US District Court Civil Docket

U.S. District - District of Columbia
(Washington, DC)

1:16cv821

Davis v. Leff et al

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Date Filed: 05/02/2016
Assigned To: Judge Ketanji Brown Jackson
Referred To:
Nature of suit: Prisoner - Other (550)
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Documents

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	Availability	No.	Date	Proceeding Text	Source
	Online	1	05/02/2016	COMPLAINT against S. GINGERICH, JR, JEH JOHNSON, DEBORAH LEFF (Filing fee $ 0.00) filed by BRIAN A. DAVIS. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet)(jf) (Entered: 05/03/2016)	
	Online	2	05/02/2016	MOTION for Leave to Proceed in forma pauperis by BRIAN A. DAVIS (jf) (Entered: 05/03/2016)	
	Online	3	05/02/2016	PRISONER TRUST FUND ACCOUNT STATEMENT for period of six months by BRIAN A. DAVIS (jf) (Entered: 05/03/2016)	
	Online	4	05/02/2016	ORDER directing an initial partial filing fee in the amount of $69.63 from Prison Account of Brian A. Davis and granting 2 MOTION for Leave to Proceed In Forma Pauperis (see order for full details). Signed by Judge Rudolph Contreras on 04/21/2016. (jf) (Entered: 05/03/2016)	
	Online	5	05/18/2016	SUMMONS (5) Issued as to S. GINGERICH, JR, JEH JOHNSON, DEBORAH LEFF, U.S. Attorney and U.S. Attorney General. (md) (Entered: 05/19/2016)	
	Free	6	06/15/2016	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/27/2016. (Answer due for ALL FEDERAL DEFENDANTS by 7/26/2016.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 5/23/16., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. JEH JOHNSON served on 5/31/2016; DEBORAH LEFF served on 5/27/2016 (td) (Entered: 06/16/2016)	
	Online	7	07/22/2016	NOTICE of Appearance by Joshua M. Kolsky on behalf of S. GINGERICH, JR, JEH JOHNSON, DEBORAH LEFF (Kolsky, Joshua) (Entered: 07/22/2016)	
	Online	8	07/22/2016	MOTION for Extension of Time to Respond to Complaint by S. GINGERICH, JR, JEH JOHNSON, DEBORAH LEFF (Attachments: # 1 Text of Proposed Order)(Kolsky, Joshua) (Entered: 07/22/2016)	
	Runner		08/02/2016	MINUTE ORDER granting 8 Defendants' Motion for an Extension of Time to August 25, 2016, to respond to the complaint. SO ORDERED. Signed by Judge Ketanji Brown Jackson on 8/2/16.(ah) (Entered: 08/02/2016)	
	Runner		08/04/2016	Set/Reset Deadlines: Answer due by 8/25/2016, (nbn) (Entered: 08/04/2016)	
	Online	9	08/25/2016	MOTION to Dismiss by S. GINGERICH, JR, JEH CHARLES JOHNSON, DEBORAH LEFF (Attachments: # 1 Text of Proposed Order)(Kolsky, Joshua) (Entered: 08/25/2016)	
	Online	10	09/01/2016	Order advising plaintiff to respond by October 11, 2016, to defendants' motion to dismiss or risk summary dismissal of the case on what will be treated as a conceded motion (see written order for details). Signed by Judge Ketanji Brown Jackson on 9/1/16.(ah) (Entered: 09/01/2016)	
	Runner		09/01/2016	Set/Reset Deadlines: Plaintiff to respond to defendants' Motion 9 to Dismiss or Risk Summary Dismissal by 10/11/2016. (nbn) (Entered: 09/01/2016)	
	Online	11	09/29/2016	MOTION to Withdraw 1 Complaint by BRIAN A. DAVIS (jf) (Entered: 10/03/2016)	
	Runner		10/03/2016	MINUTE ORDER granting Plaintiff's 11 Motion to Withdraw Complaint. It is hereby ORDERED that this case is DISMISSED. In light of Plaintiff's withdrawal of his Complaint, it is FURTHER ORDERED that Defendants' 9 Motion to Dismiss is DENIED as moot. Signed by Judge Ketanji Brown Jackson on 10/3/2016. (lckbj1) (Entered: 10/03/2016)	
	Online	12	11/01/2016	Mail Returned as undeliverable. sent to Brian A. Davis; Type of Document Returned: Order granting plaintiff motion to withdraw complaint 11 ; Resent at new address: n/a. (nbn) (Entered: 11/01/2016)	

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIAN A. DAVIS,

Plaintiff,

v.

Case: 1:16-cv-00821
Assigned To : Jackson, Ketanji Brown
Assign. Date : 5/2/2016
Description: Pro Se Gen. Civ.

COMPLAINT SEEKING INJUNCTIVE AND DECLARATORY RELIEF

DEBORAH LEFF, Pardon Attorney;
JEH JOHNSON, Secretary, Department of Homeland Security;
S. GINGERICH, JR., Senior Deputy Deportation Officer, Department of Homeland Security,

Defendants.
_____________________________________/

CIVIL COMPLAINT

Plaintiff Brian A. Davis (hereinafter "Plaintiff" unless otherwise stated), alleges the following:

I. GENERAL ALLEGATION

1. This is a civil action based on violations of Plaintiff's constitutional and statutory rights as defined under the United States Constitution and federal law. Generally, this civil action addresses violation of constitutional rights committed by the named Defendants—rights guaranteed by the First, Fifth and Eighth Amendments to the United States Constitution, and violation of the Administrative Procedure Act, 5 U.S.C. § 706 et seq.

2. This is also a petition for injunctive relief, declaratory judgment under the Federal Declaratory Act, a writ of mandamus, and injunctive relief under the Administrative Procedure Act,

5 U.S.C. § 706 et seq.

3. The allegation set forth below addresses two distinct sets of violation: The first addresses a violation under Administrative Procedure Act; the second addresses substantive due process and equal protection violations, and deprivation of Plaintiff's liberty. Each violation directly affects Plaintiff's constitutional rights.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and its inherent equitable power to remedy constitutional wrongs because the allegations set forth here arise under the Constitution and laws of the United States.

5. This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 since Plaintiff is a resident of the State of Pennsylvania, a substantial part of the violations and resulting injury alleged here originated in Washington, DC, and the named Defendants are employed by the Federal Government, two of which are based in Washington, DC.

6. This Court has the authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

7. This Court has the authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, Rules 65 and 65(a) of the Federal Rules of Civil Procedure.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1)(2) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred, and continues to occur, in this district.

III. THE PLAINTIFF

9. Plaintiff Brian A. Davis is a federal prisoner committed to the custody of the Federal

Bureau of Prisons (BOP). In 1993 Mr. Davis was convicted in the United States District Court for the Northern District of Texas of conspiracy to possess with intent to distribute 50 grams or more of cocaine base ("crack cocaine"), in violation of 21 U.S.C. §§ 841(a), 841(b)(1) and 846. Mr. Davis has been in BOP custody for more than two decades. The BOP, as part of its Intergovernment Agreement with commercial sources, ceded custody over Mr. Davis to the Geo Group, Inc., a private corporation under contract with the BOP to house federal prisoners at its privately operated prisons. (*See*, 18 U.S.C. § 4002). The Moshannon Valley Correctional Center (MVCC) is one of the many privately operated prisons owned by the Geo Group, Inc. Mr. Davis is currently confined at MVCC, which is located at: 555 Geo Drive; Philipsburg, Pennsylvania 16866.

IV. THE DEFENDANTS

10. Defendant Deborah Leff ("Defendant Leff"), at all times relevant to this action, is the current Pardon Attorney assigned to process applications for presidential pardons and sentence commutations submitted by federal prisoners under the supervision and care of the BOP. Defendant Leff heads the Office of the Pardon Attorney, which is a division within the U.S. Department of Justice (DOJ). Defendant Leff's principal place of employment with the DOJ is in Washington, DC at: the Office of the Pardon Attorney, Washington, DC 20530.

11. Defendant Jeh Johnson ("Defendant Johnson"), at all times relevant to this action, is the current Secretary of the Department of Homeland Security who has been bestowed the responsibility of performing specific governmental functions that involves enforcement of the nation's immigration laws in a manner commensurate with the requirements of the United States Constitution, statutes created by Congress designed to regulate the immigration process, and regulations codified under the Immigration and Nationality Act and Code of Federal Register in order to ensure fair processing of DHS's prosecution of immigration violations. Defendant Johnson

is also commissioned with the responsibility of ensuring that the agency's extension of available benefits, privileges, and its discretionary powers are implemented in conformance with federal law and the United States Constitution. This responsibility is ordinarily delegated to various attorneys and Deportation Officers employed by DHS authorized to act on behalf of the Secretary. These personnel operate under the supervision of the Secretary. Defendant Johnson's principal place of employment with DHS is in Washington, DC.

12. Defendant S. Gingerich, Jr. ("Defendant Gingerich"), at all times relevant to this action, is a Senior Deputy Deportation Officer employed by DHS and is one of Defendant Johnson's subordinates who has been assigned the responsibility of executing removal proceedings by preparing and issuing Notices to Appear (NTA), the document used by DHS to present its allegations and legal bases for moving to remove an alien from the United States. Once an alien is served with an NTA and the NTA is filed with an Immigration Court, at that point the alien's removal proceedings officially commences. Mr. Davis' NTA, on which Defendant Gingerich's signature appears, was prepared and issued by Defendant Gingerich. Defendant Gingerich's principal place of employment with DHS is in York, Pennsylvania at: 3400 Concord Road, Suite 2; York, Pennsylvania 17402.

V. PPRELIMINARY STATEMENT

13. Mr. Davis has been in federal prison since he was twenty-one years old based on his alleged involvement in a drug conspiracy when he was seventeen years old. Although *all* the evidence that have been used to obtain Mr. Davis' drug conviction and justify his lengthy incarceration have completely been discredited, Mr. Davis continues to languish in prison.

14. Even more dismaying, the officials named here, fully aware of the tragic circumstances under which Mr. Davis' conviction and incarceration have occurred and the many years of

emotional anguish that his unjustifiable conviction and incarceration have rendered upon him and his family, have taken deliberate steps to both prolong and worsen those tragic circumstances.

15. Defendant Leff, presented with the decision of whether to submit Mr. Davis' application for clemency to President Obama in compliance with the standard underlying the President's Clemency Initiative that was expressly set as a prerequisite for each applicant to meet in order to have their application approved for clemency, decided against submitting Mr. Davis' application to the President for consideration because of Mr. Davis' national origin, and because of illegitimate concerns that the DOJ has about the circumstances of Mr. Davis' criminal case. As the circumstances of Mr. Davis' criminal case and background show (both of which will be expounded upon below), the objectives of restoring justice underlying the President's Clemency Initiative not only address those circumstances in exact form, but the President's Clemency Initiative is also design as a specific means of providing relief to applicants like Mr. Davis seeking a reduction in their sentences by making readily available the rare benefit of a presidential clemency or pardon.

16. In addition to the allegations circumscribing Defendant Leff's conduct, the allegations outlined here also address two distinct forms of due process violations: the first is based on DHS's efforts to remove Mr. Davis from the United States based on materially false evidence and information which contravene with the requirement of 8 U.S.C. § 1229a(c)(3)(A) ("No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence."); the second is based on DHS's refusal to extend Mr. Davis the process that he is due in order to properly and fairly determine his deportability as explained by the United States Supreme Court in Judulang v. Holder, 132 S.Ct. 476, 490, 181 L.Ed.2d 449 (2011).

17. Mr. Davis, who was born in Jamaica, arrived in the United States when he was a young child and as a lawful permanent resident. (*See*, Joint Appendix "JA" 149-152). On February 11,

2015, Mr. Davis was served with an NTA prepared and signed by Defendant Gingerich which officially commenced removal proceedings against him. (JA. 153-156). The basis of the NTA's allegations for Mr. Davis' removal rest, in part, on Mr. Davis' drug conviction which, in itself, has soundly been proven to have been procured based on materially false evidence and information.

18. The other aspect of the NTA's basis for Mr. Davis' removal is based on an incorrect allegation that Mr. Davis served a four-year prison sentence *prior to* the prison term that he is currently serving. This allegation has been used by Defendant Gingerich to establish that Mr. Davis is removable based on the ground of moral turpitude under the Immigration and Nationality Act (INA). (JA. 155-156). Despite Mr. Davis' ongoing attempts at challenging the veracity of this allegation and the other allegations contained in the NTA, his efforts have repeatedly been stymied, and DHS continues to arbitrarily rely on the unfounded allegations delineated in its NTA as a means of establishing its burden under 8 U.S.C. § 1229a(c)(3) of proving by clear and convincing evidence that he is in fact deportable and therefore should be deported. Cf. 8 U.S.C. § 1229a(c)(3) (Stating that the Government must prove deportability by clear and convincing evidence).

19. In order for Mr. Davis to avoid being ordered removed permanently from the United States and from his family based on a drug conviction for which *all* the evidence presented have been completely disproved and based on an allegation made against him by Defendant Gingerich that never occurred, the Constitution and laws of the United States have provided him with the necessary means to challenge the Defendants' egregious attempt to deport him in violation of his constitutional rights. And as the Supreme Court observed in Obergefell v. Hodges, 192 LEd.2d 609 (2015), "[t]he Nation's courts are open to [him] … [to] invoke a right to constitutional protection when he [] is harmed," rather than him having to first be subjected to an unlawful deportation order and then be thrust in the position of fighting to restore his rights and his liberty through a protracted

appeal process.

20. Under Judulang v. Holder, the Supreme Court explained that a lawful permanent "alien who has long resided in this country" and is faced with deportation "has [a] *right* to remain here," Judulang, 181 LEd.2d at 464 (emphasis added), and that DHS's efforts to deport him must take into account his "fitness to reside in this country," id. 464, and "must be tied [] to the purposes of the immigration laws or the appropriate operation of the immigration system." Id. As the allegations below will show, the standard of "fitness" established by the Supreme Court has been effectively abdicated in Mr. Davis' deportation proceeding, having been replaced with efforts to deport him that are alarmingly capricious and arbitrary, and undeniably unfair and callous.

21. As stated, Mr. Davis has been in federal prison since he was twenty-one years old based on his alleged involvement in a drug conspiracy when he was seventeen years old. And even though the evidence that have been used to obtain Mr. Davis' drug conviction and justify his lengthy incarceration have been completely discredited, he continues to languish in prison and now faces a further loss of liberty and permanent separation from his family based on a fundamentally unfair and invalid conviction, and on an allegation that he previously served a four-year prison term that is not true. Cf. Moore v. United States, 571 F.2d 179, 184 (3rd Cir. 1978) (observing that "if Moore in fact were sentenced on the basis of an understanding about other criminal behavior that was fundamentally incorrect, the values of accuracy, rationality and fairness in the criminal process as it bore upon Moore were jeopardized."), *relying on* Townsend v. Burke, 334 U.S. 736, 92 LEd. 1690 (1948) (observing that "a prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue. Such a result, whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand.").

22. Mr. Davis has lived through decades of emotional and psychological distress based on a

drug conspiracy conviction and an ensuing life sentence that continues to wobble on pillars of fabricated events and information. And while Mr. Davis continues to be plagued with this nightmare masquerading as justice served, he is now confronted with the prospect of being forced to re-live yet another act of injustice and all the challenges and adversity that follows as DHS continues its effort to banish him from the United States and from all the family and friends that he knows, ultimately exiling him to a country in which he has no ties and no means of obtaining the support that he will need after serving more than two decades of an unjust incarceration.

23. The allegations delineated below will show that Defendant Leff exercised her authority as Pardon Attorney in an arbitrary and capricious manner in violation of the Administrative Procedure Act, that Defendant Leff abused the power bestowed upon her, and that Defendant Leff employed a method of selective enforcement based on Mr. Davis' national origin in deciding against submitting his application for clemency to the President in violation of the Equal Protection Clause to the United States Constitution. It is important to note that Mr. Davis is not challenging the President's denial of his application for clemency, but rather the method employed by Defendant Leff in determining whether to present his application for clemency to the President.

24. Likewise, the allegations outlined below will also show that Defendant Johnson, through his subordinates, has exercised, and is continuing to exercise, his authority as DHS Secretary in an arbitrary and capricious manner in violation of the Administrative Procedure Act, that Defendant Johnson, by and through his representatives, have engaged, and are continuing to engage in oppressive government conduct and an egregious abuse of power, in violation of Mr. Davis' First, Fifth and Eighth Amendment rights and Mr. Davis' Fifth Amendment right to the pursuit of happiness and to be treated with the dignity that is central to the precept of a free people whose institutions are founded upon the doctrine of equality. As Mr. Davis will show below, the

Defendants' actions have offended the democratic ideal upon which our nation was founded—those ideals that are rooted in the concept of natural law, natural right, human dignity, and equality.

25. It is further alleged that Defendant Johnson is responsible for creating and maintaining a policy and custom that have allowed his subordinates to engage in conduct and practices that have resulted in a violation of Mr. Davis' constitutional rights.

26. Also, the allegations outlined below will show that Defendant Gingerich has exercised, and is continuing to exercise, his authority as DHS's Senior Deputy Deportation Officer in an arbitrary and capricious manner in violation of the Administrative Procedure Act, and that Defendant Gingerich has engaged, and is continuing to engage, in oppressive government conduct and an egregious abuse of power, in violation of Mr. Davis' First, Fifth and Eighth Amendment rights and Mr. Davis' Fifth Amendment right to the pursuit of happiness and to be treated with the dignity that is central to the precept of a free people whose institutions are founded upon the doctrine of equality.

27. Mr. Davis will show that his criminal history and personal background comports with the Supreme Court's standard for evaluating whether he is "fit" to remain in the United States and what the Defendants must prove in order to establish his removal from the country—a process that the Defendants have steadfastly refused to apply to his deportation proceedings. Cf. Judulang v. Holder, 181 Led.2d at 464. Mr. Davis will also show that his personal background and criminal history are in alignment with objectives underlying the President's Clemency Initiative project, and that Defendant Leff acted arbitrarily, capriciously, and abused her discretion in declining to favorably recommend to the President to approve his clemency application. As a result of the Defendants' conduct, judicial action is most needed here in order to preserve Mr. Davis' due process right, his liberty, and those ideals that we all hold dear.

28. As stated, if Mr. Davis is to be banished from the country, the United States Supreme Court has explained that his expulsion must be based on a fair assessment of whether he is unfit to remain here. Cf. Judulang v. Holder, 132 S.Ct. 476, 181 LEd.2d 449 (2011).

VI. BASIS FOR COMPLAINT AND FACTUAL ALLEGATIONS
PART A: Rationale Given For The President's Clemency Initiative

29. Under Article II, § 2 of the United States Constitution, the President is clothed with the exclusive authority to grant clemency, executive pardon, or commute the sentence of any federal defendant serving a federal sentence.

30. As recent as 2013, President Obama, in response to growing public outcry surrounding the mass incarceration of African-Americans and Latinos sentenced for non-violent drug offenses, many of whom have been incarcerated for decades, announced plans to use his exclusive authority under the Constitution to grant clemency to thousands of non-violent drug offenders who meet certain pre-determined requirements. This wide-scale exercise of the President's authority to award clemency has never before been implemented in the nation's history. In President Obama's case, his decision to exercise his clemency authority in such an unprecedented way came as a result of Congress' lack of effort in passing legislation that would allow non-violent drug offenders languishing in federal prisons an opportunity to obtain relief from the stringent, and in many cases, draconic prison sentences that were imposed upon them over the previous two decades as a result of a war that has been waged against drugs.

31. Following the President's announcement of his Clemency Initiative, he and other members of his administration began speaking publicly about the injustice that inhere in the nation's drug laws and the disproportionate impact that the injustice has had on the African-American community, particularly young black men. In a statement in the Washington Post editorial last

summer regarding criminal justice reform and why it should be a priority for the country and is morally necessary, the President, specifically talking about young people who have languished in federal prisons for the past two decades as a result of the war against drugs, explained that "[w]hen they described their youth, these are young people who made mistakes that aren't that different from the mistakes I made, and the mistakes that a lot of [other successful members of our society] made." The President went on to state that "[t]he difference is that they did not have the kind of support structure, the second chances, the resources that would allow them to survive those mistakes." The President concluded by stating that "I believe that at its heart, America is a nation of second chances. And I believe these folks deserve their second chances." Id, cf. (July 15, 2015 Edition of Washington Post).

32. Adding to the President's statements, White House senior adviser, Valerie Jarrett, also stated in the Washington Post that the President meets regularly with young people of color and has spoken of how they face a less forgiving environment than he experienced growing up. Ms. Jarrett stated: "[The President] just wants to make sure *they don't get unfairly stuck in the criminal justice system because they've made mistakes early in their lives, without the ability to ever have a second chance.*" (emphasis added).

33. In a similar tone, United States Deputy Attorney General, James M. Cole, added: "For our criminal justice system to be effective, it needs to not only be fair, but it also must be perceived as being fair. These older, stringent punishments that are out of line with sentences imposed under today's laws erode people's confidence in our criminal justice system." (Remarks at the N.Y. State Bar Association Annual Meeting (Jan. 30, 2014), available at: speeches/2014/dag-speech.140130).

34. In response to the President's Clemency Initiative, the Clemency Project 2014 was formed. Deputy Attorney General Cole formally announced the new initiative as part of an effort to

encourage qualified federal inmates to petition to have their sentences commuted or reduced by the President. Numerous attorneys and groups were asked to volunteer their assistance under the umbrella Clemency Project 2014 in an effort to fast-track the myriad applications that were expected to be filed. According to Deputy Attorney General Cole, the expectation was that the clemency initiative "will go far to promote the most fundamental of American ideals—equal justice under law." (Remarks at Press Conference Announcing the Clemency Initiative (April 23, 2014), available at: speeches/2014/dag-speech-140423.html); *see also* (Press Release, U.S. Department of Justice, Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants (April 23, 2014), available at: April/14-dag-419.html). Deputy Attorney General Cole noted that the initiative was not limited to crack offenders, but to "worthy candidates" who meet six specific criteria. Id. Those six criteria are: (1) the applicant is serving a federal sentence that likely would have been lower if he was convicted of the same offense today; (2) he was a non-violent, low-level offender without significant ties to large-scale criminal organizations, gangs, or cartels; (3) he has served at least 10 years of his sentence; (4) he does not have a significant criminal history; (5) he has demonstrated good conduct while in the BOP; and (6) he has no history of violence before the offense or during his term of incarceration.

35. In or around October of 2014, Mr. Davis' case-file was submitted to the Clemency Project 2014 to be included among a list of qualified applicants for clemency. The list was then submitted to the Office of the Pardon Attorney for consideration whether to submit the applicants' name to the President with a *favorable* recommendation to grant clemency. The list of applicants was prepared by volunteer attorneys from the Office of the Federal Public Defender in the District of Maryland.

36. After more than a year following the submission of Mr. Davis' application for clemency

to the Office of the Pardon Attorney, in a memorandum dated January 6, 2016, Defendant Leff notified Mr. Davis that his application for clemency was denied on January 5, 2016. (JA. 159).

