

FILED

2024 NOV 13 PM 7:15

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
MRV

NAME

Carl Bradley Johannson

PRISON IDENTIFICATION/BOOKING NO.

13791-112

ADDRESS OR PLACE OF CONFINEMENT

Federal Correctional Institute, Lompoc, Ca

Note: If represented by an attorney, provide name, address, & telephone number. It is your responsibility to notify the Clerk of Court in writing of any change of address.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Carl Bradley Johannson

FULL NAME OF MOVANT

(Include name under which you were convicted)

Petitioner.

CASE NUMBER:

5:24-cv-02552-VAP

CV

To be supplied by the Clerk of the United States District Court

18-CR-00114-VAP

CR

21-CR-00170-VAP

Criminal case under which sentence was imposed.

**MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY
28 U.S.C § 2255**

INSTRUCTIONS - READ CAREFULLY

This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any questions use reverse side of sheet.

Additional pages are not permitted. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

Upon receipt, your motion will be filed if it is in proper order. **NO FEE** is required with this motion

If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in a different district, you must file separate motions as to each judgment.

Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

When the motion is fully completed, the original and three (3) copies must be mailed to the Clerk of the United States District Court, whose address is 255 East Temple Street, Suite TS-134, Los Angeles, California 90012.

MOTION

1. Name and location of court that entered judgment of conviction under attack: United States District Court
Central District of California (Western Division - Los Angeles)
2. Date of judgment of conviction: 29 November 2022
3. Length of sentence: 120 Months Sentencing judge: Virginia A. Phillips
4. Nature of offense or offenses for which you were convicted: 18 U.S.C. § 371, 49 U.S.C. § 5124,
49 C.F.R. § 180.413 (a) (1), 26 U.S.C. § 7201, as charged in Counts One, Two, and Four of the Second
Superseding Indictment in EDCR 18-114(B)-VAP AND
18 U.S.C. §§ 1349 and 3147, 18 U.S.C. §§ 1344 (2) as charged in Counts One and Three of the indictment in
EDCR21-170-VAP.
5. What was your plea? *(check one)*
- ☐ Not guilty
☒ Guilty
☐ Nolo Contendere
- If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
Court dismissed Title 49 5104(b), Title 18 U.S.C. § 2(b) and Title 18 U.S.C. 1001(a)(2) of the First and Second
of the Indictment in EDCR 18-114(B)-VAP. AND
Title 18 U.S.C. 1344(1) and (2)(b) of the Indictment in EDCR21-170-VAP.
6. Kind of trial: *(check one)* N/A
- ☐ Jury
☐ Judge only
7. Did you testify at the trial?
- ☐ Yes ☐ No
8. Did you appeal from the judgment of conviction?
- ☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court Ninth Circuit Court of Appeals

(b) Result The Court denied motion to Withdraw Plea Agreement

(c) Date of result Final review of denial 12/01/23

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

☒ Yes ☐ No

11. If your answer to question number 10 was "yes," give the following information:

(a) (1) Name of Court United States District Court - Central Division of California (Western Division - L.A.)

(2) Nature of proceeding Motion to Withdraw Plea filed prior to Sentencing - denied by District Court.

(3) Grounds raised "Fair and Just Reason" based on Legal Innocence, No prejudice to the Government, the Emotional State of Defendant and No Strategic Benefit in Delay of Sentencing.

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

☒ Yes ☐ No

(5) Result The motion to Withdraw was briefly discussed at the Sentencing Hearing, but verbally denied by Judge Phillips prior to a formal Order of Denial several days later

(6) Date of result Verbal: 11/29/22; Formal Order: 12/05/2022

(b) (1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

☐ Yes ☐ No

(5) Result _____

(6) Date of result _____

(c) (1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

☐ Yes ☐ No

(5) Result _____

(6) Date of result _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the results of action taken on any petition, application, or motion?

(1) First petition, etc. ☒ Yes ☐ No Re: See Number 9. above

(2) Second petition, etc. ☐ Yes ☐ No

(3) Third petition, etc. ☐ Yes ☐ No

(e) If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in this type of proceeding. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you have, whether listed below or not. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of the grounds listed below for relief, you must allege facts in support of the grounds you select. The petition will be returned to you if you merely check (a) through (j) or any one or more of these grounds without alleging facts in support.

- (a) Conviction obtained by plea of guilty that was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Counsel Werksman failed to properly represent and advocate for the Defendant throughout the Change of Plea process which prejudiced Mr. Johansson.

Supporting facts (tell your story briefly without citing cases or law): Counsel Werksman improperly duped the Defendant into signing plea agreement falsely stating he would not file the agreement, but immediately thereafter did file agreement without the Defendant's knowledge or consent. Furthermore, Werksman misled Defendant about critical information at the Change of Plea Hearing to coerce Mr. Johansson to sign and accept the plea. These failures prejudiced the Defendant with a felony conviction and the loss of a right to a trial.

B. Ground two: Counsel E. M. Robinson failed to properly advocate for the Defendant and Argue All Factors that were pertinent and Material to the Withdrawal of a Plea Agreement and was ineffective in representation..

Supporting facts (tell your story briefly without citing cases or law): Mr. Robinson failed to argue many of the most important and consequential factors in his Motion to Withdraw a plea which he knew, or should have known in his representation of the Defendant. This failure to present the "Totality" of all the facts that were available and Material to the outcome was ineffective assistance of counsel. This deficient representation and proper level of advocacy prejudiced Mr. Johansson and denied him his constitutional rights under the 6th Amendment.

C. Ground three: Counsel R. A. Robinson did not appropriately challenge the findings of the District Court, properly contest the Government's Opposition or effectively present the Defendant's case to the Appellate Court.

Supporting facts (tell your story briefly without citing cases or law): Ms. Robinson misunderstood basic tenets of legal standards and concepts in her failed representation of the Defendant. Rather than effectively argue the most important aspects of the case, Ms. Robinson chose to simply repeat the same failed arguments from the the District Court motion. Ms. Robinson did not challenge the voluntary nature of the Plea even though it was the determination of the District Court, the argument of the Government and the finding of the Appellate Court.

D. Ground four: N/A

Supporting facts (tell your story briefly without citing cases or law): _____

13. If any of the grounds listed in 12 A, B, C, or D were not previously presented, state briefly what grounds were not presented, and give your reasons for not presenting them: Grounds One through Three, ineffective assistance of counsel, are only available under a collateral attack in a 2255 motion

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

☐ Yes ☒ No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At a preliminary hearing: Mark Werksman: 888 West Sixth St., Los Angeles, CA 90017

(b) At arraignment and plea: Mark Werksman: Same as above

(c) At trial: N/A

(d) At sentencing: Edward M. Robinson: 21515 Hawthorne Blvd., Suite 730, Torrance, CA 90503

(e) On appeal: Rachael A. Robinson: Appeal to the Ninth Circuit to overturn the District Court's denial of a request to withdraw a plea agreement.

(f) In any post-conviction proceeding: Rachael A. Robinson: 21515 Hawthorne Blvd., Suite 730, Torrance CA 90503

(g) On appeal from any adverse ruling in a post-conviction proceeding: Rachael A. Robinson: Request in the Ninth Circuit for a re-hearing of the appeal to withdraw a plea that had previously been denied by the Appellate Court.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

☒ Yes ☐ No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give the name and location of the court that imposed sentence to be served in the future: N/A

(b) Give the date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed sentence to be served in the future?

☐ Yes ☐ No N/A

WHEREFORE, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 11/12/24
Date

Carl Bradley Munson
Signature of Movant

**FOR THE
CENTRAL DISTRICT OF CALIFORNIA
(Western Division – Los Angeles)**

Carl Bradley Johansson,

Petitioner,

V.

Criminal Case No:

18-CR-00114-VAP

21-CR-00170-VAP

UNITED STATES OF AMERICA,

Respondent

**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER'S 28 U.S.C. § 2255 PETITION**

Petitioner, Carl Bradley Johansson hereby files his Memorandum in support of his Motion.

DATED

11/12/24

Respectfully Submitted,



CARL BRADLEY JOHANSSON

Petitioner

Register 13791-112

3600 Guard Road

Lompoc, Ca 93436

TABLE OF CONTENTS

DESCRIPTION	PAGE
MEMORANDUM OF LAW.....	1
I. JURISDICTION.....	2
II. JUDICIAL REQUEST.....	2
III. STANDARD OF REVIEW.....	3
A. EFFECTIVE ASSISTANCE OF COUNSEL.....	3
B. TO PROVE INEFFECTIVE ASSISTANCE.....	4
C. PERFORMANCE PRONG.....	4
D. PREJUDICE PRONG.....	5
IV. INTRODUCTION.....	6
V. STATEMENT OF THE CASE.....	9
A. STATEMENT OF FACTS.....	9
B. PROCEDURAL HISTORY.....	10
VI. SUMMARY OF THE ARGUMENT.....	14
VII. ARGUMENT.....	14
A. RIGHT TO EFFECTIVE COUNSEL.....	14
B. GROUND I OF §2255 PETITION.....	16
C. GROUND II OF §2255 PETITION.....	23
D. GROUND III OF §2255 PETITION.....	52
E. SUMMARY OF ARGUMENTS.....	58
VIII. CONCLUSION.....	59

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(s)</u>
<i>Haines v. Kerner</i> , 404 U.S. 519, 520 (1972).....	2
<i>Erickson v. Pardus</i> , 551 U.S. 89, 94 (2007).....	2
<i>Martinez v. Ryan</i> , U.S. 10/11-1316, 12-1317, 3/20/12.....	2, 3
<i>Halbert v. Michigan</i> , 545 U.S. 605-617 (2005).....	2
<i>Nix v. Whiteside</i> , 475 U.S. 157, 175.....	3
<i>United States v. Cronic</i> , 446 U.S. 648, 654/57/59 (1984).....	3, 52, 59
<i>Strickland v. Washington</i> , 466 U.S. 688 - 696 (1984).....	passim
<i>Hill v. Lockhart</i> , 474 U.S. 52 (1988).....	4, 59
<i>Williams v. Taylor</i> , 529 U.S. 362 (2000).....	5
<i>Bell v. Cone</i> , 533 U.S. 686 (2002).....	5
<i>United States v. Keller</i> , 902 F.3d 1391 (9 th Cir.1990).....	23

<u>CASES</u>	<u>PAGE(s)</u>
<i>Torrey v. Estelle</i> , 842 F.2d 234, 237 (9 th Cir. 1998).....	20
<i>Laffler v. Cooper</i> , 566 U.S. 156, 168 (2012).....	23
<i>United States v. Ruiz</i> , 257 F.3d 1030, 1032 (9 th Cir. 2001).....	25, 44
<i>United States v. Carr</i> , 740 F.2d 339 (5 th Cir. 1984).....	25, 26
<i>United States v. Hernandez</i> , 22-50134, 06-28-24 (para. 4).....	33, 34, 35
<i>United States v. McTiernan</i> , 546 F.3d 1160, 1167 (9 th Cir. 2008).....	34
<i>United States v. Davis</i> , 428 F.3d at 808.....	35
<i>Rabkin v. Oregon Health Sciences Univ</i> , 350 F.3d 967, 977 (9 th Cir. 2003).....	41
<i>United States v. Dillard</i> 891 F.3d 151, 158 (4 th Cir. 2018).....	41
<i>Brady, v. United States</i> , 397 U.S. 742, 748 (1970).....	45
<i>United States v. Rodriguez</i> , 49 F.4 th , 1205 8/22 (9 th Cir.).....	46, 47
<i>Tollett v. Henderson</i> , 411 U.S. 258 (1973).....	47

CASES

PAGE(s)

<i>Machibroda v. United States</i> , 368 U.S. 487 (1962).....	47
<i>United States v. Fuentes-Galvez</i> , 969 F.3d 912 at 916-917 (9 th Cir. 1/24/20).....	49, 50
<i>United States v. Kamer</i> , 781 F.2d 1380, 1384-85 (9 th Cir. 1986).....	50
<i>United States v. Morrow</i> , 537 F.2d 120, 146 (5 th Cir. 1976).....	51
<i>Anders v. California</i> , 386 U. S. 738, 386 U. S. 743 (1967).....	52

STATUTES

28 U.S.C. § 2255.....	passam
18 U.S.C. § 371.....	10
18 U.S.C. §2(b).....	10
18 U.S.C. § 1001(a)(2).....	10
18 U.S.C. § 982.....	12
18 U.S.C. § 1344(1)(2)(2B).....	12
18 U.S.C. § 1349.....	12
18 U.S.C. § 3147.....	12
26 U.S.C. § 7201.....	11
49 U.S.C. § 5104(B).....	10
49 U.S.C. § 5124.....	10

<u>CODE OF FEDERAL REGULATIONS</u>	<u>PAGE(s)</u>
49 C.F.R. § 180.413(a)(1).....	10

<u>RULES</u>	
Federal Rule of Criminal Procedure 11(b)(2).....	25, 33, 34, 45, 60

<u>U.S. CONSTITUTION</u>	
Sixth Amendment.....	passam

TABLE OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>PAGE REFERENCE</u>
Exhibit - A	Change of Plea Hearing – Transcript	E - 1
Exhibit - B	Motion to Withdraw Plea	E - 2
Exhibit - C	Sentencing Transcript	E - 3
Exhibit - D	Psych Evaluation	E - 4
Exhibit – E	Government Opposition to Plea Withdrawal	E – 5
Exhibit – F	District Court Denial to Withdraw Plea	E – 6
Exhibit – G	Ninth Circuit Appellate Brief	E - 7

**IN THE UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF CALIFORNIA
(Western Division – Los Angeles)**

CARL BRADLEY JOHANSSON,
Petitioner,

V.

Criminal Case No:
18-CR-00114-VAP;
21-CR-00170-VAP

UNITED STATES OF AMERICA,
Respondent

**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER'S 28 U.S.C. § 2255 PETITION**

Comes now, Carl Bradley Johansson (hereinafter defendant, petitioner, or “Johansson”) appearing Pro Se and respectfully moves this Honorable Court seeking to have his conviction and sentence vacated, set aside or corrected in the above cited criminal matter, pursuant to 28 U.S.C. § 2255.

I. JURISDICTION

This Honorable Court, being the original Court of conviction and sentencing, jurisdiction is conferred in the language of 28 U.S.C. § 2255.

II. JUDICIAL REQUEST

Due to the Pro Se nature of this filing, Mr. Johansson respectfully requests that this Honorable Court provide a less stringent standard of review when examining petitioner's attempts at case citing, rules, procedures and legal syntax. See; *Haines v. Kerner*, 404 U.S. 519, 520 (1972); and *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

For purposes of the Honorable Court's consideration, the defendant would respectfully further elaborate upon the principles reflected by the Supreme Court in its decision in *Martinez v. Ryan*, U.S. 10-1316, 3/20/12, with regards to Mr. Johansson's attempts to raise accurate, coherent, and precise claims in his initial § 2255 filing. In *Martinez*, the Supreme Court observed that, "[d]efendants pursuing their first-tier review are generally ill-equipped to represent themselves" (quoting *Halbert v. Michigan*, 545 U.S. 605-617 (2005)). The *Martinez* Court went on to note, that "[W]ithout the help of an adequate attorney, a prisoner will have difficulties vindicating a substantial claim of ineffective assistance of counsel [in a collateral proceeding]." *Id.* at 11-1316. Furthermore, the *Martinez* Court stated

that, “[P]risoners, unlearned in the law, may not comply with the procedural rules or may misapprehend the substantive details of federal constitutional law” and “While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance which often turns on evidence outside the record.” *Id.* at 12-1317. The Court continued its observation noting that, “[a] prisoner’s inability to present a claim of error is of particular concern when the claim is one of ineffective assistance of counsel” because “[t]he right to effective counsel is a bedrock principle in this nation’s justice system.” *Id.*

III. STANDARD OF REVIEW

Title 28 U.S.C. § 2255 is the primary means under which a federal prisoner may collaterally attack the legality of his conviction or sentence. Therefore, the defendant presents his issues, claims and grounds in this forum.

A. EFFECTIVE ASSISTANCE OF COUNSEL

The *Sixth Amendment* to the *Constitution* provides that “[in] all criminal procedures the accused shall enjoy the right to have assistance of counsel for his defense.” See; *U.S. Constitution, Amendment 6*. A defendant has the right not just to counsel, but to “reasonable effective assistance of counsel.” See; *Nix v. Whiteside*, 475 U.S. 157, 175; and *United States v. Cronin*, 446 U.S. 648, 654 (1984).

B. TO PROVE INEFFECTIVE ASSISTANCE OF COUNSEL

For a violation of the *Sixth Amendment*, a defendant must satisfy the two prong test analysis established in *Strickland v. Washington*, 466 U.S. 688 (1984). Under *Strickland*, the defendant must show that; (1) Counsel's performance fell below an objective standard of reasonableness, and (2) Counsel's performance gives rise to a reasonable probability that if counsel had performed adequately, the result would have been different. See; *Strickland* 466 U.S. 691- 696. It is important to note that *Strickland* dealt with a defense counsel's performance during trial. In the following year the court extended the *Strickland* test to Ineffective Assistance of Counsel (IAC) claims in the guilty plea context. See; *Hill v. Lockhart*, 474 U.S. 52 (1988). Under *Hill*, the Court established a basis for a Sixth Amendment challenge to a conviction arising from a plea bargain if a defendant could show he accepted the plea after having received ineffective assistance of counsel.

For purposes of this motion and where applicable, references to *Strickland* include the related points concerning a guilty plea found in *Hill*.

C. PERFORMANCE PRONG

To satisfy the first prong of the *Strickland* analysis, the petitioner must show that counsel's performance was deficient. "[A] convicted defendant making a

claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.”

Strickland, Supra. at 690. Also see; *Williams v. Taylor*, 529 U.S. 362 (2000).

Deficient performance is one that falls “outside the wide range of professionally competent assistance.” *Strickland*, supra. at 690. Lastly, to establish deficient performance, the petitioner must show that counsel’s performance fell below an objective standard of reasonableness.” *Id.* at 690.

D. PREJUDICE PRONG

The second component of the *Strickland* test requires the petitioner to demonstrate that “[any] deficiencies in counsel’s performance must be prejudicial to the defense.” *Strickland*, Supra 466 U.S. at 692. To prove prejudice, the petitioner must show “that there is a reasonable probability that, but for counsel’s unprofessional errors, the results of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, Supra 466 U.S. at 694; also see; *Bell v. Cone*, 533 U.S. 686 (2002). A “reasonable probability” is one that is sufficient to undermine the outcome”. See *Strickland*, Supra, 466 U.S. at 694.

Thus, a petitioner need not show counsel’s deficient performance more likely than not altered the outcome in this case, rather, Mr. Johansson must show

only a ‘probability’ sufficient to undermine confidence in the outcome. Finally, “[t]he benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the [outcome] cannot be relied on as having produced a just result.” See, *Strickland*, 466 U.S. at 686.

IV. INTRODUCTION

Over ten years ago, on 6 May 2014, there was a tragic accident at a company Mr. Johansson was employed in an administrative role. Since that time, Mr. Johansson has been embroiled in a decade long struggle to have the opportunity to prove his innocence against allegations made by the Government regarding his knowledge of and participation in an unforeseeable event.

Four years after the aforementioned incident Mr. Johansson was eventually indicted by a Grand Jury, a secretive procedure that has been sealed and which the defendant was denied access to any of the Government’s evidence and arguments or the jury’s deliberations.

