CLOSED,APPEAL

U.S. District Court
DISTRICT OF KANSAS (Wichita)
CRIMINAL DOCKET FOR CASE #: 6:21−cr−10073−EFM−1

Case title: USA v. Capps

Date Filed: 09/08/2021

Date Terminated: 05/12/2023

Assigned to: Chief District Judge Eric F. Melgren

Appeals court case numbers: 23−3095 10CCA, 24−3083 10CCA, 24−3204 10CCA, 25−3025 10CCA

Defendant (1)

Michael R. Capps
E−Filing & ECF Notifications
TERMINATED: 05/12/2023

represented by **Michael R. Capps**
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Bar Status:

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender or Community Defender Appointment
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Bar Status: ***Government Atty***

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TERMINATED: 05/30/2023
Designation: Retained
Bar Number: 15028
Bar Status: Active

Pending Counts	**Disposition**
18:1014 False statement to a bank for a PPP loan; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (1)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution
18:1344(2) Bank fraud−PPP loan; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (2)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution
18:1001(a) False statement to the SBA for EIDL loan 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (4−5)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution
18:1343 Wire fraud, SBA; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (7−8)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution
18:1343 Wire fraud, Kansas Department of Commerce; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (9−10)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution
18:1957 Money laundering; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (12−14)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution
18:1957 Money laundering; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (15)	Sentenced to 27 months imprisonment and 2 years supervised release on Cts. 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, & 15,each count running concurrently. $1200.00 special assessment fee. $318,647.21 restitution

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
18:1001(a) False statement to the SBA for EID loan 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (3)	Acquitted
18:1343 Wire fraud, SBA; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (6)	Acquitted
18:1343 Wire fraud, Sedgwick County; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (11)	Dismissed per the Order filed 12/13/2022.
18:1957 Money laundering; 18:2 Aiding and abetting (INDICTMENT 9/8/2021) (16−19)	Acquitted

Highest Offense Level (Terminated)

Felony

Complaints	**Disposition**
None	

Garnishee

Northwestern Mutual
Beneficiary & Title
720 E Wisconsin Ave
Milwaukee, WI 53202
TERMINATED: 09/07/2023

Garnishee

Ohio National Life Assurance Corporation
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Cincinnati, OH 45242
TERMINATED: 09/07/2023

Garnishee

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Garnishee

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Garnishee

Security 1st Title, LLC
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Claimant

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Movant

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Plaintiff

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Email All Attorneys
Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
09/08/2021	1	INDICTMENT as to Michael R. Capps (1) − counts 1−19. (sz) (Entered: 09/09/2021)
09/09/2021		SUMMONS ISSUED as to Michael R. Capps Initial Appearance set for 9/22/2021 at 01:30 PM by Zoom before Magistrate Judge Gwynne E. Birzer. (Pretrial form provided to USMS)(sz) (Entered: 09/09/2021)
09/10/2021	2	SUMMONS RETURNED EXECUTED on 9/10/2021 as to Michael R. Capps. (jk) (Entered: 09/10/2021)
09/21/2021	3	ENTRY OF APPEARANCE by attorney Kurt P. Kerns appearing for Michael R. Capps. (Kerns, Kurt) (Entered: 09/21/2021)

09/21/2021	4	CONSENT TO APPEAR BY VIDEO OR TELEPHONE CONFERENCE for initial appearance, arraignment and detention hearing as to Michael R. Capps. (Kerns, Kurt) Modified on 9/22/2021 to add additional hearings. (mam) (Entered: 09/21/2021)
09/22/2021	5	**(NOTE: Access to document is restricted pursuant to the courts privacy policy.)** NOTICE OF SURRENDERED PASSPORT as to Michael R. Capps. (Passport Number 640927769, issued by USA.) (mam) (Entered: 09/22/2021)
09/22/2021	6	MINUTE ENTRY for proceedings held before Magistrate Judge Gwynne E. Birzer: RULE 5/INITIAL APPEARANCE and ARRAIGNMENT as to Michael R. Capps held on 9/22/2021 by ZOOM, Count(s) 1,2,3,4−5,6−8,9−10,11,12−19. Due Process Protections Act advisement given. The Government adopted the recommendations of Pretrial Services for release on conditions. Defendant provided verbal consent for Zoom. Defendant's next appearance per the Scheduling Order of Judge Melgren. (Tape #1:31−1:41) (sz) (Entered: 09/23/2021)
09/22/2021	7	ORDER SETTING CONDITIONS OF RELEASE as to Michael R. Capps (1) − $25,000 unsecured bond. Signed by Magistrate Judge Gwynne E. Birzer on 9/22/2021. (sz) (Entered: 09/24/2021)
09/23/2021		ORDER as to Michael R. Capps − Pursuant to the Due Process Protections Act, the government is reminded of its obligations pursuant to Brady v. Maryland and its progeny to disclose material that is favorable to the defendant and material to defendants guilt or punishment. The failure to do so in a timely manner may include dismissal of the indictment or information, dismissal of individual charges, exclusion of government evidence or witnesses, or any other remedy that is just under the circumstances. Signed by Magistrate Judge Gwynne E. Birzer on 9/22/21. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (ala) (Entered: 09/23/2021)
09/24/2021	8	BOND POSTED as to Michael R. Capps. (sz) (Entered: 09/24/2021)
09/27/2021	9	PRETRIAL AND CRIMINAL CASE MANAGEMENT ORDER ENTERED: as to Michael R. Capps. Status Conference set for 11/8/2021 at 10:15 AM in Wichita Room 414 (EFM) before District Judge Eric F. Melgren. Jury Trial set for 11/23/2021 at 09:00 AM in Wichita Courtroom 408 (EFM) before District Judge Eric F. Melgren. Signed by District Judge Eric F. Melgren on 9/27/2021. (cm) (Entered: 09/27/2021)
10/27/2021	10	MOTION to Continue Status Conference and Jury Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 10/27/2021)
10/28/2021	11	ORDER TO CONTINUE granting 10 Motion to Continue. Speedy Trial time excluded from 11/23/2021 until 1/25/2022 as to Michael R. Capps (1). Status Conference set for 1/12/2022 at 08:45 AM in Wichita Room 414 (EFM) before District Judge Eric F. Melgren. Jury Trial set for 1/25/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before District Judge Eric F. Melgren. Signed by District Judge Eric F. Melgren on 10/28/2021. (sz) (Entered: 10/28/2021)
01/07/2022	12	MOTION to Continue Status Conference and Jury Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 01/07/2022)
01/10/2022	13	ORDER TO CONTINUE granting 12 Motion to Continue. Speedy Trial time excluded from 1/12/2022 until 3/29/2022 as to Michael R. Capps (1). Status