PART B: <u>Office of the Pardon Attorney and the Clemency Process</u>

37. The Office of the Pardon Attorney (OPA) is a division within the DOJ assigned to carry out the function of assisting the President in the exercise of his clemency powers. The OPA receives petitions addressed to the President for all forms of executive clemency (including pardon, commutation of sentence, remission of fine, and reprieve) for federal criminal offenses, and in turn conducts the appropriate investigations on the merit of those petitions. The OPA then uses the information collected to prepare reports ("letters of advice") advising the President about the recommended disposition of individual cases. The "letters of advice" contain analysis of the applicant's offense, rehabilitation and suitability for clemency, and the likely impact of a grant of clemency.

38. Although the President is free to disregard OPA's recommendation or to act without any involvement from the OPA whatsoever, *the President has traditionally relied heavily on the OPA's advice in clemency cases to inform his decision-making.*

39. If the President decides to deny clemency, the Office of the Counsel to the President provides the OPA with a written notification that the request for clemency has been denied. This written notification serves as the official record of the President's action on the clemency requests of those applicants, and is retained by OPA, which places a copy of the notification in the individual applicant's clemency file and also records the information in OPA's automated database. OPA maintains lists of clemency applicants whose applications have been denied by the President.

40. Pursuant to 28 C.F.R. § 0.35, the Pardon Attorney, under the supervision of the Attorney General, "shall have charge of the receipt, investigation, and disposition of applications [for

executive clemency]." Id. The Pardon Attorney must then submit her recommendation to the Attorney General (28 C.F.R. § 0.36) and, after review and possible investigation, the Attorney General must advise the President as to whether, in his judgment, the request for clemency merits favorable action by the President. (28 C.F.R. § 1.7(b)).

41. Germane to the foregoing sequence, the United States Supreme Court has stated that an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L. Ed.2d 443 (1983); cf. 5 U.S.C. § 555(e).

PART C: Mr. Davis' Criminal Case And History

42. As stated, Mr. Davis was born in Jamaica. He arrived in the United States on or around May 3, 1982 as a lawful permanent resident. (JA. 149-152). In America, Mr. Davis attended elementary school in Brooklyn, New York (P.S. 135), middle school (Winthrop Junior High), and high school (Samuel J. Tilden High School), also in Brooklyn, New York. Mr. Davis later attended Blackstone Paralegal Studies and Ashworth University while serving his federal sentence. (JA. 138-139).

43. In December of 1988, Mr. Davis, in his final year of high school, dropped out of school, left home, his job, and ventured to Dallas, Texas with friends from his neighborhood. His reason for leaving was to separate himself from a situation at home that made life miserable for him.

44. Shortly after arriving in Dallas, Mr. Davis was arrested on December 13, 1988 and remained in jail until January 24, 1989. (JA. 53, 97). Thereafter, Mr. Davis was arrested on a number of different occasions, (JA. 54-57, 117), including an arrest by immigration officials where he spent several months in immigration detention because he was unable at the time to verify that he

was in fact who he said he was. (JA. 118).

45. All in all, from the time of Mr. Davis' arrival in Dallas in December of 1988 up until his departure in mid-to-late1990, he spent more than a year in various forms of detention, including six months in a Dallas County jail from October 5, 1989 to March 23, 1990. (JA. 97).

46. In April of 1989, Mr. Davis pled guilty to a theft offense that stemmed from him renting a car from a drug addict for $50 which belong to the addict's mother who, unbeknownst to Mr. Davis, had reported the car stolen. (JA. 119-120). Mr. Davis was pulled over in Sulpher Springs, Texas while driving the car and was charged with unauthorized use of a motor vehicle. (JA. 56). The charge was later dropped by Sulpher Springs, but was subsequently picked up by Dallas County which later prosecuted Mr. Davis. Mr. Davis pled guilty to theft because doing so meant immediate release. He later successfully served four years' probation for the offense.

47. During Mr. Davis' time in Dallas, numerous attempts to kill him were made by several of the men who he was said to have worked for selling crack cocaine and who later testified against him during his trial. These attempts include three separate shootings, one involved the destruction of a taxi cab in which Mr. Davis was riding, and another resulting in an individual who was next to Mr. Davis getting shot and Mr. Davis having to provide a statement to the police after an ambulance was called; another involved Mr. Davis being tortured. (JA. 113).

48. Following Mr. Davis' release from jail on March 23, 1990 after having been acquitted by a judge on drug charges, although he promised his mother that he would leave Dallas and return home to rebuild his life, he discovered for the first time that he had a son living in Dallas. To further complicate matters, the young lady with whom Mr. Davis had a child had given paternal rights to her boyfriend by lying to him that he was the child's father and naming the child after him, which the young lady did presumably because at the time she hardly knew anything about Mr.

Davis, had not seen or heard from him in months, and was under the assumption that she would not see or hear from him again.

49. Once Mr. Davis showed up, although the boyfriend and the child's grandmother, along with everyone else around, immediately recognized who the child's true father was, the young lady, in the beginning, was dead-set against acknowledging that Mr. Davis was in fact the child's father. As a result, it became undeniably obvious to Mr. Davis that he could not leave Dallas under those circumstances, and that he would have to break his promise to his mother.

50. Ultimately Mr. Davis succeeded in getting the young lady to acknowledge that he is the child's father, which was helped by some reprimanding from the young lady's mother. He was also able to allay the young lady's fear about him taking the child away from her and returning to New York with the child—a process that began with Mr. Davis giving the young lady all the money that was given to him by his mother for his plane fare to New York, which he did to show that he had genuine and sincere intentions of supporting and caring for his child. Mr. Davis' son was born Gerald Frazier on January 13, 1990.

51. Thereafter, Mr. Davis was gradually allowed to spend time alone with his Gerald which eventually became a frequent occurrence. But because Mr. Davis often stayed with different friends which also included the times when he had Gerald to himself, Gerald's mother did not always have a contact to get in touch with him. This later led to Gerald's mother calling the police and reporting that Mr. Davis had kidnapped Gerald after Mr. Davis had been absent with Gerald for nearly two weeks without calling Gerald's mother. Fortunately for Mr. Davis, in spite of his irresponsibility Gerald's grandmother intervened on his behalf, convincing the police that his intentions towards Gerald and his mother were good which proved to be true as Mr. Davis eventually showed up with the child.

52. Once it became clear to Mr. Davis that in order for Gerald to have a successful future, he, himself, would have to get his life in order, in mid-to-late 1990 he returned home to New York to live with his mother who at the time had moved on from the situation that caused Mr. Davis to leave home in the first place. At the time Mr. Davis had just turned 19 years old.

53. While changes in attitude, behavior, and psychological development are generally difficult to implement, particularly for a young person without a mentor and the necessary intellectual training needed to correctly make important life choices, Mr. Davis, after arriving in New York, embarked on the difficult challenge of taking control of the direction of his life by embracing his desire to reach for something better, humbling himself, and figuring out how to work towards building a productive future that would allow him to properly care for himself and his son without placing either of them in harms way. He began working in his mother's beauty salon which, in itself, turned out to be a humbling experience.

54. While the transition towards self-improvement was not always fluid as can be gleaned from a poor decision that Mr. Davis made in March of 1991 to travel with friends to Charleston, West Virginia, (JA. 97)—a decision that became a defining moment in what it means not to look back and when it is necessary to sever destructive relationships, Mr. Davis ultimately succeeded in becoming gainfully employed. He worked for the Greyhound Bus Company at Port Authority, New York, in baggage claim and janitorial services; he worked for a charitable organization based in Bronx, New York, where he was entrusted with the responsibility of collecting financial donations for disabled New York City police officers; and he worked for a construction company (Laveta Construction / L. Edwards Home Improvements) based in Brooklyn, New York, doing menial labor. (JA. 99, 110). But as has been the theme throughout whenever government officials evaluate accomplishments made by Mr. Davis that humanizes him and in some way present him in a positive

light, the Probation Officer who prepared Mr. Davis' Presentence Report (PSR) made a point of raising doubt about his employment history by commenting that Mr. Davis "claim[ed]" to have been employed from 1991 up until his arrest, (JA. 99), notwithstanding the fact that documents were submitted to verify Mr. Davis' employment history, including IRS tax return forms, and the fact that he was arrested at his job-site after *he* called the authorities to self-surrender. Id.

55. On September 14, 1992, Mr. Davis was arrested by New York City police officers for robbery, robbery with physical injury, robbery in the 3rd degree, assault with intent to cause physical injury, criminal possession of a weapon, and criminal possession of stolen property. (JA. 97). While these are obviously serious charges, the reality is that the outcome of this arrest nearly resulted in the filing of a civil complaint on behalf of Mr. Davis against the arresting officers and the City of New York for civil rights violations. But because Mr. Davis was arrested a month later on October 14, 1992 based on the current federal drug conspiracy charge, that changed the trajectory of the suit.

56. In any event, on the morning of September 14, 1992, an errant taxi driver struck the vehicle that Mr. Davis was driving (a 1991 Nissan Pathfinder that was leased by Mr. Davis' mother) and fled. Mr. Davis gave chase and both vehicles came to a stop exactly in front of a police precinct in Brooklyn which is located directly at the corner of a major street. Both vehicles stopped approximately 20 to 25 feet away from the front entrance of the precinct with Mr. Davis' vehicle blocking the taxi. As stated, the incident occurred in the morning around the time police officers were engaged in shift-change and were going in and out of the precinct. There were approximately eight police officers standing about 15 to 20 feet away from where Mr. Davis and the taxi came to a stop, which is a parking area that is adjacent to the street.

57. Mr. Davis exited his vehicle and walked towards the taxi, mindful of the police presence. At the same time, the taxi driver exited his vehicle and walked towards Mr. Davis. Although Mr.

Davis was upset, his focus was to discuss the damage to his vehicle. But to Mr. Davis' surprise, the moment the taxi driver (a man much older than Mr. Davis and towered over him) approached him, he grabbed Mr. Davis by the throat with his hand while hurling threats. Instinctively, Mr. Davis chopped the man's hand away from his throat and began hurling punches at the man. Almost immediately the police officers standing in the area came over and separated Mr. Davis and the man. Mindful of the situation, Mr. Davis pointed out that he was attacked and that he defended himself. Mr. Davis further explained that the man had hit his vehicle and fled, and pointed to the damage at the rear of the vehicle that was caused by the man's taxi.

58. Rather than the officers focusing on the complaint that Mr. Davis was making, they instead began to profile him by asking him whether he had any guns or drugs in his vehicle. This infuriated Mr. Davis and he foolishly began to hurl expletives at the officers who in turn took offense. While several of the officers moved over to the taxi driver to converse with him, one of the officers on the scene calmly told Mr. Davis to leave before he got himself into trouble. This caution, which Mr. Davis interpreted as an empty threat, succeeded only in sustaining his anger until it was too late—his mouth landed him in jail with the litany of robbery and assault charges outlined above.

59. Mr. Davis had in his possession an antique pocket knife with a fold-in blade that the officers reported was used by Mr. Davis to cut the man while he robbed him (there was obviously no knife wound found on the man). Ultimately, the PSR issued in Mr. Davis' federal drug conspiracy case accepted the police report as true that Mr. Davis violently robbed a man for $10 directly in front of the front entrance of a police precinct at approximately 8:00 a.m. while approximately eight police officers and a small crowd on pedestrians watched. And unfortunately for Mr. Davis, this narrative is still being used against him to this day.

60. The attorneys who represented Mr. Davis on the above robbery and assault charges got the case brought before a grand jury to get it thrown out after the District Attorney's Office decided to proceed with prosecuting the charges. Mr. Davis ended up testifying before the grand jury, which resulted in the charges being dismissed. (JA. 97).

61. On October 14, 1992, Mr. Davis, after discovering that a federal warrant had been issued in Dallas for his arrest, called federal authorities and self-surrendered at his job-site despite his mother's objections and instructions for him to first retain counsel. Mr. Davis self-surrendered because he foolishly thought that doing so would matter, at least in consideration of whether he would be released on bond. He also naively thought that the authorities would take into consideration the fact that he elected to face the charges filed against him rather than flee when he discovered that a warrant had been issued for his arrest. Two weeks prior to Mr. Davis' arrest, he had just turned twenty-one years old. Several months later, his second son, Brandon Davis, was born.

62. Mr. Davis, along with 60 other defendants, were named as co-conspirators in a multi-kilogram crack cocaine distribution organization that was said to have operated principally in Dallas, Texas. (JA. 92). The organization, dubbed "the Allen Organization," was said to have been headed by a man named Anthony Allen. With the exception of Mr. Davis and two other co-conspirators who Mr. Davis had never met prior to his arrest—a fact that is established in court documents, every other named co-conspirator (with the exception of those against whom the case was dismissed) pled guilty to conspiracy and agreed to cooperate with the government, including testifying if necessary. Mr. Davis and the other two co-conspirators proceeded to trial.

63. On October 21, 1993, Mr. Davis was convicted in the United States District Court for the Northern District of Texas of conspiracy to possess with intent to distribute 50 grams or more of

cocaine base (crack), in violation of 21 U.S.C. §§ 841(a), 841(b)(1) and 846 (Count One). He was also convicted of conspiracy to Launder Monetary Instruments in violation of 18 U.S.C. § 371 (Count Three). (JA. 92). Mr. Davis was not named in Count Two of the indictment, which charged a continuing criminal enterprise under 21 U.S.C. § 848.

64. Mr. Davis was found to have been involved in the conspiracy over a two-year period when he was seventeen and nineteen years old. And as stated above, of those two years, Mr. Davis spent more than a year in various county detention.

65. At sentencing, the district court imputed to Mr. Davis amounts of crack cocaine that the district court determined had been possessed by other members of the conspiracy, concluding that on this basis 23 to 41 kilograms of crack cocaine could be attributed to Mr. Davis. (JA. 30, 41). The district court emphasized that it was not relying on the portion of the government's evidence that Mr. Davis personally possessed in excess of 15 kilograms of crack cocaine, an argument that the government vehemently tried to make. (JA. 68, 51-52, 57-58, 65).

66. Under the Sentencing Guidelines in effect at the time, this quantity yielded a base offense level of 42. (JA. 67). The district court then applied enhancements that increased Mr. Davis' offense level to 46, which the court then reduced to a final offense level of 43 for sentencing purposes. Mr. Davis was assigned a criminal history category of II on account of his theft conviction. When combined with a total offense level of 43, Mr. Davis' Guideline sentencing range was mandatorily set at life imprisonment without the possibility of parole. (JA. 80). Accordingly, the district court sentenced Mr. Davis to life imprisonment without the possibility of parole. Id.

67. On June 19, 2008, the district court reduced Mr. Davis' life sentence to 30 years in response to a petition filed by Mr. Davis under 18 U.S.C. § 3582(c)(2) based on Amendment 505 to the Federal Sentencing Guidelines. (JA. 5).

68. Later in May of 2015, the district court granted a § 3582(c)(2) petition filed by counsel for Mr. Davis which sought a reduction in Mr. Davis' sentence based on the recently promulgated Amendment 782 to the Federal Sentencing Guidelines, (JA. 6), which was issued in the wake of Brian A. Davis v. U.S. Sentencing Commission, 716 F.3d 660 (D.C. Cir. 2013). The district court's Order reduced Mr. Davis' 30-year sentence to 27 years. Id.

69. During Mr. Davis' trial, he essentially conceded to Count Three in the indictment which was based on a number of Western Union money transfers that he had made on behalf of a friend who was also a named co-conspirator. (JA. 61, 106, 111-112). Mr. Davis conceded to Count Three knowing that doing so meant that he was going away to prison for five years. (JA. 112). The money transfers were all made after Mr. Davis' release from jail in March of 1990.

PART D: Analysis of the Evidence Underlying Mr. Davis' Federal Conviction

70. The entire evidence upon which Mr. Davis' drug conspiracy conviction rests consist of the following testimony and information. To begin with, the jury was told repeatedly that Mr. Davis was responsible for generating in excess of $100 million selling crack cocaine when he was 17 years old even though no evidence was presented to support that allegation—i.e., no evidence that Mr. Davis has ever owned or purchased anything of value in his entire life to support the idea that he was responsible for making over a $100 million selling crack; no evidence that Mr. Davis was ever found to be in possession of any drugs or substantial amount of cash at anytime in his life to justify him being responsible for generating in excess of $100 million in drug proceeds; and no evidence that the conspiracy itself in fact engaged in such large-scale drug distribution. Mr. Davis did make one purchase of an item of value, however—a $4,000 motorcycle that he was only able to purchase by making a series of payments before he was able to take possession of the motorcycle. The purchase of the motorcycle is a part of the trial record. Ultimately, the motorcycle itself became a

huge focus during Mr. Davis' trial.

71. During the trial, a co-conspirator named Calvert Trew (the second-in-command in the conspiracy and the government's star witness) testified that he was contacted by Anthony Allen, the conspiracy's putative leader, who instructed him to give Mr. Davis nine (9) ounces of crack cocaine which Mr. Davis in turn smuggled to Dallas on behalf of Anthony Allen. (JA. 43-44, 63-64). The jury, however, was not told that Mr. Davis and Anthony Allen had never met, never had any conversation with each other, and knew absolutely nothing about each others' existence prior to Mr. Davis' arrest on October 14, 1992. This fact is corroborated by the circumstances of the case, by a conversation that Anthony Allen had with Mr. Davis' trial attorney, (JA. 13-14, 19), and by an affidavit submitted by Anthony Allen in a different legal matter. (JA. 7-9). As the record of the case shows, Mr. Davis' trial attorney attempted to establish the unreliability of Calvert Trew's testimony and statements, but his efforts were rebuffed. (JA. 14-17).

72. Calvert Trew further testified that while he was a member of the conspiracy he had only seen Mr. Davis four times, and he *never* had a conversation with him.

73. Colnick Grignion, one of the conspiracy's leaders, testified that "he never saw Mr. Davis do[ing] anything," (JA. 114), and that just because individuals were hanging around one another, that doesn't mean that they were part of the organization. (JA. 113). Grignion really did not have much to say about Mr. Davis.

74. Christopher Hemmings, also one of the conspiracy's leaders, testified that Mr. Davis assisted him with smuggling drugs from New York to Dallas in a car. Hemmings testified that it was he, Mr. Davis, and two other co-conspirators traveling in the car, that Mr. Davis was driving when the car was pulled over by the police who searched the car and its occupants but did not discover the drugs, and that Mr. Davis was issued three traffic citations during the stop. Hemmings

also testified that Mr. Davis worked for him selling crack cocaine while he was in Dallas.

75. Hemmings and the other two co-conspirators (Kirk Hudson and Duane Knight) who Hemmings claimed were traveling in the car with him and Mr. Davis were cooperating witnesses for the government. And all three individuals testified against Mr. Davis during his trial. However, what is striking about the event testified to by Hemmings is the fact that *only* Hemmings had any recollection about the event taking place; the other two individuals (Hudson and Knight) had no knowledge whatsoever of the event ever taking place even though, according to Hemmings, they were both riding in the car when it was stopped and searched by the police who supposedly issued Mr. Davis three traffic citations. Equally striking is the fact that none of the three traffic citations could be found.

76. Hemmings further testified that he did not trust Mr. Davis and thought that he was a "snitch." (JA. 59-60). Even though the government's theory of Mr. Davis' involvement was that Mr. Davis was a part of Fitzroy Allen's crew (Fitzroy Allen being brother to Anthony Allen) of which Hemmings was a part, when Hemmings was asked to described who the members of Fitzroy Allen's crew were, he never mentioned Mr. Davis. (JA. 115-116).

77. Hemmings also testified that Mr. Davis moved one of the conspiracy's workers (Devon Foster) from one drug distribution outlet to another in September of 1990. (JA. 40-41, 61). This allegation not only contributed to Mr. Davis' conviction, but it also served as the government's *sole* basis for establishing that Mr. Davis exerted a certain level of supervision over low-level members of the conspiracy, (JA. 62, 72), which in turn led to his leadership role enhancement at sentencing. (JA. 33, 96). What the jury was not told, however, was that Devon Foster was *never* in Dallas at any time in 1990. Moreover, no statement from Devon Foster was submitted into evidence, nor were there any police report provided indicating that Devon Foster was in fact arrested in Dallas at

any time during 1990 as testified to by a special agent assigned to the case. (JA. 38, 40).

78. Lastly, Hemmings, who shot and killed one of his workers, David Colon, once attempted to kill Mr. Davis when he fired a flurry of gun shots at him, missing, but hitting an individual (Mark Hillary) who was next to Mr. Davis. Mr. Davis escaped death by what he described as divine intervention as the gun ran out of bullets and he was able to flee. Thereafter, Mr. Davis called an ambulance for Hillary and ended up having to provide a statement to the police.

79. Kirk Hudson, one of the conspiracy's lieutenants and cousin to Christopher Hemmings, testified that Mr. Davis, a seventeen year old, had established a cocaine connection with a cocaine supplier named Charley and that the cocaine obtained through this individual supplied the conspiracy. (JA. 51-52).

80. There were 61 people named in the conspiracy in which Mr. Davis was charged. (JA. 87-91). Calvert Trew and Colnick Grignion (two of the conspiracy's leaders) testified at length about where and from whom the conspiracy obtained its cocaine. (JA. 111). Neither Trew nor Grignion or, for that matter, *any other member of the conspiracy* except Kirk Hudson, mentioned anything about Mr. Davis obtaining cocaine through a cocaine supplier named Charley. (JA. 52). And no one else in the conspiracy (again with the exception of Hudson) had any knowledge about a cocaine supplier named Charley. (JA. 52, 60).

81. Hudson also admitted during cross examination that he twice attempted to kill Mr. Davis—once when Mr. Davis was riding in a cab which was riddled by bullets fired by Hudson, and the other time when Mr. Davis was in a club.

82. A Dallas police officer (Officer Mayfield) who, along with his partner were part of a drug trafficking investigation that led to his partner being criminally prosecuted, testified that on April 22, 1989 he and his partner (the same partner prosecuted for drug trafficking) encountered Mr.

Davis and a co-conspirator in an apartment with a quarter kilogram of cocaine and $17,000 in cash. According to Officer Mayfield, Mr. Davis was not arrested.

83. However, Mr. Davis' jail record conclusively shows that not only was he not in an apartment on April 22, 1989 with a quarter kilogram of cocaine, a co-conspirator, and $17,000 in cash as Officer Mayfield described, but he was in jail *prior to* April 22, 1989 based on his theft offense, (JA. 53), and remained in confinement through and after April 22, 1989. Equally striking is the fact that the alleged co-conspirator who was supposedly in the apartment with Mr. Davis provided no statement or testimony corroborating this incident; nor were there any explanation provided as to why Mr. Davis was not arrested. Unfortunately for Mr. Davis, the jury was not made aware of this information.