Throughout the years following his indictments, Mr. Johansson repeatedly informed his defense team that he was innocent of all charges but tax evasion, that he had no knowledge of, nor had he participated in, the decision to modify the tank unit that led to the explosion, and subsequent to that event had not participated in

any scheme to defraud a financial institution during the COVID pandemic. Given these facts, Mr. Johansson instructed his legal counsel to pursue a dismissal of all improper charges or, failing that, to prepare for trial.

In accordance with that position, the defendant sought out legal specialists in the field of transportation who prepared briefs supporting Dispositive Motions for dismissal that challenged the Government's allegations which were based on questionable interpretations of various Department of Transportation Regulations and the Regulations intersectional references to violations of United States Code.

To further complicate these proceedings, Mr. Johansson was continuously assailed with a first and then a second superseding indictment which expanded both the number of alleged Overt Acts and Code violations associated with his original legal case (18-CR-00114-VAP), and was then subsequently charged under a new criminal indictment proceeding (21-CR-00170-VAP) for additional alleged Code violations.

After the filing of a new indictment and criminal case, the court ordered him to be removed from pre-trial release and placed into the custody of the U.S. Marshalls in a detention holding facility during the active outbreak of COVID which further exacerbated Mr. Johansson's legal calamity. Due to nature of the COVID outbreak, the defendant was placed in a solitary confinement cell with

little access to his family, his legal team or even to a courtroom beyond a Zoom presentation. Access to telephones, emails and even legal visits was severely curtailed leaving Mr. Johansson isolated and without the legal support that was critical at this stage of his judicial process.

During the three (3) year period between Mr. Johansson's initial indictment and his guilty plea, the government generated over 1,000,000 pages of discovery that literarily overwhelmed his defense which, among other elements, contributed to multiple trial delays and the angst of the court.

This choreographed legal process led Mr. Johansson to a point in time where the concentrated pressure from the Government, the Court and even his own unprepared legal team forced him to settle the outstanding criminal cases with an unwanted guilty plea. After years of fighting his case a plea agreement was abruptly foisted upon him in a manner that left the defendant with no viable alternatives. Held in virtual isolated confinement, restricted from personal courtroom appearances and legal visits, abandoned by his fatigued defense team, suffering from physical stress and emotional and psychological disorders, and receiving menacing warnings purportedly from the Government regarding the future prosecution and punishment of members of his immediate family should he refuse to accept the plea agreement, Mr. Johansson eventually and reluctantly

acquiesced and unwillingly accepted a plea that he had steadfastly refused in prior months.

What Mr. Johansson ultimately received for his day in court was a poorly and unprofessionally negotiated plea agreement that improperly held him accountable for events he was not responsible for or guilty of, a lengthy period of incarceration that perhaps exceeded what he would have received had he gone to trial, and an order to pay restitution for funds he had never benefited from and to financial institutions he had not defrauded.

Within days of his Change of Plea hearing, Mr. Johansson sought new counsel to withdraw his guilty plea. Having been abandoned by his primary legal team of Werksman and Associates, and isolated in his COVID restricted detention environment, it would take months for Mr. Johansson to acquire new representation from the Robinson legal firm that would be hired to argue his motion to withdraw his guilty plea and challenge the government's allegations.

V. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

The core of the Government's allegation rests in an interpretative determination of a somewhat vague, Department of Transportation Regulation that remains an unsettled controversy by many within the government and the

transportation industry. The substance of the Government's argument is whether a company must have a National Board Certificate of Authorization for use of the National Board "R" Stamp when performing repairs and maintenance of Specification Cargo Tanks that are capable of hauling hazardous material - notwithstanding whether the tank will actually be hauling such material, or even if the tank will be placed on the road.

B. PROCEDURAL HISTORY

1. 2018 Indictment: Case 18-CR-00114-VAP

On 25 April 2018, Mr. Johansson was indicted and charged in three-counts of a four-count indictment as noted herein; Count One: Conspiracy to commit offense, Defraud the Government, in violation of Title 18 United States Code (U.S.C.) § 371; Count Two: Welding without required certifications, a Criminal Penalty under Title 49 U.S.C. § 5124 (for violation of Title 49 U.S.C. § 5104(b) and Title 49 Code of Federal Regulations (C.F.R.), Section 180.413(a)(1)), and the "willful offense against the United States", in violation of Title 18 U.S.C. § 2(b); and Count Three: Any material false or fraudulent statement or representation to the U.S. Government, in violation of Title 18 U.S.C. § 1001(a)(2).

Mr. Johansson pled Not Guilty to each of these charges.

2. First Superseding Indictment (Docket 84)

On 14 November 2018, seven (7) months after the initial indictment, a First Superseding Indictment was filed by the Government which expanded the scope and number of Overt Acts of Counts One, Two, Seven, Eight, Nine and Ten; and charged the defendant with additional offenses: Counts Three through Six (Tax Evasion in violation of Title 26 U.S.C. § 7201).

3. Second Superseding Indictment (Docket 149)

Nearly a year later, on 11 November 2019 a Second Superseding Indictment was filed by the Government which expanded the scope of the overt acts to include welding, tax evasion, failure to purge a tank and tanker unit out-of-service allegations.

4. Motions (Docket 166 and 178) to Dismiss Counts One and Two

On 17 December 2019 and 06 January 2020 amended motions to dismiss Counts One and Two of the Second Superseding Indictment were filed and/or joined by the defendant Carl Johansson.

5. Motion to Dismiss Counts One and Two denied (Docket 219)

On 30 January 2020 the District Court denied the defendant's motions to dismiss.

6. Complaint/Indictment Filed: Case 21-CR-00170-VAP

On 02 July 2021 a new complaint was filed charging the scheme to defraud a financial institution of funds in violation of Title 18 U.S.C. §§ 1344(2), 2(b) [Bank Fraud] and 1349 [Conspiracy].

On 21 July 2021, Mr. Johansson was indicted and charged in two-counts as noted herein; Count One: Conspiracy to commit Bank Fraud, Title 18 U.S.A. § 1349, in violation of Title 18 U.S.C. § 1344(1); and Title 18 U.S.C. § 3147, Penalty for an offense committed while on Pretrial release; Counts Two through Four: Bank Fraud in violation of Title 18 U.S.C. 1344(2), 2(b); and Title 18 U.S.C. § 3147, Penalty for an offense committed while on Pretrial release.

The indictment also notified Mr. Johansson that he would be subject to forfeiture of property under Title 18 U.S.C. § 982. Mr. Johansson pled Not Guilty to each of these charges.

7. Change of Plea Hearing (Docket 282)

On 29 September 2021 Mr. Johansson accepted the Government's plea agreement (docket 264) and pled guilty to Counts One, Two and Four of the Second Superseding Indictment (Case: 18-CR-00114-VAP); and Counts One and Two of Case 21-CR-00170-VAP.

8. Motion to Withdraw Guilty Plea (Docket 390)

On 6 November 2022 the defendant filed his motion to withdraw his guilty plea (Docket 389) with respect to Counts One and Two of the Second Superseding Indictment in Case 114. This would later be amended to include all charges.

9. Sentencing Hearing (Docket 419)

On 29 November 2022 the Court sentenced Mr. Johansson to 120 months of incarceration and ordered him to pay \$1.2 million in Restitution.

10. District Court Order Denying Withdrawal of the Plea (Docket 414)

On 05 December 2022, the Court filed its formal Order denying the defendant's motion to withdraw his plea.

11. Ninth Circuit Appellate Court Appeal (Docket 9 – Appeal)

On 10 May 2023 an appeal was filed to the Ninth Circuit Court of Appeals.

12. Appellate Court Order Denying Appeal (Docket 24 – Appeal)

On 18 August 2023, the Ninth Circuit denied the defendant's appeal.

13. Request for and Denial of Rehearing in the Ninth Circuit

A request for a rehearing was denied by the Court of Appeals on 01 December 2023.

VI. SUMMARY OF ARGUMENTS

Mark Werksman, counsel for the defense, behaved improperly throughout the plea bargain process and deliberately misrepresented Mr. Johansson's claims of legal innocence in the structure, presentation and filing of the guilty plea.

Throughout the legal proceedings of the Motion to Withdraw his guilty plea, the defendant received inadequate assistance of counsel from his representation at the District Court and the Ninth Circuit Court of Appeals from the combined legal representations within of the Law Office of Edward Robinson; Specifically: Edward M. Robinson (Representation within the District Court); and Rachael A. Robinson (Representation within the Ninth Court of Appeals).

VII. ARGUMENT

A. RIGHT TO EFFECTIVE COUNSEL

Mark Werksman, Edward M. and Rachael A. Robinson were Each Individually Ineffective Counsel at Critical Stages in Defendant's Case

Under the *Sixth Amendment* to the *United States Constitution* the petitioner was entitled to effective assistance of counsel throughout each stage of his case. Additionally, the Sixth Amendment's right to effective assistance attaches directly to the fidelity, loyalty and competence of the defense counsel services.

1. Representation by Mark Werksman

The District Court representation Mr. Johansson received from Mark Werksman during the negotiation and presentation of the proposed guilty plea and the Change of Plea hearing lacked a degree of legal professionalism, competence, fidelity and the adversarial process causing prejudice to the defendant.

2. Representation by Edward M. Robinson

The District Court representation Mr. Johansson received from his defense counsel, Mr. Edward M. Robinson in his Motion to Withdraw his Consolidated Guilt Plea lacked the necessary adversarial process because it did not effectively present the ‘**totality**’ of his case by excluding appropriate elements of argument(s) presented while excluding other arguments that were material to the outcome of the case and that were known or should have been known by Mr. Robinson. Mr. Robinson’s representation clearly fell below an objective reasonable standard which resulted in prejudice to the defendant.

3. Representation by Rachael A. Robinson

The Appellate Court representation Mr. Johansson received from his Appellate counsel, Rachael A. Robinson, did not appropriately challenge the findings of the District Court, properly contest the Opposition of the Government’s Response or, effectively present his case to the Appellate Court. Ms. Robinson’s

representation clearly fell below an objective reasonable standard which resulted in prejudice to the defendant.

Thus, pursuant to Title 28 U.S.C. § 2255, the petitioner moves the court to vacate, set aside or correct the sentence and judgment imposed.

B. GROUND ONE OF § 2255 PETITION

Defense Counsel Mark Werksman failed to properly Represent and Advocate for the Defendant throughout the Change of Plea process

The Defendant's District Court defense counsel, Mark Werksman, was ineffective in his representation of the case at a critical stage of the proceedings. A review of the actions taken by Mr. Werksman before, during and after the Change of Plea hearing confirms his representation lacked the adversarial challenge to the Government's allegations, that he deliberately betrayed his client's trust and prejudiced Mr. Johansson with an unfavorable outcome. A review of the events related to the plea agreement process follows.

The defendant always asserted that he was innocent of all the charges alleged by the Government except tax evasion. Accordingly, Mr. Johansson instructed to his attorney, Mark Werksman, to prepare for trial and challenge those charges the defendant had declared were improper. Three years after his initial indictment the defendant was removed from pre-trial release and placed into pre-

trial detention. Isolated from his family and his legal team, the point where the defendant was the most vulnerable, Attorney Werksman deliberately violated the professional code of conduct and betrayed Mr. Johansson on a number of occasions.

While being held at the pre-trial Santa Ana Federal detention facility, Mr. Johansson had a legal visit in the early evening of 12 August 2021 from his attorney, Mark Werksman. Although the legal visit had not been scheduled, the defendant, upon seeing his counsel, was expecting to be given a status update of the preparations for his trial which was scheduled in mid-September. Thus, Mr. Johansson was shocked when Mr. Werksman presented him with a copy of a plea agreement that the defendant was completely unaware of.

Mr. Johansson had not asked for or authorized his counsel to be engaged in any plea negotiation with the government and felt such a breach of confidence compromised his ability to prevail at the scheduled trial. Nevertheless, Mr. Werksman urged the defendant to consider the plea agreement explaining he had entered into the plea negotiation because he was totally unprepared for the upcoming trial and feared the court would no longer accept any further delays in the trial schedule for a proper defense to be made. Thus, Werksman rationalized, despite the facts of the case being favorable to the defendant, he would surely lose at a trial and face a longer sentence than a possible plea agreement may provide.

Without his pair of prescription reading glasses, and with the limited time allotted him, Mr. Johansson was unable to review more than a small section of the plea agreement wherein he found and corrected a number of inaccurate and erroneous allegations that conflicted with the facts of the case. Based on the limited content he was able to study Mr. Johansson was aware the plea agreement was neither correct or a favorable alternative to a trial. The defendant told Werksman the plea agreement in the current form was not only unacceptable, but completely “irredeemable” and again instructed his counsel to prepare for trial.

Defense Counsel Werksman indicated he understood his client’s disappointment and explained that the current plea agreement was merely a “rough draft” of something that had been hastily put together at the last moment as a sort of ‘trial-balloon’ exercise. Werksman then asked Mr. Johansson to sign the agreement as a sign of “good faith” to the Assistant U.S. Attorney (AUSA) prosecuting the case so he could renegotiate a favorable plea agreement that would clear up the errors and misconceptions of the charges and minimize the defendant’s exposure to a lengthy period of incarceration.

Mr. Johansson was dumbstruck by the proposition and he objected to putting his signature on something that was so clearly flawed. Mr. Werksman promised Mr. Johansson that as an officer of the court he would never break the trust of a client by filing a document that had not been voluntarily accepted and approved.

Defense Counsel Werksman once again pleaded with the defendant to sign the agreement without dating it as a precautionary measure to protect the integrity of the document from being misused. Reluctantly, Mr. Johansson signed, but did not date the plea agreement as Werksman had instructed.

On that very same evening, in a complete breach of trust and loyalty to his client, Mr. Werksman co-signed the document and filled in the date on the final page of the agreement that the defendant had signed, and then filed it with the court requesting an immediate Change of Plea hearing. See; Exhibit A – Change of Plea Hearing Transcript, Page 4, Lines 9 – 22.

Shortly after the meeting with Werksman Mr. Johansson was transferred from Santa Ana to the Los Angeles Metropolitan Detention (MDCLA) where he would spend over thirty (30) days of isolation in COVID quarantine and did not learn about his attorney's treachery until shortly before the new Change of Plea Hearing now rescheduled for 29 September 2021.

On 24 September 2021, just days before the change of plea hearing, Mr. Werksman once again met with the defendant with another copy of the aforementioned plea agreement, a version which purportedly contained a few of the minimal changes addressing the issues the defendant had found in his previous review of the original document.

It was at the 24 September meeting Mr. Johansson would discover that his defense counsel had indeed signed, dated and filed the version of the plea agreement the defendant had previously deemed unacceptable. Mr. Johansson was also informed a Change of Plea hearing had been scheduled to take place on 29 September 2021, just five (5) days hence. Mr. Johansson wanted no part of the plea agreement or the Change of Plea hearing. To assuage his client's resistance to accepting the plea and cooperating at the Change of Plea hearing, Werksman falsely asserted the plea agreement would be further amended at the hearing and promised the defendant a favorable outcome if he would participate when modifying the agreement. The plea was never modified at the hearing.

The defendant was once again unable to successfully complete his review of the plea document at the 24 September legal visit and was unable to review the final version of the plea until the day of the hearing. See; Exhibit A – Change of Plea Hearing Transcript, Page 6, Lines 12 – 19.

On the day of the Change of Plea hearing Mr. Johansson still did not have any glasses and was completely unable to read the multiple plea documents covering the defendant and the associated, co-conspirator companies. This required a delay in the proceeding to purchase reading glasses, provide a copy of the proposed plea agreements, and find a room where the defendant and counsel could review and discuss the content of the pleas. See; Exhibit A – Change of Plea

Hearing Transcript, Page 11, Lines 11 – 15. Despite a four (4) hour delay in the courtroom proceedings, the defendant was unable to complete his review of the multiple plea agreements.

Although he was able to complete only a limited review of his personal plea agreement at the 29 September hearing, Mr. Johansson explained to his counsel that the document still contained too many erroneous allegations and misstatements of the facts, and that it was unacceptable. Just before the Change of Plea hearing was reconvened, Werksman told the defendant to cease asking for any changes, that even though he had been promised the ability to make amendments to the plea agreement none would be considered by the Government or the court and it was indeed a final offer of take it or leave it. Mr. Johansson chose to not accept the plea deal.

Defense Counsel Werksman became very angry and disparaged his client with unflattering comments. In addition, Mr. Werksman falsely claimed Mr. Johansson's co-conspirators had provided the Government with damaging testimony against the defendant which, coupled with the lack of defense counsel preparedness, assured him he would lose at trial and be given an excessive period of incarceration. This claim was incorrect as each co-conspirator gave accurate assessments of the facts of the explosion which were favorable to the defendant.

Werksman also informed Mr. Johansson that if he failed to accept the plea as written and cooperate at the Change of Plea hearing that the Government would indict his son, Carl Junior and possibly his wife, Kimberly Ord. He further warned his client that the Government would also move to seize the property Mr. Johansson's sister had pledged at his pre-trial release.

According to the Government in a later response to the defendant's motion to withdraw his plea, these threats were not true. "For the record, the government has never threatened JOHANSSON with the indictment of his son, or the seizure of his sister's house." See; Exhibit E – Opposition to Motion to Withdraw, Item D.: 'The Government has Never Threatened JOHANSSON', Page 23, Lines 1 – 3.

Regardless, the defendant had believed Werksman's claims about his family's prosecutions to be true. Unwillingly forced into a plea agreement he had not authorized or approved and trapped in a plea hearing he had been completely unaware of, the defendant reluctantly accepted the plea to protect his family.

The decision to take or reject a plea, go to trial, plead without a plea agreement, or any combination of these rests so much on counsel's advice that bad advice can render a guilty plea involuntary. "A claim of ineffective assistance may be used to attack the voluntariness and hence the validity of a guilty plea". See;

United States v. Keller, 902 F.3d 1391 (9th Cir. 1990) citing *Torrey v. Estelle*, 842 F.2d 234, 237 (9th Cir. 1998).

From the improper filing of the plea agreement to Mr. Johansson's reluctant acceptance of his plea was the result of the unprofessional and outrageous conduct of his attorney, Mark Werksman. This betrayal of legal standards was an assault on the constitutional rights guaranteed under the Sixth Amendment to the United States Constitution to have the protection of loyal and effective assistance of counsel. "A defendant has the right to effective assistance of counsel in considering whether to accept" a plea. *Lafler v. Cooper*, 566 U.S. 156, 168 (2012).

These indefensible actions of Mr. Werksman deprived Mr. Johansson of effective counsel and his right to an adversarial challenge to the Government's accusations by eliminating the defendant's chance to go to trial and prove his innocence in a court of his peers. These acts prejudiced the defendant.

C. GROUND TWO OF § 2255 PETITION

Defense Counsel Edward Robinson failed to properly advocate for the Defendant and Argue All Factors Pertaining to a Withdrawal of a Plea

In the Defendant's Motion-to-Withdraw his Guilty Plea attorney Edward M. Robinson, the District Court defense counsel for the defendant, was ineffective in the presentation of the case at a critical stage of the proceedings.

At the sentencing hearing, the Court indicated it was denying the defendant's motion to withdraw his plea based on reasoning there had already been far too many continuances and delays and the Court would not allow any more. In the formal Order of denial, the Court expanded on its reasoning for the denial.