		Conference set for 3/14/2022 at 08:15 AM in Wichita Room 414 (EFM) before Chief District Judge Eric F. Melgren. Jury Trial set for 3/29/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 1/10/2022. (sz) (Entered: 01/10/2022)
03/02/2022	14	JOINT MOTION to Continue Status Conference and Jury Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 03/02/2022)
03/03/2022	15	ORDER TO CONTINUE granting 14 Motion to Continue. Speedy Trial time excluded from 3/14/2022 until 6/7/2022 as to Michael R. Capps (1). Status Conference set for 5/31/2022 at 10:00 AM in Wichita Room 414 (EFM) before Chief District Judge Eric F. Melgren. Jury Trial set for 6/7/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 3/3/2022. (sz) (Entered: 03/03/2022)
03/03/2022	16	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) Due to a conflict on the court's calendar, the Status Conference is reset for 6/1/2022 at 01:30 PM in Wichita Room 414 (EFM) before Chief District Judge Eric F. Melgren. (cm) (Entered: 03/03/2022)
05/04/2022	17	MOTION to Continue Status Conference and Jury Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 05/04/2022)
05/05/2022	18	ORDER TO CONTINUE granting 17 Motion to Continue. Speedy Trial Time excluded from 6/1/2022 until 8/16/2022 as to Michael R. Capps (1). Status Conference set for 8/5/2022 at 02:00 PM in Wichita Room 414 (EFM) before Chief District Judge Eric F. Melgren. Jury Trial set for 8/16/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 5/5/2022. (sz) (Entered: 05/05/2022)
07/08/2022	19	MOTION to Continue Status Conference and Jury Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 07/08/2022)
07/11/2022	20	MOTION to Continue Status Conference and Jury Trial by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 07/11/2022)
07/12/2022	21	ORDER TO CONTINUE granting 19 Motion to Continue as to Michael R. Capps (1); finding as moot 20 Motion to Continue as to Michael R. Capps (1). Status Conference set for 10/31/2022 at 09:45 AM in Wichita Room 414 (EFM) before Chief District Judge Eric F. Melgren. Jury Trial set for 11/15/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 7/12/2022. (sz) (Entered: 07/12/2022)
10/26/2022	22	MOTION in Limine by USA as to Michael R. Capps. (Attachments: # 1 Attachment 1, # 2 Attachment 2, # 3 Attachment 3, # 4 Attachment 4, # 5 Attachment 5, # 6 Attachment 6, # 7 Attachment 7, # 8 Attachment 8)(Metzger, Alan) (Entered: 10/26/2022)
10/26/2022	23	SEALED MOTION for Leave to File Under Seal Motion in Limine by USA as to Michael R. Capps. (Attachments: # 1 Proposed Sealed Document, # 2 Proposed Sealed Document Exhibit 10, # 3 Proposed Sealed Document Exhibit 15, # 4 Proposed Sealed Document Exhibit 23)(Metzger, Alan) (Entered: 10/26/2022)
10/27/2022	24	ORDER granting 23 Sealed Motion for Leave to File Under Seal. Counsel is directed to file forthwith the requested document(s) with an event from the SEALED

		DOCUMENTS category as to Michael R. Capps (1) Signed by Chief District Judge Eric F. Melgren on 10/27/2022. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 10/27/2022)
10/27/2022	25	SEALED MOTION in Limine by USA as to Michael R. Capps. (Attachments: # 1 Exhibit 10, # 2 Exhibit 15, # 3 Exhibit 23)(Metzger, Alan) (Entered: 10/27/2022)
10/28/2022	26	AMENDED MOTION in Limine by USA as to Michael R. Capps. (Attachments: # 1 Attachment 1, # 2 Attachment 2, # 3 Attachment 3, # 4 Attachment 4, # 5 Attachment 5, # 6 Attachment 6, # 7 Attachment 7, # 8 Attachment 8, # 9 Attachment 9)(Metzger, Alan) (Entered: 10/28/2022)
10/31/2022	27	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: STATUS CONFERENCE as to Michael R. Capps held on 10/31/2022. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 10/31/2022)
10/31/2022	28	MOTION to Continue Jury Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 10/31/2022)
10/31/2022	29	ORDER granting 28 Motion to Continue Jury Trial. Speedy trial time excluded from 11/15/2022 until 12/20/2022 as to Michael R. Capps (1). Jury Trial is reset for 12/20/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 10/31/2022. (mam) (Entered: 10/31/2022)
10/31/2022	30	ORDER as to Michael R. Capps re 26 Amended MOTION in Limine filed by USA. At the direction of Chief Judge Eric F. Melgren, defendant will file a response to the Amended Motion in Limine on or before 11/7/2022. Signed by Chief District Judge Eric F. Melgren on 10/31/2022. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 10/31/2022)
10/31/2022	31	ORDER granting in part and denying in part 25 Sealed Motion as to Michael R. Capps (1). Signed by Chief District Judge Eric F. Melgren on 10/31/2022. (ca) (Entered: 10/31/2022)
11/01/2022	32	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) Jury Trial set for 12/12/2022 at 09:00 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Jury Trial set for 12/14/2022, 12/15/2022, and 12/19/2022 at 08:30 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. (cm) (Entered: 11/01/2022)
11/17/2022	33	UNOPPOSED MOTION in Limine by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 11/17/2022)
11/17/2022	34	TRIAL ORDER estimated trial time 4 days as to Michael R. Capps. In Limine/Jury Instructions Conference set for 12/2/2022 at 01:30 PM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 11/17/2022. (cm) (Entered: 11/17/2022)
11/17/2022	35	ORDER granting 33 Motion in Limine as to Michael R. Capps (1). Exhibit 29 may be admitted into evidence during the trial of this matter without the necessity of a sponsoring/foundation witness. Signed by Chief District Judge Eric F. Melgren on 11/17/2022. (sz) (Entered: 11/17/2022)