84. Mr. Davis' PSR reports that he "was employed as a runner for the Allen Organization" and that "[he] participated as a runner for Ian Barr." (JA. 93). No information was provided as to whom Ian Barr is, and Mr. Davis is unaware of who this individual is. Moreover, as can be gleaned from the list of individuals named in the indictment, the name Ian Barr appears nowhere on the list. (JA. 87-91). Yet part of the evidence presented against Mr. Davis is that he was a runner for this individual.

85. The PSR also indicates that "[Mr.] Davis report[ed] that he ran away from home when he was 16 years of age to come to Dallas to work for the Allen Organization." (JA. 98). This information is completely false and make absolutely no sense when considering that Mr. Davis proceeded to trial precisely to contest the government's allegation that he was a member of the Allen Organization. But assuming, *arguendo*, that Mr. Davis did run away from home at 16 years old to go to Dallas to work for the Allen Organization as the PSR contends, does that justify life imprisonment and the steady flow of opposition from the government that Mr. Davis has been

receiving for more than two decades?

86. The PSR further alleged that one of the aliases used by Mr. Davis was "English," (JA. 86), which the PSR sought to use to establish that Mr. Davis was in fact responsible for a shooting incident that he was arrested for on December 13, 1988 shortly after his arrival in Dallas. (JA. 93). But nowhere in the voluminous trial record and the mountain of statements provided were there any mention that anyone has ever referred to Mr. Davis as "English." (JA. 23, 48-50).

87. Lastly, according to the government, the conspiracy originated in the Crown Heights section of Brooklyn, New York, where its members lived. However, neither Mr. Davis, any member of his family, nor any of his friends have ever lived in Crown Heights. Nor did Mr. Davis ever attended school or was a part of any community program located in Crown Heights. The section of Brooklyn where Mr. Davis lived and grew up is miles away from Crown Heights.

88. On December 13, 1988, almost two weeks after Mr. Davis arrived in Dallas, he was arrested and charged with aggravated assault and attempted murder based on a police report that he shot a man in both legs with a semi-automatic machine gun and that he put the gun to the man's head and pulled the trigger but the gun misfired. (JA. 35-36, 93). According to the report, the man was able to escape by running away and signaling a police cruiser several blocks away from where the incident occurred. (JA. 35). Although these charges were later thrown out, (JA. 22-23, 47-50), the record of this arrest has been the bane of Mr. Davis' existence from the time of his arrest by federal authorities on the current conspiracy case, and continues to be a source of disrepute to this day.

89. At the time of Mr. Davis' arrest on December 13, 1988, the original report was that he was holding a police officer hostage. This prompted the arrival of tactical unit and local TV news programs. Once the "police officer hostage" report proved to be false, the revised report was that an

armed man was barricaded inside an apartment. That report also turned out to be false as Mr. Davis was not "barricaded" in an apartment; and no weapon was discovered in the apartment where Mr. Davis was later arrested.

90. Once Mr. Davis was taken to a police station, he was questioned about a shooting but declined to provide any information. His reticence was interpreted as hardball, and he was told that he would be made to talk. He was then charged, but was released several weeks later as all charges were dropped.

91. Looking at the incident outlined in the police report through a logical lens, clearly the intended message is that Mr. Davis intended to kill a man. But a closer look at the entire circumstance shows that the facts represented do not add up. To begin with, from a sociological standpoint (and this is just acknowledging a cultural truism that we all know exist), it is immensely unlikely that the police and/or the prosecuting attorney would simply drop such serious charges against Mr. Davis if they truly believed that he in fact shot a man in both legs and put a gun to the man's head and pulled the trigger in an effort to kill him. This unlikeliness seamlessly crosses over to impossibility when considering that black defendants have invariably been convicted on far less evidence than what the police report in this case described. Secondly, and again applying logic, the question becomes whether it is possible for a person who was shot in both legs by an assailant intent on killing to be able to escape the assailant by "running" on legs that sustained gun shot wounds when all the assailant had to do was simply unjam the gun and proceed with completing the act of killing or simply choose a different route to complete the act? The answer to that question is obvious, especially when considering that the storyline is an intent to kill. It also must follow that the assailant would have prevented his intended target (who he shot moments before in both legs) from escaping until he figured out how to consummate the act of killing.

92. Putting a gun to a man's head and pulling the trigger is serious business. And such an act, without a doubt, communicates an image about the actor that is despicable, abhorrent and monstrous. And unfortunately for Mr. Davis, that has been the perception that he has had to struggle against for years, knowing that it is unjustified.

93. There is no question that Mr. Davis' string of arrests have played a catalytic role in virtually every scenario and instance where he has been considered for one benefit or another, including at his sentencing when he was enhanced for possessing a gun at the time of his arrest on December 13, 1988 even though no gun was ever discovered, (JA. 69), and even though, in spite of all his arrests and many run-ins with the police, he was never once found to be in possession of a gun. Nevertheless, because of Mr. Davis' arrests, many of which never made it to court, he has been deemed an incorrigible and veritable malefactor by those in government bent on ensuring that he either die in prison or permanently expelled from American society. Interestingly, Duane Knight, who also testified against Mr. Davis on behalf of the government and who was released on bond and ultimately served less than five years in prison, admitted during the trial to indiscriminately firing a flurry of gun shots into a house where children were. (JA. 115). Yet this reprehensible act of violence did not prevent Duane Knight from being treated favorably by the same institution that to this day continues to regard Mr. Davis as a threat to society. Id.

94. What was also kept away from the jury during Mr. Davis' trial were the murders committed by the cooperating witnesses who testified against Mr. Davis in hopes of receiving reduced prison sentences and other benefits that were extended to family members who would have otherwise been prosecuted. (JA. 110). And to this day no one (except for those in government) knows why the Department of Justice continues to expend such an enormous amount of effort and resource in ensuring Mr. Davis' continued incarceration and permanent exclusion from the

American society notwithstanding Mr. Davis' pre-arrest efforts as a young man determined to forge a positive path for himself by embracing values such as hard work and responsibility that many of us today embrace in our own everyday lives as positive and productive members of our communities.

95. Mr. Davis' fateful entanglement in the drug conspiracy for which he was convicted began when he inadvertently walked into a surveillance of some of the conspiracy's members and ended up becoming the focus of the surveillance. One day during the summer of 1990 in Dallas, Mr. Davis was riding the motorcycle that he had recently purchased and recognized people that he knew standing next to their vehicles in a motel parking lot. Wanting to show off the motorcycle, Mr. Davis turned and entered the parking lot. He knew many of the people standing around that day, including Duane Knight who he allowed to ride the motorcycle around the parking lot. Some of the people present that day were later charged in the conspiracy; others were not. Mr. Davis hang around for approximately 20 to 25 minutes, then rode off. The surveillance footage taken that day, enlarged and enhanced during the trial, became the lynchpin in the government's narrative and ultimately solidified Mr. Davis' participation in the conspiracy in the minds of the jury.

96. Equally damaging was Mr. Davis' arrest in a house on Wendelkin Street that is located across from an apartment building out of which the conspiracy sold crack cocaine. Mr. Davis' presence in that house was part of his surreptitious tactic of taking away from the building's operators without getting caught, (JA. 113), which ultimately backfired and led to him getting shot at—repeatedly.

97. The house in which Mr. Davis was arrested was occupied by a woman who was a drug addict and who also had two young daughters living with her, both of whom were around six to eight years old. Mr. Davis was only able to gain access to the house through promises of financing

the woman's drug habit with the agreement that in return the monthly subsidy that she received through state-sponsored programs for her daughters would be fully allocated towards the girls' well-being. To ensure that the woman lived up to her end of the agreement, the time that Mr. Davis spent inside the house casing the building across the street was also spent engaging in conversation with the two young girls to assess whether they were properly being cared for.

98. Mr. Davis had no business in Dallas. That much is evident by the steps and the efforts he made to do something productive with his life *after* leaving Dallas. But he will never say that it was a mistake for him to go to Dallas simply because that would also mean that his son, Gerald, was a mistake. Nevertheless, Mr. Davis' character and attitude alone have always, and continues to, illuminate the goodness that is readily seen in him—a quality that became the driving force behind him sponsoring two young children in Ecuador while he was in Dallas and putting forth the effort in keeping up with their growth. (These anecdotal occurrences are recorded in trial documents).

99. One may argue that it is Mr. Davis' fault for putting himself in the predicament that he is today by affiliating himself with a less than scrupulous crowd who exhibited patterns of affinity for lawlessness. But then the Supreme Court would be wrong for explaining that "children [] lack of maturity and [] underdeveloped sense of responsibility[] lead to recklessness, impulsivity, and heedless risk-taking," and for further explaining that children "vulnerab[ility] to negative influence and outside pressures, including from their family and peers," and their "lack [of] ability to extricate themselves from horrific, crime-producing settings ... [makes them] less deserving of the most severe punishments ... because [their] character is not as well formed as an adult's, [their] traits are less fixed[,] and [their] actions are less likely to be evidence of irretrievable depravity." Miller v. Alabama, 182 LEd.2d 251 (2012), *quoting* Roper v. Simmons, 543 U.S. 551, 569 (2005) & Graham v. Florida, 560 U.S. 495 (2010).

100. Hannah Arendt, a German-born political philosopher, once argued that expressions of injustice within the institutional setting typically derives from a bureaucratic mindset in which rules and routines overcome the capacity to reflect on one's actions. Perhaps there is some truth to that argument, especially when considering that lines have to be drawn in the confrontation between criminals and those who have been entrusted with the responsibility to defend against crime. But even though our system of justice is an inherently good system, it is not infallible. Therefore, while the responsibility to protect society will always remain paramount, it oftentimes becomes convenient from a bureaucratic standpoint for those in government to replace personal perceptions, attitudes and opinions with the rules and routines spawned by the bureaucratic process in order to get the job done. But if the system has made a mistake and the mistake is either self-evident or proven, then it becomes incumbent upon the system not to hesitate to correct that mistake. Confidence in the system is not only formed whenever the system works, but it also arises from what the system does when it fails.

101. Unfortunately, in circumstances like Mr. Davis', once someone develops a negative perception or opinion about a person or thing, it usually becomes difficult for that person or thing to be seen in any other light but a negative one, even when there is no justification for the negativity.

102. There is no factual basis or moral reason that the Defendants, or anyone else for that matter, could point to in the convoluted events of Mr. Davis' criminal case and the events of his personal background to justify the oppressive governmental conduct that he has had to endure, and continues to endure, based solely on a time in his life when he was a kid. Nevertheless, the Defendants in this case, well aware of the circumstances described here, have not only maintained the effort of continuing to deprive Mr. Davis of his liberty, but have taken steps to ensure that Mr. Davis is permanently removed from the country by inserting allegations in the NTA issued against

him that are materially false, and by relying on events underlying his federal drug conviction that never occurred. And there has been nothing that Mr. Davis has been able to do about it despite his many attempts in Immigration Court at challenging the allegations' veracity. This is the unbearable pain and suffering that Mr. Davis has had to endure while being told repeatedly that those who have sworn an oath to protect and preserve the liberties, values and the preservation of life and family upon which this republic was founded are also there to ensure that his claim to those liberties and values is protected.

103. Despite the fact that Mr. Davis was sent to federal prison for the duration of his life back in 1993 based on events and actions that never occurred, he continued to cling the idea that his circumstance will one day improve, and to his belief of putting family first. While in prison, Mr. Davis dedicated himself to doing whatever he could to ensure that his son, Gerald, who lived in an environment that breeds failure, avoid the same fate that he himself has experienced. He worked tirelessly in the Federal Prison Industries (JA. 140-147) to be able to help support both Gerald and Brandon as best he could. And when Gerald's experience at home became difficult, Mr. Davis convinced the Hershey Boarding School founded by the philanthropist, Milton Hershey, to enroll Gerald, meanwhile doing his best to convince Gerald's mother of the wisdom of allowing Gerald to relocate to the school's compound. To Mr. Davis' surprise, his efforts paid off as the school expressed interest in enrolling Gerald. (At the time, Mr. Davis, through a letter-writing campaign, succeeded in leapfrogging a two-year enrollment waiting list). But unfortunately, Gerald's mother foiled all the efforts made by Mr. Davis by reneging on her word to send Gerald away.

104. Undeterred in his dedication to remove Gerald from the unhealthy environment in which he lived, Mr. Davis later succeeded in convincing Gerald's mother to cede custody over Gerald to his mother in New York, hoping that the change in environment would provide his son with a better

chance at a productive future. (JA. 157). That enormous achievement, however, proved short-lived as Gerald became homesick after living in New York for more than a year and insisted on returning home.

105. Still undeterred, Mr. Davis continued parenting from prison via telephone and correspondences, ultimately relying on those limited mediums to communicate with Gerald's high school football coach when Gerald became a sensation in high school football and caught the attention of a number of major college football programs. He also communicated with a probation officer when Gerald first got into trouble with the law, and communicated with whoever he was able to convince to help him salvage his son's future. But in the end it all proved futile as Gerald squandered opportunities that were presented to him and was sent to prison for selling drugs, killing his dream (and Mr. Davis') of playing professional football in the process.

106. Brandon, on the other hand, who was raised by a mother who is a school teacher and has experienced a less difficult upbringing, is currently attending college but has developed quite a bit of anger towards Mr. Davis for being absent his entire existence on the planet. Still Mr. Davis continues to cling to hope that one day he will be able to share some semblance of a meaningful life with his sons and his two adopted daughters despite the overwhelming cloud of uncertainty that he is faced with.

107. What is unique about the circumstances of Mr. Davis' case is that they illuminate an under-explored area of concern that has quietly but resolutely contributed to the problem plaguing our criminal justice system and, as it turns out, how the deportation process is currently being executed—an area of concern that is driven by the actions of those entrusted with the responsibility of defending our civil rights and liberties and their unique ability to mask whatever feelings of indifference, intolerance, prejudice and callousness that they harbor beneath their role as custodians

of our rights and liberties. It is markedly difficult, and at times seemingly impossible, to mount an argument of governmental abuse and impropriety when the injury complained about is intertwined with allegations of criminality that are invariably used to inveigle our attention away from the complained about abuse and constitutional violations. That, coupled with the fact that a wary public that has consistently shown support towards poorly explained efforts to eliminate crime and those identified as its purveyors, have inevitably reverted back to the unique ability of those given the responsibility to execute our laws to do so in a manner that is consistent with their own personal views as oppose to standing on the principles of justice and truth that the Constitution requires.

108. That notwithstanding, it is tempting for those on the outside looking in to infer that this case is about one individual who received a raw deal. But in truth, this case actually represents the hopelessness that confronts children of color today struggling to belong in a society that has yet to fully accept that they belong or that they arrived on this rock possessing something valuable to contribute to the progression of life. And even though President Obama has courageously put together a Clemency Initiative project that, together with the recent changes that have been made to the Federal Sentencing Guidelines by the U.S. Sentencing Commission, were designed to counter those ideas of hopelessness, uncertainty, suspicion, and distrust that continues to confront young black men while taking the first step towards ameliorating the problems of unfair justice and the devaluation of life that we have witnessed unfold within our criminal justice system with alarming frequency over the past two decades, the reality is that the challenges and opposition that Mr. Davis continues to face in spite of the President's and the Sentencing Commission's efforts are indicative of the amount of work that still needs to be done before any real progress will begin to manifest. Unfortunately, the challenges that Mr. Davis continues to face in his efforts to reclaim his life despite the struggles that he has already endured have greatly undermined the confidence that was

supposed to have been drawn from the efforts made by the President and the Sentencing Commission to begin the difficult journey of reforming a broken justice system.

109. This is not the first time that the circumstances of Mr. Davis' case has been held up for scrutiny. But each time an examination is made, the outcome has been one of indifference and resistance rather than expressions of humanity and the tenor of hope that inspires confidence and belief in a system of government that is fair, has respect for life and human dignity, and guarantees equal justice under the law. For Mr. Davis who has been forced to endure a slow and painful institutional death, the American value of preserving life, freedom, dignity, and justice for all has sadly devolved into hallow expressions of a belief that is out of reach to those incapable of attracting support through convenience, while evoking a sense of abandonment that is known only to those at the bottom of the pile. That the President has expressed that America is a nation of second chances means nothing if the rest of us do not believe that.

110. Despite the ongoing acts of government abuse that Mr. Davis continues to endure based on the resuscitating idea that he is an incorrigible malefactor deserving of the fate that has been ascribed to him over the past two decades, he nevertheless has been able to garner the support of accomplished and reputable members of the community who have gladly put their reputation on the line to support him, (JA. 121-137)—folks who believe that he has more to offer than simply being relegated to the dark contours of a prison cell forced to watch his life waste away with time under the guise of protecting society from his future criminal conduct as opposed to him being able to divert his creativity towards developing his company, Sivad Development, (JA. 158), or some other endeavor, into something useful and productive. These wonderful people have nothing to gain by helping Mr. Davis other than simply living out the creed of what our nation is supposed to represent. And none have bought into the notion that Mr. Davis deserved the fate that he has endured, or that

he deserves to be banished from the only country that he knows and from his family. Without question, this is a step in the right direction as the number of support continues to grow. And as with all cracks in a dam, in time a gorge will begin to form and answers will begin to be demanded.

PART E: Analysis of DHS' Conduct

111. Since Mr. Davis is a lawful permanent resident with longstanding ties to this country, under the Immigration and Nationality Act (INA), DHS "bears the burden of [proving that he is deportable], which it must [do] by adducing clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true." Francis v. Gonzales, 442 F.3d 131, 138 (2nd Cir. 2006).

112. It is true that Mr. Davis has a felony drug conviction for which he was sentenced to life in federal prison. But as the above discussion of facts soundly shows, Mr. Davis' drug conviction has been (and continues to be) based on fabricated and unreliable evidence, and therefore can no longer serve as basis to further deprive him of his rights and liberty. Yet despite knowing this, DHS has continued in its efforts to permanently remove Mr. Davis from the country and from his family and friends based on an unjust and unreliable drug conviction.

113. To further compound the injustice, Defendant Gingerich deliberately added an allegation in the NTA that he issued against Mr. Davis which states that Mr. Davis previously served four (4) years in prison *prior to* his current incarceration, (JA. 155), and has relied on this allegation to justify charging Mr. Davis with moral turpitude under the INA. (JA. 156).

114. Under the INA as it currently exist, two or more convictions for which a sentence of one year or more could have been imposed renders the alien removable on the ground of moral turpitude. Under pre-1996 immigration law, a sentence of one year or more *had to actually have been served* in order to trigger the moral turpitude classification under the INA. In Mr. Davis' case,

he has two convictions; his current drug conviction, and a previous conviction for theft. He has obviously served a sentence of more than a year on his drug conviction. But no prison time was ever imposed on the theft conviction despite Defendant Gingerich's allegation that there was. Defendant Gingerich's allegation thus triggers the moral turpitude classification under the INA because Mr. Davis has now been deemed to have served a prison sentence of more than a year on his two prior convictions.

115. As stated, Mr. Davis has repeatedly challenged the allegations outlined in the NTA in Immigration Court and twice before the Board of Immigration Appeals (BIA) to no avail as the allegations continue to serve as basis for his impending deportation. In addition, Mr. Davis has also challenged DHS's reliance on immigration statutes enacted *after* 1996 (well after his conviction in 1993) to effectuate his removal, arguing that application of those statutes to his removal proceedings constitutes an impermissible retroactive effect as explained by the Third Circuit in Atkinson v. Attorney General, 479 F.3d 222 (3rd Cir. 2007). The post-1996 statutes upon which DHS is relying to effectuate Mr. Davis' removal were enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, enacted April 24, 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546, enacted on September 30, 1996 (collectively "the 1996 Amendments"). The 1996 Amendments amended the INA (66 Stat. 163, 8 U.S.C. § 1101 et seq.) by essentially stripping the Attorney General of his previously held broad discretion to cancel, suspend, waive or simply terminate deportation proceedings and deportation orders for deportable aliens who met certain residence requirements.

116. During one of Mr. Davis' several removal proceedings, the presiding Immigration Judge conceded that the 1996 Amendments do not apply in his case. Nevertheless, no changes were made,

and Mr. Davis continues to face deportation based on allegations that never occurred, and based on immigration statutes that have been deemed inapplicable to his removal process.

117. As stated, Mr. Davis has *never* served any prison time prior to his present incarceration. And even though Mr. Davis has *repeatedly* challenged the allegation as factually untrue, the allegation continues to be used against him. Had Defendant Gingerich simply made the allegation without relying on it as a predicate for Mr. Davis' removal, then an argument could have been made that the allegation was a product of inadvertence or simply an erratum. But instead, Defendant Gingerich *deliberately* relied on the allegation as basis for charging Mr. Davis with moral turpitude in the NTA, (JA. 156), and maintained the allegation each time that Mr. Davis challenged it in Immigration Court and before the BIA. Cf. 8 U.S.C. § 1229a(c)(3)(A) ("No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.").

118. The Supreme Court, in deciding Chessman v. Teets, 354 U.S. 156, 1 LEd.2d 1253 (1948), a case that involves the deprivation of an accused's due process right based on a State procedure that was fundamentally unfair which led to a loss of liberty, held that "consistent[] with procedural due process, California's affirmance of [the] petitioner's conviction upon a seriously disputed record, whose accuracy petitioner has had no voice in determining, cannot be allowed to stand." 1 LEd.2d at 1260. In so holding, the Court explained that "[w]e must be deaf to all suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, because courts, including this Court, were not earlier able to enforce what the Constitution demands." Id. The Court tempered this explanation to mean that "[t]he proponent before [us] is not the petitioner but the Constitution of the United States." Id; cf. Payne v. Arkansas, 356 U.S. 560, 2 LEd.2d 975 (1958) (observing that due process, guaranteed by the Fourteenth Amendment, is denied accused

where he is deprived of that fundamental fairness which is essential to the very concept of justice).

119. Here, if the Defendants cannot show that Mr. Davis has either overlooked material evidence in the fourteen volumes of trial transcript that have heretofore been relied upon to justify his conviction for being a member of the "Allen Organization" drug conspiracy and his ensuing 23½ years of confinement, then as a matter of protecting the integrity of the United States Constitution and its preservation of life and liberty and the fundamental precept of justice and fairness that are "consistent[] with procedural due process," 1 LEd.2d at 1260, Mr. Davis' drug conspiracy conviction can no longer serve as a basis to further deprive him of his liberty and his ability to aspire towards those "personal rights essential to the orderly pursuit of happiness by free men." Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817 (1967).

120. Because Mr. Davis' drug conspiracy conviction, in the eyes of Supreme Court, offends the precept of fundamental fairness that the Constitution's due process clause guarantees and therefore "cannot stand," Niemotko v. Maryland, 340 U.S. 268, 271, 95 Led.2d 267 (1951), and because Mr. Davis' drug conviction, in the words of United States Deputy Attorney General James M. Cole, "erode people's confidence in our criminal justice system," (Remarks at the N.Y. State Bar Association Annual Meeting (Jan. 30, 2014)), then it must follow that his conviction can no longer serve as a legally sound and reliable basis for further legal penalty and/or exclusion from benefits provided by federal statutes, regulations, and the United States Constitution.