In the Court's formal Order Judge Phillips responded to the defendant's arguments in the Robinson brief noting (1) his desire to protect his family from prosecutorial charges, (2) the results of the Psych Evaluation and (3) Mr. Johansson's claims of innocence. Each one of the Court's considerations to deny the motion was based on an insufficient level of argument and the lack of adversarial content within the Edward Robinson memorandum.

A review of the argument(s) prepared by Mr. Robinson confirms there were important elements missing from the factors that were presented. In addition, there were other factors pertinent to the motion to withdraw the guilty plea that had been excluded from the argument(s) presented. Thus, the motion and brief prepared by Mr. Robinson was so deficient as to cause the motion to be denied which prejudiced Mr. Johansson. A review of the Robinson argument follows.

1. Legal Standard

When addressing the legal standard to withdraw a guilty plea after a district court accepts a plea, but before sentencing, defense counsel Robinson argued a

defendant may do so if they “can show a fair and just reason for requesting the withdrawal” [Re: Fed.R.Crim.P.11(d)(2)(B)], citing *United States v. Ruiz*, 257 F.3d 1030, 1032 (9th Circuit, 2001). See; Exhibit B – Motion to Withdraw, Argument, Item I. A.: Legal Standard, Page 2, Lines 23 – 25.

In a precedent setting case, *United States v. Carr*, 740 F.2d 339 (5th Circuit 1984) the Appellate Court established seven factors a court considers in finding whether a “Fair and Just Reason” exists to allow withdrawal of a guilty plea after it has been accepted by a district court. These factors are listed below:

- (1). A claim of innocence
- (2). Prejudice to the government
- (3). A defendant’s delay in moving to withdraw his plea
- (4). Judicial Inconvenience
- (5). The Waste of Judicial Resources
- (6). The “Close Assistance of Counsel”
- (7). The Knowing and Voluntary nature of the plea

Any one or several of these factors may be enough to find a fair and just reason for withdrawal according to the Rules of the Court and Case Precedence. Regardless, the decision to allow a withdrawal remains within the discretion of the district court which must weigh the relative importance of each factor presented and then consider the **totality** of all the arguments to arrive at a decision. This is

important, because the exclusion of even one factor may be sufficiently deficient when considering the elements of each factor and the combined merits of all factors within an argument.

The Robinson Brief addressed only the first three (3) of the seven (7) factors that were listed in the *Carr* case. The Robinson arguments only included:

- (1). “A Claim of Innocence”
- (2). “Prejudice to the Government”
- (3). “Defendant’s Delay to Withdraw the Plea”

This is perplexing because the Robinson Memorandum cites *United States v. Carr* so the defense counsel was therefore aware of the complete list of factors to be considered when developing what should have been an effective and comprehensive argument for the defendant. See; Exhibit B – Motion to Withdraw, Argument, Item I. C.: Prejudice to the Government, Page 4, Lines 16 – 17. For whatever reason, equal or more important elements within the factors presented and the remaining factors within of the *Carr* case which were not present, but were also relevant to the Johansson motion, were either not adequately argued or were completely omitted by the Robinson Memorandum.

In addition to the three factors noted, the Robinson Memorandum also briefly discussed the “Emotional State” of the defendant as a separate argument.

2. Elements missing from the three (3) Factors Robinson argued:

A review of the arguments addressed by Robinson is noted below.

a. A Claim of Innocence

The Robinson memo addressed Counts One and Two of the charges from Case 18-CR-00114-VAP, but failed to challenge Counts One and Two of Case 21-CR-00170-VAP which alleged Payroll Protection Program (PPP) fraud. This was an error as there was no PPP fraud. The facts clearly show that the fraud alleged by the Government was in fact a series of easily provable administrative errors in the manner payroll expenses were tabulated and reported on the PPP forms. Because the defendant was innocent of these charges it was an important fact the Court needed to be informed of in Mr. Johansson's request to withdraw his plea.

b. Prejudice to the Government

In the Government's response to the defendant's motion to withdraw, the prosecution argued that any further delays "would cause significant prejudice to the Government". See; Exhibit E – Opposition to Motion to Withdraw, Item C.: Prejudice to the Government, Page 22, Lines 9 – 10. Mr. Robinson failed to reply to the Government's position leaving the defendant exposed to unchallenged misrepresentations that the defendant now answers for himself.

In its Response to the defendant's motion to withdraw his plea, the Government piously lamented it would be unfair to the witnesses and the victims who, due to the various continuances and delays, had already been served with multiple trial subpoenas and had made multiple travel plans for the ever changing trial dates.

The defendant notes that the Government had little concern about the inconvenience to the witnesses and alleged victims when the trial continuances were due to the Government's recurring stream of multiple new charges through several superseding indictments and a new criminal case. The Government is comfortable with creating disruptive delays that impact the lives of the witnesses and victims but then has the audacity to complain when the defendant requests an expansion of the proceedings in order to defend himself. The Government cannot have it both ways and was errant to argue this as a condition for denying the motion. Mr. Robinson should have argued this point.

The Government also churlishly complained that a plea withdrawal would inevitably create additional trial continuances to enable the defense counsel to have the time to review over one million pages of discovery and hundreds of hours of surveillance footage. See; Page 22, Lines 12 – 15. (Id.).

Once again, the defendant must remind the Government it cannot have it both ways. The Government cannot file multiple numbers of charges supported by copious amount discovery and then complain that the need to review and challenge the Government's allegations will inevitably create inconvenient delays necessary to give the defense team time to review it. Another point not addressed by the defense counsel.

And finally the Government asserts "memories fade ... years after an event" and any future delay in testimony is not fair to the witnesses. See; Exhibit E – Opposition to Motion to Withdraw, Page 21, at 10-11 (Id.). Beyond repeating for the third time that the Government was responsible for the overwhelming number of delays, the defendant must remind the Government that within the same text the Government had already conceded that the "recollections of the Government's witnesses have remained remarkably consistent over the years". See; Page 21, Lines 14 - 15. (Id.). It would also appear that the Government would have the defendant and the Court forget that the recollections of the witnesses had also been documented through FBI interviews and court depositions.

In summary, it is the role of the defense counsel to reply to any and all spacious allegations and assertions made by the Government at critical times during legal proceedings. The lack of any kind of reply to the afore-noted false

and misleading comments within the Government's response was but another failure of Mr. Robinson's representations.

c. Delays in Withdrawing the Plea

While the Robinson Motion did argue that "Any delay in Bringing the Motion [to withdraw] was not for the purpose of gaining a Strategic Benefit" (See; Exhibit B – Motion to Withdraw, Argument, Item I. D.: Legal Standard, Page 4, Lines 21 – 28, and Page 5, Lines 1 – 11) it left out a critical factor. During the first five (5) months following the Change of Plea hearing, the defendant made numerous attempts to contact his original attorney to withdraw his plea, but Mr. Werksman failed to accept any telephone call or have his office visit Mr. Johansson until 10 April 2022. This was an inexcusable exclusion of factual significance because the courts have noted that the earlier a defendant attempts to withdraw his plea, the more compelling is his argument.

d. Mental Stability – Psych Evaluation

The Robinson motion's inclusion of the "Emotional State" of the defendant at his "Change of Plea Hearing" was simply a mere recital of sparse data without any supporting argument or conclusory determination. The defendant notes the motion's deficiencies below.

(1). Omission of Pertinent Details

While the Robinson motion noted the District Court “took notice of [the defendant’s] emotional condition”, it failed to adequately specify and/or reference many of the Court’s comments and observations concerning the defendant’s mental state and decision-making capacity allowing the Court to go on a self-monitored fishing expedition to find and read a specific quote within the text of an exhibit. This allowed the Court to choose what it wanted to read (or not read) and conclude and disregard its significance without having to respond to specific points of argument within the motion. The defendant provides examples of the missing details that Mr. Robinson glossed over or omitted in his references:

After the afore-noted recess and throughout the ensuing change of plea hearing the court observed the defendant displaying physical and emotional signs of duress and anxiety causing the court to repeatedly question Mr. Johansson about his mental state, instructed him to sit down and inquired whether he was able “to go forward” with the hearing. See; Exhibit A – Change of Plea Hearing Transcript, Page 24, Lines 9 – 25.

Thirteen (13) minutes later the court asked if the defendant was “feeling all right” and “still able to go forward” – Page 33, Lines 21 – 25, and Page 34, Lines 1 – 4 (Id.). Sixteen minutes after that the court inquired about the defendant’s “psychological and psychiatric” care he was receiving (Page 46, Lines 24 -25 (Id)), and indicated after feedback from the defendant the court was going to direct Mr. Johansson “be evaluated for any treatment for those conditions”, Page 47, Lines 1 – 17 (Id).

The court repeated its intention to have the defendant “be evaluated for treatment for [his] mental health condition of depression, anxiety, whatever” and Judge Phillips commented that she *believed what he was telling her* about his “shattered” emotional condition, Page 66, Lines 11 – 24 (Id.).

Each of these detailed references, individually and combined, portray a far more accurate assessment of the defendant’s mental and physical condition and the Court’s acknowledgment of such on the day of the Change of Plea hearing.

(2). Failure to Challenge the District Court’s abuse of Discretion

Based on the Court’s own observations, the Court knew well before the completion of the hearing that there were signs of Mr. Johansson’s mental, physical and emotional instability and yet it chose to continue with the lengthy Change of Plea proceeding. Accordingly, Mr. Robinson was ineffective when he failed to assert the Court was remiss for not ending the hearing before its completion and having the defendant’s mental condition immediately evaluated to determine whether he was capable of providing the Court with a voluntary plea.

Additionally, Mr. Robinson failed to remind the Court that, despite its documented concerns regarding the defendant’s mental stability, it never followed through on ordering a Psych Evaluation for Mr. Johansson which was ultimately ordered and paid for by his family. The court’s disregard of the defendant at the

change of plea hearing and its continuing failure to follow through and confirm the defendant's mental capacity with a Psych Evaluation which the Court had deemed necessary suggests the court had an unfair and predetermined disposition toward Mr. Johansson which Mr. Robinson should have challenged, but did not.

Each of these actions and inactions is an abuse of discretion by the District Court which should have been identified by the defense counsel as supporting arguments for withdrawing the plea agreement.

(3). Failure to Identify an Important Legal Premise

Defense Counsel Robinson failed to recognize or argue the fact that the introduction of Mr. Johansson's Psych Evaluation was an "Intervening Circumstance" based on *new evidence* from an independent third-party source that was not known at the time of the Change of Plea hearing.

"District Courts may allow a defendant to withdraw a plea before sentencing if he offers a "fair and just" reason for doing so." See; *United States v. Hernandez*, 22-50134, 06-28-24 (para. 4) citing *Fed. R. Crim. Pro. 11*; an appeal from the United States District Court for the Central District of California *No. 2:19-cr-00715-VAP* (Virginia A. Phillips presiding). "We have interpreted the "fair and just" standard **to include** a reason that did not exist when the defendant entered the plea." (Id.). Bold emphasis added.

The Johansson Psych Evaluation was new evidence and an intervening circumstance that the defendant offered in good-faith and was a materially significant reason for withdrawing his plea. “To start, we have interpreted *Rule 11*’s “fair and just” standard broadly, requiring district courts to freely allow withdrawal anytime the defendant provides “any ... reason for withdrawing the plea that did not exist when the defendant entered his plea””. *Hernandez* (Id.) (para. 8) citing *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir.2008). “Those reasons may include ... “newly discovered evidence, intervening circumstances, or any other reason for withdrawing the plea that did not exist when the defendant entered his plea”” (Id.).

Mr. Robinson failed to research and argue an “Intervening Circumstance” based on new evidence was a valid reason to withdraw a plea, even though it was especially relative to the current case. In the *Hernandez* case Virginia A. Phillips was the District Court Judge whose denial of a motion to withdraw a plea that was based on new evidence was overturned by the Ninth Circuit Appellate court. This was the same judge who was presiding over the very same issue as in the Johansson case. Because the argument was not made by Robinson, the Phillips Court was never challenged to consider the point. This was a significant argument that should have been addressed by Mr. Robinson but was omitted from the motion to withdraw the plea.

The Ninth Circuit Court further stated: “in determining whether a plea withdrawal is “fair and just,” it is the objective inquiry whether the “new reason” for withdrawal would have “plausibly affected” the decision to plead guilty – that matters”. See; *Hernandez* (Id.) (para 16), citing: *United States v. Davis*, 428 F.3d at 808. At the time of the Change of Plea hearing, the defendant, who suffered from a number of chronic illnesses and neurosis, had just been released from an extended period in solitary confinement where he had been denied treatment for either. This created a condition that made Mr. Johansson emotionally stressed and vulnerable to the pressures he was put under at the Change of Plea hearing that he had been completely unaware of until several days before the proceeding.

The Psych Evaluation was an Intervening Circumstance based on genuine new evidence from a third party source that was provided to the court in good faith. There is no evidence in the Court’s Change of Plea commentary within the Sentencing Transcript or in the formal district Court Order denying the request to withdraw the plea that the Court ever considered whether the defendant’s reason for withdrawing his plea was based on new evidence and an intervening circumstance. This omission falls outside the range of professionally competent assistance. Due to the failings of counsel, this issue went completely unaddressed in the District Court argument which prejudiced Mr. Johansson in the loss of his motion.

(4). Summary of 2.d. - Mental Stability – Psych Evaluation

The Robinson motion provided very little information, made few challenges and omitted strategic points of argument for this issue that were subsequently supported by Ninth Circuit case precedence. This was ineffective assistance which prejudiced the defendant.

3. Factors not properly argued as independent grounds for withdrawal:

a. Factor Four (4): Judicial Inconvenience

Subsequent to the Sentencing hearing, the District Court would eventually prepare a formal Order that expanded its reasons for denying the defendant's motion to withdraw his guilty plea. However, at the Sentencing hearing, and without a formal Court Order of denial to reference, the District Court indicated the determining factor for the denial was the number delays and continuances already experienced by the court.

See; Exhibit C – Sentencing Transcript, Page 13, Lines 5 – 14, wherein the court emphasizes its frustration with the case: "you know, I could spend a long time going through the docket and all of the continuances in this case. The trial continuances, the sentencing continuances, the changes of counsel, it's all in the record and I'm not going to go through that now. But suffice it to say that the record speaks for itself and makes it clear that this is a last minute attempt ... to yet again continue the sentencing".

The court further indicated that it would entertain no further motions or consideration to withdraw the plea agreement which it intended to deny. See; Page 14, Line 25 and Page 15 Lines 1 and 2 (Id). And, on Page 16 Lines 9 – 10 (Id.) the court references its decision to deny the motion to withdraw “for the reasons set forth”, where the delays and continuances were the reasons noted in the court transcript which the judge clearly blamed on the defendant.

However, a review of the court record reveals the many scheduling delays that had occurred throughout the legal proceeding were exclusively the result of activities and events that were beyond the control of the defendant. Assembling a more complete and accurate presentation of the court record would have identified, addressed and challenged the issue of scheduling inconveniences that were raised by the Court which, based on the comments in the Sentencing Hearing, appears to be the only point noted in the Court’s denial of the plea withdrawal at sentencing. A denial that appears to be based more on expediency by a court more interested in closing a case with an admittedly long history of delays than allowing it continue, even if that would have been the more judiciously correct approach to take.

To begin with, the case was far more complex than the Government originally asserted and became even more so as the proceedings moved forward. The initial case involved a number of employees who were either co-conspirators, witnesses or both and included the accidental death of an employee involved in a routine welding operation. The allegations brought forward by the Government

initially charged violations of various contentious C.F.R.s that were entangled in Criminal Codes wrapped around a conspiracy and the making of false statements to obstruct justice and defraud the Government. This required an added level of complexity with the testimony of expert witnesses from both the Government and the defense regarding the interpretation of D.O.T Regulations.

Approximately seven (7) months after the original indictment, a First Superseding indictment added charges of tax evasion. And a year after that, the Government brought forth a Second Superseding Indictment which expanded the number of alleged illegal overt acts. Then, eighteen (18) months later, the Government filed another new case charging Mr. Johansson with committing bank fraud while on pre-trial release. At the same time the Government filed a court action that revoked the defendant's bond and returned him to pre-trial detention which isolated the defendant from his defense team and the court, creating even more delays in the proceedings.

Each new set of charges, and their related courtroom activities, brought new delays in the court's trial schedule as the defense was beset with new allegations to defend against, more prosecutorial discovery to review and more case history to research. The Court's frustration with the defendant over the many delays within the courtroom schedule was a misplaced, unfair and unchallenged criticism.

In addition, the revocation of the defendant's pretrial release in the middle of the COVID lockdowns contributed to further delays which brought communication between parties of the Johansson defense, the government and the court to a halt for an extended period of time. The COVID outbreak shut down the courts, delayed courtroom activity and as noted, further isolated defendants from their defense counsel.

These series of events were further complicated and delayed by a number of constitutionally allowed defense motions for pretrial release, to limit testimony, dismiss charges, exclude various acts and request the details of the Grand Jury.

During the forty-two (42) month pre-trial period there were ten (10) motions to reschedule a trial date which contributed to the number of pre-trial delays which was referenced by Judge Phillips. Of these ten motions, nine (9) were filed as a Joint Stipulation which were initiated by the Government for 'good cause'. Of these nine (9) motions, several were to adjust the court schedule to accommodate the time spent on pre-trial release and preliminary arraignments, another two (2) were due to the COVID outbreak which attributed to nearly a year of the delayed trial proceedings and the balance were to adjust the court's schedule for new charges and the related increases in discovery and courtroom challenges. The tenth motion, filed by the defense, was initially opposed by the Government but later re-

filed as a Joint Stipulation and approved by the court just several months prior to the change of plea hearing.

There were also a number of changes of counsel among all of the defendants which did contribute to delays within the court's schedule. Most notably for Mr. Johansson was his change of counsel that was initiated so he may withdraw his acceptance of the plea agreement which his counsel, Mr. Werksman, opposed.

And finally, a lengthy delay in the sentencing proceedings were the result of the tax charges filed against the defendant. At the end of the Change of Plea hearing on 29 September 2021 the court set the date for the original sentencing hearing over seven (7) months later to provide the defendant enough time for a closing agreement with the IRS. See; Exhibit A – Change of Plea Hearing Transcript, Page 52, Lines 12 – 20.

The specific facts and circumstances of the case include the Court's commentary at the Sentencing hearing wherein Judge Phillips stated she was going to deny the motion to withdraw. At that time, Judge Phillips indicated her decision to deny the motion was based on the numerous continuances and delays. While this motive was not included in the final Order of denial filed several days later, it was clearly a significant part of the decision making process as attested by the Judge's stated comments at the Sentencing hearing. This type of reasoning was an

abuse of discretion by the court because it lacked any evidence that the delays were either deliberate or excessive under the circumstances or the fault of the defendant.

When a court makes a decision using the wrong consideration it is an abuse of court discretion. “An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.” See, *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 977 (9th Circ. 2003). “A district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law.” See; *United States v. Dillard*, 891 F.3d 151, 158 (4th Cir. 2018). This errant court decision went completely unchallenged by Mr. Robinson before, during and after the Sentencing hearing.