11/28/2022	36	EXHIBIT LIST by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 11/28/2022)
11/28/2022	37	WITNESS LIST by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 11/28/2022)
11/29/2022	38	AMENDED EXHIBIT LIST by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 11/29/2022)
11/30/2022	39	PROPOSED JURY INSTRUCTIONS by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 11/30/2022)
11/30/2022	40	ENTRY OF APPEARANCE on behalf of USA by Molly M. Gordon. (Gordon, Molly) (Entered: 11/30/2022)
11/30/2022	41	PROPOSED JURY INSTRUCTIONS by Michael R. Capps. (Kerns, Kurt) (Entered: 11/30/2022)
11/30/2022	42	PROPOSED VOIR DIRE QUESTIONS by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 11/30/2022)
11/30/2022	43	EXHIBIT LIST by Michael R. Capps. (Kerns, Kurt) (Entered: 11/30/2022)
11/30/2022	44	WITNESS LIST by Michael R. Capps. (Kerns, Kurt) (Entered: 11/30/2022)
11/30/2022	45	PROPOSED VOIR DIRE QUESTIONS by Michael R. Capps. (Kerns, Kurt) (Entered: 11/30/2022)
12/02/2022	46	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: granting 26 Motion in Limine as to Michael R. Capps (1); finding as moot 22 Motion in Limine as to Michael R. Capps (1); PRETRIAL CONFERENCE as to Michael R. Capps held on 12/2/2022. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/02/2022)
12/05/2022	47	SUPPLEMENTAL PROPOSED JURY INSTRUCTION by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 12/05/2022)
12/05/2022	48	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) In Court/Jury Instructions Conference set for 12/9/2022 at 09:00 AM in Wichita Courtroom 408 (EFM)before Chief District Judge Eric F. Melgren. (cm) (Entered: 12/05/2022)
12/05/2022	49	AMENDED EXHIBIT LIST by Michael R. Capps. (Kerns, Kurt) (Entered: 12/05/2022)
12/06/2022	50	AMENDED WITNESS LIST by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 12/06/2022)
12/06/2022	51	SECOND SUPPLEMENTAL PROPOSED JURY INSTRUCTION by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 12/06/2022)
12/06/2022	52	PROPOSED FORFEITURE JURY INSTRUCTIONS by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 12/06/2022)
12/07/2022	53	MOTION in Limine to Bar Expert Testimony by Michael R. Capps. (Kerns, Kurt) (Entered: 12/07/2022)

12/07/2022	54	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) In Court/Jury Instructions Conference set for 12/9/2022 at 09:00 AM in Wichita Room 414 (EFM)before Chief District Judge Eric F. Melgren. NOTE: THIS IS A LOCATION CHANGE ONLY. (cm) (Entered: 12/07/2022)
12/08/2022	55	AMENDED WITNESS LIST by Michael R. Capps. (Kerns, Kurt) (Entered: 12/08/2022)
12/08/2022	56	RESPONSE TO MOTION by USA as to Michael R. Capps re 53 Motion in Limine to Bar Expert Testimony. (Metzger, Alan) (Entered: 12/08/2022)
12/09/2022	57	UNOPPOSED MOTION to Dismiss Count 11 by USA as to Michael R. Capps. (Metzger, Alan) (Entered: 12/09/2022)
12/09/2022	60	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: IN COURT/JURY INSTRUCTIONS CONFERENCE as to Michael R. Capps held on 12/9/2022. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/14/2022)
12/12/2022	58	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: JURY TRIAL as to Michael R. Capps held on 12/12/2022. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/12/2022)
12/13/2022	59	ORDER granting without prejudice 57 Unopposed Motion to Dismiss Count 11 as to Michael R. Capps (1). Signed by Chief District Judge Eric F. Melgren on 12/12/2022. (mam) (Entered: 12/13/2022)
12/14/2022	61	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: JURY TRIAL as to Michael R. Capps held on 12/14/2022. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/14/2022)
12/15/2022	62	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: JURY TRIAL as to Michael R. Capps held on 12/15/2022. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/15/2022)
12/18/2022	63	MOTION to Read Instructions to Jury at Close of Evidence by Michael R. Capps. (Kerns, Kurt) Modified on 12/19/2022 to re−title. (mam) (Entered: 12/18/2022)
12/19/2022	64	SECOND AMENDED EXHIBIT LIST by Michael R. Capps. (Kerns, Kurt) (Entered: 12/19/2022)
12/19/2022	65	ORDER denying, in open court, 63 Motion for Order as to Michael R. Capps (1) Signed by Chief District Judge Eric F. Melgren on 12/19/2022. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/19/2022)
12/19/2022	66	ORDER for Juror Lunch as to Michael R. Capps. Signed by Chief District Judge Eric F. Melgren on 12/19/2022. (cm) (Entered: 12/19/2022)
12/19/2022	67	TRANSCRIPT of Jury Trial, Excerpt of James Clendenin, held 12−14−22 as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson,

		316−315−4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Mr. Dion Lefler, Wichita Eagle. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter or PACER. Release of Transcript Restriction set for 3/20/2023. (jw) (Entered: 12/19/2022)
12/19/2022	68	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: JURY TRIAL as to Michael R. Capps held on 12/19/2022. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 12/19/2022)
12/19/2022	69	INSTRUCTIONS TO THE JURY as to Michael R. Capps. (sz) (Entered: 12/20/2022)
12/21/2022	70	QUESTIONS FROM THE JURY filed as to Michael R. Capps. (kas) (Entered: 12/21/2022)
12/21/2022	71	ORDER as to Michael R. Capps. Lunch ordered for jurors during deliberations. Signed by Chief District Judge Eric F. Melgren on 12/21/2022. (cm) (Entered: 12/21/2022)
12/21/2022	72	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: JURY TRIAL as to Michael R. Capps concluded on 12/21/2022. (Court Reporter Jo Wilkinson) (Attachments: # 1 Witness Sheet, # 2 Exhibit List Plaintiff's, # 3 Exhibit List Defendant's) (cm) (Entered: 12/22/2022)
12/21/2022	73	JURY VERDICT as to Michael R. Capps (1). Defendant found Guilty on Counts 1−2, 4−5, 7−10 and 12−15; Not Guilty on Counts 3, 6 and 16−19. (mam) (Additional attachment(s) added on 12/22/2022: # 1 Unredacted Verdict) (mam). (Entered: 12/22/2022)
12/21/2022	74	FORFEITURE INSTRUCTIONS TO THE JURY as to Michael R. Capps. Signed by District Judge Eric F. Melgren on 12/21/2022. (mam) (Entered: 12/22/2022)
12/21/2022	75	SPECIAL VERDICT FORM FOR FORFEITURE as to Michael R. Capps. (mam) (Additional attachment(s) added on 12/22/2022: # 1 Unredacted Special Verdict Form) (mam). (Entered: 12/22/2022)
12/27/2022	76	TRANSCRIPT of Excerpt of Jury Trial, Defense Opening Statements, held December 12, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, 316−315−4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Ms. Molly M. Gordon. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact,**