121. Finally, as discussed above, the United States Supreme Court, in Judulang, has outlined the standard that DHS is required to employ in its efforts to deport lawful permanent residents like Mr. Davis who arrived in the country as a child. However, in Mr. Davis' case DHS has elected to pursue an arbitrary method of deporting him by relying on false information and unreliable evidence, and by relying on a standard that has been determined to be inapplicable to Mr. Davis'

removal process under Supreme Court law. And up until this point, there has been nothing that Mr. Davis has been able to do about it. This standard of removal under Judulang matters because Mr. Davis also has a money laundering conviction that he has not contested which is part of his drug conspiracy indictment, and DHS has also moved to deport him on that conviction. (JA. 155).

122. The overarching exercise of government authority discussed here constitutes an encroachment upon Mr. Davis' rights and liberties guaranteed by the Constitution. And as it stands, Mr. Davis continues to struggle against the abusive, unlawful and unjustifiable governmental attempts to permanently destroy his life—or whatever life he has remaining.

VII. LEGAL THEORY

123. Title VI of the Civil Rights Act provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 U.S.C. § 2000d).

124. Title 28 C.F.R. § 0.35 provides that the Pardon Attorney "shall have charge of the receipt, investigation, and disposition of applications [for executive clemency]." Id.

125. Title 28 C.F.R. § 0.36 provides that the Pardon Attorney must submit her recommendation on clemency applications to the Attorney General.

126. Title 28 C.F.R. § 1.7(f) provides that the Attorney General must advice the President as to "whether, in his judgment, the request for clemency [merits] favorable action by the President."

127. The Constitution's Equal Protection Clause proscribes selective treatment and selective enforcement of and against persons who are similarly situated, and against any person based on his or her national origin.

128. The Constitution's First, Fifth and Eighth Amendments guarantee freedom from

oppressive government conduct and the right to the pursuit of happiness without unjustifiable and unlawful government interference.

129. The Constitution's Fifth Amendment guarantees due process under the law and the right to be treated equally and fairly under the law as those similarly situated.

130. Title 5 U.S.C. § 706 et seq of the Administrative Procedure Act provides a cause of action against an agency's action that is arbitrary and capricious and an abuse of discretion.

131. Title 28 C.F.R. § 42.104 prohibits recipients of Federal funds from discriminating against any person on the grounds of race, color, or national origin.

VIII. PLAINTIFF'S INJURY

132. The goal of the President's Clemency Initiative is to specifically address injustices like what occurred in Mr. Davis' case. This goal was validated and put into action by members of the President's administration such as Valerie Jarrett, the White House's senior adviser, who expressed in the Washington Post editorial that the President "wants to make sure [that those convicted and sentenced like Mr. Davis] don't get unfairly stuck in the criminal justice system because they've made mistakes early in their lives, without the ability to ever have a second chance," and by Deputy Attorney General, James M. Cole, who publicly announced the President's Clemency Initiative by explaining that, (a) "[f]or our criminal justice system to be effective it needs to not only be fair, but it also must be perceived as being fair"; (b) "[t]hese older, stringent punishments that are out of line with sentences imposed under today's laws erode people's confidence in our criminal justice system"; (c) the expectation is that the clemency initiative "will go far to promote the most fundamental of American ideals—equal justice under law"; and (d) the initiative was not limited to crack offenders, but to "worthy candidates" who meet the six specific criteria outlined above. (*See*, para. 34, *supra*).

133. Notwithstanding the President's stated goals for executing his Clemency Initiative, and notwithstanding the fact that the circumstances that resulted in Mr. Davis spending decades of his life in a federal prison fall squarely within the President's stated goals and fully reflect the narrative of "fairness" and "public confidence" that members of the President's administration have espoused as part of the Clemency Initiative effort, Defendant Leff, fully aware of the circumstances of Mr. Davis' case, decided against favorably recommending Mr. Davis for clemency.

134. Defendant Leff, in her individual capacity and under color of federal law, violated Mr. Davis' First, Fifth and Eight Amendment rights by abusing her discretion, and by arbitrarily and capriciously executing her duties as Pardon Attorney. This action has caused Mr. Davis significant pain and suffering.

135. Defendant Leff, in her individual capacity and under color of law, acted arbitrarily and capriciously is deciding against favorably recommending Mr. Davis for clemency, causing Mr. Davis significant pain and suffering.

136. Defendant Leff, in her individual capacity and under color of federal law, abused her discretion in deciding against favorably recommending Mr. Davis for clemency, causing Plaintiff significant pain and suffering.

137. Defendant Leff, in her individual capacity and under color of federal law, acted arbitrarily and capriciously, and abused her discretion in deciding against favorably recommending Mr. Davis for clemency in violation of the Administrative Procedure Act, causing Mr. Davis significant pain and suffering.

138. Defendant Leff, in her individual capacity and under color of federal law, deprived Mr. Davis access to a benefit specifically created to address his situation based on his national origin, causing Mr. Davis significant pain and suffering.

139. Defendant Leff, in her individual capacity and under color of federal law, engaged in a process of selective treatment and selective enforcement in executing the President's Clemency Initiative, which unfairly and unlawfully affected Mr. Davis' enjoyment of a fundamental liberty and his pursuit of happiness.

140. Defendant Johnson, in his individual capacity and under color of federal law, created and maintained a policy and practice that have resulted in Mr. Davis being subjected to (and continues to be subjected to) an unlawful exercise of governmental power, thereby causing Mr. Davis significant pain and suffering.

141. Defendant Johnson, in his individual capacity and under color of federal law, created and maintained a policy and practice that have subjected (and continues to subject) Mr. Davis to abuse of governmental power, denial of his liberty, and denial of his right to due process, and such policy and practice have caused Mr. Davis significant pain and suffering.

142. Defendant Johnson, in his individual capacity and under color of federal law, created and maintained a policy and practice that have subjected (and continues to subject) Mr. Davis to arbitrary, capricious, and abusive governmental power in violation of the Administrative Procedure, and such policy and practice have caused Mr. Davis significant pain and suffering.

143. Defendant Johnson, in his individual capacity and under color of federal law, has implemented deficient policies and practices and has been deliberately indifferent to the risk that such policies and practices will lead to the deprivation of Mr. Davis' constitutional rights. This violation has caused Mr. Davis significant pain and suffering.

144. Defendant Johnson, in his individual capacity and under color of federal law, and in creating and maintaining a policy and practice that have subjected Mr. Davis to an abuse of governmental power and arbitrary and capricious governmental conduct, has failed to supervise his

subordinates. Defendant Johnson's failure in this respect has caused Mr. Davis significant pain and suffering.

145. Defendant Gingerich, in his individual capacity and under color of federal law, violated Mr. Davis' First, Fifth and Eighth Amendment rights by unlawfully depriving Mr. Davis of the pursuit of happiness, by abusing his discretion, by subjecting Mr. Davis to cruel and unusual punishment, and by arbitrarily and capriciously executing his duties as Senior Deputy Deportation Officer. This violation caused Mr. Davis significant pain and suffering by depriving him of his liberty.

146. Defendant Gingerich, in his individual capacity and under color of federal law, acted arbitrarily and capriciously in deciding to move to remove Mr. Davis from the United States based on allegations that did not occur in violation of Mr. Davis' due process right and his right to be free of unlawful and abusive governmental conduct. This violation caused Mr. Davis significant pain and suffering by depriving him of his liberty.

147. Defendant Gingerich, in his individual capacity and under color of federal law, acted arbitrarily and capriciously in moving to remove Mr. Davis from the United States in a manner that contravene with the standard of removal established by the United States Supreme Court in Judulang v. Holder, *supra*, in violation of Mr. Davis' due process right and his right to be free from arbitrary, unlawful and abusive governmental conduct. This violation caused Mr. Davis significant pain and suffering by depriving him of his liberty.

148. Defendant Gingerich, in his individual capacity and under color of federal law, has arbitrarily and capriciously denied Mr. Davis the opportunity to have his removal proceedings conducted under the standard of removal established by the Supreme Court in Judulang v. Holder, *supra*, which is based on a fair and just assessment of whether Mr. Davis should be removed from

the United States or be allowed to stay. In light of Mr. Davis' history as discussed above, under Judulang, DHS will not be able to establish the he is unfit to remain in the country. Therefore, based on the Supreme Court's explanation in Judulang that as a lawful permanent resident with longstanding ties to this country, Mr. Davis "has [a] *right* to remain here," id 181 LEd.2d at 464 (emphasis added), and that DHS's efforts to deport him must take into account his "fitness to reside in this country" and "must be tied [] to the purposes of the immigration laws or the appropriate operation of the immigration system," Mr. Davis is due the process of having his "fitness" to remain in the country appropriately and fairly determined before DHS may lawfully deport him. This violation caused Mr. Davis significant pain and suffering by depriving him of his liberty.

149. Defendant Gingerich, in his individual capacity and under color of federal law, engaged in a process of selective treatment and selective enforcement in executing the immigration laws, which unfairly and unlawfully affected Mr. Davis' enjoyment of a fundamental liberty, and has resulted in a loss of liberty that he would have otherwise enjoyed. This violation caused Mr. Davis significant pain and suffering by depriving him of his liberty.

150. The unlawful conduct of the Defendants described herein have violated Mr. Davis' constitutional, civil, and statutory rights, including his right to the pursuit of happiness; his right not to be subjected to abusive and unlawful governmental powers; his right to equal protection under the law; and his right to equal access to rights and amenities guaranteed by the Constitution of the United States and federal law. As a proximate result of Defendants' unconstitutional acts, omissions, policies and practices, Mr. Davis is suffering and will continue to suffer an unconstitutional deprivation of his guaranteed rights and liberty.

IX. PLAINTIFF'S CLAIM FOR RELIEF

For all the foregoing reasons, Mr. Davis seeks the following relief:

i. Mr. Davis seeks declaratory and injunctive relief to eliminate and remedy Defendant Johnson's unlawful application of immigration regulations, policies, practices, acts, and omissions that are depriving him of his liberty and access to the enjoyment of his life;

ii. Mr. Davis seeks the issuance of a judgment declaring that Defendant Johnson's rationale, bases, policies, practices, acts, and omissions described herein for moving to deport him are unlawful and exceeds Defendant Johnson's constitutional and statutory authority in violation of 5 U.S.C. § 706(2)(A)-(D);

iii. Mr. Davis seeks the issuance of a judgment declaring that Defendant Johnson's rationale, bases, policies, practices, acts, and omissions described herein for moving to deport him are unlawful and violate his constitutional rights as explained herein;

iv. Mr. Davis seeks the issuance of a judgment declaring that Defendant Johnson's rationale, bases, policies, practices, acts, and omissions described herein for moving to deport him are unlawful and exceeds Defendant Johnson's constitutional and statutory authority in violation of the Constitution's First, Fifth and Eighth Amendments;

v. Mr. Davis requests that the Court permanently enjoin Defendant Johnson, his subordinates, agents, employees, and all others acting in concert with them from subjecting him to the statutory and constitutional violations and unconstitutional interpretation and application of regulations, policies, acts, and omissions described herein; and to further enjoin Defendant Johnson, his subordinates, agents, employees, and all others acting in concert with them from engaging in any retaliatory tactics, acts or omissions due to his exercising his constitutional right to redress;

vi. Mr. Davis seeks declaratory and injunctive relief to eliminate and remedy Defendant Gingerich's unlawful application of immigration laws, regulations, policies, practices, acts, and omissions that are depriving him of his liberty and access to the enjoyment of his life;

vii. Mr. Davis seeks the issuance of a judgment declaring that Defendant Gingerich's rationale, bases, policies, practices, acts, and omissions described herein for moving to deport him are unlawful and exceeds Defendant Gingerich's constitutional and statutory authority in violation of 5 U.S.C. § 706(2)(A)-(D);

viii. Mr. Davis seeks the issuance of a judgment declaring that Defendant Gingerich's rationale, bases, policies, practices, acts, and omissions described herein for moving to deport him are unlawful and exceeds Defendant Gingerich's constitutional and statutory authority in violation of the Constitution's First, Fifth and Eighth Amendments;

ix. Mr. Davis seeks the issuance of a judgment declaring that Defendant Gingerich's rationale, bases, policies, practices, acts, and omissions described herein for moving to deport him are unlawful and violate his constitutional rights as explained herein;

x. Mr. Davis seeks the issuance of a judgment declaring that Defendant Leff's rationale, bases, policies, practices, acts, and omissions described herein for refusing to favorably recommend Mr. Davis for clemency based on his national origin are unlawful and exceeds Defendant Leff's constitutional and statutory authority in violation of 42 U.S.C. § 4000d;

xi. Mr. Davis seeks the issuance of a judgment declaring that Defendant Leff's rationale, bases, policies, practices, acts, and omissions described herein for refusing to favorably recommend him for clemency are unlawful and exceeds Defendant Leff's constitutional and statutory authority in violation of 5 U.S.C. §§ 706 (2)(A)-(D);

xii. Plaintiff seeks injunctive relief sufficient to rectify those statutory and constitutional violations described herein;

xiii. Alternatively, Mr. Davis requests that the Court issue a writ of mandamus compelling Defendant Leff to exercise her authority in recommending him for clemency in the manner consistent with the requirements and objectives set forth in the President's Clemency Initiative, and to ensure that provisions are made to immediately allow his application for clemency to be properly, adequately, and accurately evaluated and consider by the President;

xiv. Mr. Davis requests that the Court issue a writ of mandamus compelling Defendant Johnson to exercise his authority in ensuring that he is afforded a fair, proper, and adequate deportation proceeding that is consistent with his due process right, Supreme Court law, and the Constitution's precept of justice and fairness;

xv. The Defendants, as a matter of law, have a duty to exercise their authority in the manner described herein;

xvi. Lastly, Mr. Davis respectfully requests that the Court grant such other relief as the Court deems just and proper.

Dated: February 24, 2016.

Respectfully submitted,

Brian A. Davis, (Pro Se Plaintiff)
Federal Register No. 40427-053
M.V.C.C.
555 Geo Drive
Philipsburg, PA 16866

No. ________

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BRIAN A. DAVIS,

Plaintiff,

v.

DEBORAH LEFF, Pardon Attorney;
DANIEL O'NEILL, Field Office Director,
Department of Homeland Security;
S. GINGERICH, Jr., Senior Deputy Deportation Officer,
Department of Homeland Security,

Defendants.

PLAINTIFF'S JOINT APPENDIX

Brian A. Davis, Plaintiff
Register No. 40427-053
M.V.C.C.
555 Geo Drive
Philipsburg, PA 16866

TABLE OF APPENDIX

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AO 245 S (Rev. 4/90) Sheet 1 - Judgm[illegible] a Criminal Case

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR 7 1994
NANCY DOHERTY, CLERK
By ____________
Deputy

United States District Court

NORTHERN DISTRICT OF TEXAS
Dallas Division

UNITED STATES OF AMERICA

v.

BRIAN ANTHONY DAVIS
a/k/a "Stamma"

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

Case Number: 3:92-CR-365-D (29)

Edwin V. King, Jr.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _

☒ was found guilty on count(s) 1 and 3 of the 3 count Superseding Indictment filed 10-6-92 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC § 846	Conspiracy	6/28/91	1
18 USC § 371	Conspiracy	6/28/91	3

The defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _ and is discharged as to such count(s).

☐ Count(s) _ dismissed on the motion of the United States.

☒ It is ordered that the defendant shall pay a special assessment of $ 100.00, for count(s) 1 and 3, which shall be due ☒ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within thirty (30) days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 118-68-1439
Defendant's Date of Birth: 9-30-71

Defendant's Mailing Address:

657 E. 26th Street, #4B
Brooklyn, New York 11210

Defendant's Residence Address:

Same as above

March 4, 1994
Date of Imposition of Sentence

Signature of Judicial Officer

SIDNEY A. FITZWATER, U.S. DISTRICT JUDGE
Name & Title of Judicial Officer

March 7, 1994
Date

Certified a true copy of an instrument on file in my office 3-7-94
NANCY DOHERTY
By Barbara Stepp Deputy

APPENDIX 1

Defendant: BRIAN ANTHONY DAVIS
Case Number: 3:92-CR-365-D (29)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years on Counts 1 and 3, to run concurrent with one another.

While on supervised release, the defendant shall not commit another federal, ~~state, or local crime and~~ shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons, if not deported.

☒ The defendant shall not possess a firearm or destructive device.

☒ The defendant shall provide to the probation officer any requested financial information.

☒ The defendant shall participate in a program approved by the U.S. Probation Office for treatment of narcotic or drug or alcohol dependency which will include testing for the detection of substance use or abuse. It is ordered that the defendant contribute to the costs of services rendered (co-payment) in an amount to be determined by the probation officer, based on ability to pay or availability of third-party payment.

☒ The defendant shall not illegally reenter the United States, if deported.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1. ~~the defendant shall not leave the judicial district without the permission of the court or probation officer;~~
2. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five (5) days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer within seventy-two (72) hours of any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or ~~administer any narcotic or other~~ controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

APPENDIX 3

AO 247 (02/08) Order Regarding Motion for Sentence Reduction

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN 19 2008
CLERK, U.S. DISTRICT COURT
By ______ Deputy

ORIGINAL

UNITED STATES DISTRICT COURT
for the
Northern District of Texas

United States of America	)	
v.	)	
BRIAN ANTHONY DAVIS	)	Case No: 3:92-CR-365-D(29)
	)	USM No: 40427-053
Date of Previous Judgment: March 7, 1994	)	Edwin V. King, Jr. (at time of sentencing)
(Use Date of Last Amended Judgment if Applicable)	)	Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of X the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☐ DENIED. X GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of LIFE months **is reduced to** 360 months.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level:	43	Amended Offense Level:	42
Criminal History Category:	II	Criminal History Category:	II
Previous Guideline Range:	____ to LIFE months	Amended Guideline Range:	360 to LIFE months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

X The reduced sentence is within the amended guideline range.

☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.

☐ Other (explain):

III. ADDITIONAL COMMENTS

If the reduced sentence is less than the amount of time the defendant has already served, the sentence is reduced to a "Time Served" sentence. A "Time Served" shall be stayed for a period of ten days from the date of this order.

Except as provided above, all provisions of the judgment dated 3/7/1994 shall remain in effect.

IT IS SO ORDERED.

Order Date: June 19, 2008

Judge's signature

Effective Date: ______
(if different from order date)

SIDNEY A. FITZWATER, CHIEF JUDGE
Printed name and title

Digitally signed by Lisa Nemeth
DN. cn=Lisa Nemeth, c=US, o=BOP, ou=Class/Comp Specialist, email=lnemeth@bop gov
Reason. Document obtained via Pacer
Location DSCC
Date: 2008 07 01 08.24 34 -05'00'

APPENDIX 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 3:92-Cr-365-D (29)

BRIAN ANTHONY DAVIS,

Defendant.
_______________________________/

AFFIDAVIT OF ANTHONY GEORGE ALLEN

I, Anthony George Allen, Federal Register Number 40428-053, hereby makes the following statements willingly, freely, without duress, and under penalty of perjury:

1. I am an inmate currently serving a federal sentence under the custody of the Federal Bureau of Prisons.
2. I am named among the defendants charged under the above criminal case number which was filed in the United States Court for the Northern District of Texas. I pled guilty in that case and was sentenced to life imprisonment.
3. Brian Anthony Davis is among the defendants who were charged with me in the above criminal case number.
4. I first met Brian Davis on October 14, 1992, which was the day when Brian and I were arrested based on the above criminal case number and were later housed together in a holding cell at a police precinct in Manhattan, New York. The following day (October 15, 1992), Brian and I were transferred to the Metropolitan Correctional Center (MCC) in Manhattan for formal processing as federal inmates. This fact is illustrated in our federal inmate identification number. In other words, because Brian was processed ahead of me, he was issued the federal identification number 40427-053, where I was then issued the number 40428-053.

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11. When I was later called by Brian's attorney to provide the truth about what Calvert Trew said that I instructed him to do in terms of giving Brian drugs, I elected to invoke my Fifth Amendment right and remained silent simply because I did not want to incur a life sentence.

12. In retrospect, I wish I had been brave enough to tell the truth---to speak in spite of the detriment that my speaking may have caused me. But the reality was I wanted to avoid a life sentence. And I was told that if I testified to what I had described to Brian's attorney over the telephone, I would indeed receive a life sentence. Like anyone faced with such a choice, I was afraid for my life. Today, I can honestly say that I regret having made that decision not to tell the truth.

13. As I have stated above, I met Brian Davis in prison, became aware of who he is on October 14, 1992 when he and I were housed together at a police precinct in Manhattan, New York, and have never instructed Calvert Trew to give Brian Davis any drugs whatsoever. Also, I am aware that Brian's street name was "Stamma". That name does not change what I have described about regarding my being unaware of who Brian Davis was prior to October 14,1992, or that Calvert Trew's statement that I had instructed him to give Brian Davis drugs is fundamentally false.

14. Finally, I have nothing to gain from making the above declarations and statements other that setting straight what should have been set straight a very long time ago.

THE ABOVE STATEMENTS WERE MADE UNDER PENALTY OF PERJURY PURSUANT TO 28 USC § 1746.
The affiant sayeth not:

/s/ Anthony Allen
Anthony George Allen

9-14-13
Date

E. Herron, Case Manager 9/14/13
Authorized by Act of July 7, 1955, as amended, to administer oaths (18 U.S.C. § 4004).

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THE COURT: The court intends to take a short break before starting with the sentencing of Mr. Davis.

Mr. King, do you need a few minutes with your client?

MR. KING: Your Honor, I met with him earlier this morning.

THE COURT: All right. Since that's -- yes.

MR. KING: Your Honor, if I may, we have asked that Anthony Allen be brought forward and the U.S. Attorney's Office complied with that and that order for production for him.

I called Mr. Allen's attorney and I believe he's present in court today, Mr. Sanders.

I am not -- have not spoken with Mr. Allen myself and I don't know if counsel for Mr. Allen has had an opportunity to speak with him. I was led to believe by a telephone conversation I had with Mr. Allen approximately two weeks ago -- two or three weeks ago that he was willing to sign a document making a certain statement in regards to Mr. Davis. I didn't feel that would be admissible in court, so I requested the presence of Mr. Allen here today.

I don't know if he's going to be willing to take the stand or not. I just wanted to make the court aware of that.

MR. SANDERS: Your Honor, I have met with my client briefly. Mr. King did advise me of his request. I met with go over the presentence report with your lawyer?

THE DEFENDANT: Yes, sir, I have.

THE COURT: Do either of you have any additional corrections or comments about the presentence report, other than the ones set forth in writing already? Mr. King?

MR. KING: No, sir. We will rely on my objections to the presentence report, Your Honor.

THE COURT: I will turn to those later.

Mr. Davis, do you have any additional comments or objections, other than the ones filed by your lawyer in writing?

THE DEFENDANT: No, sir.

THE COURT: Okay. All right. Thank you. You may be seated.

At this time the court will take up the matter of a witness. And at this time, so that the record is clear, I'll ask Mr. Allen's lawyer to make his appearance for the record.