To summarize, the Robinson argument failed to foresee the significance of addressing the numerous courtroom continuances that the court associated with the Judicial Inconvenience factor. And although the District Court referenced the many courtroom scheduling delays and their purported inconvenience to the court as the primary reason for its decision to deny the defendant’s motion to withdraw his plea agreement at the Sentencing hearing, Mr. Robinson failed to remind the Court that it had approved all of the various continuances “for good cause shown”.

b. Factor Five (5): The Waste of Judicial Resources

“The waste of judicial resources” factor was neither referenced nor argued by Mr. Robinson in support of Mr. Johansson’s request to withdraw his plea. This factor, like all other critical factors, should have been addressed in the motion to support the available argument.

In order to accommodate the withdrawal of the plea, the court was merely required to reschedule a time for a trial that it had previously scheduled in the months prior to the request. Beyond the-afore noted rescheduling exercise, there had been no expenditure of court time or resources assembling a jury, contacting witnesses or sending subpoenas and trial notices. No evidence had been destroyed or lost and all witnesses were still available.

Thus, there was little to no waste of judicial resources.

c. Factor Six (6): The Close Assistance of Counsel

On 12 July 2021 the court revoked the pretrial release of Mr. Johansson and placed him in the Federal Detention holding facility in Santa Ana, California. Several weeks later the defendant was transferred to the Metropolitan Detention Center in Los Angeles (MDCLA) where he was placed in a forty-five (45) day COVID quarantine. See; Exhibit A – Change of Plea Hearing Transcript, Page 5, Lines 9 – 25.

During that critical ten (10) week period, which occurred just prior to the change of plea hearing, Mr. Johansson was able to meet with his counsel to discuss the content of the plea agreement on only two separate occasions, each one ending in failure. The first time the plea was presented was on 12 August 2021 in the Santa Ana detention facility. The second attempt was on 24 September 2021, just days before the Change of Plea hearing was held on 29 September 2021. On each occasion the defendant, without any glasses and unable to adequately read the text, struggled unsuccessfully to review the contents of the plea agreement in the time allotted his counsel.

Isolated and alone before the change of plea hearing, Mr. Johansson did not have sufficient access to his defense counsel for the necessary advice and explanation of the legal and punitive issues involved in a plea agreement he was unfamiliar with. Nor was he able to explore options. These elements were crucial to the defendant's ability to understand the consequences of the decision presented to him and then determine whether or not to accept or reject the plea.

Given these conditions and the lack of proper legal representation, the record clearly demonstrates that on the day of the change of plea hearing Mr. Johansson was not prepared to voluntarily commit to accepting the numerous stipulations, waivers of constitutional rights and exposure to incarceration and financial penalties contained within the numerous plea agreements he was confronted with.

An argument should have been made by Mr. Robinson that the court was remiss in its duties to insure the defendant was treated fairly and in a just manner regarding access to legal counsel at the Change of Plea hearing.

d. Factor Seven (7): The “Knowing and Voluntary nature of the plea”

For a plea to be valid requires the defendant’s acceptance of the plea to be knowing/willing, intelligent and voluntary. The determination of these criteria is focused around a number of elements to include: the defendant’s state of mind, his level of competence to understand the proceedings, the medication he may be receiving or deprived of, the level of legal advice and legal support he receives in understanding the elements of the plea and the related legal consequences involved in its acceptance, the defendant’s belief in his innocence and his objection to an improper guilty plea, and whether there had been any threats, or if there had been any promises given (outright or implied) from the Government, his defense counsel, or any member of the court.

A “knowing, intelligent, and voluntary” plea is a legal standard used to ensure that a defendant’s guilty plea is valid. The Constitution requires “that the defendant enter a guilty plea that is “voluntary” and that the defendant must make related waivers [of constitutional rights] “knowing[ly] and intelligent[ly]” and with sufficient awareness”. See; *United States v. Ruiz*, 536 U.S. 622, 629 (2002) citing

Brady v. United States, 397 U.S. 742, 748 (1970). For a plea to be accepted by the court, it must meet these three criteria.

(1). Voluntary

The Plea must be made of the defendant's own free will, without coercion, threats, or false promises.

(2). Knowing

The defendant must fully understand the nature of the charges, the consequences of the plea, and the rights they are waiving by pleading guilty.

(3). Intelligent

The defendant must have the mental capacity to comprehend the situation and make an informed decision.

Voluntary

Under Rule 11(b)(2), it states: "before accepting a guilty plea ... the court must address the defendant personally in open court and determine the plea is voluntary and did not result from force, threats or promises (other than those in the plea agreement)."

The Robinson memorandum correctly asserted one of the reasons the defendant gave up his right to a trial and pled guilty was to protect his family, yet it failed to provide the appropriate context in which it was made. The Robinson memo referenced "representations made by the government in his consolidated plea agreement that ...his son would likely be indicted, caused Mr. Johansson to

enter his guilty plea.” See; Exhibit B – Page 4, at 2 – 4. This is not completely correct.

As previously noted in Argument I. above, the defendant was unable to completely review the multiple plea agreements provided to him on the very day he was to plead guilty. Thus, at the Change of Plea hearing he was completely unaware of the Government’s “representations” concerning the exclusion of his family from future prosecution. Also noted therein, the defendant asserted he was informed **by his legal counsel** of the Government’s threats to his family after he refused to accept the plea agreement at the Change of Plea hearing. Based on the circumstances noted, this appears to have been an act of aggressive coercion by Mr. Werksman to force the defendant to accept a plea agreement he was opposed to and in a courtroom setting where Mr. Johansson faced tremendous pressure to make a momentous decision in a limited amount of time.

Given the nature of the forcible threat, which the defendant believed to be true, it impacts the voluntary nature of the plea and should have been presented to the Court at Colloquy, if not by the defense, then by the Government, but was not.

“A plea agreement is made voluntarily if the defendant is not induced by promises or threats to enter the agreement.” See; *United States v. Rodriguez*, 49 F.

4th 1205 [Headnotes] 8/22. To be “voluntary,” a plea must be made by free will. This means that the court cannot accept your plea if it’s induced by coercion, false promises, or threats. *Machibroda v. United States*, 368 U.S. 487 (1962).

To further undermine the defendant’s rights, Mr. Werksman told the defendant that, as a matter of courtroom etiquette, when questioned by the court during the Change of Plea hearing whether any improper threats or promises had been made in his decision to accept the Government’s offer he must deny it to protect his family. Mr. Robinson was aware of this also and failed to include it in the motion.

Ineffective assistance of counsel arises when an attorney inaccurately advises a client that they will face certain consequences in an effort to encourage them to accept a negotiated plea. Clearly, it was wrong for the defense counsel to improperly use a threat of any kind to influence his client to waive his right to trial. The Supreme Court has explained that in a collateral attack on a guilty plea, a prisoner “may only attack the voluntary and intelligent character of the guilty plea by showing that the *advice* he received from counsel” was wrong. *Tollett v. Henderson*, 411 U.S. 258 (1973) (emphasis added).

Although aware of the coercive pressure placed upon Mr. Johansson, Mr. Robinson chose not to reference it within his arguments.

Knowing

On the day of the Change of Plea hearing Mr. Johansson was presented with multiple plea agreements that he had not reviewed and was unprepared to fully acknowledge when questioned by the Court. As previously noted, after a recess, Mr. Johansson returned to the courtroom still unprepared to respond to the court's inquiries in a voluntarily knowing and willful manner.

When it was evident the defendant was unprepared to participate in a hearing where he lacked the fundamental knowledge of the legal consequences of the plea agreements the court should have adjourned and rescheduled a new hearing, but it did not. This was an abuse of discretion which Robinson failed to argue.

Intelligent

Two of the key elements of a voluntary plea are the competence and mental state of the defendant. As previously noted, the District Court had ample reason to doubt the defendant had an acceptable level of either of these elements to meet the voluntary requirement. During the weeks preceding his hearing he had been locked down in solitary confinement due to a COVID enforced quarantine. While in the lockdown, Mr. Johansson had been deprived of a number of medications for chronic illnesses that included high-blood pressure and high cholesterol which left

him dizzy and light headed. At the time of the hearing the defendant was experiencing physical impairment, and emotional and mental anguish to include claustrophobic stress, depression and anxiety.

Throughout the Change of Plea hearing, the Court was concerned with Mr. Johansson's visibly unhealthy condition and continued to inquire as to his physical and mental wellbeing. Based on the Court's own observations, the Court knew well before the completion of the hearing that there were signs of mental, physical and emotional instability with Mr. Johansson and yet it continued with the lengthy change of plea proceeding. Accordingly, the Court was remiss for not ending the hearing before its completion and having the defendant's mental condition evaluated to determine whether he was capable of providing the Court with a voluntary plea. This was not addressed by Robinson.

As noted in a Ninth Circuit case, these factors alone made the defendant very vulnerable in his decision making process. "*Fuentes-Galvez* showed a reasonable probability that the district court's omissions could have affected his decision to continue in his guilty plea. He ... had a history of mental health disorders, including ... depression and anxiety. At the time of his hearing he was taking medications for his "diabetes, as well as unknown drugs for his cholesterol and lung." In light of these facts, of which the district court was aware, *Fuentes-Galvez* was especially vulnerable to entering an involuntary plea. By failing to

confirm that he was competent and intelligent to enter the plea at the time of the hearing the court did not ensure that his plea was knowing and voluntary.” See; *United States v. Fuentes-Galvez* 969 F.3d 912 at 916-917 (9th Cir. 1/24/20), referencing *United States v. Kamer*, 781 F.2d 1380, 1384-85 (9th Cir. 1986).

By the time Mr. Robinson was preparing his motion to withdraw the plea, he knew full well the results of the Psych Evaluation which reinforced the observations of the court. The results of the extensive evaluation described Mr. Johansson as having a cornucopia of clinically recognized psychological issues to include claustrophobia, Bipolar Disorder, hypomanic episodes, and Major Depressive Disorder which left him vulnerable at the change of plea hearing. See, Exhibit D – Psych Evaluation, Pages 16-17.

Thus, Mr. Robinson was remiss for not arguing that the defendant lacked the mental capacity and competence to make an intelligent, informed decision.

Summary: The Knowing and Voluntary nature of the plea

The “Knowing and Voluntary nature of the plea” was an absolutely crucial factor in determining a “Fair and Just Reason” for withdrawing from a plea agreement. The validity of the plea is the cornerstone of determining whether a plea agreement should be withdrawn by the District Court that previously accepted it.

In the final Order denying the request to withdraw, the District Court determined the plea was voluntary. Based on the facts of the case, this should have been a key consideration for any defense counsel to challenge and include in their argument. Mr. Robinson failed to include this critical factor in his argument.

4. **Summary: GROUND II.**

The content of the Robinson motion to withdraw the defendant's plea agreement fell short of its objective by not providing the court with a complete set of material, relevant arguments to allow the court to judge the merits of the motion based on the **totality** of the facts. "When courts apply the factors enumerated above they should consider the **totality of the circumstances**". See; *United States v. Morrow*, 537 F.2d 120, 146 (5th Cir. 1976) – Bold highlight added to text.

The Supreme Court held in *Strickland v. Washington*, 466 U.S. 668, 669 that the proper standard for constitutional assistance of counsel is that attorney performance must be objectively reasonable "given the totality of circumstances".

Defense counsel Robinson's failure to advocate for his client denied Mr. Johansson his constitutional right under the *Sixth Amendment* to withdraw the plea agreement and go to trial. "[T]he adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an

advocate.”” See; *U.S. v. Cronin*, 466 U.S. 656 (1984); quoting: *Anders v. California*, 386 U. S. 738, 386 U. S. 743 (1967).

In this context, Mr. Robinson’s representation fell below an Objective and Reasonable Standard when he excluded material arguments from the motion and failed to be an advocate for the defendant which prejudiced Mr. Johansson.

D. GROUND THREE OF § 2255 PETITION

Defense Counsel Rachael Robinson failed to properly advocate for the Defendant and Argue All Factors Pertaining to a Withdrawal of a Plea

In the Defendant’s Ninth Circuit appellant motion to challenge his denial to withdraw his Guilty Plea, attorney Rachael A. Robinson was ineffective in the presentation of the case. Ms. Robinson did not appropriately challenge the findings of the District Court, properly contest the Opposition of the Government’s Response or effectively present the defendant’s case to the Appellate Court. Ms. Robinson’s representation of her client clearly fell below an objective reasonable standard which resulted in prejudice to the defendant.

1. The District Court Findings

Under Article III. “DISCUSSION” of the District Court’s denial of the Motion to Withdraw the defendant’s plea, the Court focused on: whether the plea

was involuntary based on coercion; the defendant's emotional and mental state; and the defendant's claim of innocence.

a. Involuntary argument – Coercion

The District Court argued “Johansson’s reliance on the promises made in his plea agreement does not by itself render his plea involuntary.” See; Exhibit F - District Court Order Denying Plea Withdrawal, Section III. Page 5, Lines 4 – 5 for quote and Lines 5 – 19 for supporting citations. As previously noted herein, the defendant’s decision to accept the plea was not based on promises made within the plea by the Government to not pursue future prosecutions of family members, but the overt, real time threats the defendant received through his defense counsel at the Change of Plea hearing. Ms. Robinson was aware of this issue but did not include the fact in her motion to the appellate court as a challenge the District Court’s denial.

b. Involuntary Argument - Defendant’s Emotional State

In the Denial of the motion, the Court argued the Psych ‘report’ “does not suggest that Johansson was unable to understand the nature of the charges against him or the consequences of his guilty plea.” See; Exhibit F - District Court Order Denying Plea Withdrawal, Section III. Page 6, Lines 4 – 6. While the Court acknowledged the defendant’s visible stress at the hearing, it indicated that stress

alone is a common factor and an insufficient reason to withdraw a guilty plea that was “otherwise entered knowingly, intelligently, and voluntarily.” See; Exhibit F, Page 6 at 11-12.

The Court’s reasoning’s were misrepresentations of the facts which Ms. Robinson failed to address. To begin with, the Psych Evaluation is a medical report that compiled the results of psychological testing by a trained clinical psychologist. It is not a legal document written by an attorney to determine the scope of a defendant’s ability to understand legal concepts such as charges and the consequences of a guilty plea. The Court failed to understand the significance of the Evaluation and how to apply its findings and conclusions with the events in the courtroom, something Ms. Robinson failed to address.

For instance, on Page 13 of the Psych Evaluation the Clinical Psychologist draws a critical conclusion between the disparity of scores on the Verbal Comprehension Index (VCI) and the Working Memory Index (WMI). In Johansson’s case his WMI score was 32 points lower than the VCI score which represented a significant statistical difference that affects only one percent of the population range. According to the Evaluation, “[T]he WMI measures an individual’s ability to immediately attend to verbally presented information in the auditory modality, to process that information in memory while performing another mental operation, and to then articulate a response.” The report went on to

inform that the WMI is especially affected by someone under stress or suffering from depression, a symptom evident with the defendant, which further impacts an individual's ability to process information. See, Exhibit F, Page 13.

In just this one example, the medical report indicates that, given the nature of his condition, the defendant who was under extreme pressure and stress would have experienced acute difficulty in making valued and voluntary judgments about information in a plea he was unfamiliar with.

c. Involuntary Argument - Summary of Issues

Ms. Robinson failed to identify and challenge the Court's misconceptions and misinterpretations regarding the source of the coercion and the proper application of the medical data that had been provided the Court.

Nor did Ms. Robinson even bother to challenge the voluntary nature of the plea something which the District Court acknowledged was one of the primary considerations in its decision. In fact, rather than challenge the court's determination of the voluntary nature of the plea, Ms. Robinson doubled down arguing that a "fair and just" standard excluded any necessary argument to the validity of the voluntary plea argument posed by the District Court. See; Exhibit G – Appellate Brief, Page 19, "The District Court Misapplied the Law".

Continuing on with this misguided understanding of the law, Ms. Robinson errantly suggested the validity of the plea should only be argued after a conviction is final. Ms. Robinson also improperly asserted that Mr. Johansson “was not claiming that he did not understand the nature of the charges or the consequences of pleading guilty.” See; Exhibit G – Appellate Brief, Page 20.

Thus, Ms. Robinson failed to understand the importance of the voluntary nature of a plea as one of the factors, if not the most significant factor, to be considered in the “fair and just” legal standard. In so doing, Ms. Robinson foolishly eliminated for her client the very argument the case was decided on within the District Court Order, the Government’s Response and the Ninth Circuit Court of Appeals. Even the defendant had repeatedly informed her in emails that it was the most significant factor of his appeal. For Ms. Robinson to repeatedly ignore the involuntary nature of the plea as one of the primary arguments for Mr. Johansson is a prime example of deficient performance by a defense counsel.

d. Defendant’s Claims of Innocence

Ms. Robinson failed to argue the legal points of innocence brought up in the defendant’s motions to dismiss Counts One and Two of Case 18-CR-00114-VAP. Although the motions were previously denied by the District Court, the decisions were never appealed and therefore ripe for reconsideration.

2. Government's Opposition to Appeal

The Crux of the Government's argument was the validity of the defendant's waiver within his plea agreement to any appeal. The Government asserted because the District Court had declared the plea to be of a voluntary nature, the waiver was valid and prevented any appeal.

Although the defendant repeatedly urged Ms. Robinson to challenge whether the plea was voluntary which would have also challenged the validity of the plea's waiver she ignored Mr. Johansson's multiple requests to broaden the base of the argument. This proved to be an error that was too obvious to not understand.

3. Appellate Court Brief

In her Appellate brief, Ms. Robinson presented a rebuttal to the District Court denial that was for the most part a simple repeat of the issues that had been already argued, and lost, by her father, Edward Robinson, in the original motion to withdraw the plea. And as noted, Ms. Robinson did little to challenge the Government's arguments in its Opposition to the appeal. Except for her inclusion of the "intervening circumstance", which she was completely unaware of until the defendant informed her of its criticality, there was little material of new substance that helped the defendant rebut either the District Court's misguided findings or the Government's opposition to the appeal.

4. Summary of ARGUMENT III.

Ms. Robinson failed to address the most important aspect of the defendant's denial of his motion to withdraw his Plea Agreement, which was the involuntary nature of his acceptance of the plea which invalidated his waiver to appeal. Although this legal point was clearly telegraphed by the District Court, the Government, and even the defendant, Ms. Robinson doggedly refused to appropriately challenge what was an obvious argument to a successful outcome. What was even more disturbing was Ms. Robinson's lack of the legal concepts of an involuntary argument as a factor in a "fair and just reason". Failing to include the involuntary nature of the plea agreement within the arguments of the appeal was plainly ineffective assistance of counsel which prejudiced Mr. Johansson.

E. SUMMARY OF ARGUMENTS

After years of professing his innocence and preparing for trial Mr. Johansson was abruptly forced to accept a negotiated plea agreement he had not asked for and based on facts he disagreed with.

The defendant's defense counsel, Mark Werksman, misled and misinformed his client with improbable promises and exaggerated threats that were clearly inaccurate under the circumstances. Worst of all, Werksman betrayed his client's trust in a shocking display of unprofessionalism. These multiple malfeasances

placed Mr. Johansson in an uncompromising situation and contributed to his lack of intelligence and knowledge regarding the facts of the case and clouded his judgment in his involuntary decision to accept the plea.

In his attempt to withdraw his plea and regain his constitutional right to trial Mr. Johansson engaged the Robinson legal team to represent him. Although the facts of the plea acceptance were known to both Edward and Rachael Robinson, they both repeatedly refused to properly address all of the known issues. In addition, the Robinson legal representation, et al, was incomplete in the totality of its arguments and it failed to address the challenges to the Government that were available to the defendant and in so doing failed to properly advocate for their client. “[I]f counsel fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of the Sixth Amendment rights”. See; *Cronic*, at 659 (*Supra*).