		of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter or PACER. Release of Transcript Restriction set for 3/27/2023. (jw) (Entered: 12/27/2022)
01/09/2023	77	MOTION for New Trial by Michael R. Capps. (Kerns, Kurt) (Entered: 01/09/2023)
01/12/2023	78	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) Sentencing set for 3/10/2023 at 09:30 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. The court failed to docket the sentencing date at the conclusion of the trial. This entry fixes that error. (cm) (Entered: 01/12/2023)
01/13/2023	79	TRANSCRIPT of Excerpt of Jury Trial Volume III held December 15, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, 316−315−4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Ms. Molly Gordon. Volume: III. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter or PACER. Release of Transcript Restriction set for 4/13/2023. (jw) (Entered: 01/13/2023)
01/13/2023	80	TRANSCRIPT of Excerpt of Jury Trial Volume IV held December 19, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, 316−315−4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Ms. Molly Gordon. Volume: IV. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After

		that date it may be obtained through the Court Reporter or PACER. Release of Transcript Restriction set for 4/13/2023. (jw) (Entered: 01/13/2023)
01/25/2023	81	MOTION for a Preliminary Order of Forfeiture by USA as to Michael R. Capps. (Gurney, Annette) (Entered: 01/25/2023)
01/27/2023	82	RESPONSE TO MOTION by USA as to Michael R. Capps re 77 Motion for a New Trial. (Gordon, Molly) (Entered: 01/27/2023)
02/16/2023	83	ORDER OF FORFEITURE granting 81 Motion for a Preliminary Order of Forfeiture as to Michael R. Capps (1). Signed by Chief District Judge Eric F. Melgren on 2/16/2023. (sz) (Entered: 02/16/2023)
02/17/2023	84	MEMORANDUM AND ORDER denying 77 Defendant's Motion for a New Trial as to Michael R. Capps (1). Signed by Chief District Judge Eric F. Melgren on 2/17/2023. (mam) (Entered: 02/17/2023)
02/21/2023	85	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) Due to a conflict on the Court's calendar, the Sentencing is being reset for 3/30/2023 at 02:30 PM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. (cm) (Entered: 02/21/2023)
03/22/2023	86	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) At request of counsel, the Sentencing is reset for 4/24/2023 at 01:30 PM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Sentencing Memorandum Deadline set for 4/17/2023. (cm) (Entered: 03/22/2023)
04/14/2023	87	PRESENTENCE INVESTIGATION REPORT as to Michael R. Capps. **(NOTE: Access to this document is restricted to the USA and this defendant.)** (USPO) (Entered: 04/14/2023)
04/14/2023	88	NOTICE OF HEARING as to Defendant Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) Sentencing set for 5/11/2023 at 02:00 PM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Sentencing Memorandum Deadline set for 5/5/2023. (cm) (Entered: 04/14/2023)
05/01/2023	89	TRANSCRIPT of Jury Trial, Testimony of Michael Capps, held December 15, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, 316−315−4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Ms. Molly Gordon. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.**

		Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter or PACER. Release of Transcript Restriction set for 7/31/2023. (jw) (Entered: 05/01/2023)
05/01/2023	90	TRANSCRIPT of Jury Trial, Testimony of Michael Capps, held December 19, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, 316−315−4334, jo_wilkinson@ksd.uscourts.gov. Transcript purchased by: Ms. Molly Gordon. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter or PACER. Release of Transcript Restriction set for 7/31/2023. (jw) (Entered: 05/01/2023)
05/05/2023	91	SENTENCING MEMORANDUM by USA as to Michael R. Capps. (Gordon, Molly) (Entered: 05/05/2023)
05/05/2023	92	SENTENCING MEMORANDUM by Michael R. Capps. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O)(Kerns, Kurt) (Entered: 05/05/2023)
05/10/2023	93	SERVICE BY PUBLICATION filed by USA as to Michael R. Capps. Last publication date April 15, 2023. (Attachments: # 1 Attachment 1)(Gurney, Annette) (Entered: 05/10/2023)
05/10/2023	94	RESPONSE to 92 Sentencing Memorandum by USA as to Michael R. Capps. (Gordon, Molly) (Entered: 05/10/2023)
05/11/2023	95	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: SENTENCING HEARING held on 5/11/2023 as to defendant Michael R. Capps. Defendant was sentenced to 27 months to Bureau of Prisons and was allowed to self−surrender. (Court Reporter Jo Wilkinson) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 05/11/2023)
05/12/2023	96	EXHIBIT LIST by Government from Sentencing for Michael R. Capps. (cm) (Entered: 05/12/2023)
05/12/2023	97	AMENDED PRESENTENCE INVESTIGATION REPORT as to Michael R. Capps. **(NOTE: Access to this document is restricted to the USA and this defendant.)** (USPO) (Entered: 05/12/2023)
05/12/2023	98	

		JUDGMENT as to Michael R. Capps (1) − Counts: 1, 2, 4, 5, 7−10, 12−15 Sentenced to 27 months imprisonment and 2 years supervised release; each count, running concurrently. $1200.00 special assessment fee. $318,647.21 restitution. Acquitted on Counts 3, 6, 16, 17, 18, and 19. Count 11, Dismissed per the Order filed 12/13/2022. Signed by Chief District Judge Eric F. Melgren on 5/12/2023. (ca) (Entered: 05/12/2023)
05/12/2023	99	STATEMENT OF REASONS as to Michael R. Capps re 98 Judgment. **(NOTE: Access to this document is restricted to the USA and this defendant.)** (ca) (Entered: 05/12/2023)
05/16/2023	100	MOTION to Withdraw Kurt Kerns as Attorney by Michael R. Capps. (Kerns, Kurt) (Entered: 05/16/2023)
05/17/2023	101	NOTICE OF APPEAL TO 10CCA as to defendant Michael R. Capps. (Kerns, Kurt) (Entered: 05/17/2023)
05/26/2023		APPEAL FEE STATUS: filing fee Not Paid re: 101 Notice of Appeal on behalf of Defendant Michael R. Capps. (THIS IS A TEXT ONLY ENTRY−NO DOCUMENT IS ASSOCIATED WITH THIS TRANSACTION) (kas) (Entered: 05/26/2023)
05/26/2023	102	PRELIMINARY RECORD ON APPEAL transmitted to 10CCA as to Michael R. Capps re 101 Notice of Appeal. (Attachments: # 1 Preliminary Packet)(kas) (Entered: 05/26/2023)
05/26/2023	103	MOTION for Determination of Eligibility for Appointment of Counsel Under CJA by Michael R. Capps. (Kerns, Kurt) (Entered: 05/26/2023)
05/26/2023	104	DESIGNATION OF RECORD ON APPEAL by Michael R. Capps re 101 Notice of Appeal. (Appeal No. 23−3095) (Kerns, Kurt) (Additional attachment(s) added on 6/12/2023: # 1 Corrected Designation of Record) (msb) (Entered: 05/26/2023)
05/26/2023	105	(VIEW RESTRICTED − PLEASE DISREGARD THIS ENTRY AND SEE DE 108 FOR CORRECT ENTRY.) −− TRANSCRIPT ORDER FORM: Transcript Requested Sentencing 5/11/23 re 101 Notice of Appeal filed by Michael R. Capps. (Kerns, Kurt) Modified text on 5/30/2023. (msb) (Entered: 05/26/2023)
05/26/2023	106	(VIEW RESTRICTED − PLEASE DISREGARD THIS ENTRY AND SEE DE 108 FOR CORRECT ENTRY.) −− TRANSCRIPT ORDER FORM: Transcript Requested Sentencing 5/11/23 re 101 Notice of Appeal filed by Michael R. Capps. (Kerns, Kurt) Modified text on 5/30/2023. (msb) (Entered: 05/26/2023)
05/26/2023	107	APPEAL DOCKETED in 10CCA on 5/26/2023 and assigned Appeal No. 23−3095 re 101 Notice of Appeal filed by Michael R. Capps. (kas) (Entered: 05/26/2023)
05/30/2023	108	TRANSCRIPT ORDER FORM: Transcript Requested Sentencing 5/11/23 re 101 Notice of Appeal filed by Michael R. Capps. (Kerns, Kurt) (Additional attachment(s) added on 5/30/2023: # 1 Transcript Order Form) (msb) (Entered: 05/30/2023)
05/30/2023	109	ORDER granting 103 Motion to Determine Eligibility for Appointment of Counsel Under CJA as to Michael R. Capps (1). The Court finds that the defendant is eligible for the appointment of counsel under CJA and is granted IFP status. Signed by Chief District Judge Eric F. Melgren on 5/30/2023. (kas) (Entered: 05/30/2023)