MR. SANDERS: Yes, Your Honor, Chris Sanders, court appointed counsel for Anthony Allen.

THE COURT: All right. Mr. King, why don't you address for the record the purpose for calling Mr. Allen and procedurally we'll bring this matter before the court.

MR. KING: Your Honor, I was contacted by my client and advised by Mr. Davis that Mr. Allen would be willing to

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going to request Mr. Allen's appearance. I advised him at that time that I would object to that, his testifying.

I have had an opportunity -- but without otherwise waiving the attorney-client privilege -- I had an opportunity to visit with my client this morning. I advised him of his rights under the Fifth Amendment and I advised him to exercise his rights with respect to any question asked of him by Mr. King.

I am prepared to make a brief record with my client about my advice to him and his response thereto. I did object. I voiced my objection to Mr. King. And I do object at this time and have -- am prepared to present the witness and have him confirm those instructions.

THE COURT: Mr. King, I believe you're entitled under the law to have the witness produced, to proffer the questions to the witness and to have the witness invoke the Fifth Amendment and to have a court make a ruling on whether it's properly invoked. I also believe there is authority that says that once a certain line of questioning has been dwelt with the court doesn't necessarily have to continue, that each and every shade of a question be asked.

I'm willing to bring the witness into the courtroom, have you propose whatever questions you want and compel Mr. Sanders to invoke the Fifth Amendment on his client's behalf or have the witness do so.

THE COURT: Mr. Allen, I'm going to permit Mr. King to ask you a couple of questions. If you wish to invoke your Fifth Amendment right in response to the question you may do so and then I'll make a ruling on whether it is properly invoked.

THE DEFENDANT: May I do so right now?

THE COURT: I did not hear you, sir.

THE DEFENDANT: May I plead the Fifth right now?

THE COURT: Under the procedure I need you to do so in response to Mr. King's questions. If you want to stand by your client, Mr. Sanders, you may.

MR. KING: May I proceed, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. KING:

Q. Mr. Allen, you are Anthony Allen?

A. Yeah, I'm Anthony Allen.

Q. Mr. Allen, did you first meet Brian Davis in October of 1992? Is that when you first met him?

THE COURT: If you want you can invoke the Fifth on his behalf.

MR. SANDERS: Your Honor, at this point in time I'll advise my client to invoke the Fifth Amendment in response to that question posed by counsel.

THE COURT: Do you wish to offer any argument?

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Amendment privilege is clearly in place.

THE COURT: Do you have any authority for your waiver argument?

MR. KING: No, sir.

THE COURT: The invocation of the Fifth Amendment will stand as to the question asked.

You may ask the next question.

BY MR. KING:

Q. Mr. Allen, did you ever instruct Calvert Trew or any other individual to deliver any controlled substance at any time to Brian Davis?

THE DEFENDANT: Fifth.

MR. SANDERS: Your Honor, on behalf of my client we invoke the Fifth Amendment in relation to this question posed by counsel.

MR. KING: Those are all of our questions, Your Honor.

THE COURT: Do you wish to offer any argument concerning the invocation of the Fifth Amendment as to your last question?

MR. KING: Once again, he's pled to the conspiracy counts in trafficking of cocaine, Your Honor, and I believe that that particular question, there is no Fifth Amendment privilege at this point in time.

THE COURT: What's your position, Mr. Sanders?

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MR. SANDERS: Thank you, Your Honor.

THE COURT: Mr. King, before hearing from the government, the next step would be to take up the objections that you have made. Let me make certain that the record is clear that you have had enough time to go over the presentence report with your client prior to today. Is that correct?

MR. KING: That is correct, Your Honor.

THE COURT: Mr. Davis, have you had enough time to go over the presentence report with your lawyer prior to today?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Thank you, sir.

Mr. King, I believe it would make the most sense to first address the objections that you have made that will not involve government testimony and then to take up the matters that I think will require testimony.

For example, I'm prepared to overrule your constitutional challenge to the sentencing guidelines, unless you wish to offer any additional argument.

MR. KING: No, sir.

THE COURT: I conclude as a matter of law that the sentencing guidelines are constitutional in the respect that the defendant has challenged them.

You have also made, as I see it, three objections that,

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MR. KING: At this time?

THE COURT: You may.

MR. KING: May I introduce --

THE COURT: The entire package as Defendant's Exhibit 1 for sentencing.

Any objection, Mr. McBride?

MR. McBRIDE: No, Your Honor.

THE COURT: Defendant's Exhibit 1 is * admitted.

Do you wish to offer any argument or further evidence?

MR. KING: There was no testimony elicited at trial the defendant was ever known by the nickname of English. None of the witnesses that ever were called by the government every alluded that he had an additional nickname, other than Stamma.

We feel that the subsequent no bills are the basis of a misidentification of the defendant for this offense and that therefore we would -- we object to Paragraph 9.

THE COURT: Does the government wish to be heard regarding this paragraph?

MR. McBRIDE: Your Honor, that paragraph is relevant to the assessment of additional points as to the use of a weapon, in addition to other testimony that Detective Storey is present to present today.

In fact, evidence was elicited during the trial that 1814 South Boulevard was a crack spot operated by Fitzroy make rulings.

At this time then, that being the case, I'm going to go ahead and hear from the government on all of these matters, including drug quantity, firearm and role in the offense.

MR. McBRIDE: The government calls Detective Charles Storey.

THE COURT:

CHARLES STOREY, ^ GOVERNMENT'S WITNESS, SWORN

THE COURT: Be seated, please.

DIRECT EXAMINATION

BY MR. McBRIDE:

Q. Would you state your name, please.

A. Charles Storey.

Q. How are you employed?

A. Dallas Police Department.

Q. How long have you been employed as a police officer?

A. 25 years.

Q. And what is your current assignment?

A. I'm a detective with the criminal intelligence unit on special assignment to a federal drug task force.

Q. And have you participated in the investigation of the case which is now before the court?

A. I have.

Q. In what capacity?

A. As one of the case agents.

Q. Let me ask you first to address the date that you found according to your investigation, and also from being present during the October trial, of when Brian Davis became or participated -- first participated in this conspiracy.

A. In October, November 1988.

Q. And what do you base that on?

A. The dates were established through Christopher Hemmings' statement where he stated that Brian Davis was brought to Dallas in November of 1988; also based on the statement of Calvert Trew where he stated that in October of '88 in New York City Brian Davis came to his -- where he was staying at 842 Ashford, picked up cocaine under the direction of Anthony Allen and at the time that he had heard that he was working for Fitzroy Allen in Dallas. The month of October/November was as close as I could come to establishing the date that he entered the conspiracy.

MR. KING: Your Honor, excuse me. Mr. McBride. Excuse me, Mr. Storey.

Your Honor, we object to the testimony of Mr. Storey in regards to a summary of testimony that was previously given under oath. We feel that that testimony is the best evidence of what came from the witness stand and we would submit that it is hearsay as to Mr. Storey as to what someone else said, so we object to this in the form of a summary when it comes to alleging weapons or alleging drugs.

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into consideration the dates that he was placed in jail and the dates that he was released from jail.

Based -- after I established the time periods that he was involved in the conspiracy I reviewed both my interview notes and statements that were submitted during the previous trial of co-defendants and witnesses in the case.

I examined these -- these statements and interview notes, paragraph-by-paragraph to try and determine the amount of cocaine involved.

The way that I established this was if it was mentioned directly by amounts of cocaine I would convert to grams; and if it was mentioned in dollar figures I used the basis of $100 per gram of crack cocaine. And this is based on a tenth or a $10 rock, which had average weight of one-tenth of a gram, so that when you reach one gram the price would have been $100, approximately.

Q. And in your experience and according to your examination is that -- was that a proper price affixed to one gram of cocaine during Mr. Davis' involvement in this conspiracy?

A. Yes, it is.

Q. And did you take any particular precautions to avoid the possibility of double counting or, stated in other words, combining or doubling amounts of cocaine that you would attribute to Mr. Davis? Have you taken precautions to

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Honor.

BY MR. McBRIDE:

Q. Do you understand the Judge's question?

A. Yes, I do.

Q. Can you speak to that, please.

A. Yes. All of the cocaine that are taken into calculations may have been obtained as cocaine powder. It it was all distributed as cocaine base or crack as it was referred to by the witnesses and the co-defendants.

MR. McBRIDE: Did that answer the court's question, Your Honor?

THE COURT: And would -- if it were distributed as crack cocaine would the quantities be the same?

THE WITNESS: Yes, the quantities are the same as the figures that I have calculated for crack cocaine.

?

THE COURT: So based on your testimony there is no reduction to crack cocaine in smaller quantities from a larger amount of cocaine; is that your testimony?

THE WITNESS: That's correct.

THE COURT: All right. Go ahead.

BY MR. McBRIDE:

Q. Would you then explain the basis of your conclusions for the amounts that you just announced.

A. Yes. It was through the -- examining the witnesses' statements and co-defendants' statements that I obtained

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this cocaine to the boss or to a designated location, designated by the conspiracy.

The runner, I think, in -- even in testimony here in trial, showed that he exercised an amount of supervisión over the drug monitor at the traps.

Q. And can you define what point in time his participation in the conspiracy and at what location he served as a runner?

Jail May 1st
Jail Δ Oct 5 1989
May 1990
March to Jan 12 to P11

A. Yes. Basing what I found from the -- from the testimony, 2609 Meyers Street in approximately October of 1989 he served the function as a runner; also at -- this was established through Christopher Hemmings. in Jail

Also starting in April of 1990 it was established that he was a runner to 3518 Wendelkin; this was established by Norman James.

Then it was established that he was a runner to 3526 Herrling Street in approximately April of 1990; this was established by Christopher Hemmings, also by Mark Hillary who assisted him in this role. in Jail

Delord Foster In Dallas in 89 Never return

After then at 4410 Colonial a role as a runner, which was established by one of the workers named Devon Foster, also known as bumpy. This was in the latter part of 1990, approximately September. All times and dates coincide with the time that this defendant was involved in the conspiracy.

THE COURT: Mr. McBride, so there is no ambiguity

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from 5/90 to 12/90.

BY MR. McBRIDE:

Q. Detective Storey, would you address the objection posed by the defendant as to the enhancement for carrying of a weapon during the course of this conspiracy?

A. Yes, I will. The weapons that I addressed, several instances of occurrence.

Starting December of '88 which occurred at 1814 South Boulevard, which at this particular time was a retail outlet of crack cocaine being operated by Fitzroy Allen, Christopher Hemmings and Lester Robinson. Dallas police responded to an incident there where a person by the name of Clarence Wright had been shot. At the time Brian Davis was arrested at this location at 1814 South Boulevard.

Detective B.J. Watkins of the Dallas Police Department after receiving this case, having this case assigned to him, took a photo lineup involving 6 photographs to the victim of this offense, Clarence Wright. Mr. Wright related to Mr. Watkins or Detective Watkins that he was shot in the leg by an uzi type weapon, that the Defendant Brian Davis then put the weapon to his head, pulled the trigger and the weapon misfired.

He identified Brian Davis' photograph from the six photograph lineup and the lineup was placed in the Dallas police property room.

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testimony is addressed to Paragraph 9.

BY MR. McBRIDE:

Q. Detective Storey, would you continue with your discussion of the weapons enhancement?

A. Yes. On examining the statement of Christopher Hemmings on May the 5th of 1989, a female by the name of Mary Van was shot and killed outside 2609 Meyers Street. At the time Brian Davis was a worker selling crack cocaine at this trap at this location. After the murder he told Christopher Hemmings that David Colon, also known as Romeo, had killed the female Mary Van. Colon told Hemmings that Davis was inside selling to a customer and when he went out to chase the female away, who I think was creating a disturbance, he was waiving his gun around and it went off killing her. And after this incident this particular trap was closed for a period of time.

Q. And when you say "he" you're referring to David Colon?

A. As the shooter?

Q. Yes.

A. Yes. David Colon, the shooter.

Q. And Brian Davis as the worker within the trap?

A. That's correct.

Q. Would you continue, please.

A. In examining Norman James' interview notes he stated that the weapons were made available to the workers at 3518 charged with was relevant conduct, nor can he be charged with weapons violations for something that happens after he quits it, so we feel under the sentencing guidelines that's inadmissible evidence.

MR. McBRIDE: Let me come at it from a different direction.

THE COURT: I was also going to say that you can reserve this if necessary to present after the rulings of the court as well.

MR. McBRIDE: Well, I believe Detective Storey can connect it in response to counsel's objection.

THE COURT: I'll carry the objection at this point. Go ahead.

BY MR. McBRIDE:

Q. Detective Storey, would you first address the issue of 4110 Colonial, whose particular crack operation that was and how is it connected to the conspiracy?

A. At a time period in late 1990 Fitzroy Allen, Norman James and other co-conspirators within the case opened 4410 as a crack distribution outlet, specifically an individual by the name of Devon Foster had been a worker at 3518 Wendelkin.

In approximately September of 1990 Brian Davis carried Devon Foster to 4410 Colonial and at 4410 Colonial Devon Foster started selling crack cocaine.

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one gram. Marvin poured out the rocks for Richardson to select two. Richardson made the purchase and left. The officers returned on 3/1 of 1990 and executed a narcotics search warrant. They recovered 17 rocks of crack and a 9 millimeter pistol for an approximate weight of cocaine of 8.5 grams and arrested the three subjects.

MR. KING: Excuse me, Mr. McBride.

THE COURT: I'm not going to take into account in passing sentence the testimony regarding 4410 Colonial for any purpose.

MR. KING: If I may make one objection.

THE COURT: You may.

MR. KING: The ability for the government to bring in a witness and to summarize evidence is a flat denial of the right to confrontation of a defendant, regardless of whether or not Congress intended to do it, it breaches the Constitution. It does not allow at the most important level of the trial, the sentencing, the right to confrontation of the witnesses who -- through whose mouth Mr. Storey now speaks. We believe that's a violation of the Sixth mendment and Fourteenth Amendment.

I realize what the court's ruling is probably going to be, but we feel this failure to allow us to have the right of confrontation is a denial of due process under the Constitution of the United States and we strenuously object

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Christopher Hemmings stated that around the first part of October of 1989 that 2609 Meyers was the location, his trap, he and -- had got it open and running and that Brian Davis was the runner to the location, delivered the crack and picking up the money; that was his job.

Then Mark Hillary also stated that the Defendant Brian Davis was a runner to 2609 Meyers; that his job was to delivery cocaine to the worker at that location who was identified as Cave Man, and to pick up the money from that location.

Mark Hillary also adds in his statement that at the date of this arrest the worker Cave Man had ran and got away from the location and was not arrested.

Q. All right. The particular cocaine that was seized during the execution of this warrant, do you know the source of that cocaine?

A. Christopher Hemmings had obtained two big-eights, which would be nine ounces; and Brian Davis was the runner delivering the crack to the location is found in the statement of Mark Hillary.

Q. All right. There is also a clarification or somewhat of an objection posed to paragraph 14 concerning the testimony of Calvert Trew who allegedly testified that he -- or testified that he gave the defendant two big-eights in New York City which were to be transported to Dallas, Texas.

range then becomes below the range applicable to count 3 and therefore count 3 should be used. And it seems to me that the court should first address the objections to count 1, because if he loses those objections then that objection to paragraph 19 falls away. Is that correct, Mr. King?

MR. KING: That's essentially correct, Your Honor.

If I could just add this. Mr. Scheets was here, he was going to testify and I -- I told Mr. McBride we would agree that Mr. Scheets would essentially testify that the total amount of money that was apparently run through the Western Union was approximately $137,000 that they allege Mr. Davis had some knowledge of, some part of all of that or was present at some point; however, the only amount that Mr. Davis allegedly did was approximately $90,000 and that's, I believe, the testimony that Mr. Scheets was going to testify to.

THE COURT: In the event that the -- a specific ruling is required I will give each of you an opportunity to address it; however, unless a substantial number of his objections prevail, the court would simply disregard that -- that argument, as the court understands it.

MR. McBRIDE: Very well. All right. Very well. Pass the witness.

THE COURT: One other thing. There is also an objection to paragraph 13 regarding the Timbercreek

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Q. And for the record, what purpose or use was the Timbercreek apartments?

A. It was a place where many of the runners, cooks and managers of the location lived, packaged or converted cocaine powder into cocaine crack and also used it to stash money and cocaine at the location where it was distributed to the retail outlet.

Q. And do you know who obtained the Timbercreek apartments for this purpose?

A. I think it was an individual by the name of Eric Elliott.

Q. For whom in this conspiracy? Whose -- whose crew essentially lived at the Timbercreek apartments?

A. Eventually it was Fitzroy Allen's, the individuals that worked with Fitzroy Allen in the crack distribution business lived at the Timbercreek apartments.

MR. McBRIDE: Does the court have any further questions?

THE COURT: Not at this time.

MR. McBRIDE: Pass the witness

CROSS-EXAMINATION

BY MR. KING:

Q. Mr. Storey, let me just -- let's talk about the weapons first.

Tell me on how many occasions Brian Davis was arrested

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A. Yeah. Brian -- I don't know of anyone else within the -- co-defendants in the conspiracy that called him English.
Q. Okay. Who was called English in the conspiracy?
A. There was actually two people called English during the conspiracy.
Q. Okay. And have you had an opportunity to look at their photographs and compare them to the similarities to Brian Davis?
A. Well, one of them is a female, Mr. King.
Q. And one of them is a male?
A. One of them is a male and he's dead.
Q. Okay. But when did he die?
A. He died in March of '89.
Q. Okay. He would have been alive then at the time this offense was committed?
A. Yes. But he was much older, if I remember correctly.
Q. Well, let me --
A. I have not -- to answer your question, no, sir, I have not compared the photographs.
Q. All right. Let me -- the person that was described as committing this offense was using the name English; is that correct?
A. Yes.
Q. Brian Davis never used the name English to the best of

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Davis had?

Q. I just want to know what you're saying he personally had access to or was -- the --

A. Okay. The way the calculations were done was in reviewing the testimony -- I mean, I'm sorry. I mean, in reviewing the interviews with the co-defendants within the conspiracy of the amounts that were mentioned, and the amounts that were mentioned compared against the dates that this person was involved in the conspiracy is the total. I addressed it in two areas, the amounts of cocaine that was mentioned, the amounts of cocaine that was reasonably foreseeable to him to have knowledge of.

Q. And that's all well and good, but I think what we're talking about now, since this is not -- not the charge of trying to prove conspiracy of an offense but we're talking about a particular sentencing statute, I think what we should be directed at is exactly what was he ever caught with or what did he actually have a hand in obtaining.

Now, did Brian Davis ever order any cocaine from any place in the sense that he would put in an order for 10 kilos or one kilo or half a kilo? He didn't, did he?

A. I think so, sir.

May I have a moment to find it?

Q. Yes, sir.

A. There was an occasion in 1989 where one of the

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Q. January the 18th?

A. That's what the records indicate.

Q. Let's go through. So 12/13/88 to January 18th, '89.

Now, he was arrested then on April 19th, 1989 on the 21st -- excuse -- on April 21st 1989 by Trooper Maynard in Sulphur Springs in Hopkins County; is that correct?

A. I don't have that date. Is that the vehicle charge?

Q. Yes, sir.

A. Okay. I don't have that date specifically. April the 21st.

MR. KING: May I approach the witness?

THE COURT: You may.

BY MR. KING:

Q. Let me show you what's been marked as Defense Exhibit Number 4. And just let me show you. This is a -- you may recall this.

First of all, y'all presented this to me back at sometime prior to trial. And it's a copy of the conditions of probation that Mr. Davis was placed on back in, I think it's going to be, June 26th, 1989. The offense date; has a copy of the indictment; and it also has a copy of the affidavit for arrest warrant. And if you will see he was arrested April the 21st, 1989 in Hopkins County for this offense.

A. Yes. That's correct.

Q. And --

MR. KING: May I approach the witness again, Your Honor?

THE COURT: You may.

BY MR. KING:

Q. Let me show you what's been marked as Defense Exhibit Number 2 and it's a certified copy of the judgment, the court's docket, the -- and a narrative which we now call the probable cause affidavit contained in a court's file with the arrest warrant in the court's file, all of which have been certified by the district clerk of Dallas County.

And as a former police officer -- I guess you still are a police officer -- you recognize these documents, do you not?

A. Yes, sir.

Q. Okay. And it purports to be regarding Brian Davis and it reports an offense date of October 5th, 1989 and that Officers Nettles and Hoskins were -- involves 2609 Meyers?

A. That's correct.

MR. KING: We would offer Defense Exhibit Number 2, Your Honor.

MR. McBRIDE: No objection.

THE COURT: Defense Exhibit 2 is * admitted.

BY MR. KING:

Q. Now --

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was in possession of any amount of cocaine?

A. Yes, reasonably foreseeable --

Q. I'm talking about personally.

A. No.

Q. We can safely exclude that period of time.

I'm not talking about reasonably foreseeable. I'm talking about actually possessed.

A. There is an amount of cocaine figured in during that period of time.

Q. I understand, but Mr. Davis didn't personally have that cocaine, did he?

A. No.

Q. As a matter of fact, your amounts, your 17,000 grams, that's not an amount that Mr. Davis personally had, you've just come up with that number from trying to figure out, well, somebody said that somebody had some cocaine some place, if Mr. Davis was in the conspiracy then by golly I guess he should have probably known about it somehow, but it's not that Mr. Davis ever actually had 17 kilos of cocaine in his possession, is it?

A. Yes.

Q. Did Mr. -- did Mr. --

A. By examining what the witnesses -- the test -- I'm sorry, the interview notes from the witnesses and co-defendants during the time period that he was involved in was where allegedly Brian Davis was present when he brought over a kilo or something, do you recall that?

A. Yes, sir.

Q. What was the name of that apartment again?

A. Timbercreek apartments.

Q. Timbercreek apartments. Do you remember me asking, well, did you conduct this transaction out there with Brian Davis and everybody else that was there at the apartment or did you go in the back room?

And do you recall Mr. Trew saying, well we went in the back room where me and whoever he was giving the cocaine to did a transaction?

A. Are you asking do I recall the testimony?

Q. Do you recall that testimony?

A. No, I don't.

Q. You don't recall that?

A. Mr. King, just that he went there with the kilo.

Q. Well, do you recall the testifimony of Christopher Hemmings in that he didn't trust Brian Davis --

A. Yes, sir, I do.

Q. As a matter of fact, nobody trusted Brian Davis because he was always getting arrested, he was always apparently always in trouble with the law and people thought he was a snitch?

A. The only time I recall a mistrust that I recall was the

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and principal organizers and managers.
Q. So runner is somewhere below a secondary level manager?
A. Yes, sir.
Q. And above some type of monitor?
A. Yes. I believe if I recall the testimony at trial the example that was given was one Neal Harris who was a runner to the trap at 3215 Elihu. In one occasion he was -- had fired the drug monitor, which was Shawn Stevens.