The combined failure of these three counsels is a clear example of ineffective counsel that unfairly prejudiced Mr. Johansson.

VIII - CONCLUSION

For all the reasons set forth in Carl Bradley Johansson’s 2255 Motion and his Memorandum in support thereof, Mr. Johansson has demonstrated that both the performance and the prejudice prongs of the *Strickland* standard, supported by *Hill*

v. *Lockhart* (Supra) have been satisfied. The Petitioner therefore is entitled to relief under Title 28 Section 2255.

The Sixth Amendment to the Constitution requires the defense counsel(s) to provide to their client proper professional representation and an adversarial challenge to the government's case. This did not happen with Mr. Johansson at any level or with any of his legal representatives.

Federal Rule of Criminal Procedure 11(b)(2) requires that the acceptance of a plea agreement be done voluntarily. Based on the facts of the case, Mr. Johansson's acceptance of the plea was anything but voluntary.

Accordingly, the actions of all defense counsels fell below an Objective and Reasonable Standard when the counsels failed to be proper advocates. It is abundantly clear that there is a reasonable probability that if Mr. Johansson's counsels had performed adequately, the result would have been different. When evaluating whether counsel's errors rise to the level of being harmful courts consider the outcome-determinative standard. If a defendant can demonstrate that their lawyer's errors affected the outcome of a specific proceeding (such as guilty plea) they may establish prejudice and qualify for post-conviction relief. Such is the case here. All of the errant actions of multiple counsels prejudiced the defendant.

For all of the foregoing reasons set forth in this Motion and the supporting documents, Mr. Johansson respectfully requests that this Honorable Court grant him relief under Title 28 U.S.C. Section 2255.

Respectfully Submitted,

DATED: 11/12/24



CARL BRADLEY JOHANSSON

Petitioner

Register No.: 13791-112

Federal Correctional Institute

3600 Guard Road

Lompoc, Ca 93436

EXHIBIT - A

CHANGE OF PLEA HEARING TRANSCRIPT

E - 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CR 21-170 VAP
	)	
CARL BRADLEY JOHANSSON,	)	
	)	
Defendant.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CR 18-114 VAP
	)	
CARL BRADLEY JOHANSSON,	)	
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
CHANGE OF PLEA HEARING
WEDNESDAY, SEPTEMBER 29, 2021
10:04 A.M.
LOS ANGELES, CALIFORNIA

MYRA L. PONCE, CSR NO. 11544, CRR, RPR, RMR, RDR
FEDERAL OFFICIAL COURT REPORTER
350 WEST 1ST STREET, ROOM 4455
LOS ANGELES, CALIFORNIA 90012
(213) 894-2305

1 never confronted a situation like this. And I'm frustrated,
2 but I want to curb my personal frustration and ask the Court to
3 understand the situation and perhaps help us resolve this.

10:06AM 4 THE COURT: All right. Is it a matter of needing
5 more time today to --

6 MR. WERKSMAN: Possibly. But here's the problem,
7 Your Honor.

8 THE COURT: All right.

10:06AM 9 MR. WERKSMAN: I need the Court's help. And the
10 situation is that on August 12th, my client and I met at the
11 Santa Ana City Jail. And we reviewed and finalized what I
12 thought was a final version and signed copy of the plea
13 agreement, which was filed with the Court later that night or
14 early the next morning with the anticipation that we would come
10:06AM 15 to court on Friday, the 13th of August for entry of plea.

16 And it was my intention, when I went to bed on the
17 night of August 12th, to get up on Friday morning, the 13th,
18 and come to court and my client was going to be here and we
19 were going to enter pleas to the case against Mr. Johansson
10:06AM 20 personally in both Indictments and on behalf of Western, which
21 is the entity in the second of the two cases, the reason he's
22 been incarcerated.

23 That morning on the 13th, my client had a medical
24 issue which caused the U.S. Marshals to take him to a nearby
10:07AM 25 clinic. And from that point forward, he has been more or less

1 held incommunicado, deprived of counsel, and deprived of access
2 to legal papers and reading glasses by the U.S. Marshals.

3 I don't want to vent too much on the U.S. Marshals.
4 I know they have a tough job, they perform bravely. But we're
10:07AM 5 in a situation now where the U.S. Marshals are absolutely
6 frustrating my ability to communicate with my client, his
7 ability to receive legal papers, and in some cases his ability
8 to come to court.

9 So what's happened now, Your Honor, is that he's
10:07AM 10 been more or less incommunicado in one form or another of COVID
11 quarantine for about 46 days, ending early this week. I met
12 with him Friday, the -- this previous Friday --

13 THE COURT: So he's now at the MDC.

14 MR. WERKSMAN: He's at MDC. He was finally taken
10:07AM 15 off quarantine Friday, this past Friday, and I met with him.

16 I tried to give him copies of his plea agreement so
17 he could review them. I gave him those copies because he
18 hadn't seen them in 43 or so days. And he wanted to review
19 them in anticipation of today's court appearance.

10:08AM 20 When we left the visiting room, he took these papers
21 with him to his cell, but a deputy U.S. Marshal intercepted
22 him -- or maybe he was an employee of the Bureau of Prisons,
23 one of them -- took his papers away and said you can't take
24 them from the attorney lounge, that or visiting room. You have
10:08AM 25 to be -- they have to be mailed in.

1 They returned them to me on the spot. And I then
2 immediately put them in envelopes. I had to break the papers
3 in two because there's a very thin slot for you to slide legal
4 mail in in the lobby of MDC.

10:08AM 5 I'm telling you all this for a reason, Your Honor.
6 I'll get to the point.

7 THE COURT: That's all right.

8 MR. WERKSMAN: Friday midday my assistant,
9 Rob Pooley, personally put two envelopes in the mail slot
10:09AM 10 containing all the papers, both plea agreements that are --
11 we're here today for my client to agree to.

12 I am told now that the guy who handles mail at the
13 Metropolitan Detention Center has been off this week. So as of
14 this moment, my client reports to me that he has not received
10:09AM 15 copies of his plea agreements.

16 Moreover, he complained to me last Friday and he's
17 complaining again this morning that he can't see because he
18 doesn't have glasses. They took away his glasses a long time
19 ago, and he can't read without glasses.

10:09AM 20 So, Your Honor, I believe that my client intends to
21 enter into these agreements.

22 THE COURT: But he needs more time to read them.

23 MR. WERKSMAN: He needs to read them.

24 THE COURT: All right. Let me -- pardon me for
10:09AM 25 interrupting you, but let me ask a couple of questions.

1 can receive these glasses.

2 THE COURT: Okay. Let me talk to the deputy
3 marshals.

4 MR. WERKSMAN: Thank you, Your Honor.

10:14AM

5 (Off-the-record discussion between
6 the Court and the U.S. Marshal.)

7 THE COURT: Okay. So what we'll do,
8 Deputy Stovall -- that's the deputy's name.

9 MR. WERKSMAN: Stovall?

10:16AM

10 THE COURT: Stovall.

11 So they're going to make the third floor -- a
12 conference room available to you. When someone else from your
13 office arrives there with the glasses, there shouldn't be a
14 problem. But if there is, Deputy Stovall will make sure that
15 he gets the glasses.

10:16AM

16 MR. WERKSMAN: Very well. So --

17 THE COURT: And we're going to look into what
18 happened to the prescription pair.

19 MR. WERKSMAN: So is he going to be taken there and
20 held there until 2:00 o'clock?

10:16AM

21 THE COURT: Yes.

22 MR. WERKSMAN: All right. So my -- my associate,
23 Ms. Sosa, who's here, we can get him some glasses, bring them
24 back here, and then spend some time with him on the third
25 floor.

10:16AM

1 right to hold public office, the right to sit on a jury, and
2 the right to own or possess a firearm and ammunition of any
3 sort.

4 Do you understand that?

02:29PM 5 THE DEFENDANT: Yes.

6 THE COURT: You have a number of rights that are
7 guaranteed to you by the laws and the Constitution of the
8 United States in connection with this case.

9 Mr. Werksman, does your client need to sit down
02:30PM 10 while we go through this?

11 MR. WERKSMAN: Would you like to sit?

12 THE DEFENDANT: I'm just a little dizzy, yeah.

13 THE COURT: Why don't you take a seat.

14 MR. WERKSMAN: He's a little dizzy. It might be
02:30PM 15 more convenient.

16 THE COURT: That's fine. Certainly.

17 You can adjust the microphone so that it reaches
18 him.

19 MR. WERKSMAN: I'll go sit next to him, Your Honor.

02:30PM 20 THE COURT: And you said you're a little dizzy. Do
21 you feel you can go forward today, Mr. Johansson?

22 THE DEFENDANT: Yes. I -- I -- I get this vertigo
23 every once in a while.

24 THE COURT: But you're thinking clearly?

02:30PM 25 THE DEFENDANT: As clearly as I can, yes.

1 opportunity to discuss it with your lawyer before sentencing.

2 After the report's been issued, then your lawyer and
3 the lawyer for the Government will each file their sentencing
4 briefs with the Court, making their arguments and
02:41PM 5 recommendations as to what sentence I should give.

6 I consider all of those things before I make a
7 decision. But it's important that you understand that it is
8 the judge who decides what your sentence should be, not the
9 probation officer and not the lawyers.

02:41PM 10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If your sentence is -- well, back to the
13 guidelines. The guidelines are advisory. So in most cases,
14 the judge can impose a sentence that's either shorter than
02:42PM 15 what's called for under the guidelines or longer.

16 If your sentence is different than what you hoped
17 for or expected, you'll still be bound by your guilty plea and
18 you won't have the right to withdraw it.

19 Do you understand that?

02:42PM 20 THE DEFENDANT: Yes.

21 THE COURT: Are you feeling all right,
22 Mr. Johansson?

23 THE DEFENDANT: Um, I'm as good as I felt in the
24 last few months, yeah.

02:42PM 25 THE COURT: All right. So you're still able to go

1 forward today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Let me know if you're not
4 feeling well.

02:42PM 5 All right. Has anybody made any threats against you
6 or anyone in your family or anyone else in order to get you to
7 plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone threatened you?

02:42PM 10 THE DEFENDANT: No.

11 THE COURT: Other than what's in the consolidated
12 plea agreement and other than what we've discussed here in
13 court today and other than the general discussion that you told
14 me you had with your lawyer about the Sentencing Guidelines,
02:43PM 15 has anyone told you -- or made you any promises about what
16 sentence you would receive if you pled guilty?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone promised you a certain
19 sentence if you pled guilty?

02:43PM 20 THE DEFENDANT: No.

21 THE COURT: Has anyone promised you anything of any
22 kind in order to get you to plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Do you feel that you understand
02:43PM 25 everything that we have discussed here today?

1 THE COURT: All right. But they're all for one or
2 more of the conditions that you told me about?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And do any of them affect your ability
02:57PM 5 to think clearly?

6 THE DEFENDANT: I don't believe so.

7 THE COURT: All right. And I understand -- are
8 there any other conditions or injuries, anything else that
9 you're suffering from?

02:58PM 10 THE DEFENDANT: Other than my eyesight and just
11 getting old.

12 THE COURT: That affects many of us.

13 All right. Now, you were quarantined because of the
14 COVID pandemic while you've been incarcerated. Is that right?

02:58PM 15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: But you have never been diagnosed with
17 the COVID virus. Is that right?

18 THE DEFENDANT: No.

19 THE COURT: I'm sorry. I asked my question badly.

02:58PM 20 No, you haven't been diagnosed. Is that -- is that
21 what you meant?

22 THE DEFENDANT: No, I've not gotten coronavirus.

23 THE COURT: Okay. Thank you.

24 All right. Are you receiving any psychological or
02:58PM 25 psychiatric care of any kind?

1 THE DEFENDANT: No, but I -- I've been in solitary
2 confinement for almost three months. And there's no one to
3 talk to and no one to listen to you. And all you have is just
4 your anxiety and your depression and just a crushing sense of
02:59PM 5 loneliness. I was only allowed out one hour a week for almost
6 three months.

7 THE COURT: All right. So do you feel that you need
8 to receive and get some psychiatric or psychological care at
9 this time? Because I can recommend that you be evaluated right
02:59PM 10 away for that.

11 THE DEFENDANT: I would just like to -- if I can
12 just pet my dogs, I'd feel a lot better.

13 THE COURT: Well, I'm afraid I can't control that.
14 But it sounds to me, if you're suffering -- you say you're
02:59PM 15 suffering from this anxiety and depression. And I think
16 that -- I am going to direct that you be evaluated for any
17 treatment for those conditions. All right?

18 Do you -- again, do you feel that -- what you're
19 suffering from, does that prevent you from understanding what's
03:00PM 20 going on here today?

21 THE DEFENDANT: I don't think so, but I just -- if I
22 could just hug my dogs, I'd be fine.

23 THE COURT: Well, I -- I understand. I understand
24 very well the comfort power of one's pets, one's dogs.

03:00PM 25 All right. Do you -- do you understand that if I

1 influence of any kind, are voluntarily made with full knowledge
2 of the charges against him and the consequences of his guilty
3 pleas, that no promises of any kind have been made to the
4 defendant by anyone, and no coercion or threats of any kind
03:05PM 5 have been exerted upon him in any manner.

6 So it is ordered that the pleas of guilty to
7 Counts 1, 2 -- 1 and 3 -- I'm sorry -- 1, 2, and 4 in Case
8 No. 18-114 and Counts 1 and 3 in Case No. 21-170 be accepted
9 into the Court's record, entered today's date.

03:06PM 10 And I understand the parties have agreed upon a date
11 next year for sentencing.

12 MR. WERKSMAN: Yes, Your Honor. Just briefly,
13 because there are the tax counts, we have to do a closing
14 agreement with the IRS, which is very time-consuming.

03:06PM 15 Therefore, we're requesting May 9th as a sentencing date for
16 both Mr. Johansson and I will set that for the date for the
17 corporation as well.

18 THE COURT: All right.

19 MR. WERKSMAN: If that's okay with Your Honor.

03:06PM 20 THE COURT: That's fine. May 9th at 9:00 a.m.

21 MR. O'BRIEN: That's fine with the Government,
22 Your Honor.

23 Your Honor, I have one very minor clarification to
24 make.

03:06PM 25 THE COURT: Yes.

1 Government has the evidence in this case to prove the facts in
2 Exhibit 1 to the plea agreement for Western Distribution beyond
3 a reasonable doubt?

4 MR. WERKSMAN: Yes, Your Honor.

03:24PM

5 THE COURT: Thank you.

6 Mr. Johansson, I've already asked you in detail in
7 connection with your guilty plea as an individual about the
8 treatment you're receiving from your doctors. Is there
9 anything different that I should know in connection with your
10 guilty plea on behalf of Western?

03:24PM

11 THE DEFENDANT: No. Just I'm not the -- after the
12 three months of solitary confinement, I'm just -- just
13 shattered.

14 THE COURT: All right. And as we discussed earlier,
15 I'm going to direct that you be evaluated for treatment for
16 your mental health conditions of depression, anxiety, whatever.

03:24PM

17 But are you able to think clearly and understand all
18 of my questions?

19 THE DEFENDANT: Yes. It's just that, um, the
20 solitary confinement is -- is really, really bad. I had
21 21 days at one place where there was no light bulb inside the
22 cell. It was dark the whole time. It's just not right.

03:25PM

23 THE COURT: Well, I understand, I believe what
24 you're telling me. My question is: As a result of what you've
25 told me that you suffered, do you -- do you feel that you're

03:25PM

EXHIBIT - B

MOTION TO WITHDRAW PLEA AGREEMENT

EDWARD M. ROBINSON (CA Bar 126244)

Brian A. Robinson (CA Bar 333650)

21515 Hawthorne Blvd, Suite 730

Torrance, CA 90503

Office: (310) 316-9333

Facsimile: (310) 316-6442

eroblaw@gmail.com

Attorneys for Defendants

Carl Bradley Johansson

National Distribution, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL DISTRIBUTION, INC., et
al.,

Defendant.

Case No. 5:18-00114-VAP

Case No. 5:21-00170-VAP

**DEFENDANTS CARL BRADLEY
JOHANSSON'S AND NATIONAL
DISTRIBUTION INC.'S NOTICE OF
MOTION AND MOTION TO
WITHDRAW GUILTY PLEA
PURSUANT TO FED. R. CRIM.
PRO. 11(d); DECLARATION OF
COUNSEL; EXHIBITS IN
SUPPORT; EXHIBIT A UNDER
SEAL**

DATE: November 28, 2022

TIME: 10:00 a.m.

Courtroom of the
Honorable Virginia A. Phillips

1 A detailed factual basis is attached as Exhibit 1 to the consolidated plea
2 agreement. Pages 1-9 of Exhibit 1 outline the facts that Mr. Johansson agreed to in
3 support of his guilty plea to counts 1 and 2 in case 114.

4 With respect to counts 1 and 2 in case number 114, Mr. Johansson's guilty plea
5 was involuntary for two critical reasons. First, it was the product of his desire to protect
6 his son, Carl Johansson, from being indicted as a co-conspirator in the conduct alleged
7 in case 170, as set forth in pages 12-17 of Exhibit 1, the factual basis. Second, Mr.
8 Johansson's plea with respect to counts 1 and 2 in case 114 was involuntary because he
9 pled guilty to protect his brother in law's interest in the property that was posted to
10 secure his pretrial release. (See paragraph 4(c) and (h) of consolidated plea agreement.)

11 Mr. Johansson does not seek to withdraw his guilty pleas to any of the other
12 counts. Mr. Johansson has not yet been sentenced on any counts.

13 For the reasons set forth below, this Court has the discretion to allow Mr.
14 Johansson and National to withdraw their guilty pleas with respect to counts 1 and 2 in
15 case number 114, and Mr. Johansson respectfully requests that this Court allow them to
16 do so.

17 ARGUMENT

18 **I. This Court has Discretion to Allow Mr. Johansson and National to** 19 **Withdraw their Guilty Pleas Because Sentencing has not Occurred and** 20 **Fair and Just Reasons Exist for Withdrawal**

21 **A. Legal Standard**

22 A defendant may withdraw a guilty plea after a district court accepts a plea, but
23 before sentencing, if "the defendant can show a fair and just reason for requesting the
24 withdrawal." Fed. R. Crim. P. 11(d)(2)(B); *United States v. Ruiz*, 257 F.3d 1030, 1032
25 (9th Cir. 2001) (en banc) (holding that the fair and just reason standard applies to pre-
26 sentencing motions to withdraw guilty pleas); *United States v. McTiernen*, 546 F.3d 1,
27 60 (9th Cir. 2008) (motion to withdraw plea made after filing of government's position
28 paper).

1 Mr. Johansson's mental and emotional condition, coupled his belief, based upon
2 the representations made by the government in his consolidated plea agreement that
3 absent his plea, his son would likely be indicted, caused Mr. Johansson to enter his
4 guilty plea despite his repeated assertions of innocence. (Doc. 264; Doc. 345;
5 Declaration of Counsel.)