05/30/2023	110	CJA 23 FINANCIAL AFFIDAVIT by Michael R. Capps. (kas) (Entered: 05/30/2023)
05/30/2023	111	ORDER granting 100 Motion to Withdraw as to Michael R. Capps (1). Attorney Kurt Kerns is withdrawn from this case. Signed by Chief District Judge Eric F. Melgren on 5/30/2023. (kas) (Entered: 05/30/2023)
05/31/2023	112	ORDER of 10CCA appointing the Federal Public Defender for the Districts of Colorado and Wyoming to represent appellant Michael R. Capps re 101 Notice of Appeal. (Appeal No. 23−3095) (kas) (Entered: 05/31/2023)
06/12/2023	113	DOCKET ANNOTATION: Please find attached the corrected 104 Designation of Record on Appeal filed by Michael R. Capps. The corrected document has been attached to the original filing DE 104 and to this filing for noticing purposes only. (msb) (Entered: 06/12/2023)
06/12/2023	114	ENTRY OF APPEARANCE by attorney Jacob Rasch−Chabot appearing for Michael R. Capps. (Rasch−Chabot, Jacob) (Entered: 06/12/2023)
06/12/2023	115	MOTION for Release Pending Appeal by Michael R. Capps. (Rasch−Chabot, Jacob) (Entered: 06/12/2023)
06/14/2023	116	ORDER as to Michael R. Capps re 115 Motion for Release Pending Appeal filed by Michael R. Capps. At the direction of Judge Eric F. Melgren, the government's response to DE 115 is due on or before 6/20/2023. Signed by Chief District Judge Eric F. Melgren on 6/14/2023. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 06/14/2023)
06/20/2023	117	ORDER as to Michael R. Capps re 115 Morion for Release >Pending Appeal filed by Michael R. Capps. At the direction of Judge Eric F. Melgren, the government's response is now due on or before noon, 6/22/2023. Signed by Chief District Judge Eric F. Melgren on 6/20/2023. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 06/20/2023)
06/21/2023	118	RESPONSE TO MOTION by USA as to Michael R. Capps re 115 Motion for Release Pending Appeal. (Gordon, Molly) (Entered: 06/21/2023)
06/22/2023	119	REPLY TO RESPONSE TO MOTION by Michael R. Capps re 115 Motion for Release Pending Appeal. (Rasch−Chabot, Jacob) (Entered: 06/22/2023)
06/22/2023	120	TRANSCRIPT ORDER FORM: Transcript Requested Initial appearance on 9/22/21; Pretrial Conference held on 12/2/2022; Jury Instructions Conference held on 12/9/22; Jury Trial held on 12/12/22, 12/14/22, 12/15/22, 12/19/22,12/21/22; Sentencing Hearing held 5/11/23. re 101 Notice of Appeal filed by Michael R. Capps. (Rasch−Chabot, Jacob) (Entered: 06/22/2023)
06/23/2023	121	MEMORANDUM AND ORDER granting 115 Motion for Release from Custody Pending Appeal as to Michael R. Capps. Signed by Chief District Judge Eric F. Melgren on June 23, 2023. (mls) (Entered: 06/23/2023)
07/06/2023	122	TRANSCRIPT ORDER FORM by Court Reporter Johanna L. Wilkinson ordering trial transcripts held on 12/9/22, 12/12/22, 12/14/22, 12/15/22, 12/19/22, 12/21/22, Pretrial Conference held 12/2/22, 9/22/21 Initial Appearance, and 5/11/23 Sentencing Hearing re 101 Notice of Appeal filed by Michael R. Capps. (Appeal No. 23−3095) Transcripts due by 7/22/2023. (kas) (Entered: 07/06/2023)

07/17/2023	123	ENTRY OF APPEARANCE on behalf of USA by Kathryn E. Sheedy. (Sheedy, Kathryn) (Entered: 07/17/2023)
07/17/2023	124	APPLICATION FOR WRIT OF CONTINUING GARNISHMENT to Garnishee Northwestern Mutual by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 07/17/2023)
07/17/2023	125	APPLICATION FOR WRIT OF CONTINUING GARNISHMENT to Garnishee Ohio National Life Assurance Corporation by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 07/17/2023)
07/17/2023	126	WRIT OF CONTINUING GARNISHMENT ENTERED BY CLERK as to Michael R. Capps. Garnishee Ohio National Life Assurance Corporation; writ issued to US Attorney. (Attachments: # 1 Instructions to Debtor)(nao) (Entered: 07/17/2023)
07/17/2023	127	WRIT OF CONTINUING GARNISHMENT ENTERED BY CLERK as to Michael R. Capps. Garnishee Northwestern Mutual; writ issued to US Attorney. (Attachments: # 1 Instructions to Debtor) (nao) (Entered: 07/17/2023)
07/20/2023	128	CERTIFICATE OF FILING OF TRANSCRIPT by Court Reporter Johanna L. Wilkinson. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	129	TRANSCRIPT of Other Hearing held September 22, 2021 as to Michael R. Capps before Judge Gwynne E. Birzer, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Tape Number: 1:31−1:41. Transcript purchased by: Mr. Jacob Rasch−Chabot. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	130	TRANSCRIPT of Motion Hearing held December 2, 2022 as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After

		that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	131	TRANSCRIPT of Other Hearing held December 9, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	132	TRANSCRIPT of Jury Trial Volume I held December 12, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. Volume: I. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	133	TRANSCRIPT of Jury Trial Volume II held December 14, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. Volume: II. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After

		that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	134	TRANSCRIPT of Jury Trial Volume III held December 15, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. Volume: III. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	135	TRANSCRIPT of Jury Trial Volume IV held December 19, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. Volume: IV. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	136	TRANSCRIPT of Jury Trial Volume V held December 21, 2022, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. Volume: V. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.**

		Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/20/2023	137	TRANSCRIPT of Sentencing Hearing held May 11, 2023, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Jo Wilkinson, redwoof58@yahoo.com. Transcript purchased by: Mr. Jacob Rasch−Chabot. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/18/2023. (Wilkinson, Johanna) (Entered: 07/20/2023)
07/31/2023	138	RECORD ON APPEAL transmitted to 10CCA electronically as to Michael R. Capps. Volumes 3 re 101 Notice of Appeal. (Appeal No. 23−3095) (kas) (Entered: 07/31/2023)
08/03/2023	139	ANSWER to 127 Writ of Continuing Garnishment by Northwestern Mutual. (ca) (Entered: 08/03/2023)
08/04/2023	140	CERTIFICATE OF SERVICE by USA as to Michael R. Capps re 126 Writ of Continuing Garnishment as to Ohio National Life Assurance Corporation. (Sheedy, Kathryn) (Entered: 08/04/2023)
08/04/2023	141	CERTIFICATE OF SERVICE by USA as to Michael R. Capps re 127 Writ of Continuing Garnishment as to Northwestern Mutual. (Sheedy, Kathryn) (Entered: 08/04/2023)
08/10/2023	142	ANSWER to 126 Writ of Continuing Garnishment by Ohio National Life Assurance Corporation. (mam) (Entered: 08/10/2023)
08/30/2023	143	RETURN OF SERVICE of Notice of Forfeiture served on the FBI as to Michael R. Capps. (Gurney, Annette) (Entered: 08/30/2023)
08/30/2023	144	RETURN OF SERVICE of Notice of Forfeiture served on the property as to Michael R. Capps. (Gurney, Annette) (Entered: 08/30/2023)
08/30/2023	145	RETURN OF SERVICE of Notice of Forfeiture served on Pershing, LLC as to Michael R. Capps. (Gurney, Annette) (Entered: 08/30/2023)
08/30/2023	146	RETURN OF SERVICE of Notice of Forfeiture served on Cybertron International, Inc. as to Michael R. Capps. (Gurney, Annette) (Entered: 08/30/2023)
08/30/2023	147	RETURN OF SERVICE of Notice of Forfeiture served on the U.S. Small Business Administration as to Michael R. Capps. (Gurney, Annette) (Entered: 08/30/2023)
09/05/2023	148	

		APPLICATION FOR WRIT OF CONTINUING GARNISHMENT to Garnishee Knopp Law Group, P.A. by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 09/05/2023)
09/05/2023	149	WRIT OF CONTINUING GARNISHMENT ENTERED BY CLERK as to Michael R. Capps. Garnishee Knopp Law Group, P.A.; writ issued to US Attorney. (Attachments: # 1 Notice and Instructions). (mls) (Entered: 09/05/2023)
09/06/2023	150	CERTIFICATE OF SERVICE by USA as to Michael R. Capps re 149 Writ of Continuing Garnishment as to Knopp Law Group, P.A. (Sheedy, Kathryn) (Entered: 09/06/2023)
09/06/2023	151	MOTION for Garnishee Order as to Northwestern Mutual by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 09/06/2023)
09/06/2023	152	MOTION for Garnishee Order as to Ohio National Life Assurance Corporation by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 09/06/2023)
09/07/2023	153	GARNISHEE ORDER granting 151 Motion for Garnishee Order as to Michael R. Capps. Garnishee Northwestern Mutual shall immediately liquidate and pay over the property ($1,225.16) to the United States. Once Northwestern Mutual no longer has custody, possession, or control of any property in which Defendant Michael R. Capps has an interest or once Northwestern Mutual is no longer indebted to Defendant Michael R. Capps and will not become indebted to Defendant Michael R. Capps in the future, Northwestern Mutual is released and discharged as Garnishee in this action. Signed by Chief District Judge Eric F. Melgren on 9/7/2023. (mls) (Entered: 09/07/2023)
09/07/2023	154	GARNISHEE ORDER granting 152 Motion for Garnishee Order as to Michael R. Capps. Garnishee Ohio National Life Assurance Corporation shall immediately liquidate and pay over the property ($568.99) of Defendant Michael R. Capps to the United States. This order shall remain in effect until such time as Garnishee no longer has custody, possession, or control of any property in which Defendant Michael R. Capps has an interest or for which Ohio National Life Assurance Corporation is or may become indebted to Defendant. Once Garnishee Ohio National Life Assurance Corporation no longer has custody, possession, or control of any property in which Defendant Michael R. Capps has an interest or once Garnishee Ohio National Life Assurance Corporation is no longer indebted to Defendant Michael R. Capps and will not become indebted to Defendant Michael R. Capps in the future, Garnishee Ohio National Life Assurance Corporation is released and discharged as Garnishee in this action. Signed by Chief District Judge Eric F. Melgren on 9/7/2023. (mls) (Entered: 09/07/2023)
09/12/2023	155	APPLICATION FOR WRIT OF CONTINUING GARNISHMENT to Garnishee Coinbase, Inc. by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 09/12/2023)
09/12/2023	156	WRIT OF CONTINUING GARNISHMENT ENTERED BY CLERK as to Michael R. Capps. Garnishee Coinbase, Inc.; writ issued to US Attorney. (Attachments: # 1 Instructions to Defendant) (jal) (Entered: 09/12/2023)
09/19/2023	157	CERTIFICATE OF SERVICE by USA as to Michael R. Capps re 156 Writ of Continuing Garnishment as to Coinbase, Inc. (Sheedy, Kathryn) (Entered: 09/19/2023)