Then basing my belief that the runner also exercised amount of supervisory capacity over the workers, was when Brian Davis moved the worker Devon Foster from 3518 Wendelkin to 4410 Colonial.
Q. Okay. Mr. Storey let me ask you this.

Allegedly, according to Mr. Scheets, between May the 28th, 1990 and December 21st, 1990, some $137,000 was laundered through Western Union; okay?
A. Yes, sir.
Q. And allegedly Brian Davis laundered $90,000 of that and may have been present when the remaining -- remainder 37 -- $47,000 was laundered?
A. That's correct.
Q. Now $137,000 would represent the proceeds of about a kilo and a half of cocaine, wouldn't it?
A. 147,000? That's close. Yes, sir.
Q. Okay. So in that -- in that period of time, if you

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anybody ever said they gave Brian Davis cocaine was Calvert Trew said I gave Brian Davis two big-eights?
A. I think I said that right now I'm not prepared to fully answer that without a further review.
Q. Well, you will agree with me --
A. Of laying it in his hand, person A putting in Brian Davis' hand an amount of cocaine. But reasonably foreseeable, because of his knowledge of the operation of 2609 Meyers, 1814 South Boulevard, 3518 Wendelkin, I estimate my calculations and base them on the reasonable foreseeability of over 15 kilos of crack was distributed from these locations.
Q. But you don't really have any way of knowing whether or not Brian Davis had any knowledge whatsoever of how much cocaine actually went out of there, you're just making a guess?
A. He had knowledge of the amount of cocaine that was going through --
Q. You're just making a guess?
A. I don't make a guess, Mr. King. I'm basing it on my notes that we have taken and the statements and the interview notes of the witnesses and the co-defendants. It is not my guess. I'm basing it on what I have reviewed on these facts.
Q. Okay. But you're not prepared to tell the court --

A. The people within the conspiracy, the co-defendants and the co-conspirators often discussed money.

Q. So the workers would have discussed millions of dollars or whatever; right?

A. Depending on what they're exposed to is what they would discuss.

Q. It would have been just as reasonably foreseeable for all these workers to be charged with the 17 kilos or having knowledge of 17 kilos also?

A. That's correct.

Q. In your opinion?

A. In my opinion, yes.

Q. Even though they may have only worked there a day or two or a week?

A. Depends on their knowledge of the operation.

Q. So they would gain that type of -- level of knowledge of an operation as extensive as this one allegedly was in secrecy and in dealings, they would gain that level of knowledge in just a short period of time as to how much cocaine --

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A. As an individual judgment on an individual worker, I can't accurately make -- you know, comment on that.

Q. Well, didn't Mr. Trew testify that he did not discuss the management of this organization with the minions below him?

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probable accuracy that the calculations in question are factually correct.

The court also concludes when it overrules an objection that the calculation is legally correct.

The court turns first to the drug quantity.

Under the drug quantity calculation of the presentence report the probation officer has calculated a base offense level of 42. Under the sentencing guidelines the offense level of a defendant convicted of a drug trafficking offense is calculated according to guideline 2D1.1(a)(3). Under this guideline drug quantity is determined by the quantity of drugs involved in the offense. This includes either drugs with which the defendant was directly involved or drugs that can be attributed to a defendant in a conspiracy as part of his relevant conduct under guideline 1B1.3(a)(1)(B). Relevant conduct for conspiratorial activity is defined by guideline 1B1.3(a)(1)(B) as all reasonably foreseeable acts and omissions of others taken in furtherance of jointly undertaken criminal activity. Therefore, this guideline requires that conspiratorial conduct within the meaning of 1B1.3(a)(1)(B) must be both reasonably foreseeable and within the scope of the defendant's agreement. In addition, reasonably foreseeable conduct within the meaning of 1B1.3(a)(1)(B) is prospective only and subsequently cannot include conduct occurring

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the guidelines for the weapon enhancement that is provided for in guideline 2D1.1(d)(1), which provides that if a dangerous weapon, including a firearm, was possessed, increase by two levels. That two level increase can be accorded either because the defendant actually possessed the weapon during the course and scope of the offense or because another person possessed it but the defendant could have reasonably foreseen the possession.

And the government has proved not only that the defendant could reasonably have foreseen the possession but that possession of the dangerous weapon was in the scope of the conspiracy.

The court finds two alternative bases for upholding the weapon enhancement in this case.

First, the court finds under the applicable evidentiary standard that the defendant actually himself possessed a dangerous weapon within the course and scope of the conspiracy. The court bases that finding upon Paragraph 9 of the presentence report and the testimony of the witness which includes an evidentiary basis for concluding and finding that the defendant possessed a dangerous weapon during the course and scope of the conspiracy on December 13, 1988 at 1814 South Boulevard.

The court also finds the weapon enhancement was properly accorded in paragraph 21 on the alternative basis that

The court finds that the government has proved by a preponderance of the evidence that the defendant's role during the course of the conspiracy made him a manager because the position of runner was at the managerial level. The government has proved by a preponderance of the evidence the traps at which the defendant was a runner; has proved his managerial role.

The court will now make specific rulings on the other objections.

As to Paragraph 9, the court overrules the objection. The court finds by a preponderance of the evidence that has a sufficient indicia of reliability to support its probable accuracy that Paragraph 9 of the presentence report is correct.

With respect to paragraph 12, the court overrules the objection finding that the basis for paragraph 12 is supported under the applicable standard.

The court also overrules the objections to paragraphs 13 and 14, finding under the applicable standard that they are supported.

In passing sentence the court will not take into account the allegations regarding the May 5, 1989 incident.

And in that regard the court specifically has not taken into account the May 5, 1989 incident in overruling any of the objections.

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offense level is reduced from a 46 to a 43. The criminal history category remains at a 2.

Ms. Valenti.

PROBATION OFFICER VALENTI: Your Honor, excuse me, there is also a pending memorandum opinion and order that the court filed December 29th regarding the obstruction of justice on punishment.

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THE COURT: Thank you. The government objected to the failure of the court to increase the offense level for obstruction of justice. The court has indicated and reconfirms today that it will not take into account in passing sentence that matter and will disregard that objection for purposes of passing sentence. If the court were to sustain the objection it would increase the offense level from a 46 to a 48. The offense level would still be reduced to a 43 under application note 2, therefore the court need not make a ruling on that in passing sentence.

Mr. King, it is the court's intention that the court make a ruling on each of your objections. Do you believe that ruling has been made on each of your objections?

MR. KING: I believe so, Your Honor.

THE COURT: All right. At this time then you and Mr. Davis may approach the lectern.

I'll hear from you and Mr. Davis in whichever order you wish.

cocaine. I think the guidelines are unfair, but that's neither here nor there. And I'm not going to waste the court's time with that. I would ask the court for a downward departure because I think that the sentence is unfair in regards to the circumstances.

THE DEFENDANT: Your Honor, according to my testimony during the trial -- the trial, it was clear -- it is clear that I've been hanging with the wrong crowd, so to say, really -- excuse me, I stutter when I talk. Really are becoming aware of --

THE COURT: Take your time.

THE DEFENDANT: Yeah. I'm extremely nervous.

THE COURT: Just take a deep breath, relax. And I'll sit here and be glad to listen to you.

THE DEFENDANT: All right. Becoming aware of the kind of company that I've been hanging around with or hanging out with, so to say, in the past, that myself -- that I myself have been leading -- which I know was nothing but -- nothing but -- excuse me -- really to be concise, Your Honor, what I am trying to say is that I have made certain changes in my life. I don't know if it will really make a difference now for me saying so, but as you can see on certain exhibits that my attorney has passed to the court, I've been working and so forth. And prior to this -- this -- my incarceration for this case, I kind of felt like really would like to keep close -- I mean, so to speak, keep from making the mistakes that I made.

I have never grown up with a father. I really don't know a father what like. And I don't know really if I would be able to experience it, being a father for my child. But being close to him where it's convenient for my parents to bring him to visit with me I can probably strike a bond between father and son and from there I could probably take it and see how it goes and see what I could do from there. And probably when the time -- you know, keep on learning and grasping as much as I can, and when the time comes maybe I could really be more effective and be more adequate as a father and a human being, so to say, overall.

There is so much more. As I keep talking it keep coming to me, but I would like to end it right here and from there you make your decision, sir, in all respect.

MR. KING: Your Honor, I advised the defendant that I would file a motion to a recommendation to the federal Bureau of Prisons for placement.

THE COURT: I intend to recommend a New York institution if appropriate and I'll put that in the judgment form.

MR. KING: Thank you, Your Honor.

THE DEFENDANT: Thank you, sir.

THE COURT: Before turning to the request for

THE COURT: Her letter is dated November 5, 1993.

THE DEFENDANT: Have you received the letter from Ms. Kerri Ann Malcom (phonetic)?

THE COURT: And I have a letter here from Kerri Ann Malcom. I could not read her signature very well. And that letter is postmarked November 5, 1993 from Brooklyn.

THE DEFENDANT: All right. Yes, sir.

THE COURT: Let me turn now to the request for downward departure.

Under guideline line 5K2.0 the basis for the court to depart downward is limited. The court can only do so when the Sentencing Commission has failed to take into account a factor of a kind or to a degree and therefore the court finds that a particular matter should be taken into account in departing. According to the policy statement in 5K2.0 the court must find there exists an aggravating or mitigating circumstance of a kind or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that proscribed.

In this particular case I find that the sentence that is required by law to be imposed is what the Sentencing Commission intended. I do not find basis to depart downward in this case.

Mr. King, do you know of any reason why sentence cannot case of a life sentence without parole.

While on supervised release the defendant shall comply with the standard terms and conditions for supervised release recommended by the United States sentencing commission and shall comply with the following special terms and conditions.

The standard sentencing conditions have been adopted by the court on its forms. The following special conditions will also apply.

Number 1, the defendant shall not possess a firearm or destructive device.

Number 2, the defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons, if not deported.

Number 3, the defendant shall provide to the probation officer any requested financial information.

Number 4, the defendant shall participate in a program approved by the U.S. Probation Office for the treatment of narcotic or drug or alcohol dependency, which will include testing for the detection of substance use or abuse.

It is ordered that defendant contribute to the cost of services rendered in an amount to be determined by the probation officer based on ability to pay or availability of third-party payment.

If you wish to appeal your conviction and sentence you must promptly notify Mr. King of that fact because he must file a notice of appeal.

At this time I remand the defendant to the custody of the United States Marshal for transporting directly to the designated institution.

Mr. King, if you have nothing further, you're excused.

MR. KING: Thank you, Your Honor.

(Recess taken.)

(End of proceeding.)

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IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
Brian Anthony Davis	)	**Case No. 3:92-CR-365-D (29)**

Prepared for: The Honorable Sidney A. Fitzwater
U.S. District Judge

Prepared by: USPO Sharon D. Valenti
Dallas, Texas
(214) 767-8149

Assistant U.S. Attorney
Mark McBride
1100 Commerce Street
Dallas, Texas 75242-1391
(214) 767-0951

Defense Counsel
Edwin V. King, Jr.
3300 Oaklawn, Suite 600
Dallas, Texas 75219
(214) 748-8871

Sentence Date: December 10, 1993

Offense:

Count 1: Conspiracy to Possess with Intent to Distribute Crack Cocaine (21 U.S.C. § 846) - Not less than 10 Years to Life, a Class A Felony

Count 3: Conspiracy to Launder Monetary Instruments (18 U.S.C. § 371) - 5 years, a Class D Felony

Release Status: In federal custody since October 14, 1992

Detainers: Dallas County Probation Violation; Kings County, New York - Aggravated Robbery

Codefendants: See Attachment

Related Cases: None

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Date Report Prepared: December 3, 1993 **Date Report Revised:**

CODEFENDANTS

ALLEN, Anthony George (01) aka "T"	Pled guilty to Conspiracy, 21 U.S.C. § 846, sentencing pending.
EUBANKS, Dennis Phillip (02) aka "Banks"	Pled guilty to Conspiracy, 21 U.S.C. § 846, sentencing pending
SEALED (03)	PENDING (fugitive)
SEALED (04)	PENDING (fugitive)
SKYERS, Richard William (05) sentencing pending aka "Richie" aka "Soldier"	Convicted by jury of Conspiracy, 21 U.S.C. § 846,
SEALED (06)	PENDING (fugitive)
SEALED (07)	PENDING (fugitive)
SEALED (08)	PENDING (fugitive)
WITTER, Garth Anthony (09) aka "Boogie Dread"	DISMISSED
WOOD, Howard Washington (10) sentencing pending aka "Skelly"	Convicted by jury of Conspiracy, 21 U.S.C. § 846,
TURNER, Donovan (11) aka "TC"	PENDING

SEALED (22)	PENDING (fugitive)
ALLEN, Condell Winston (23) aka "Lincoln"	Pled guilty to Conspiracy, 21 U.S.C. § 846, sentencing pending.
SEALED (24)	PENDING (fugitive)
SEALED (25)	PENDING (fugitive)
HEMMINGS, Christopher Earl (26) aka "Smiley"	Pled guilty to Conspiracy, 21 U.S.C. § 846, sentencing pending.
ROBINSON, Lester Henry (27) aka "Ninja"	Pled guilty
PATTERSON, Annette (28)	DISMISSED
DAVIS, Brian Anthony (29) sentencing pending aka "Stamma"	Convicted by jury of Conspiracy, 21 U.S.C. §846,
SEALED (30)	PENDING (fugitive)
SEALED (31)	PENDING (fugitive)
HUDSON, Kirk Anthony (32) aka "Tongue Man" aka "Kirk Roy Meyers" aka "Kirk Roy Hudson"	Pled guilty to Conspiracy, 21 U.S.C. § 846, sentencing pending
WILLIAMS, Joan Marie (33)	Pled guilty to Conspiracy, 18 U.S.C. § 371, sentenced November 5, 1993 to 24 months BOP, 3 years TSR

CAMERON, Andre Norris (47) aka "Andrew Cameron"	DISMISSED
SEALED (48)	PENDING (fugitive)
FRANCIS, Dionne Sophia (49)	Pled guilty (Rule 20)
GRANT, Sandra (50)	Pled guilty to Conspiracy, 18 U.S.C. § 371, sentencing pending
JENNAS, Olive Nerissa (51)	DISMISSED
JENNAS, Margaret Ann (52)	DISMISSED
LeGORE, Maxine (53)	Pled guilty to Conspiracy, 18 U.S.C. § 371, sentencing pending
LEWIS, Francis (54)	Pled guilty (Rule 20)
ROBERTS, Sandra (55)	Pled guilty to Conspiracy, 18 U.S.C. § 371, sentencing pending.
SYNSMIR, Carine (56)	DISMISSED
TAYLOR, Sandy (57)	Pled guilty to Conspiracy, 18 U.S.C. § 371, sentencing pending
WIGGINS, Dehlia Opal (58)	PENDING
WALKER, Denise Vanesa (59)	DISMISSED
BARNES, John Patricia (60)	Pled guilty to Conspiracy, 18 U.S.C. § 371, sentencing pending
SMITH, Hillary (61)	DISMISSED

6. The organization consisted of various levels of workers which included overseers, runners, and on-location managers. The managers directed the activities of the money counters and direct sales persons. In addition, individuals were employed as recruiters. Normally, individuals would enter at a lower-worker level and assume a more responsible position as they demonstrated their loyalty within the organization. There was constant travel between Dallas, New York, and other areas, as there was a continuous recruitment of workers occurring. In addition, the organization was constantly seeking other sources of cocaine. Since the traps were staffed and had established customer traffic, the organization allowed other individuals/organizations with crack cocaine to use the traps for the sale of their products. This would allow the conspirators to keep the business going at various locations without a breakdown in supply.

7. The first "Big 8" (4½ ounces of crack cocaine) was obtained from Noel Allen and sold at the trap on Holmes Street. They used the proceeds to purchase more crack cocaine. Anthony Allen was aware that his brother, Noel, was purchasing cocaine in Houston, Texas. He would have Oliver and Charles Holmes pick up the cocaine and return it to Dallas.

8. In October 1988, Fitzroy Allen sent three workers from New York to Dallas. One of those individuals was Brian Davis. Davis began working in traps for the Allen Organization and worked at 1814 South Boulevard, 2414 and 2609 Meyers. Investigative agents know that in November and December 1988, Anthony Allen called Calvin Trew with instructions to give two "Big 8's" (4½ ounces each) to Brian Davis. Davis eventually returned to Dallas and resumed working in the traps. By September or October 1989, Brian Davis was employed as a runner for the Allen Organization. Additionally, Davis participated as a runner for Ian Barr.

9. Dallas police reports also show that on December 13, 1988, officers were dispatched to the 1800 block of Park Row to a shooting. Upon arrival, the complainant, Clarence Wright, stated that Brian Davis had shot him (Wright) in the legs with an Uzi in a dispute over a money shortage of $140. Clarence Wright stated that he was a "good eye" for Davis whom he identified as a dope dealer. Wright did have one bullet wound in each lower leg. Wright told police that after shooting him in both legs, Davis pointed the gun at his head at close range and pulled the trigger. The gun misfired and Wright was able to escape.

10. In August 1989, while Condell Allen was in New York, a worker in the trap was killed by a co-conspirator for short-stopping the trap, meaning he was slipping in his own crack cocaine to sell. This homicide occurred on August 18, 1989. As standard practice in the trap, as in other traps in the Allen organization, workers were armed to protect themselves from robberies of individuals attempting to take money or crack cocaine.

Adjustment for Acceptance of Responsibility

17. The defendant went to trial in this case. He has made no statements regarding his involvement in the offense. He, therefore, does not qualify for a 2-level downward adjustment for acceptance of responsibility.

Offense Level Computations

18. The November 1, 1993, edition of the Guidelines Manual has been used in this case.

Multiple Count Adjustment

19. U.S.S.G. §3D1.1 provides that when the defendant has been convicted of more than one count, refer to U.S.S.G. §3D1.3. Subsection (a) provides that in the case of counts grouped together pursuant to §3D1.2(a)-(c), the offense level is determined by the offense level for the most serious (highest) offense level of the counts in the group. The highest offense level is established by 21 U.S.C. § 846.

20. Base Offense Level: The guideline for a violation of 21 U.S.C.§ 846 is found at U.S.S.G. 2D1.1. The total amount of cocaine involved in this conspiracy is in excess of 15 kilograms of crack cocaine. For offenses which involved unlawful manufacturing, importing, exporting, or trafficking (including possession with intent to commit these offenses); attempt or conspiracy, the base offense level is the offense level specified in the Drug Quantity Table. U.S.S.G. 2D1.C(1) states that if at least 15 kilograms or more of cocaine base were involved, the base offense level is 42. 42

21. Specific Offense Characteristics: U.S.S.G. 2D1.1(b)(1) states that if a dangerous weapon (including a firearm) was possessed, increase by 2 levels. +2

22. Victim Related Adjustment: None. 0

23. Adjustment for Role in the Offense: U.S.S.G. 3B1.1(b) states that if a defendant was a manager or supervisor (but not an organizer or a leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels. +3

24. Adjustment for Obstruction of Justice: None. 0

25. Adjustment for Acceptance of Responsibility: None. 0

26. Total Offense Level: 47

Other Arrests

	Date of Arrest	Charge	Agency	Disposition
32.	12/13/88	Aggravated Assault Murder, F88-98832-H	Dallas	1/24/89: No billed.
33.	4/30/89	Terroristic Threats MB89-40927	Dallas	7/7/89: Dismissed because defendant sentenced on other case.

The defendant pulled a gun on the complainant. The complainant fled with the defendant chasing him. The complainant was able to flag down officers.

34.	10/5/89	Possession with Intent to Deliver, F89-87430	Dallas	3/23/90: Found innocent by judge.
35.	3/12/91	Possession with Intent to Deliver Crack Cocaine	Charleston, West Virginia	3/22/91: Dismissed.
36.	9/14/92 8-31-95 2:20pm. NY D.O.C. Gary 718-728-7000 IN 9-14-92 / OUT 9-15-92 #750.00 BOND BROOKLYN HOUSE OF DETENTION. Sfatamo PD	1) Robbery - Forcible Theft 2) Robbery with Physical Injury 3) Robbery - 3rd Degree 4) Assault with Intent to Cause Physical Injury 5) Criminal Possession of a Weapon 6) Criminal Possession of Stolen Property, Docket #92 K046277	New York City, New York Charges dismissed on 3/28/94 PB.	1/20/93: Bench warrant issued by Kings County, New York Superior Court, Indictment No. 10680-92

Substance Abuse

41. Davis acknowledges that he began smoking marijuana at the age of 17 and continued to smoke occasionally until 1990 or 1991. He denies the use of alcohol.

Educational and Vocational Skills

42. The defendant states he attended Samuel J. Tilden High School in Brooklyn, New York through 1989. He claims he completed the eleventh grade. Verification has not been returned. Davis reports that he has experience in construction work, particularly sheet rock and tape bedding.

Employment Record

43. The defendant claims from 1991 until his arrest, he was employed at Laveta Construction Company. The defendant did provide a letter from L. Edwards Home Improvements on Monroe Street in Brooklyn, New York that he had been employed as a carpenter from July 1991 until October 1992.

44. Previously he reports employment at the Greyhound Bus Company in New York. This company was unable to verify the defendant's employment. The defendant did file with this officer a copy of a W-2 form showing that during the year of 1991, he earned $1,819 from them.

Financial Condition: Ability to Pay

45. The defendant has been unemployed since his arrest. While employed, he earned minimal wage. It does not appear he has the ability to pay a fine.

PART D. SENTENCING OPTIONS

Custody

46. Statutory Provisions: For a violation of 21 U.S.C. § 846, the defendant shall not be sentenced to less than 10 years, nor more than life.

47. Guideline Provisions: Based on a criminal history category of II and total offense level of 46, the guideline range of imprisonment is LIFE.

Federal Prison Facilities	Contract Halfway Houses
Daily: $56.84	Daily: $37.10
Monthly: $1,734	Monthly: $1,132
Annually: $20,803	Annually: $13,578

The Budget Division of the Administrative Office of the U.S. Courts provides the following per capita supervision costs:

Supervision

Daily: $6.03
Monthly: 180.90
Annually: 2,170.80

Supervision costs do not include the costs for drug/alcohol treatment and testing, mental health treatment, or the costs associated with electronic monitoring.

Restitution

57. Statutory Provisions: 18 U.S.C. § 3556 authorizes the Court to impose restitution in accordance with 18 U.S.C. §§ 3663 and 3664 for violations under Title 18 of the United States Code and under 49 U.S.C. § 1472(h), (i), (j), or (n).

58. Guideline Provisions: Restitution shall be ordered for convictions under Title 18 of the United States Code or under 49 U.S.C. § 1472(h), (i), (j), or (n), and may be ordered as a condition of probation or supervised release in any other case.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

59. None.

Respectfully submitted,

Sharon D. Valenti
Senior U.S. Probation Officer

SDV/skk
December 3, 1993

REVIEWED AND APPROVED:

Robert D. Wetherholt, Supervising
U.S. Probation Officer

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IV.