6 C. Mr. Johansson's Withdrawal of his Plea will not Prejudice the
7 Government

8 Here, the government will not have difficulty presenting its case at a subsequent
9 trial—witnesses can still be located, and no evidence has been destroyed or lost. As a
10 prime example, cooperating co-defendant Spicer's sentencing was just recently
11 continued to February 6, 2023, after Mr. Johansson's sentencing. (Case No. 5:18-cr-
12 00114-VAP-5, Doc. 387.) Clearly, the government still has access to its necessary
13 witnesses and evidence.

14 Even if the Court finds some minimal level of prejudice to the government, this
15 alone will not automatically result in the denial of a defendant's motion. Such a finding
16 only heightens the defendant's burden. *United States v. Carr*, 740 F.2d 339, 343 (5th
17 Cir. 1984); *see also United States v. Mathis*, 963 F.2d 399, 410 (D.C. Cir. 1992);
18 *United States v. Barker*, 514 F.2d 208, 222 (D.C. Cir. 1975). Given Mr. Johansson's
19 assertion of innocence, weighed against any prejudice to the government, fair and just
20 reasons demand that he be allowed to withdraw his guilty pleas.

21 D. Any Delay in Bringing this Motion Was Not for the Purpose of
22 Gaining a Strategic Benefit

23 Counsel for Mr. Johansson made his first appearance in August. As set forth in
24 the declaration of counsel in support of Mr. Johansson's motion to continue sentencing,
25 counsel has been diligent in reviewing the substantial discovery in support of counts 1
26 and 2 in case 114, meeting with Mr. Johansson and members of his investigative team
27 to analyze the evidence in support of counts 1 and 2 in case 114, and most importantly,
28 securing, in the most timely fashion, the opportunity for the in-custody psychological

1 evaluation of Mr. Johansson that is now offered in support of Mr. Johansson's claim
2 that his plea to the D.O.T. counts was involuntary. (*See* Declaration of Counsel.)

3 Critically, Mr. Johansson sought to have prior counsel relieved as early as April
4 12, 2022. Presumably, for reasons due to the pandemic and the difficulties with meeting
5 Mr. Johansson at MDCLA, no new counsel became of record until August 2022. Prior
6 counsel did not file a motion to be relieved, nor did he file any post guilty plea
7 pleading. As such, Mr. Johansson's efforts to obtain new counsel and to pursue this
8 limited motion to withdraw pleas was not due to any lack of diligence on his part or for
9 any strategic purpose. His desire for new counsel was expressed as early as April 12,
10 2022, eight days after the disclosure of the presentence report, hence the delay in
11 presenting this motion.

12 E. Mr. Johansson has Asserted his Legal Innocence and has a Legally
13 Cognizable Defense

14 When a defendant "asserts a legally cognizable defense to the charges,
15 'presentence withdrawal should be rather freely allowed.'" *United States v. Ford*, 993
16 F.2d 249, 251 (D.C. Cir. 1993); *quoting United States v. Barker*, 514 F.2d 208, 220
17 (D.C. Cir. 1975).

18 Mr. Johansson has maintained his innocence as to the "R" Stamp counts despite
19 entering a guilty plea. Mr. Johansson has a legally cognizable defense to those counts.
20 He did not order the welding on the spec tank, he never ordered work to be done on
21 tanks that had not been purged, and he did not make any attempts to impede the DOT's
22 or any agency's investigation. As he will demonstrate at trial:

- 23 1. Mr. Johansson was not at the facility the day of the incident.
- 24 2. The work order for the tank in question did not come from Mr. Johansson.
- 25 3. In D.L.V.'s sworn statements to investigators in 2014, he indicated that it was his
26 idea to attach the new vapor system.
- 27 4. The incident report prepared by the Corona Fire Department indicate that a small
28 amount of crude oil was found in the vent system, not in the tanker.

EXHIBIT - C

SENTENCING TRANSCRIPT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR 21-170 VAP
	)	
WESTERN DISTRIBUTION, LLC, and	)	
CARL BRADLEY JOHANSSON,	)	
	)	
Defendants.	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR 18-114 VAP
	)	
NATIONAL DISTRIBUTION SERVICES, INC.,	)	
WHOLESALE DISTRIBUTION, INC., and	)	
CARL BRADLEY JOHANSSON,	)	
	)	
Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING
TUESDAY, NOVEMBER 29, 2022
10:06 A.M.
LOS ANGELES, CALIFORNIA

MYRA L. PONCE, CSR NO. 11544, CRR, RPR, RMR, RDR
FEDERAL OFFICIAL COURT REPORTER
350 WEST 1ST STREET, ROOM 4455
LOS ANGELES, CALIFORNIA 90012
(213) 894-2305

1 Mr. Johansson made it clear --

2 THE COURT: Not counsel's timeliness but -- I
3 understand, you set that forth in your declaration, I'm happy
4 to accept that representation from you as an officer of the
10:20AM 5 Court. But your -- you know, I could spend a long time going
6 through the docket and all of the continuances in this case.
7 The trial continuances, the sentencing continuances, the
8 changes of counsel, it's all in the record and I'm not going to
9 go through that now.

10:20AM 10 But suffice it to say that the record speaks for
11 itself and makes it clear that this is a last-minute attempt --
12 not on counsel's part, you're doing as your client directed
13 you -- but it's a last-minute attempt to yet again continue the
14 sentencing and avoid the resolution of this case. And it's not
10:21AM 15 going to happen today.

16 MR. ROBINSON: So in light of that, what I'd like to
17 do, Your Honor, just to try to perfect the record with respect
18 to the prong concerning the claim of legal or factual
19 innocence, if the Court is going to construe our notice of
10:21AM 20 intent as a supplement to our motion to withdraw, if the Court
21 could agree that the pleadings in the 170 case are incorporated
22 by reference into the supplement as part of a factual basis for
23 the claim of legal innocence so that Mr. Johansson has a record
24 from which he can appeal.

10:21AM 25 THE COURT: That's fine. I mean, that's what I

1 intend when I say I'm construing it as a supplement.

2 MR. ROBINSON: Thank you.

3 And lastly -- and this is something that is unique,
4 it's very unique. And I don't want to jump the gun, but I
10:21AM 5 think it's relevant just to my comments on the motion to
6 dismiss -- to withdraw the plea.

7 Mr. Johansson has made it clear that he denies what
8 he swore to in the factual basis. He has some comments as to
9 what he would testify to with respect to the loan fraud counts
10:22AM 10 were the plea withdrawn and the matter to proceed to trial.

11 I have not had much time with Mr. Johansson
12 concerning that position, as evidenced by the fact that this
13 notice was given on the 22nd of November, seven days ago.

14 Mr. Johansson has some notes that he has drawn up
10:22AM 15 that deal with the -- his position on lack of knowledge, lack
16 of intent to defraud with respect to the loan counts.

17 I'd like an opportunity to review those documents
18 and maybe after today's hearing, within a short period of time,
19 file a supplement to the motion so that the record is perfected
10:23AM 20 to the extent that it can be, recognizing that your ruling with
21 respect to the supplement, the tax count and the loan fraud
22 count, is based upon primarily timeliness as opposed to
23 anything else because there's nothing else in the record.

24 Is that something that the Court would entertain?

10:23AM 25 THE COURT: No, I would not. You know, Mr. -- I'm

1 MR. O'BRIEN: It's a one-page letter.

2 (Pause in the proceedings.)

3 THE COURT: All right. Then, as to the sentencing
4 as to Mr. Johansson, are both sides ready to proceed?

10:25AM 5 MR. O'BRIEN: The Government is ready. Yes,
6 Your Honor.

7 MR. ROBINSON: Your Honor, we are, subject to our --
8 our motion to withdraw.

9 THE COURT: All right. Which -- which the Court
10:26AM 10 denies the motion to withdraw for the reasons set forth.

11 Mr. Exum.

12 MR. EXUM: Is the Court -- I mean, I filed some
13 documents on behalf of National Distribution.

14 THE COURT: Which I have read.

10:26AM 15 MR. EXUM: Right. Um --

16 THE COURT: But I'm not doing that sentencing at the
17 moment. I'm just doing the individual.

18 MR. EXUM: Oh, sorry, Your Honor. Sorry.

19 THE COURT: All right. Mr. Johansson, you may stand
10:26AM 20 with your counsel at the lectern.

21 All right. Has the Government complied with the
22 Crime Victims' Rights Act as to this proceeding?

23 MR. O'BRIEN: Yes, Your Honor.

24 THE COURT: Are there any victims who wish to
10:26AM 25 address the Court, other than in the form of the written

EXHIBIT - D

PSYCH EVALUATION

Paul J. Lane, Ph.D.
Clinical Psychology
California License PSY 6272
(310) 824-3500

3812 Sepulveda Blvd.
Suite 520
Torrance, California 90505

10921 Wilshire Blvd.
Suite 507
Los Angeles, California 90024

PSYCHOLOGICAL EVALUATION

<u>Name:</u>	Carl Bradley Johansson
<u>Date of Birth:</u>	September 25, 1958
<u>Age:</u>	64
<u>SSN:</u>	559-11-0771
<u>FBI No.:</u>	868226HB7
<u>USM No.:</u>	13791-112
<u>Docket No.:</u>	0973 5:18CR00114(B)-3; 0973 5:21CR00170-2
<u>Dates of Assessment:</u>	September 24, 2022; September 30, 2022; and October 17, 2022
<u>Date of Report:</u>	October 31, 2022

IDENTIFICATION AND REFERRAL INFORMATION:

Mr. Carl Bradley Johansson is a 64-year-old, married, Caucasian male who was referred for a psychological evaluation by his attorney, Mr. Edward Robinson, in order to evaluate his psychological condition, mental status, and amenability for treatment in reference to the defendant's consolidated plea agreement and future sentencing. Mr. Johansson is being charged with multiple federal felony accounts relating to conspiracy, welding without required certification, tax evasion, bank fraud committed while on pretrial release, and conspiracy to commit bank fraud committed while on pretrial release. Mr. Johansson previously was sentenced in 2000 for crimes relating to conspiracy to violate regulations prescribed by the hazardous materials Transportation Safety Act for the repair of cargo tanks used in the transportation of hazardous materials, repair of hazardous material cargo tank at an unregistered facility, and conspiracy to make false statements in matters within the jurisdiction of the Federal Highway Administration.

TESTING AND EVALUATION PROCEDURES:

Brief Neuropsychological Cognitive Examination (BNCE)
Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV)

Re: Carl Bradley Johansson

Page 2
October 31, 2022

Test of Premorbid Functioning (TOPF)
California Verbal Learning Test-Third Edition (CVLT-3)
Rey Auditory-Verbal Learning Test
Advanced Clinical Solutions Word Choice/Effort Measure
Personality Assessment Inventory (PAI)
Miller Forensic Assessment of Symptoms Test (M-FAST)
Bipolar Spectrum Diagnostic Scale (BSDS)
Beck Depression Inventory-II (BDI-II)
Trauma Symptom Inventory-2 (TSI-2)
Mental Status Examination
Comprehensive Clinical Interviews
Collateral Interview
Review of Records

REVIEW OF RECORDS:

Prior to the preparation of this report, I reviewed the following documents:

1. Consolidated Plea Agreement for defendant Carl Bradley Johansson dated August 13, 2021.
2. Reporters' Transcript of Proceedings Change of Plea Hearing in the matter of United States of America vs. Carl Bradley Johansson dated September 29, 2021.
3. Sentencing letter dated March 30, 2022, addressed to Honorable Virginia Phillips, Senior United States District Judge, from Ms. Eunice Habig, U.S. Probation Officer, and Ms. Natasha Alexander-Mingo, Chief Probation and Pretrial Services Officer.
4. Presentence Investigation Report (Docket No.: 0973 5:18CR00114(B)-3; 0973 5:21CR00170-2) dated April 4, 2022, in the matter of United States of America vs. Carl Bradley Johansson, and prepared by Ms. Eunice Habig, U.S. Probation Officer, and Ms. Natasha Alexander-Mingo, Chief Probation and Pretrial Services Officer.

BACKGROUND INFORMATION:

Mr. Johansson reported that he has been consistently employed throughout his life beginning at the age of 9 when he began delivering newspapers. He worked

Re: Carl Bradley Johansson

Page 3
October 31, 2022

throughout high school, college, and graduate school. After working for several major corporations, Mr. Johansson began his own fuel distribution business around 1984 and carried on in this industry until the time of his arrest on July 8, 2021, when he was remanded to federal custody. On September 29, 2021, Mr. Johansson pled guilty, as per a consolidated plea agreement, to multiple federal felonies including conspiracy, welding without inquiring certification, tax evasion, bank fraud committed while on pretrial release, and conspiracy to commit bank fraud while on pretrial release. Although Mr. Johansson was sentenced in April of 2000 pertaining to three other federal felonies relating to his business, he does not have any prior criminal history and denied any history of juvenile delinquency, gang involvements, or violent conduct.

Since Mr. Johansson was arrested in July of 2021, he has struggled with the exacerbation of a pre-existing psychiatric condition (probable Bipolar II Disorder and claustrophobia which will be discussed in more detail later in this report). After his incarceration in solitary confinement as per coronavirus protocol and after his multiple prison location changes until September 2, 2021 (when he was transferred to the Metropolitan Detention Center in Los Angeles where he has been confined until the present time), Mr. Johansson's psychological and physical condition rapidly deteriorated. For example, on July 9, 2021, when in solitary confinement, Mr. Johansson experienced a high level of stress, extremely high blood pressure, and tachycardia. A nurse evaluated him and he was transported to the Western Medical Center for treatment. On August 13, 2021, during the prison transfer, Mr. Johnson was secured in a very confined space in the back of a U.S. Marshall Service van when he experienced respiratory distress, dehydration, marked anxiety and panic, and he eventually lost consciousness. The defendant was transported to Good Samaritan Hospital in Los Angeles. The evaluation revealed cardiac arrhythmia, significantly elevated blood pressure, dehydration, and he was eventually hospitalized. In addition to the aggravation of Mr. Johansson's multiple medical conditions (e.g., asthma, COPD, hypertension, migraine headaches, diplopia, vertigo, and atrial fibrillation), his mental health further declined. His depression primarily reflected itself in terms of low mood, hypersomnia, anhedonia, and marked weight loss (approximately 75 pounds), while his anxiety primarily manifested in phobic/panic symptoms. The probation officer's report acknowledges the defendant's multiple medical conditions, depression, anxiety, and history of claustrophobia. Furthermore, in the Reporter's Transcript of Proceedings Change of Plea Hearing dated September 29, 2021, the Court also recognized the defendant's depression and anxiety and noted that she would direct Mr. Johansson to be evaluated for any treatment for those conditions (to my knowledge such evaluation has not yet been conducted at the MDC within the last 13 months since the Change of Plea Hearing in September of 2021).

Re: Carl Bradley Johansson

Page 4
October 31, 2022

FAMILY HISTORY:

Mr. Johansson was born in the Southern California area and grew up primarily in Panorama City, Newhall, North Hollywood, and Mission Hills. He was a product of his biological parents who worked full-time when he was a child. His paternal grandmother primarily raised him within the family home and his grandfather died when Mr. Johansson was 9. Mr. Johansson's 87-year-old mother lives with one of his sisters. She had been an administrative secretary for different companies before she retired. In describing his mother, Mr. Johansson related: "She was a hard worker. She made sure that we were okay. I admired her for what she did and her work ethic. She was also a tough taskmaster." Mr. Johansson's father was a manager for a number of different insurance companies and he was always employed throughout the defendant's childhood. He died of a heart attack in 2004 at the age of 71. Mr. Johansson described his father in the following terms: "He also was a very hard worker. But he said he loved me only two or three times that I can remember. He was outgoing and played golf. He didn't spend a lot of time with me and only came to one or two of my football games. He was not a warm person."

As Mr. Johansson was growing up, he had a difficult time getting along with his parents. Although he did not witness any domestic violence between his parents, they often argued and he witnessed major altercations. Mr. Johansson denied any history of lying, stealing, or running away from home. His parents were strict and if he were out of line, he was hit with a belt, typically by his father. Mr. Johansson recalled being hit so hard that he sustained bruises, welts, and marks on his body. In addition, his mother would occasionally slap him or pull his hair. He acknowledged a history of emotional neglect and physical abuse. Mr. Johansson denied any childhood history of sexual abuse or molestation. No one in his family had troubles with the law. He believes that his father was probably an alcoholic, although he denied any other family history of drug abuse or alcohol problems.

Mr. Johansson was raised with two sisters in his family. His 65-year-old sister lives in Camarillo Valley while his younger 60-year-old sister lives in Temecula. He reportedly is close to both sisters. Mr. Johansson denied any family history of criminality and there was no history of any juvenile delinquency growing up.

MARITAL HISTORY:

Mr. Johansson married his wife, Kimberly, in 1990 after a two-year courtship. Kimberly filed for a separation in 1996 because the defendant "was never home

Re: Carl Bradley Johansson

Page 5
October 31, 2022

and driven by his work." After a brief separation, the couple began living together again and they have remained as a couple since 2003. Mr. Johansson admitted that he was a "workaholic" and he was outside the home working a minimum of six days per week. He and his wife have four children: two pairs of fraternal twins. His 27-year-old son, Carl, is employed by an electric car manufacturer as a financial analyst. He currently lives in Irvine. Mr. Johansson's other 27-year-old son, Bryce, is employed in the construction field in the plumbing and electrical areas. Both sons graduated from Orange Lutheran High School and Texas A&M University. The defendant's 24-year-old daughter, Anneliese, is employed by a major financial services company on the new projects design team. The defendant's 24-year-old son, Stefan, has been intermittently employed in the construction field. He has a history of ADHD, depression, and alcohol problems. Both Stefan and Anneliese are currently living with their mother in Newport Beach. In discussing Stefan's situation with Mr. Johansson, he noted: "I feel guilty all the time not getting him the help he needed and I was so busy with other things."

RELATIONSHIP AND SEXUAL HISTORY:

In the psychosexual area, Mr. Johansson identified himself as being heterosexual in orientation. He has never had any homosexual encounters or relationships. He has never engaged in the paraphilias and he has never had any history of illegal sexual boundary transgressions. Furthermore, Mr. Johansson has never been in trouble with the law because of his sexual behavior. He had several relationships prior to meeting his wife in 1988. However, he does not have any history of prior marriages and he does not have any other children from previous relationships.

EDUCATIONAL HISTORY:

Mr. Johansson generally enjoyed elementary school and high school. He did not find school to be boring and he never had any significant difficulties paying attention or focusing. He denied any history of learning disabilities. When asked about how his teachers would have described him, Mr. Johansson stated: "They'd say that I was rambunctious. That I was outgoing and well liked." He recalled being very active as a child, particularly in elementary school. In high school, he struggled with chemistry and high level mathematics. Nevertheless, he maintained a GPA of 3.2 and graduated from John F. Kennedy High School in Granada Hills in 1976. Mr. Johansson never had to repeat a grade in school and he generally would get along with his classmates. Although he had many close

Re: Carl Bradley Johansson

Page 6
October 31, 2022

friends, he recalled having several physical fights in middle school when he was more talkative and active in his behavior. He recalled being suspended on one occasion in high school for leaving campus early. He has never been expelled, and denied any problems in school such as disturbing the class, cheating, stealing, or being intoxicated at school. Mr. Johansson played football as a safety in high school from the tenth through the twelfth grades.

Following high school, Mr. Johansson went to community college at the College of the Canyons in Santa Clarita for approximately 18 months before transferring to UCLA. He graduated from UCLA in 1980 with a GPA of 3.2 and a B.A. degree in economics and political science. From 1980 to 1982, Mr. Johansson completed an M.A. degree at St. John's University in financial risk management. He apparently was the valedictorian of his class and graduated in 1982 with a GPA of 3.98.