09/19/2023	158	NOTICE of Garnishment and Instructions to Interested Parties by USA as to Michael R. Capps re 156 Writ of Continuing Garnishment to Coinbase, Inc. (Sheedy, Kathryn) (Entered: 09/19/2023)
09/25/2023	159	ANSWER to 156 Writ of Continuing Garnishment by Coinbase, Inc. (mam) (Entered: 09/25/2023)
09/26/2023	160	ANSWER to 149 Writ of Continuing Garnishment by Knopp Law Group, P.A. (mam) (Entered: 09/27/2023)
12/08/2023	161	PRO SE MOTION for Declaratory Judgment Regarding Exclusion of Social Security Disability Benefits from Garnishment and, in the Alternative, for Injunctive Relief by Michael R. Capps. (jal) (Entered: 12/08/2023)
12/19/2023	162	PARTIAL RELEASE OF JUDGMENT LIEN − Property Located in Sedgwick County, KS by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 12/19/2023)
12/21/2023	163	MOTION Dismiss Defendant's 161 Pro Se Motion for Declaratory Judgment Regarding Exclusion of Social Security Disability Benefits from Garnishment and, in the Alternative, for Injunctive Relief by USA as to Michael R. Capps. (Attachments: # 1 Exhibit A − Notice of Intent to Offset)(Sheedy, Kathryn) (Entered: 12/21/2023)
12/29/2023	164	MOTION to Enforce Sentencing Order by Michael R. Capps. (mam) (Entered: 01/02/2024)
01/01/2024	165	AMENDED MOTION to Enforce Sentencing Order by Michael R. Capps. (mam) (Entered: 01/02/2024)
01/02/2024	166	NOTICE OF INTENT by Michael R. Capps to File a Reply to 163 Motion to Dismiss Defendant's 161 Motion for Declaratory Judgment. (mam) (Entered: 01/02/2024)
01/03/2024	167	RESPONSE TO MOTION by Michael R. Capps re 163 Motion to Dismiss 161 Defendant's Motion for Declaratory Judgment. (mam) (Entered: 01/03/2024)
01/11/2024	168	RESPONSE TO MOTION by USA as to Michael R. Capps re 165 Amended Motion to Enforce Sentencing Order. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Gurney, Annette) (Entered: 01/11/2024)
01/18/2024	169	REPLY TO RESPONSE TO MOTION by Michael R. Capps re 164 / 165 Motions to Enforce Sentencing Order. (mam) (Entered: 01/18/2024)
02/05/2024	170	APPLICATION FOR WRIT OF CONTINUING GARNISHMENT to Garnishee Security 1st Title, LLC by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 02/05/2024)
02/05/2024	171	WRIT OF CONTINUING GARNISHMENT ENTERED BY CLERK as to Michael R. Capps. Garnishee Security 1st Title, LLC; writ issued to US Attorney. (Attachments: # 1 Instructions to Debtor) (jk) (Entered: 02/05/2024)
02/09/2024	172	NOTICE of Garnishment and Instructions to Interested Parties, Garnishee Security 1st Title, LLC by USA as to Michael R. Capps re 171 Writ of Continuing Garnishment (Sheedy, Kathryn) (Entered: 02/09/2024)
02/14/2024	173	CERTIFICATE OF SERVICE by USA as to Michael R. Capps re 171 Writ of Continuing Garnishment as to Security 1st Title. (Sheedy, Kathryn) (Entered:

		02/14/2024)
02/27/2024	174	LIMITED APPEARANCE of Claimant Charles Capps to Object to Garnishment (Doc. 171) AND to Provide Notice of Intepleader Action by Knopp Law Group, P.A. as to Michael R. Capps. (Knopp, Ted) Modified on 7/15/2024 to re−title. (mam) (Entered: 02/27/2024)
02/28/2024	175	EXEMPTION CLAIM AND HEARING REQUEST by Michael R. Capps. (kas) (Entered: 02/28/2024)
02/29/2024	176	ANSWER to 170 Application for Writ of Continuing Garnishment by Security 1st Title, LLC. (kas) (Entered: 02/29/2024)
02/29/2024	177	ORDER as to Michael R. Capps re 175 Motion for Hearing filed by Michael R. Capps, 174 Objections filed by Knopp Law Group, P.A. At the direction of Judge Eric F. Melgren, on or before 3/19/2024 the government is instructed to file responses to both DE 174 and DE 175 . Signed by Chief District Judge Eric F. Melgren on 2/29/2024. Mailed to pro se party Michael Capps by regular mail. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 02/29/2024)
03/04/2024		DOCKET ANNOTATION: Defendant Michael R. Capps is a registered Pro Se Participant with E−Filing and ECF Notifications with approval from the court pursuant to D. Kan. rule CR 49.2 (lrr) (Entered: 03/04/2024)
03/19/2024	178	RESPONSE to 174 Limited Appearance of Claimant Charles Capps to Object to Garnishment and to Provide Notice of Intepleader Action by USA as to Michael R. Capps. (Attachments: # 1 Exhibit Government Exhibits A through S) (Sheedy, Kathryn) (Entered: 03/19/2024)
03/19/2024	179	OBJECTION to Exemption Claim and 175 Hearing Request by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 03/19/2024)
03/26/2024	180	CERTIFICATE OF SERVICE by USA of First Set of Interrogatories to Defendant and First Request for Production of Documents and Electronically Stored Information as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 03/26/2024)
04/03/2024	181	MOTION for Extension of Time to File a Reply to the Response to the 179 Objection by Charles Capps as to Michael R. Capps. (Knopp, Ted) (Entered: 04/03/2024)
04/03/2024	182	ORDER granting 181 Motion for Extension of Time to File Reply as to Michael R. Capps (1). Reply deadline 4/17/2024. Signed by Chief District Judge Eric F. Melgren on 4/3/2024. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 04/03/2024)
04/08/2024	183	MOTION for order for Stay of Restitution Pending Appeal by Michael R. Capps. (Attachments: # 1 Attachment A, # 2 Attachment B, # 3 Attachment C)(Rasch−Chabot, Jacob) (Entered: 04/08/2024)
04/17/2024	184	MOTION for Stay of Briefing by Charles Capps as to Michael R. Capps. (Knopp, Ted) (Entered: 04/17/2024)
04/22/2024	185	RESPONSE by USA as to Michael R. Capps re 183 Motion for Stay of Restitution Pending Appeal. (Attachments: # 1 Exhibit A − 2018−CV−001307 − Journal Entry Approving Settlement, # 2 Exhibit B − Warranty Deed − 10202 E Bronco, # 3 Exhibit C − 2018−PR−000662 − Accounting of Administrator, # 4 Exhibit D −