OBJECTION ¶14: The defendant contends it was not reasonably foreseeable that he knew of more than 15 kilograms of crack cocaine being distributed through the "traps." He states there is no evidence of this elicited at trial. Further, the defendant cites that he was in jail for various long periods of time and was not an individual trusted by his codefendants. The amount of money wired by him involved a small percentage of the profit made by the Allen Organization and he believes it is unreasonable that he could foresee 15 kilograms of cocaine base.

RESPONSE: The government contends there is substantial indicia of reliability which it can prove at the time of sentencing that this is the amount that was jointly undertaken and reasonably foreseeable by the defendant. Case law has supported that an exact amount of drugs does not need to be proven at trial. The trial court simply has to find that there is a preponderance of evidence that this is the amount jointly undertaken and reasonably foreseeable by the defendant at the time of sentencing.

V.

OBJECTION ¶20: The defendant contends that the amount of drugs jointly undertaken and reasonably foreseeable by him was less than 200 grams of cocaine and that he did not possess cocaine base. The defendant states there is no testimony in the record of the defendant being actually being in possession of any other amounts of cocaine or having actual knowledge of any other amounts.

RESPONSE: See Response to Objection IV above.Defendant contends his offense level should be 18 as opposed to 42.

VI.

OBJECTION ¶21: The defendant states that there is no evidence that he possessed a firearm and should not have a 2-level adjustment.

RESPONSE: There appears to be a substantial indicia of reliability, based on the information contained in Paragraph 9, that the defendant was in possession of a firearm. Further, this enhancement is not limited to the defendant himself as the only one in possession a firearm. If others in the conspiracy possessed a firearm and this was reasonably foreseeable by the defendant, this enhancement is applicable.

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<u>RESPONSE</u>: This argument has been considered by the United States Sentencing Commission and Congress. It has been decided that this argument bears no merit.

Respectfully submitted,

Sharon D. Valenti
Senior U.S. Probation Officer

SDV:skk
December 17, 1993

REVIEWED AND APPROVED:

Robert D. Wetherholt, Supervising
U.S. Probation Officer

By the Defendant

I.

OBJECTION ¶9: The defendant objects to the inclusion of the offense for which the defendant was no billed by the Dallas County Grand Jury and reports that a person who committed the offense was known by the name of "English." The defendant states there was no testimony at trial to support this allegation.

RESPONSE: Despite the no bill in this offense, the victim clearly identified the defendant, Brian Davis, as the individual who shot him.

II.

OBJECTION ¶12: The defendant objects to the inclusion of this information because he was found not guilty of that offense as reflected in Paragraph 34 of the Presentence Investigation Report.

RESPONSE: Despite the fact that the defendant was found not guilty of that offense, this information is included in the offense conduct. It is not necessary, for sentencing purposes, for the Court to consider information that was proven beyond a reasonable doubt. Information can be used in relevant conduct of counts of which the defendant has been acquitted. The Court needs only to find that a preponderance of the evidence indicates that the defendant was involved in this conduct.

III.

OBJECTION ¶13: The defendant states that although it is alleged that he was present at the Timbercreek Apartments when Calvert Trew supplied the cocaine, it is clear from testimony that no exchange of cocaine was made in the presence of Davis, nor was he shown any cocaine. The defendant contends the transaction took place out of his presence.

RESPONSE: The government contends it can prove this information with a substantial indicia of reliability.

VII.

OBJECTION ¶23: The defendant states that there is no evidence that he was a manager or supervisor and should not receive a three-level adjustment for this aggravating role.

RESPONSE: The government contends that it can produce testimony which will clearly show the defendant had a role in a supervisory capacity..

VIII.

OBJECTION ¶26: The defendant reiterates that the offense level should be no more than 18.

RESPONSE: See Response to Objection IV and V.

IX.

OBJECTION ¶19: The defendant contends that the highest offense level should be a violation of 18 U.S.C. § 1956(a)(1)(A)(i). This would establish a base offense level of 23.

RESPONSE: Based on government's position regarding the defendant's involvement in drug distribution, the higher offense level is the drug amount.

X.

OBJECTION ¶47: The defendant contends that he should receive a guideline imprisonment range of 51 to 63 months based on a criminal history category of II and a total offense level of 23.

RESPONSE: The guidelines are accurately calculated, according to the government's contention of what was proven at trial.

XI.

OBJECTION: There has been an objection to the guideline calculations on the basis of cocaine base rather than cocaine. He contends that the disparity of sentences between the possession of cocaine and cocaine base constitutes a violation of equal protection and due process under the 5th and 14 Amendments of the Constitution of the United States, as such disparity is racially biased against African Americans.

That's kind of interesting, isn't it?

Calvert Trew testified he was buying dope from Alex Amaya. Colnick Grignion testified he was buying drugs from Alex Amaya. During this period of time the testimony came from the witness stand was apparently Anthony Allen was doing some other things. There was somebody named Chicken down in Miami. They were getting dope from Miami. But during the period of time they have referenced here, they were not getting their dope from New York.

Christopher Hemmings said that Stamma was always arrested with drugs. Once again, you know, it's a reasonable deduction from the evidence that this young man was found not guilty of any drug charges that he -- that were filed against him, because you have heard them testify about how he was arrested. You have heard that formal charges were brought. And there is no disposition that we could bring forward to you. And it's a reasonable deduction deduction from the evidence that he was the found not guilty of those charges.

Now, it's real easy to say that Brian Davis was wrong when he did this for Alex Synsmir. You know, the interesting thing is that Alex Synsmir -- Paul Wilson; right? Do you remember that?

Now, Brian says what Alex would do essentially is a lot of times he would have the thing already filled out and

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send this money. They didn't trust me."

All right. Nobody trusted Brian Davis because he was one of the guys robbing them and taking monies out of apartments and busting in. I mean, think about it. Think of all the times the police officers say they went into a place, thought they cleaned the place out and come to find out that they overlooked big globs of money and all types of things.

If you think about it, it makes sense. Take your money and not any dope that you might find. And you're out on the street selling that dope, somebody is going to put 2 and 2 together and figure that out.

You remember Tim, one of the guys he did rob, actually was part of the Allen organization. And that was when he got tortured and that was when he got away.

Now, Mark Hillary -- you know, Mr. Harris and Mr. Johnson don't have anything to do with Brian Davis. They really don't have much recall.

As a matter of fact, if you listen to the testimony of Colnick Grignion, all the way through, one of the last questions I asked him was, Well, Colnick, if somebody was hanging with you would that mean that they were part of the organization?

And he said, Well, somebody might think that but that might not be what it was.

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never fired those shots into the house; right, Duane?

Oh, that's right, Mr. King.

Well, I was just learning to ride that bike.

Yeah. Well, you know, they want to say that Brian Davis is riding this motorcycle when it wrecks out. I submit to you this is the cowboy riding that motorcycle when it wrecks out, this guy right here. The boy that is on bond up in New York right now.

And, of course, we all know that he's being an honorable guy up there right now, isn't he?

All right. We can trust him, Duane Knight, the guy that we know would go and slap six shots into a house, good guy to have on bond.

Ladies and gentlemen, I'm about out of time. I -- Christopher Hemmings, the last thing I'm going to tell you, Christopher Hemmings said he recalled -- he gave two statements. He gave one statement and apparently he reviewed it and the next day he came in and added a paragraph.

THE COURT: One minute.

MR. KING: Thank you, Your Honor. The paragraph he added was now I recall the conversation with Stamma and Paul that occurred at Rothington and that they were talking about this motorcycle accident. Apparently Mr. Storey made a mistake I guess, left it out the first copy of the

FELONY RECORD SEARCH CERTIFICATE

THE STATE OF TEXAS

COUNTY OF DALLAS

I, BILL LONG, Clerk of the District Courts of Dallas County, Texas, do hereby certify that a search of the Indexes from 1973 through the present date, on BRIAN A. DAVIS,

Date of Birth 9-30-70:

_____ DOES NOT REFLECT ANY FELONY CHARGES OR CONVICTIONS.

XXX REFLECTS THE FOLLOWING:

	Case No.	Offense		Disposition
	F90-35193-L	AA/DW	12-12-90	NO BILLED
	F88-98832-H	ATT MURDER	01-24-89	NO BILLED
**	F89-82430-L	POSS. W/INT	03-23-90	TRIAL BEFOR THE COURT FOUND INNOCENT
	F89-87428-L	THEFT 750	06-26-89	PLEA OF GUILTY 4 YEARS PROBATION
			05-27-94	JUDGMENT SET ASIDE

** THIS CHARGE SHOWS UNDER SAME NAME WITH DATE OF BIRTH OF 9-30-71.

GIVEN UNDER MY HAND AND SEAL of said Court, in Dallas, Texas, this the 1ST day of MAY, 1996.

BILL LONG
DISTRICT CLERK
DALLAS COUNTY, TEXAS

By: B. Dillard
Deputy
B. DILLARD

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JUDGMENT AND PROBATION - PLEA OF GUILTY OR NOLO CONTENDERE - JURY WAIVED - NON-CAPITAL

MINUTES OF THE Criminal DISTRICT COURT #5 OF DALLAS COUNTY, TEXAS

NO. F89-82428-JL

179/233do

STATE OF TEXAS

April TERM, 19 89

VS.

Brian Anthony Davis

June 26, 1989

JUDGMENT

The defendant having been indicted in the above entitled and numbered cause for the felony offense of Theft of property of the value of $750 or more but less than $20,000, a 3rd degree felony, as charged in the indictment. R & C.

and this cause being this day called, the State appeared by her assistant Criminal District Attorney Lisa Moye and the Defendant Brian Anthony Davis, appeared in person and his counsel Karo Johnson also being present and both parties announced ready and the Defendant in person and in writing in open Court having waived his right of trial by jury, such waiver being with the consent and approval of the Court and now entered of record on the minutes of the Court and such waiver being with the consent and approval of the Criminal District Attorney of Dallas County, Texas, in writing, signed by him, and filed in the papers of this cause before the ...ndant entered his plea herein, the Defendant was duly arraigned and in open Court ...ed guilty to the charge contained in the indictment; thereupon Defendant was admonished by the Court of the consequences of the said plea and the Defendant persisted in entering said plea, and it plainly appearing to the Court that the Defendant is mentally competent and that he is uninfluenced in making said plea by any consideration of fear, or by any persuasion, or delusive hope of pardon prompting him to confess his guilt, the said plea was accepted by the Court and is now entered of record as the plea herein of the Defendant. The Defendant in open Court, in writing, having waived the reading of the indictment, the appearance, confrontation, and cross-examination of witnesses, and agreed that the evidence may be stipulated and consented to the introduction of testimony by affidavits, written statements of witnesses and any other documentary evidence, and such waiver and consent having been approved by the Court in writing and filed in the papers of the cause; and, the Court having heard the Defendant's waiver of the reading of the indictment, the Defendant's plea thereto, the evidence submitted, and the arguments of counsel, is of the opinion from the evidence submitted that the Defendant is guilty as charged.

IT IS THEREFORE FOUND AND ADJUDGED BY THE COURT, that the said Defendant is guilty of the felony offense of Theft of property of the value of $750 or more but less than $20,000, a 3rd degree felony, as charged in the indictment. R & C.

and that the said Defendant committed said offense on the 19th day of April, 19 89, and that he be punished by confinement in the Texas Department of Corrections for 4 YEARS AND A FINE OF $300.00, and that the State of Texas do have and recover of the said Defendant all costs in this prosecution expended, for which execution will issue; and that said Defendant be remanded to the Sheriff of Dallas County, Texas, to await the further Order of the Court herein; and it is further ordered by the Court that the imposition of sentence of the Judgment of conviction of the Court herein shall be suspended for a period of 4 YEARS, and that Defendant be placed on Probation during the period of time fixed by the Court, under the conditions to be determined by the Court in accordance with the provisions of the law governing Adult Probation of said State.

Fine is to be PAID ~~XXXXXXXX~~

It appearing to the Court that the Defendant is mentally competent and understanding of the English language, the Court in the presence of said Defendant and his counsel proceeded to place Defendant on probation as heretofore determined by the Court.

IT IS THE ORDER OF THE COURT, that the said Defendant, who has been adjudged by the Court to be guilty of Theft of property of the value of $750 or more but less than $20,000, a 3rd degree felony, as charged in the indictment, R & C.

and whose punishment has been assessed by the Court at confinement in the Texas Department of Corrections for 4 YEARS AND A FINE OF $ 300.00, in this said cause be placed on probation for a period of 4 YEARS, in accordance with the provisions of the law governing Adult Probation of said State, it appearing to the Court that the ends of justice and the best interests of the public, as well as the Defendant, will be subserved by suspending the imposition of the sentence herein and placing the Defendant on probation.

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ADAM BYRON COGAN
Attorney at Law
ONE NORTHGATE SQUARE
GREENSBURG, PENNSYLVANIA 15601

Phone
724.837.9046
724.837.2100

Fax
724.837.8882

April 21, 2008

Brian Davis, #40427-053
FCI – McKean
P.O. Box 8000
Bradford, PA 16701

<u>IN RE: UNITED STATES OF AMERICA V. DAVIS</u>

Dear Mr. Davis:

The circumstances that you described pertaining to your prior case are indeed tragic and it is impossible for people to appreciate such things who are not involved in the system how someone in your position can be serving a life sentence. I can only hope at some point in the future that something will be done to deal with a case such as yours, whether it be a pardon petition or some amendment of the law that will take affect. While one can only hope right now, the pendulum of justice does swing both ways.

I am glad that you had some positive resolution of your civil case and I wish you the best in the future.

Very Truly Yours,

Adam B. Cogan, Esquire

ABC/mla

APPENDIX 121

Cheryl L. Kates Esq.
Attorney at Law
PO Box 711
Honeoye, NY 14471
(585)820-3818

December 19, 2007

Honorable Sidney A. Fitzwater
U.S. District Judge
1100 Commerce Street
Dallas, Texas 75242

Re: Brian Davis

Dear Honorable Sidney A. Fitzwater:

I am writing to express support for Brian Davis. Brian has filed a motion for your consideration to modify his sentence pursuant to 18 USC 3582 (c) (2). As you know Davis was named along with 61 co-defendants in a superseding indictment filed October 6, 1992. Mr. Davis was 17 years old at the time of the alleged offense. On March 4, 1994, after voluntary extradition, Davis was sentenced to life in prison without parole.

Davis is an African-American young male, who was adversely affected by the 100-to-1 crack vs. powder cocaine ratio allowed in previous sentencing guidelines. These guidelines, as you know, dictate stiffer punishments for crack cocaine vs. powder cocaine. This adversely affects mainly minority defendants. The recent guideline suggestions and the development in case law such as the Booker case, allows you to look at the sentence of this defendant once again.

I have known Brian Davis for the last five years. A friend who runs a post-conviction remedy service for federal inmates referred him to my office. I am a state administrative law practitioner focusing mainly on matters of state parole. I am not nueropsychologist and the director of the Brain Behavior Lab at the University of Pennsylvania indicated:

"The evidence is strong the brain does not cease to mature until the early 20's in the relevant parts of the brain that govern impulsivity, judgment, planning for the future, foresight of consequences and other characteristics that make people morally culpable" (ABA, 2004).

Other researchers, through the study of adolescent MRI found the frontal lobe, the part of the brain that controls aggression, long-range planning, mental flexibility, abstract thinking and moral judgment is not developed fully in an adolescent. There is a late phase of development of myelin formation indicating there is a neural basis for assuming teens are less blameworthy than adults for criminal acts (ABA, 2004, Brower, 2004).

These theories are filtering into the legal analysis of whether an adolescent is morally culpable for criminal acts. In analyzing whether a mentally-retarded person should be executed the Supreme Court recognized there was a different level of culpability due to the lack of development in the brain, Atkins v. Virginia, 536 U.S. 304 (2002).

Further arguments also state that adolescents do not have the same level of moral culpability, Roper v. Simmons , 543 U.S. 557 (2005). Evidence submitted by various sources indicate the above research. The court held American society viewed juveniles as categorically less culpable than the average criminal and provided three reasons: 1. The lack of maturity and an underdeveloped sense of responsibility were found in youth more often than adults and were more understandably among the young; 2. Juveniles were more vulnerable or susceptible to negative and outside pressures including peer pressure; and 3. The character of a juvenile was not as well formed as that of an adult, Roper, id.

humble individual that does not pose extra financial strains on his mother by calling her collect excessively. He does everything he can to remain involved as a parent from behind bars and to be there for his two sons. He has been able to maintain himself despite his current circumstances educating himself and reading. He has been able to remain hopeful that one day this wrong will be righted.

Please consider Mr. Davis' motion and grant him the reduction he is requesting. Justice has not been gained by confining this young man to prison for life for some bad decisions he made as a teen. He has turned himself around. He was in the process of doing this on his own when the authorities came to arrest him. He deserves a second chance at life. Only you have the power to grant this. I trust that you will do what you think is the right thing in this matter.

Sincerely,

Cheryl L. Kates Esq.

GEORGIA J. HINDE
ATTORNEY AT LAW
1133 BROADWAY
SUITE 221
NEW YORK, NEW YORK 10010

(212) 727-2717
TELEFAX: (212) 727-2627

August 13, 2012

Agent Shawn Lewis
U.S. Immigration and Customs Enforcement
P.O. Box 209
White Deer, PA 17887

Re: Brian Davis, No. 40427-053

Dear Agent Lewis:

I am happy to provide this letter in support of Mr. Brian Davis' application for discretionary relief from deportation pursuant to the policy announced in Director John Morton's Memorandum dated June 17, 2011.

While he was incarcerated at FCI McKean in 2010, Mr. Davis assisted a client of mine with his initial application to reduce his sentence pursuant to 18 U.S.C. § 3582(c). That application ultimately proved successful and resulted in my client's release from custody. After that, my client informed me about Mr. Davis' very helpful assistance, and I thereafter heard from Mr. Davis himself, who was exploring whether he might obtain similar sentencing relief in his own case. Mr. Davis sent me copies of legal arguments he had prepared, and I was very impressed with the intelligence, reasonableness and respect for the law contained in those submissions, which were also extremely well written.

Because of the particular circumstances underlying Mr. Davis' sentence, I was unfortunately unable to assist him with an application to further reduce his own sentence. I have, however, maintained contact with Mr. Davis since that time, and have come to know a bit more about his background.

I thus understand that Mr. Davis came to the United States over thirty years ago, when he was only nine years old. All of his immediate and extended family reside here, and it would be a great benefit, both to Mr. Davis and to his family if he could remain in the United States instead of being deported to Jamaica at the conclusion of his sentence. Mr. Davis is also fearful that, if he is deported to Jamaica, he may encounter men who once threatened his life and later testified against him. If he could stay in the United States, however, he would have the support of his family and his community, which would allow him to successfully make the

Dr. Andrew R. Conn
77 Parkway East
Mount Vernon, NY 10552

January 2, 2008

Honorable Sidney A. Fitzwater,
U.S. District Judge
1100 Commerce Street
Dallas, Texas 75242, USA.
Re: Brian A. Davis

Dear Honorable Sidney A. Fitzwater

I am writing to respectfully ask you to reduce the sentence of Brian A. Davis reg. #40427-053, who is currently incarcerated at FCI McKean. I am a research mathematician and not a lawyer, prosecutor or defender. Nor am I a judge, policeman, parole or prison officer. Thus I am ask you to understand that my request is not made primarily on legal grounds but on what, as a concerned US citizen, I perceive as reasonable and just grounds. I believe that I know something about our justice and penal system and I feel that I know Mr Davis. I am distressed by what I perceive as an excessive sentence that does not serve either justice or punishment, in a reasonable way. However, I recognize that your decisions are typically (and rightly) driven by legal arguments and precedents. Moreover your experience and perception are obviously very different from my own. However, if I understand the situation correctly, the recent guideline suggestions and the development in case law (for example the Booker case), gives the opportunity to reconsider Mr. Davis's sentence. In the interest of both justice and humanity I urge you to give such a reconsideration and in my letter below I try to explain why I feel so passionate about this.

As you know Brian Davis was seventeen years old at the time of the alleged offense. His circumstances and the environment he came from, at that time, made it difficult for him, and many others in similar circumstances, to make wise decisions. We all know that even those of us raised in an ideal environment are most prone to making mistakes when adolescent. However, even then Brian had the intelligence and motivation prior to his arrest to take proactive steps in order to become a productive and worthy father, husband, worker and citizen. As one would expect, initially taking responsibility and deciding to make an honest living without help was difficult, discouraging and required determination. Brian was able to sustain that determination because he knew deep down the kind of human being he was and he wanted a productive and decent life for his future, his wife, his children and himself. Unfortunately at that time, circumstances did not grant him the chance he needed. However, I am hoping that there is now an opportunity to give him that chance and that when one gaining. Plea bargaining has everything to do with expediency and nothing to do with justice. Although it is not too easy for me to corroborate everything, far too frequently I have the impression that serious criminals are able to considerably reduce their incarceration by 'trading' crimes for information. Frequently, the worst offenders receive much lighter sentences than those they successfully accuse who are, in fact, considerably lesser criminals. Moreover, the system is vindictive! 'Evidence of sentencing disparity visited on those who exercise their Sixth Amendment right to trial by jury is today stark, brutal, and incontrovertible. As a practical matter this means, as between two similarly situated defendants, that if the one who pleads and cooperates gets a four-year sentence, then the guideline sentence for the one who exercises his right to trial by jury and is convicted will be 20 years. Not surprisingly, such a disparity imposes an extraordinary burden on the free exercise of the right to an adjudication of guilt by one's peers. Criminal trial rates in the United States are plummeting due to the simple fact that today we punish people — punish them severely — simply for going to trial. I honestly believe that Mr Davis was indeed punished in this way. Inevitably, like Brian Davis, those without money, a good lawyer and education, are by far, the most likely to come off worst. In the case of drug trafficking those much higher up on the criminal ladder than Mr. Davis have more to bargain with and can afford high quality lawyers. It is my understanding that whereas Brian's crime was not violent, some of his co-conspirators who were higher up the chain and better represented, served less time even though there actual crimes involved both violence and murder.

In my opinion there is something wrong with a criminal justice policy that looks only to lengthy imprisonment as the answer to crime. Indeed, in just the last 30 years, the United States has created something never before seen in its history and unheard of around the globe: a booming population of prisoners whose only way out of prison is likely to be inside a coffin. 'Western Europeans regard 10 or 12 years as an extremely long term, even for offenders sentenced in theory to life' said James Q. Whitman, a law professor at Yale and the author of 'Harsh Justice,' which compares criminal punishment in the United States and Europe. A survey by The New York Times found that about 132,000 of the nation's prisoners, or almost 1 in 10, are serving life sentences. The number of lifers has almost doubled in the last decade, far outpacing the overall growth in the prison population. Of those lifers sentenced between 1988 and 2001, about a third are serving time for convictions other than murder, including burglary and drug crimes.Brian is, of course, one of these.