OCCUPATIONAL HISTORY:

Mr. Johansson had a newspaper route from the age of 9 to 12. He then sold flowers on a freeway offramp for about two years and then was a dishwasher for another two years during his early years of high school. From the age of 16 to 18, Mr. Johansson was employed at a Shell gas station pumping fuel and performing light maintenance tasks. While attending college, Mr. Johansson was employed on a full-time basis at a Shell distribution plant driving delivery trucks and working in a warehouse loading up trucks. From 1980 to 1983, Mr. Johansson was employed on a full-time basis at Continental Corporation. He performed financial analytic tasks for the company which paid for his graduate school education. In 1983, he began working (for approximately one year) for Safeco Insurance Company in the marketing department. After this job, Mr. Johansson talked with his former boss at the Shell distribution plant and decided to buy his own truck in order to deliver diesel fuel to commercial customers. In this position, from 1984 to 1995, he reportedly worked seven days per week in the fuel distribution business as he developed his own company. Since 1995, Mr. Johansson has expanded his business and helped develop several other companies all generally in the fuel distribution business. He has never had any sustained periods of unemployment and has consistently worked throughout his life.

MILITARY SERVICE HISTORY:

Mr. Johansson does not have any military service history.

Re: Carl Bradley Johansson

Page 7
October 31, 2022

LEGAL/CRIMINAL HISTORY:

Please review the records and particularly the Presentence Investigation Report dated April 4, 2022, for a more detailed summary of Mr. Johansson's criminal background pertaining to the instant offenses and his criminal history prior to the instant offenses.

MEDICAL HISTORY:

Mr. Johansson was diagnosed with asthma at the age of 10 and he regularly uses inhalers for this condition. He was also diagnosed with COPD approximately four years ago. He was hit by a car at the age of 11 and suffered major back injuries for which he was hospitalized for approximately three days. He has been wearing glasses since the age of 16 and as an adult, Mr. Johansson has suffered from diplopia (double vision) which requires special lenses. Approximately 10 years ago, Mr. Johansson was diagnosed with migraine headaches which now occur approximately two times per month. Around the same time, he was diagnosed with vertigo which he continues to experience intermittently. About eight years ago, Mr. Johansson had a severe bout of pneumonia which damaged tissue in his lungs. Over the years, he has had multiple "skin cancer spots" removed from his chest and back (on one occasion, the cancer type was a melanoma). About seven years ago, Mr. Johansson was diagnosed with high blood pressure and high cholesterol for which he takes Losartan, Metoprolol, and Simvastatin. More seriously, Mr. Johansson was diagnosed with atrial fibrillation about three years ago and he takes some type of medication for this condition as well. It should be noted that Mr. Johansson's previous periods of solitary confinement significantly exacerbated his medical conditions as well as his history of claustrophobia. Currently, he does not engage in any behaviors which might adversely impact his physical health.

SUBSTANCE USE HISTORY:

Mr. Johansson first used alcohol in high school after football games. However, he rarely used alcohol throughout his college years. As an adult, he would normally drink a glass of wine about 3 to 4 nights per week. However, he did have other periods throughout his adult life when he used alcohol excessively in order to manage his underlying mood states. For example, during a time when he was separated from his wife in the early 2000s, he was "extremely depressed" and would regularly drink a full bottle of wine each day and then "pass out." He

Re: Carl Bradley Johansson

Page 8
October 31, 2022

noted: "I just didn't want to be awake. I was also upset when separated from my wife in the mid-1990s and it was the same." Mr. Johansson talked about how various family members and close friends have died over the years during which time he would use alcohol to cope with his depression. Mr. Johansson reported: "I pushed the losses out of my memories...if I didn't want to deal with it, I'd just guzzle alcohol to deal with it and then work and then drink and then repeat again."

Mr. Johansson first tried marijuana on two occasions in college. However, he never used cannabis on a regular basis and he does not have any other history of illicit drug experimentation. He has never had any history of drug abuse and he has never been involved in any alcohol or drug rehabilitation programs.

PSYCHIATRIC HISTORY:

Mr. Johansson reported a traumatic event that occurred when he was around 7 or 8 years old when his parents left him in the custody of an alcoholic uncle for four days when they were out of town. Apparently this uncle had a difficult time dealing with Mr. Johansson's activity level and told him not to make any noise around the house. Because the defendant "acted up," the uncle locked him in a closet in the basement for three days with no light and only limited food supplies. Since that event, Mr. Johansson developed phobic anxiety to enclosed spaces and aversion to taking elevators, traveling in small cars, airplanes, and mazes. Any time his movement is constrained, this triggers phobic anxiety and physical symptoms relating to tachycardia and hyperventilation. Mr. Johansson never disclosed the trauma he incurred as a child to his parents. He reported: "I wouldn't have seen a therapist as a child because of fears of embarrassment and it just wasn't done in my family. I thought about it, but you didn't admit to weaknesses or flaws and I was raised to be stoic." Nevertheless, in his mid-20s, Mr. Johansson did consult a psychologist in Van Nuys for his claustrophobia. He saw the psychologist for about one year and received some behavioral therapy. He never told anyone that he needed treatment and never told anybody about the situation with his uncle. Although he found the therapy to be helpful, Mr. Johansson still suffers from memories of the trauma and his claustrophobia never was completely resolved. Mr. Johansson denied any previous history of psychiatric hospitalizations and he has never consulted a psychiatrist for a psychotropic medication evaluation. Nevertheless, he reported a long history of mood instability and a "driven nature" to the degree that Mr. Johansson was always "on the go" and would often experience periods of "massive energy." Although he did not report any clearcut history of manic episodes, he reported a history of hypomanic behavior characterized by high energy, flight of ideas, fitful

Re: Carl Bradley Johansson

Page 9
October 31, 2022

sleep patterns, and poor social judgment. His primary coping strategies when he experienced a hypomanic or depressive episode was to use avoidance, alcohol, or he would lose himself in working an excessive amount of hours.

COLLATERAL INTERVIEW:

I had the opportunity to speak to Mr. Johansson's wife, Kimberly, on October 17, 2022. Mr. Johansson's 57-year-old wife confirmed his history of claustrophobia and noted that he "always wants to be in open spaces in restaurants and at work and always takes the stairs and no elevators." She acknowledged his family history and that his father was "very strict and stern." Kimberly confirmed Mr. Johansson's educational history and his degrees from UCLA and St. John's University. She acknowledged periods of separation in marriage and how she filed for a structured separation in 1996 noting: "It was because he was never home and driven with his work. But we eventually began living together again." Regarding Mr. Johansson's medical problems, his wife validated his long-standing history of asthma, high blood pressure, eye problems with double vision, vertigo, and severe migraine headaches. According to her, the migraine headaches became increasingly severe to the degree that Mr. Johansson was often experiencing these headaches on a weekly basis while becoming nauseous and extremely sensitive to any light. She validated his history of severe insomnia for the last 25 years and how he was always "24/7" with work. Kimberly noted: "There were always issues and problems with work and it took away from any family time.... He had a very driven personality...he was very dedicated and loyal to the business and his employees. He would never say no to his employees and always extended time and was always on the go." To her knowledge, he had never sought any psychiatric help and never took any medication for his psychological issues. She also noted: "He was very hypervigilant and highly anxious and depressed most of the time. When there were multiple transfers with the confinement, it was very traumatic in light of his history." In addition, Mr. Johansson's wife stated that the defendant would drink wine daily to cope with his migraine headache pain and to try to help with sleep and his overall stress level.

MENTAL STATUS EXAMINATION:

Mr. Carl Bradley Johansson is a 64-year-old, married, Caucasian male who looked his stated age and presented himself in an articulate, composed, and quite loquacious manner. He was cooperative and forthcoming with information and rapport was easy to establish. The defendant was socially appropriate and

Re: Carl Bradley Johansson

Page 10
October 31, 2022

he did not show any unusual or idiosyncratic social mannerisms. There were no noticeable gait or ambulation problems, and there were no disturbances in the quality and form of Mr. Johansson's speech and language (e.g., phonology, syntax, semantics, and pragmatics). He did not show any signs of dysarthria, dysfluency, or dysnomia. His speech was occasionally accelerated and quite tense. He was alert with intact registration and he was oriented in all four spheres. He completed the serial 7s task, when he was asked to count backward from 100 by 7s, fluently and efficiently with no errors. Although occasionally inattentive, Mr. Johansson did not show any major concentration problems. Furthermore, he did not evidence any major short-term or long-term memory deficits. His associations were tight and the flow of his thought processes was coherent. Mr. Johansson did not show any hallucinations or delusions, and he denied any history of psychotic symptoms. The defendant denied suicidal and homicidal ideation, and he denied any history of suicide attempts. His mood was depressed and occasionally irritable, but there were no major signs of affective lability.

Mr. Johansson's clinical history was consistent with periodic hypomanic episodes, lack of consistent sleep, and workaholic lifestyle. He stated: "My wife was upset that I was married to the business. I was constantly on the road traveling when we had 42 locations. I was always on the go and always going 100 miles per hour...I've not had a nap in 40 years and no lunches. I was very hyper with work and I always pushed myself over the Holidays, but I would collapse from the exhaustion because of all the Christmas get-togethers with all the employees." Mr. Johansson reported a difficult time sleeping over the course of the last 25 years when he only had about 3 to 4 hours of sleep per night. He also talked about having "massive energy" periods when he would just go non-stop. Yet he would occasionally "crash" when he would abuse alcohol to mask his depression. Underlying his periods of hyperactivity was the feeling that he did not measure up. He flatly stated: "I was always trying to get my father's approval. I was never good enough and it haunted me...I was always chasing affirmations throughout my life." In addition to the defendant's mood-related problems, he has a history of claustrophobia and associated phobic anxiety whenever he is in enclosed spaces or confined. The defendant recalled: "The periods of solitary confinement destroyed me. I was suffering from vertigo and I was disoriented and physically ill. When the other side (the prosecution) and the attorneys pressured me, I caved and signed that plea agreement." Although the judge in Mr. Johansson's case acknowledged his anxiety and depression and indicated that he was going to direct that he be evaluated for treatment, he still has not received any evaluation for treatment since his incarceration. In addition to Mr. Johansson's current depressed mood, he complained of a decreased appetite and has lost approximately 75 pounds since his incarceration. His

Re: Carl Bradley Johansson

Page 11
October 31, 2022

energy level is markedly decreased and his depression is accompanied by anhedonia and hypersomnia. Nevertheless, Mr. Johansson's reality testing was intact and there were no signs of any psychotic decompensation.

SUMMARY OF TEST RESULTS:

On the Brief Neuropsychological Cognitive Examination (BNCE), Mr. Johansson obtained a raw score of 30, which was consistent with individuals who do not have any major psychological deficits. During this screening test, the defendant's memory, gnosis, praxis, language, orientation, attention and executive functions were assessed. In short, he did not show any deficits in more conventional types of information processing tasks and in less conventional executive functioning types of information processing tasks. More specifically, he did not show any aphasia, agnosia, apraxia or dyspraxia, amnesia, attentional, or executive functioning deficits. In addition, Mr. Johansson denied any history of head trauma, neurological problems or learning disabilities which might be factors involved in the instant offenses.

In order to obtain a comprehensive measure of Mr. Johansson's overall cognitive functioning, the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) was administered. On the WAIS-IV cognitive testing, the defendant obtained the following results:

<u>Subtests</u>	<u>Scaled Scores</u>
Similarities	16
Vocabulary	17
Information	13
Block Design	11
Matrix Reasoning	15
Visual Puzzles	17
Digit Span	9
Arithmetic	11
Letter-Number Sequencing	14
Symbol Search	9
Coding	13

(The mean of the above scaled scores is 10 with a standard deviation of 3)

FSIQ = 121
VCI = 132

Re: Carl Bradley Johansson

Page 12
October 31, 2022

PRI = 125
WMI = 100
PSI = 105

On the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), Mr. Johansson obtained a Full Scale I.Q. of 121, which indicated that he is functioning within the superior range of intelligence. His overall Full Scale I.Q. of 121 further indicated that he is functioning at a higher level than 92% of his same age peers. It should be noted that test scores fluctuate on different occasions because of a variety of factors and, therefore, the defendant's score should not be considered absolutely fixed; nevertheless, there is a 95% probability that his true Full Scale I.Q. falls between 117 and 125. If one considers the defendant's best performance across the four major index scores (the VCI, PRI, WMI, and PSI), then it could be estimated that his premorbid level of intelligence was at least within the very superior range, not that dissimilar to his current Full Scale I.Q. This analysis is further supported by the defendant's standard score of 122 on the Test of Premorbid Functioning (TOPF) from the Advanced Clinical Solutions test battery.

There was only a 7 point discrepancy between the defendant's Verbal Comprehension Index (VCI) and his Perceptual Reasoning Index (PRI), indicating that his verbal/conceptualization abilities are about equally developed compared to his nonverbal/perceptual-organizational reasoning abilities. This discrepancy is not statistically significant and not all that dissimilar from many test subjects.

Confidence intervals were calculated for the Full Scale I.Q. as well as the four factor (index) scales. In terms of the defendant's Full Scale I.Q. of 121, as mentioned earlier, we can be 95% confident that his true overall I.Q. score is in the range between 117 and 125. On the VCI, Mr. Johansson obtained an index of 132 with a percentile rank of 98. We can be 95% confident that his true score falls between 125 and 136. On the PRI, Mr. Johansson obtained an index of 125 and a percentile rank of 95. We can be 95% confident that his true score falls between 118 and 130. On the Working Memory Index (WMI), Mr. Johansson obtained an index of 100 and a percentile rank of 50. We can be 95% confident that his true score lies between 93 and 107. In addition, on the Processing Speed Index (PSI), the defendant obtained an index score of 105 and a percentile rank of 63. We can be 95% confident that his true PSI falls between 96 and 113.

Re: Carl Bradley Johansson

Page 13
October 31, 2022

While Mr. Johansson scored within the very superior range in the verbal-conceptualization/comprehension area, his perceptual reasoning and general nonverbal abilities were just about commensurate. However, his performance on the WMI was 32 points lower than his VCI score. This disparity was statistically significant and indicated that only 1% of individuals within this age range had a difference of 32 points or greater. The WMI measures an individual's ability to immediately attend to verbally presented information in the auditory modality, to process that information in memory while performing another mental operation, and then to articulate a response. It should be noted that strengths in working memory may facilitate the acquisition of new information; conversely, a weakness in working memory can inhibit learning and is common among individuals who are experiencing inattentiveness and/or major depression. Although Mr. Johansson's WMI score does not represent a deficit in absolute terms, the pattern of testing data suggested that his lower WMI in contrast to his VCI represented a relative weakness and might present some challenges for Mr. Johansson in processing information when he is laboring under stressful circumstances. Furthermore, Mr. Johansson obtained a significantly lower score on the PSI, which reflects the cognitive speed with which an individual can process simple or routine information without making errors, in contrast to his PRI. Again, although Mr. Johansson's performance does not represent a deficit, he may have some minor challenges quickly applying his cognitive aptitude and high level verbal and nonverbal abilities in day to day situations requiring social judgment and critical thinking. Nevertheless, one of Mr. Johansson's highest scaled scores was on the Vocabulary subtest (scaled score was 17 with a percentile rank of 99); this finding was consistent with the defendant's higher education and relatively higher performance on the VCI compared to his other composite scores.

On the California Verbal Learning Test-Third Edition (CVLT-3), which measures an individual's ability to learn and remember as well as to recall new verbal information, Mr. Johansson did not show any significant deficits in terms of his immediate recall and delayed recall memory abilities. In fact, on the Trials 1-5 Correct Index Score measure, the defendant obtained an Index score of 127 which was commensurate with his premorbid level of intellectual functioning and his current VCI on the WAIS-IV. Mr. Johansson did not show significant problems with delayed recall and he did not produce any intrusion and very minimal repetition errors. There were no indications whatsoever that Mr. Johansson tried to exaggerate any memory problems on this test. In fact, on the Forced Choice Recognition Trial, the defendant obtained a perfect score, suggesting that there were no issues with respect to performance validity and the defendant's exerted effort.

Re: Carl Bradley Johansson

Page 14
October 31, 2022

To further evaluate the defendant's auditory short-term memory functioning and his retrieval capacity, the Rey Auditory-Verbal Learning Test was administered. On this task, Mr. Johansson was presented with a 15 word list over the course of five different trials in order to measure a learning curve. After the presentation of the five trials, a different word list (interference task) was presented and he was then asked to recall as many words as he could from the original learning list. In addition, after a 20-minute delay, the defendant's delayed recall memory and his recognition memory were assessed. On this task, the defendant showed a fairly normal stepwise learning curve. At the end of the five trials with the original learning list, he was able to recall 13 out of the 15 words. After the presentation of the interference task, Mr. Johansson was still able to recall 12 out of the 15 words from the original learning list, while the average for men in his age group is approximately 7.0. On the delayed recall task, Mr. Johansson was able to recall 12 out of the 15 words. When his recognition memory was tested, he was able to recall 15 out of the 15 original words presented to him and he was able to recall 3 out of the 15 words from the interference task that had been presented previously (the average for men in his age group is 3.9). In general, the test results did not suggest that Mr. Johansson has any major encoding or retrieval deficits in the verbal modality.

Using the Advanced Clinical Solutions battery, the Word Choice subtest was administered in order to provide a measure of whether the defendant may have been engaging in exerting suboptimal effort. Mr. Johansson obtained a perfect score on the Word Choice subtest, suggesting that he did not put forward a suboptimal effort during the testing.

On the Personality Assessment Inventory (PAI), Mr. Johansson attended to the test items appropriately and responded consistently to the content of the items. The degree to which response styles may have distorted the defendant's reporting of symptomatology on the inventory was assessed. Regarding positive impression management, the results suggested that he may tend to present himself in a consistently favorable light and, consistent with his family upbringing, he may not admit to certain common shortcomings to which most individuals might more readily endorse. He may tend to minimize his problems and "keep a stiff upper lip." Regarding negative impression management, there was no evidence to suggest that Mr. Johansson attempted to portray himself in a more negative or pathological light than the clinical picture would warrant. Nevertheless, despite his difficulties acknowledging personal limitations, he did report a number of physical signs associated with depression, frequent physical complaints, preoccupation with physical functioning, physical symptoms associated with anxiety, compulsive rigidity, feelings of helplessness, and the impact of traumatic events.

Re: Carl Bradley Johansson

Page 15
October 31, 2022

In terms of the clinical profile analysis, Mr. Johansson clearly is preoccupied with his physical functioning in light of his multiple medical conditions. It is highly likely that his daily functioning has been compromised by one or more physical problems. Although Mr. Johansson also reported difficulties with depressive symptomatology, the PAI Clinical Interpretive Report noted no significant problems in the following areas: antisocial behavior, problems with empathy, undue suspiciousness or hostility, unusual thoughts or peculiar experiences, extreme moodiness and impulsivity, and problematic behaviors used to manage anxiety. In addition, Mr. Johansson did not report any significant problems with alcohol or drug abuse or dependency. The test results showed that the defendant's self-concept is relatively stable and his interpersonal style would tend to be amiable and extraverted. He would try to communicate a positive picture in the presence of others and would likely show his interest in others in a straightforward and open manner. The defendant reported experiencing periodic, but transient thoughts of self-harm likely due to his concerns about his prospects for the future. It is highly unlikely that he would be a danger to others. In terms of anger management, the defendant would tend to be unassertive and may have some difficulty in appropriately expressing his anger.