Thus I humbly ask you to do everything possible to take advantage of this opportunity to give Mr Davis the one chance that, in my opinion, he so judiciously merits and deserves. I am supremely confident that in return we will have gained

United States District Court
NORTHERN DISTRICT OF TEXAS
1100 COMMERCE STREET
DALLAS, TEXAS 75242

CHAMBERS OF SIDNEY A. FITZWATER
U.S. DISTRICT JUDGE

March 14, 1994

Mr. Brian A. Davis
1800 Ridgmar
Cleburne, Texas 76031

Re: United States v. Davis
Criminal No. 3:92-CR-365-D (29)

Dear Mr. Davis:

Thank you for taking the time to write to me on March 7, 1994. As your attorney may have explained to you, once I overruled your objections to the presentence report, the only sentence I was permitted to impose by law was the one I handed down. I am therefore unable to reconsider your sentence.

Because your case will now be proceeding on appeal, I am unable to discuss your case with you further. After your appeal has been resolved, I would be pleased to hear from you in the future so that I may keep up with your progress.

Respectfully,

Sidney A. Fitzwater

Sidney A. Fitzwater
United States District Judge

SAF/de

cc: Edwin V. King, Jr., Esq.

during his incarceration and has become quite knowledgeable in aspects of the law, particulary as they impinge on himself and some of his fellow prisoners.

Many of his letters over the years have expressed his concern for his children — often based on his acknowledgement that he is not in a good position to serve as an ideal role model. As a consequence he has always been extremely grateful to those who have tried to assist him in these matters, whether it be his mother, his children's mother, a friend or a school counselor, for example. If you had been corresponding with him over the years as I have you would have no doubts as to his humanity and sensitivity to those he has received help from, however small. Everything he writes and thinks supports my strong belief that he is a perfect candidate for terminating deportation proceedings.

Of course I am not in a position to know what the corrections professionals who have been in contact with Mr Davis are able to add to my plea on his behalf but I am confident that they will be able to support my strong belief that Mr Brian Davis is a caring and industrious person who made bad decisions when he was young, but who is not ever going to be in a position to be incarcerated again, once he finally does obtain release. Not only is it inconceivable that he will be a menace if released back in the community, but I am sure he will be exactly the opposite.

So in brief, I would say that Brian Davis was harshly sentenced, is a person that understands that he is incarcerated because of very bad decisions that he made in his youth, is industrious, positive in his outlook and a very caring person who only awaits to be released to become the kind of first-rate citizen he has wanted to be for a long time now. Moreover, he is culturally and socially completely American. I hope you give the petition he is preparing very careful consideration and that you will find the supporting evidence that will lead you to the same conclusion as my own. It would be an injustice and a great shame if somebody like Mr Davis cannot be reprieved and allowed to remain in the United States where he will finally be able to contribute to our society, his family and his community.

Thank you for taking the time to read this letter

Sincerely

Dr Andrew R. Conn and Barbara Conn

Copy

BLACKSTONE CAREER INSTITUTE
218 MAIN STREET, P.O. BOX 899, EMMAUS, PA 18049

June 18, 2003

Brian Davis 40427-053
FCI Mckean
P O Box 8000
Bradford PA 16701-0980

Dear Brian:

CONGRATULATIONS! All of us at Blackstone Career Institute are proud to number you among our graduates. We are pleased we could be part of your training and hope your time with us has been rewarding. You certainly should be proud of your accomplishment.

As the Director, I know that you have worked hard and made some personal sacrifices to complete this course. It indicates to me that you are committed to your studies and realize the role educational training can play in attaining your goals.

Our staff is genuinely interested in our students success. We appreciate when a graduate writes to let us know they are utilizing their educational training and working in their chosen profession. As part of our continuing efforts to enhance the standing of Blackstone Career Institute as an important resource for quality education, we seek your insight into how we can improve our course. If you have not completed the yellow questionnaire mailed along with exam twenty-eight, I would encourage you to do so.

Included in your graduation packet you should find your diploma for the Blackstone Career Institute program completed along with your official school transcript.

Again, congratulations on your completion and best wishes in your future endeavors.

Sincerely,

Kevin J. McCloskey
President

UNICOR

"TEAM PLAYER OF THE YEAR AWARD"

This meritorious award is presented to

Brian Davis

On the 5TH day of January 2004, for outstanding contributions throughout the year to the UNICOR McKean Factory. Your supervisor Roger Tingley, in recognition of your dedication as a Team Player in the UNICOR factory, recommended this honorary citation. You will receive $ 75.00 Bonus with the congratulations of UNICOR management and staff. A copy of this certificate will be forwarded to your Unit Team for notation in your Central File.

Tim Holohan, Acting Superintendent of Industries

UNITED STATES GOVERNMENT
MEMORANDUM
F.P.I. McKEAN, PA

Date: September 30, 2006

Reply To Attn of: Linda K. Kern

Subj: UNICOR WORK PERFORMANCE EVALUATION RECORD

Inmate Name: DAVIS, BRIAN Register Number: 40427-053

Dot Code: 249367066 Job: PROCUREMENT CLERK

Evaluation Type: Semi-Annual X Program Change ____ Worker Request ____

Evaluation Period: Beginning Date: 04/01/06 End Date: 09/30/06 Institution Code: 231 Industrial Code: MCPL

During this period of evaluation the inmate named above performed in a manner commensurate with the rating listed below, in those areas specified:

Punctuality:	5
Attitude on Job:	5
Accident Proneness:	5
Relations with Others:	5
Follows Orders:	5
Works Independently:	5
Work Habits:	5
Level of Skill:	5
Effort:	5
Employment Recommendation:	5
Total Evaluation Score:	50

* Rating Scale *

1. - Much Below Average
2. - Below Average
3. - Average
4. - Better than Average
5. - Much Better than Average

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Comments: Mr. Brian Davis is an outstanding Unicor Employee. He always strives to do his best completes his work accurately. He asks for clarification on directions he does not understand so he does it right the first time. He is an outstanding employee and is an asset to the OFBG Team.

I have reviewed this evaluation with my foreman.

Inmate' Signature Brian Davis Supervisor's Initials LKK Date: 12/4/06

U.S. Department of Justice
UNICOR
Federal Prison Industries, Inc.

Federal Correctional Institution - McKean
P.O. Box 6000
Bradford, PA 16701

"Achievement Award"

(Special Letter of Commendation)

June 4, 2007

Mr. Brian Davis
40427-053

Dear Mr. Brian Davis:

This meritorious award is presented to you for your outstanding contribution to the UNICOR McKean factory. Your foreman Ms. Linda Kerr in recognition of your special achievements during April 2007 recommended this honorary citation. Your skills, initiative, job performance, and positive attitude were considered in the decision to issue this award.

In addition, you will receive a Day Off with pay. A copy of this letter is being forwarded to your Unit Team for notation in your Central File.

Congratulations on your fine work performance. I encourage you to keep up the good work. It is men such as yourself that enable UNICOR McKean to meet production schedule's and produce quality products month after month.

Sincerely yours,

Martin Sapko

Martin Sapko,
Superintendent of Industries

MS/cm

APPENDIX 145

Cc: Unit Team
File

CERTIFICATE OF COMPLETION

THIS CERTIFICATE IS AWARDED TO

Brian Davis

APRIL 22, 2009

IN COMPLETION OF ENTREPRENEURSHIP, COURSE ONE

A six-week course offered at the McKean Federal Correctional Institution, provided by the Entrepreneurship Program at the University of Pittsburgh, Bradford in conjunction with North Central and the Small Business Administration.

JILL FOYS North Central Regional Planning & Development	CARL KNOBLOCK SBA, Western Pennsylvania District Office	DIANA MAGUIRE University of Pittsburgh, Bradford

2

DESCRIPTION *SIGNALEMENT*

	Bearer *Titulaire*	Wife *Femme*
Profession *Profession*		
Place and date of birth *Lieu et date de naissance*	Kingston Jamaica 30th September 1971	
Country of Residence *Pays de Résidence*	JAMAICA	
Height *Taille*	4 ft. in.	ft. in.
Colour of eyes *Couleur des yeux*	Dark Brown	
Colour of hair *Couleur des cheveux*	Dark Brown	
Special peculiarities *Signes particuliers*		

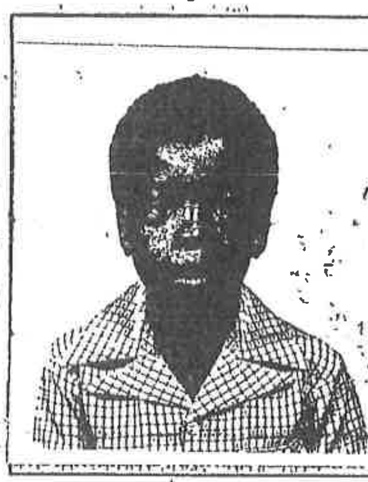
CHILDREN *ENFANTS*

Name *Nom*	Date of birth *Date de naissance*	Sex *Sexe*

Usual signature of bea[redacted]
Signature du titulaire
Usual signature of wife
Signature de sa femme

3

Bearer
Titulaire



Wife
Femme

(PHOTO)

APPENDIX 149

8

VISAS

9

VISAS

PROCESSED FOR I-551.
TEMPORARY EVIDENCE OF
LAWFUL ADMISSION FOR
PERMANENT RESIDENCE
VALID UNTIL MAY 12 1983
EMPLOYMENT AUTHORIZED

U. S. IMMIGRATION
NEW YORK, N.Y. 1323
MAY -3 1982
ADMITTED (CLASS)
UNTIL
A 37621318

U.S. Department of Homeland Security

COPY

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 280238088 FINS: 1180819608 File No: 029 574 329

DOB: 09/30/1971 Event No: ALW0906000060

In the Matter of:

Respondent: BRIAN ANTHONY DAVIS AKA: UNKNOWN, Stamma currently residing at:

Moshannon Valley 555 GEO Drive Phillipsburg,PENNSYLVANIA, 16866

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

3400 Concord Road Suite 2 York PA 17402. EOIR York, PA

(Complete Address of Immigration Court, including Room Number, if any)

on To be set. *(Date)* at To be set. *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

APPENDIX 153

S 0448 GINGERICH JR. SDDO

(Signature and Title of Issuing Officer)

Date: February 17, 2015

Allenwood, Pa.

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)

U.S. Department of Homeland Security **Continuation Page for Form** I-862

Alien's Name	File Number	Date
DAVIS, BRIAN ANTHONY	029 574 329 Event No: ALW0906000060	02/17/2015

THE SERVICE ALLEGES THAT YOU:
----

1. You are not a citizen or national of the United States;

2. You are a native of JAMAICA and a citizen of JAMAICA;

3. You were admitted to the United States on or about May 3, 1982 at New York, New York as a lawful permanent resident with the status of (P63);

4. You were, on March 07, 1994, convicted in the Criminal District Court ,of Dallas Texas under case number F89-82428-JL, for the crime of Theft of property with a value of 750 USD or more but less than 20,000 USD in violation of Texas Penal Code,Title 7, Chapter 31 for which a sentence of 4 years confinement was imposed;

5. You were, on March 07, 1994, convicted in the United States District Court, for the Northern District of Texas, under case number 92-CR-365, for the offenses of: Conspiracy to Possess with intent to distribute Crack Cocaine, in violation of Title 21, United States Code Section 846 (count 1), and Conspiracy to Launder Monetary Instruments in violation of Title 18, United States Code Section 371, Count 3: for which a sentence LIFE was imposed on count 1 and 60 months imposed on count 3, to be served concurrently. On June 19, 2008 the LIFE sentenced imposed on count was reduced to 360 months imprisonment;

6. The amount of funds laundered in this case exceeds $10,000 USD;

7. These crimes did not arise out of a single scheme of criminal misconduct.

ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

Section 237(a)(2)(B)(i) of the Immigration and Nationality Act, as amended, in that, at any time after admission, you have been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802), other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code.

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43)(U) of the Act, a law relating to an attempt or conspiracy to commit an offense described in section 101(a)(43) of the Act.

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43)(D) of the Act, a law relating to an offense described in

Signature	Title
S 0448 GINGERICH JR.	SDDO

3 of 4 Pages

CUSTODY AGREEMENT
FOR
MINOR CHILD GERALD WILLIE FRAZIER

I, Ms. Darlene Anita Rudd, Social Security No:466-29-8210, currently residing at 3901 Rupert Street, Apt.1246, am of legal age to make this agreement. I am the natural mother of minor male child **GERALD WILLIE FRAZIER**, who was born on January 13, 1990, Social Security No:637-12-0568. I am voluntarily, knowingly and intelligently **without** duress and/or coercion relinquishing and transfering the custody of minor child GERALD WILLIE FRAZIER to Ms. Linva Rose-Vassel who is currently residing at 657 East 26 Street, Apt.4B; Brooklyn, New York 11210. Ms. Rose-Vassel is the mother of Mr. Brian Anthony Davis, Social Security No. 118-68-1439, who is the natural father of minor child GERALD WILLIE FRAZIER.

ABOVE STATEMENTS ARE MADE UNDER THE PENALTY OF PERJURY.

NOTARY:

Darlene Anita Rudd 12-9-99

Darlene Anita Rudd

NOTARY PUBLIC STATE OF TEXAS

METRA JACKSON, Notary Public
In and for the State of Texas
My Commission Expires 9-17-2000

SUBSCRIBED AND SWORN BEFORE ME
THIS 8 DAY OF Dec 1999
Metra Jackson
NOTARY PUBLIC

Dated: ______________________

APPENDIX 157

C1
C3-24L

U.S. Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

January 6, 2016

MEMORANDUM

TO: Moshannon Valley CI
Federal Bureau of Prisons

FROM: /s/ Deborah Leff
Pardon Attorney

SUBJECT: BRIAN ANTHONY DAVIS
Reg. No. 40427-053
Applicant for executive clemency

Please advise BRIAN ANTHONY DAVIS that his application for commutation of sentence was carefully considered in this Department and the White House, and the decision was reached that favorable action is not warranted. The application was therefore denied on January 5, 2016. Under the Constitution, there is no appeal from this decision. As a matter of well-established policy, we do not disclose the reasons for the decision in a clemency matter. In addition, deliberative communications pertaining to agency and presidential decision-making are confidential and not available under existing case law interpreting the Freedom of Information Act and Privacy Act. If BRIAN ANTHONY DAVIS wishes to reapply for commutation, he will become eligible to do so one year from the date on which the President denied the current application.

In a court case in which the Office of the Pardon Attorney (OPA) defended its long-standing practice of declining to release lists of names of persons whose clemency applications have been denied, the federal courts of the District of Columbia rejected OPA's arguments and ruled that lists of the names of persons who have been denied executive clemency by the President are not protected from public disclosure under the Freedom of Information Act (FOIA). See *Lardner v. Department of Justice*, 638 F.Supp.2d 14 (D.D.C. 2009), *affirmed*, *Lardner v. United States Department of Justice*, No. 09-5337, 2010 WL 4366062 (D.C. Cir. Oct. 28, 2010) (unpublished). Accordingly, the applicant should be aware that as a result of the *Lardner* decision, OPA now is obliged to release existing lists of the names of persons who have been denied executive clemency by the President to anyone who requests such records pursuant to the FOIA.

Please ensure that BRIAN ANTHONY DAVIS receives a copy of this memorandum reflecting the denial of his clemency application.

CIVIL COVER SHEET

JS-44 (Rev. 3/16 DC)

I. (a) PLAINTIFFS	DEFENDANTS
BRIAN A. DAVIS - PR	DEBORAH LEFF, et al.
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 88888 (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) MOSHANNON VALLEY - R40427-053 CORRECTIONAL INSTITUTION 555 GEO DRIVE PHILIPSBURG, PA 16866	AT Case: 1:16-cv-00821 Assigned To : Jackson, Ketanji Brown Assign. Date : 5/2/2016 Description: Pro Se Gen. Civ.

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ A. *Antitrust*

- ☐ 410 Antitrust

○ B. *Personal Injury/ Malpractice*

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

○ C. *Administrative Agency Review*

- ☐ 151 Medicare Act

Social Security

- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes

- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ D. *Temporary Restraining Order/Preliminary Injunction*

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ E. *General Civil (Other)* OR **◉ F. *Pro Se General Civil***

Real Property

- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property

- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy

- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions

- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☒ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights

- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

Federal Tax Suits

- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty

- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes

- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

-O-

○ G. *Habeas Corpus/ 2255* ☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	○ H. *Employment Discrimination* ☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	○ I. *FOIA/Privacy Act* ☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	○ J. *Student Loan* ☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)* ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	○ L. *Other Civil Rights (non-employment)* ☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	○ M. *Contract* ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	○ N. *Three-Judge Court* ☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

⦿ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

5 USC 701

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE: 04/27/2016 **SIGNATURE OF ATTORNEY OF RECORD** NCD

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIAN A. DAVIS, Plaintiff, v. DEBORAH LEFF, Pardon Attorney; JEH JOHNSON, Secretary, Department of Homeland Security; S. GINGERICH, Jr., Senior Deputy Deportation Officer, Department of Homeland Security, Defendants.	Case No. 1:16-cv-00821(KBJ) Civil Action

PLAINTIFF'S MOTION TO WITHDRAW CIVIL COMPLAINT

Plaintiff Brian A. Davis ("Plaintiff"), pro se, respectfully submits this motion requesting to withdraw his civil complaint filed in this Court against the above named Defendants.

In support of this request, Plaintiff states the following:

I. BASIS FOR MOTION

Plaintiff commenced this civil action against the named Defendants on or around February 17, 2016. The suit alleged that the Pardon Attorney, Deborah Leff, arbitrarily declined to submit Plaintiff's application for clemency to the President of the United States despite knowing that Plaintiff met the five criteria set by the Department of Justice which established the standard that the Pardon Attorney was required to follow in evaluating which federal inmates qualify for clemency under the president's unprecedented Clemency Initiative program.

On August 25, 2016, the Defendants filed a Motion to Dismiss Plaintiff's complaint. In their motion to dismiss, the Defendants ask that the Court dismiss Plaintiff's complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. While Defendant Leff is correct that the actual award of clemency lies within the sole discretion of the president to make, because a standard was put in place specifically to determine which federal inmate qualified for the actual award of clemency and eliminating the possibility of inmates being arbitrary selected to participate in the president's mass clemency program, and because the inmates *selected* by the Pardon Attorney for the award of clemency are granted clemency almost one hundred percent of the time, Plaintiff had a due process right to a fair selection process and a right not to have his clemency application subjected to an arbitrary and capricious process.

As the president and members of his administration explained, the Clemency Initiative Project was specifically designed to remedy past injustice in sentencing that stemmed from a criminal justice system that was determined to have been broken.[1] And because the president's clemency initiative was designed to remedy the injustice by providing relief where the law no longer could, Plaintiff's claim that

[1] U.S. Deputy Attorney General, James M. Cole, made the following remarks: "For our criminal justice system to be effective, it needs to not only be fair, but it also must be perceived as being fair. These older, stringent punishments that are out of line with sentences imposed under today's laws erode people's confidence in our criminal justice system." (Remarks at N.Y. State Bar Association Annual Meeting (January 30, 2014)).

he was subjected to an arbitrary and capricious process was properly before the Court as a matter actionable under the Administrative Procedure Act.

The Defendants' claim that Plaintiff is "unhapp[y] with the outcome of his pardon application" simply has nothing to do with the merits of the constitutional and statutory claims that were raised in his complaint. (Def. Resp., pg.1). In addition, as for whether the Court has jurisdiction to resolve the claims raised by Plaintiff, none of the claims raised in Plaintiff's complaint fall under the political question doctrine as Defendants contend. A careful reading of the complaint will show that nowhere in the complaint did Plaintiff complained about the president's decision to deny him a presidential pardon. Moreover, because sufficient information have been alleged in the complaint to satisfy the requirement of Rule 8(a) of the Federal Rules of Civil Procedure, dismissal under Rule 12(b)(6) does not apply.

Therefore, Plaintiff's claims against the Pardon Attorney were properly before the Court to resolve.

Secondly, the Defendants' contention that Plaintiff's complaint is "an attempt to challenge his removal proceedings" further misrepresents the actual intent of the complaint. (Def. Resp., pg.12). Equally misleading is the Defendants' contention that "Plaintiff[ ] belie[ve] that his criminal conviction was 'based on material false evidence and information,'" (Def. Resp., pg.13), and the Defendants' contention that Plaintiff is attempting to collaterally challenge his criminal conviction. Id., pg.14-15. In his complaint, Plaintiff alleged that the Defendants' effort to remove him from the United States based on materially false evidence and information contravene with the requirement of 8 U.S.C. § 1229a(c)(3)(A), which states that "[n]o decision on deportability *shall* be valid unless it is based upon reasonable, substantial, and probative evidence." Id. (emphasis added). One of the allegations upon which Plaintiff's deportation order rests is that he was sentenced to prison time based on a prior theft conviction which the Defendants relied upon as basis to justify charging him with moral turpitude under the Immigration and Nationality Act. The reality, however, is that Plaintiff has *never* served any prison time on his theft conviction. Therefore, it was within Plaintiff's right to sue based on allegations against him that are not true.

The other allegation used by the Defendants as basis to justify Plaintiff's deportation order is his federal drug conspiracy conviction. In his complaint, Plaintiff outlined facts which wholly disprove and discredit *all* the evidence upon which his drug conspiracy conviction currently rests. He then argued that while he is not specifically challenging the conviction per se, the Defendants' reliance on the conviction as basis to effectuate his deportation violate his due process right and the command of 8 U.S.C. § 1229a(c)(3)(A). What is conspicuously missing from the Defendants' motion to dismiss is the representation of facts—any fact—disputing either of the foregoing allegations put forth by Plaintiff. As this Court is well aware, more is needed to obtain the dismissal that the Defendants seek than merely reciting the law and belittling Plaintiff for being unhappy to have been forced to endure a set of circumstances that are without question way beyond the demarcation of what is considered unjust.

With that being said, because Plaintiff is no longer in the custody of the Federal Bureau of Prisons, he no longer has an interest in pursuing his claims against the Pardon Attorney. Likewise, because Plaintiff's immigration dispute is presently being litigated before the Board of Immigration Appeals, he is no longer interested in pursuing his claims against Defendants Johnson and Gingerich.

Plaintiff has been incarcerated a very long time. And while there is no way for him to get any of that time back, it is well past being important that he focuses on the time that is before him. Plain and simple, Plaintiff no longer has any interest in pursuing his claims in this civil matter.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully asks to withdraw his complaint against the above-named Defendants.

Dated: September 8, 2016.

Respectfully submitted,

Brian A. Davis, (Pro Se)
Pouch No. 218230
York County Prison
3400 Concord Road
York, PA 17402

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached PLAINTIFF'S MOTION TO WITHDRAW CIVIL COMPLAINT was mailed on this 8th day of September, 2016, to the following party:

Joshua M. Kolsky
Assistant U.S. Attorney
U.S. Department of Justice
Judiciary Center
555 Fourth Street, N.W.
Washington, D.C. 20001

Brian Davis

Brian A. Davis (Pro Se)
Pouch No. 218230
York County Prison
3400 Concord Road
York, PA 17402