With respect to critical item endorsement on the PAI, the defendant responded to the following statements on the test in the indicated manner:

"I have no trouble falling asleep." (False)

"I keep reliving something horrible that happened to me." (True)

"I've been troubled by memories of a bad experience for a long time." (True)

The Miller Forensic Assessment of Symptoms Test (M-FAST) was administered in order to assess and rule out the possibility of any malingered psychopathology in light of the forensic context of the psychological evaluation. Mr. Johansson's total score of 1 on the M-FAST was significantly below the cutoff score of 6. Thus, his total score of 1 indicated that there is a high probability that this defendant is not a malingerer and that he can be correctly classified as someone who is authentically reporting his symptoms.

On the Bipolar Spectrum Diagnostic Scale (BSDS), Mr. Johansson obtained a raw score of 13, indicating a moderate probability that he has some type of a Bipolar Disorder. Furthermore, his wife's discussion of the defendant's history also suggested symptoms associated with Bipolar II Disorder.

Re: Carl Bradley Johansson

Page 16
October 31, 2022

On the Beck Depression Inventory-II (BDI-II), Mr. Johansson obtained a raw score of 34, which placed him within the severe range along the continuum of major depression. He endorsed such items as:

- "I feel sad much of the time."
- "I feel more discouraged about my future than I used to be."
- "I have failed more than I should have."
- "I can't get any pleasure from the things I used to enjoy."
- "I feel guilty over many things I have done or should have done."
- "I criticize myself for all of my faults."
- "I cry more than I used to."
- "I feel so restless or agitated that it's hard to stay still."
- "I have lost most of my interest in other people or things."
- "I find it more difficult to make decisions than usual."
- "I have less energy than I used to have."
- "I am more irritable than usual."
- "I have no appetite at all."
- "I am too tired or fatigued to do a lot of the things I used to do."

On the Trauma Symptom Inventory-2 (TSI-2), Mr. Johansson obtained a valid profile. In general, he showed a preoccupation with somatic symptoms (either for psychological reasons or as a result of preoccupation with actual physical disease, dysfunction, or pain). In addition, he obtained elevations on the anxiety scales and on the IE (Intrusive Experiences) clinical scale, which reflected an endorsement of intrusive post-traumatic reactions and symptoms. It is likely that Mr. Johansson may have repetitive thoughts intruding into awareness with accompanying dysphoria. He would attempt to suppress the unwanted thoughts/memories which, in the past, was accomplished by excessive work and alcohol abuse. He would engage in defensive avoidance to regulate his level of stress and autonomic hyperarousal. Furthermore, Mr. Johansson scored within the 95th percentile on a measure of depression.

CONCLUSIONS AND RECOMMENDATIONS:

Mr. Carl Bradley Johansson is a 64-year-old, married, Caucasian male who was seen for a psychological evaluation at the request of his attorney, Mr. Edward Robinson. My clinical assessment and interviews documented that Mr. Johansson likely has a history of Bipolar II Disorder, hypomanic type, as well as a Phobic Disorder (claustrophobia) with post-traumatic sequelae and intermittent alcohol abuse. However, currently, Mr. Johansson is suffering from a Bipolar II

Re: Carl Bradley Johansson

Page 17
October 31, 2022

Disorder, depressed type, along with claustrophobia and associated high levels of anxiety with intermittent panic attacks. He fulfills the criteria for a Major Depressive Disorder (as evidenced by the current psychological testing as well as the defendant's current anhedonia, severe sleep problems, and marked weight loss of 75 pounds). Furthermore, the defendant's level of psychological stress, compounded by the periods of solitary confinement since his incarceration and the two hospitalizations in 2021 before he consented to the current plea agreement, exacerbated his medical problems (most notably his high blood pressure, vertigo, migraine headaches, asthma, and tachycardia).

Based on my review of the records and the current psychological evaluation, there was no evidence to suggest that Mr. Johansson was malingering. While he does not suffer from any major neuropsychological deficits, it is likely that his psychological condition played a role in his poor judgment and criminal behavior in the past. His previously undiagnosed psychiatric conditions are quite treatable with psychotropic medication and evidence-based cognitive behavioral psychological treatment. If this defendant receives appropriate treatment in the future, the likelihood of recidivism will be significantly reduced while it is also highly unlikely that Mr. Johansson would return to his previous business enterprises. It is also my opinion that Mr. Johansson's psychiatric conditions rapidly deteriorated since his arrest and recent period of incarceration and periods of solitary confinement since July of 2021. His sense of isolation, claustrophobia, depression, and documented medical conditions were all aggravated and left him more vulnerable, especially during the time leading up to when Mr. Johansson appeared for his change of plea hearing on September 29, 2021.

Should you need any additional information regarding Mr. Johansson's psychological evaluation, please contact me at (310) 824-3500 or e-mail me at: pjlanephd@gmail.com.

Sincerely,

Paul J. Lane, Ph.D.

Paul J. Lane, Ph.D.
Clinical Psychologist

PJL:dl

EXHIBIT - E

GOVERNMENT OPPOSITION TO PLEA WITHDRAWAL

1 E. MARTIN ESTRADA
United States Attorney
2 SCOTT M. GARRINGER
Assistant United States Attorney
3 Chief, Criminal Division
MATTHEW W. O'BRIEN (Cal. Bar No. 261568)
4 Assistant United States Attorney
Environmental and Community Safety Crimes Section
5 1300 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-8644
7 Facsimile: (213) 894-0141
E-mail: Matthew.O'Brien@usdoj.gov
8

Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 NATIONAL DISTRIBUTION SERVICES,
INC.,

16 aka "NDSI,"

WHOLESALE DISTRIBUTION, INC.,

17 dba "Quality Services,"

CARL BRADLEY JOHANSSON,

18 aka "Brad Johnson,"

aka "Carl Johnson,"

19 aka "C. Brad Johanson,"

aka "Keith Golatta,"

20 ENRIQUE GARCIA,

aka "Henry Garcia," and

21 DONALD CAMERON SPICER,

22 Defendants.
23

CR No. 5:18-00114(B)-VAP

GOVERNMENT'S OPPOSITION TO
DEFENDANTS CARL BRADLEY
JOHANSSON'S AND NATIONAL
DISTRIBUTION SERVICES, INC.'S
MOTION TO WITHDRAW GUILTY PLEAS

Hearing Date: November 28, 2022

Trial Time: 10:00 a.m.

Location: Courtroom of the
Hon. Virginia A.
Phillips

24 Plaintiff United States of America, by and through its counsel
25 of record, the United States Attorney for the Central District of
26 California and Assistant United States Attorney Matthew O'Brien,
27 hereby submits its opposition to the motion to withdraw guilty pleas
28

- 1 • Why, after the other tanker exploded on September 25, 2012,
2 did JOHANSSON tell investigators that a 55-gallon oil drum
3 had exploded, rather than his own tanker? (Id., ¶¶ 33, 34.)

4 There are many more such examples (particularly in JOHANSSON's
5 testimony in civil dispositions relating to the May 2014 explosion).
6 The government will not repeat them all here. The obvious point is
7 that an innocent man presumably would not go to such lengths to hide
8 the truth.

9 **C. The Withdrawal of JOHANSSON's Pleas Would Unfairly**
10 **Prejudice the Government, the Witnesses, and the Victims**

11 JOHANSSON claims that the withdrawal of two of his guilty pleas
12 fourteen months after he pled guilty would not prejudice the
13 government. (Motion at 4:6-20.) That is incorrect. The criminal
14 conduct JOHANSSON is now attempting to disavow happened between 2012
15 and 2014. Even though the recollections of the government's
16 witnesses have remained remarkably consistent over the years, it is
17 not fair to the government, the witnesses, and the victims to grant
18 JOHANSSON's request for a trial at this late juncture.

19 As the Court may recall, after six trial continuances, the
20 parties were ready to proceed to trial on February 11, 2020. After
21 all of the pre-trial filings had been completed, at the pretrial
22 conference on February 3, 2020, the Court informed the parties that
23 it had a scheduling conflict and offered to transfer the trial to an
24 available judge in Riverside, but defendants refused. The parties
25 then agreed to a short continuance, and then COVID-19 happened,
26 causing several more continuances.

27 When the government filed JOHANSSON's signed plea agreement on
28 August 12, 2021, trial was scheduled for September 14, 2021. The

1 delays in JOHANSSON's change-of-plea hearings resulted in one last
2 continuance, to January 18, 2022. Garcia, the last defendant
3 remaining, pled guilty on January 3, 2022. At that point the
4 government notified its dozens of witnesses around the country - most
5 of whom had been served with multiple trial subpoenas during this
6 prosecution due to the various continuances, and many of whom had
7 made travel plans for multiple trial dates - that all of the
8 defendants had pled guilty and there would be no trial.

9 JOHANSSON's request to withdraw his pleas would cause
10 significant prejudice to the government if granted. Memories fade
11 eight to ten years after an event. It is not fair to witnesses and
12 victims to set another trial date (for the twelfth time). And it is
13 inevitable that defense counsel would ask for additional trial
14 continuances to get up to speed on the nearly one million pages of
15 the discovery and the hundreds of hours of surveillance footage
16 (which, based on the claims in the motion, it is unclear whether the
17 defense team has reviewed).

18 The prejudice that JOHANSSON's latest gambit would create is
19 exactly why courts rarely grant such motions at this late of a
20 juncture, absent far more compelling justifications. See, e.g.,
21 Barker, 514 F.2d at 222 ("A swift change of heart is itself strong
22 indication that the plea was entered in haste and confusion;
23 furthermore, withdrawal shortly after the event will rarely prejudice
24 the Government's legitimate interests. By contrast, if the defendant
25 has long delayed his withdrawal motion, and has had the full benefit
26 of competent counsel at all times, the reasons given to support
27 withdrawal must have considerably more force.").

1 **D. The Government Has Never Threatened JOHANSSON**

2 For the record, the government has never threatened JOHANSSON
3 with the indictment of his son, or the seizure of his sister's house.
4 The motion hints at such coercion but never makes such an accusation,
5 because it would be false. While it is obviously true that the
6 government agreed not to charge Western Distribution, LLC's other
7 officers, and not to pursue the forfeiture of JOHANSSON's sister's
8 house, as part of the plea agreement, that is a far cry from the
9 government telling a defendant "if you don't do x, we will do y."

10 JOHANSSON's claim that the inducements in Paragraphs 4(c) and
11 4(h) of his plea agreement rendered his pleas "involuntary" would, if
12 credited, provide a basis for almost any defendant to withdraw from
13 any plea agreement. (Motion at 2:4-10.) In every plea agreement,
14 the government makes certain promises to a defendant; that is the
15 benefit of a defendant's bargain. The idea that such promises may
16 then be thrown back in the government's face as a means to undo a
17 plea agreement on specious claims on involuntariness would turn the
18 process on its head.

19 **E. The Psychologist's Claim About JOHANSSON's Low Risk of**
20 **Recidivism Is Not Credible**

21 Finally, while it is more a sentencing issue, JOHANSSON's
22 preposterous claim about his low risk of recidivism merits a
23 response. On the last page of his report, the psychologist opines
24 that JOHANSSON's risk of recidivism is low and that "it is highly
25 unlikely that Mr. Johansson would return to his previous business
26 enterprises." (Motion, Exh. A at 17.) The psychologist cites no
27 factual or scientific support for this speculation, and the
28 government is aware of none.

EXHIBIT - F

DISTRICT COURT DENIAL OF PLEA WITHDRAWAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

v.

National Distribution Services, Inc.,

et al.,

Defendants.

Case No. 5:18-cr-00114-VAP

**Order DENYING Defendant
National Distribution Services,
Inc.'s Motion to Withdraw Guilty
Plea (Doc. No. 389) and
DENYING Carl Bradley
Johansson's Motion to
Withdraw Guilty Plea (Doc No.
390)**

On November 6, 2022, Defendants Carl Bradley Johansson ("Johansson") and National Distribution Services, Inc. ("National") (collectively, "Defendants") filed identical motions to withdraw their guilty pleas (the "Motions"). (Doc. Nos. 389, 390.) The Government opposed the Motions on November 12, 2022 ("Opp'n," Doc. No. 398), and Defendant replied on November 18, 2022 ("Reply," Doc. No. 400.)

After considering all the papers filed in support of, and in opposition to, the Motions, as well as the arguments advanced at the hearing, the Court DENIES the Motions.

1 persons for alleged criminal conduct and not to seek forfeiture of the
2 secured bond. (See Johansson's Plea Agreement at 6-7.)

3
4 Johansson's reliance on the promises made in his plea agreement
5 does not by itself render his plea involuntary. Indeed, the Government often
6 makes promises in plea agreements with the expectation that defendants
7 will rely on them, and Rule 11 permits such promises. See Fed. R. Crim. P.
8 11(b)(2) (requiring a court to determine that a plea "is voluntary and did not
9 result from force, threats, or promises (other than promises in a plea
10 agreement)"). Johansson's bare claim that he felt coerced by promises
11 made in his plea agreement does not overcome his "solemn declarations
12 made in open court," which carry a "strong presumption of verity." *Chizen v.*
13 *Hunter*, 809 F.2d 560, 562 (9th Cir. 1986); see also *Lott v. Prelesnik*, No.
14 1:08-CV-481, 2013 WL 4697464, at *10 (W.D. Mich. Aug. 30, 2013) ("In light
15 of Petitioner's plea colloquy and the testimony provided at the hearing on
16 Petitioner's motion to withdraw his plea, Petitioner's bare claim that his plea
17 was the result of coercion can hardly be said to overcome the presumption
18 of truthfulness which attaches to statements made during the plea
19 colloquy.").

20
21 Defendants also argue that Johansson's emotional state at his
22 change of plea hearing provides a fair and just reason for the withdrawal of
23 his guilty plea. They cite a psychiatric report from Dr. Lane stating that
24 "Johansson's psychiatric conditions rapidly deteriorated since his arrest" and
25 that "[h]is sense of isolation, claustrophobia, depression, and documented
26 medical conditions were all aggravated and left him more vulnerable,

1 especially during the time leading up to when Mr. Johansson appeared for
2 his change of plea hearing on September 29, 2021.” (Motions at 3.)
3

4 The report, however, does not suggest that Johansson was unable to
5 understand the nature of the charges against him or the consequences of
6 his guilty plea. The Court, having asked Johansson if he was able to think
7 clearly and understand the questions being asked of him, has no reason to
8 doubt Johansson's response in the affirmative. (Doc. No. 389-1 at 66-67.)
9 While the Court recognizes the severity of the mental and emotional stress
10 that may accompany any period of incarceration, the Court does not find
11 such stress to constitute a fair and just reason for withdrawing a guilty plea
12 that was otherwise entered knowingly, intelligently, and voluntarily.
13

14 Defendants finally allege various facts purporting to demonstrate their
15 innocence. (Motions at 5-6.) First, they claim that “Johansson was not at
16 the facility on the day of the incident” and that “[t]he work order for the tank
17 in question did not come from Johansson.” (*Id.* at 5.) Even if Johansson
18 was not present on the day of the repairs and did not submit a work order
19 for the repairs, however, Johansson admitted that on May 5, 2014, one day
20 before the explosion on May 6, 2014, he and a co-defendant “discussed
21 repairs that they intended for employees to conduct” on the relevant cargo
22 tank.² (Johansson's Plea Agreement at 28.) This provides the necessary
23

24 ² In their Reply, Defendants state that Johansson is prepared to testify that
25 he never ordered anyone to work on the cargo tank. (Reply at 1.) The Court
26 declines to accept Johansson's proposed testimony, especially when it di-
rectly contradicts the admissions he made at the Rule 11 hearing. See
United States v. Castello, 724 F.2d 813, 815 (9th Cir. 1984) (“The court was

EXHIBIT - G

NINTH CIRCUIT APPELLATE BRIEF

Nos. 22-50303, 22-50304
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
CARL BRADLEY JOHANSSON,)
)
Defendant-Appellant.)
_____)

APPELLANT'S OPENING BRIEF

Appeal from the United States District Court
for the Central District of California

Nos. 18-cr-00114-VAP-3; 21-cr-00170-VAP-2
Hon. Virginia A. Phillips, United States District Judge

Rachael A. Robinson (313991)
Edward M. Robinson (126244)
Law Office of Edward M. Robinson
21515 Hawthorne Boulevard, Suite
730 Torrance, CA 90502
Telephone: (310) 316-9333 Facsimile:
(310) 316-6442

Attorney for Defendant-Appellant
CARL BRADLEY JOHANSSON

involuntary, the proper inquiry was whether he had shown a fair and just reason for withdrawing his plea even if it was otherwise valid.”)

1. The District Court Misapplied the Law

Here, just as the court did in *Ortega-Ascanio*, the district court misapplied the law regarding withdrawal pre-sentencing. 376 F.3d at 885-86 (“‘fair and just reason’ must extend beyond a challenge to the validity of the plea.”) Instead of applying the “fair and just” standard to Mr. Johansson’s motion to withdraw, the district court incorrectly considered the validity of the plea agreement and determined that, because Mr. Johansson understood the nature of the charges and the consequences of pleading guilty, his plea agreement was valid and not subject to withdrawal. Such misapplication of the law was an abuse of discretion. *Id.*

In its order denying the motion to withdraw, the district court concluded that Mr. Johansson’s psychological report “does not suggest that Johansson was unable to understand the nature of the charge against him or the consequences of his guilty plea.” (1-ER-97.) Whether or not a defendant understands the nature of the charges and the consequences of his guilty plea goes strictly to the validity of that plea, not to the more permissive “fair and just” standard applied pre-sentencing. *Ortega-Ascanio*, 376 F.3d at 885-86. As the Ninth Circuit has long made clear, “a defendant need not prove that his plea was invalid in order to meet the “fair and just reason” standard to withdraw at this stage of the proceeding. *Id.*, 376 F.3d at

884 (*emphasis in original*) (“[w]hen a defendant moves to withdraw his plea is thus critical. If the defendant waits until his conviction is final, the district court cannot permit withdrawal and the plea can be set aside only ... if the plea is somehow invalid. If, on the other hand, the defendant moves for withdrawal prior to sentencing, the district court shall permit withdrawal if the defendant establishes a fair and just reason for doing so”); *see also United States v. Davis*, 428 F.3d 802, 806 (9th Cir. 2005).

Mr. Johansson moved to withdraw prior to sentencing, and he was not claiming that he did not understand the nature of the charges or the consequences of pleading guilty. Instead, Mr. Johansson’s position was that he was extremely vulnerable, clinically anxious and depressed, and that he was coerced by the threat of his son’s prosecution and the seizure of his sister and brother-in-law’s property when he entered the plea. (2-ER-144, Sealed ER-20-21.) As he stated, when entering his plea of guilty, he was “physically ill and despondent and traumatized.” (1-ER-49.) He had also had a near complete breakdown of communication with counsel when he was pressured into entering the plea. (2-ER-248-250.) The psychological evaluation and report obtained after he entered his plea supported his claim. (Sealed ER 20-21.)

As Dr. Lane concluded, Mr. Johansson’s “psychiatric conditions rapidly deteriorated since his arrest and recent period of incarceration ... his sense of