		2018−PR−000662 − Journal Entry of Final Settlement) (Sheedy, Kathryn) (Entered: 04/22/2024)
04/22/2024	186	MOTION to Quash Requests for Production and Interrogatories and for Sanctions Against Plaintiff by Michael R. Capps. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Capps, Michael) (Entered: 04/22/2024)
04/29/2024	187	REPLY TO RESPONSE TO MOTION by Michael R. Capps re 183 Motion for Stay of Restitution Pending Appeal. (Rasch−Chabot, Jacob) (Entered: 04/29/2024)
05/01/2024	188	RESPONSE TO MOTION by USA as to Michael R. Capps re 184 Motion for Stay of Briefing. (Sheedy, Kathryn) (Entered: 05/01/2024)
05/01/2024	189	RESPONSE TO MOTION by USA as to Michael R. Capps re 186 Motion to Quash Requests for Production and Interrogatories and for Sanctions Against Plaintiff. (Sheedy, Kathryn) (Entered: 05/01/2024)
05/06/2024	190	REPLY TO RESPONSE TO MOTION by Michael R. Capps re 186 Motion to Quash Requests for Production and Interrogatories and for Sanctions Against Plaintiff. (Capps, Michael) (Entered: 05/06/2024)
06/12/2024	191	MEMORANDUM AND ORDER denying 183 Motion for Order for Stay of Restitution Pending Appeal as to Michael R. Capps (1). Any funds that are garnished are to be deposited into the Court's registry. These funds will not be disbursed by the Clerk of the Court until further order by the Court. Signed by Chief District Judge Eric F. Melgren on 6/11/2024. (ca) (Entered: 06/12/2024)
06/13/2024	192	MEMORANDUM AND ORDER − Denying 161 Defendant's Motion for Declaratory Judgment. Granting 163 Government's Motion to Dismiss Defendant's Motion for Declaratory Judgment. Denying 164 Defendant's Motion to Enforce Sentencing Order. Denying 165 Defendant's Amended Motion to Enforce Sentencing Order. Denying 175 Defendant's Exemption Claim and Hearing Request. Denying as moot 184 Claimant Charles Capps' Motion for Extension of time. Denying 186 Defendant's Motion to Quash or Motion for Sanctions. Signed by Chief District Judge Eric F. Melgren on 6/13/2024. (ca) (Entered: 06/13/2024)
06/17/2024	193	NOTICE OF APPEAL TO 10CCA by Michael R. Capps re 192 Memorandum and Order. (ca) (Entered: 06/17/2024)
06/17/2024		APPEAL FEE STATUS: filing fee not paid re: 193 Notice of Appeal on behalf of Defendant Michael R. Capps. CJA 23 filed on 5/30/2023. (THIS IS A TEXT ONLY ENTRY−NO DOCUMENT IS ASSOCIATED WITH THIS TRANSACTION) (ca) (Entered: 06/17/2024)
06/17/2024	194	PRELIMINARY RECORD ON APPEAL transmitted to 10CCA as to Michael R. Capps re 193 Notice of Appeal. (Attachments: # 1 Preliminary Packet)(ca) (Entered: 06/17/2024)
06/18/2024	195	APPEAL DOCKETED in 10CCA on 6/17/2024 and assigned Appeal No. 24−3083 re 193 Notice of Appeal. (ca) (Entered: 06/18/2024)
06/18/2024	196	ENTRY OF APPEARANCE on behalf of USA by Carrie Nicole Capwell. (Capwell, Carrie) (Entered: 06/18/2024)
06/24/2024	197	OBJECTION to 171 Garnishment by United States of America to Security 1st Title, LLC by Charles Capps as to Michael R. Capps. (Attachments: # 1 Exhibit)(Knopp,

		Ted) (Entered: 06/24/2024)
06/27/2024	198	RECORD ON APPEAL retrieved by 10CCA as to Michael R. Capps, re 193 Notice of Appeal. (Appeal No. 24−3083). (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (ca) (Entered: 06/27/2024)
07/01/2024	199	MOTION / REQUEST for Hearing on Objection of Charles Capps to Garnishment of Escrow Funds by Charles Capps as to Michael R. Capps. (Knopp, Ted) (Entered: 07/01/2024)
07/08/2024	200	RESPONSE AND PROCEDURAL OBJECTION re 197 Claimant's Objection to 171 Garnishment to Security 1st Title, LLC by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 07/08/2024)
07/08/2024	201	MOTION to Stay Enforcement of Memorandum and Order Pending Appeal by Michael R. Capps. (Capps, Michael) (Entered: 07/08/2024)
07/09/2024	202	RESPONSE IN OPPOSITION by USA as to Michael R. Capps re 199 Request for Hearing. (Sheedy, Kathryn) (Entered: 07/09/2024)
07/22/2024	203	ORDER granting 199 Motion for Hearing as to Michael R. Capps (1). Motion Hearing set for 9/12/2024 at 09:30 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. Signed by Chief District Judge Eric F. Melgren on 7/22/2024. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 07/22/2024)
07/22/2024	204	NOTICE of Motion Hearing as to Michael R. Capps re 203 Order on Motion for Hearing. As noted on the docket, the motion hearing has been scheduled for 9/12/2024 at 9:30 a.m. The parties need to come prepared to fully argue their positions. (cm) (Entered: 07/22/2024)
07/22/2024	205	NOTICE of Non−Opposition to Stay by USA as to Michael R. Capps re 201 Motion to Stay Enforcement of Memorandum and Order Pending Appeal. (Sheedy, Kathryn) (Entered: 07/22/2024)
07/23/2024	206	ORDER granting 201 Motion to Stay Enforcement of Memorandum and Order Pending Appeal as to Michael R. Capps. Signed by Chief District Judge Eric F. Melgren on 7/23/2024. (jal) (Entered: 07/23/2024)
07/26/2024	207	MOTION for Order Restraining Property and Rights to Property Available for Payment of Restitution by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 07/26/2024)
08/21/2024	208	NOTICE OF HEARING ON MOTION as to Michael R. Capps. THIS IS AN OFFICIAL NOTICE FOR THIS HEARING 207 Motion for Order Restraining Property and Rights to Property Available for Payment of Restitution : (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) Motion Hearing set for 9/12/2024 at 09:30 AM in Wichita Courtroom 408 (EFM) before Chief District Judge Eric F. Melgren. This hearing will be in conjunction with the currently scheduled motion hearing as set out in DE 204.(cm) (Entered: 08/21/2024)
09/11/2024	209	(STRICKEN per 210) −− RESPONSE TO MOTION by Michael R. Capps re 207 Motion for Order Restraining Property and Rights to Property Available for Payment of Restitution. (Capps, Michael) Modified on 9/12/2024, see 210. (mam) (Entered: 09/11/2024)

09/12/2024	210	MINUTE ENTRY for proceedings held before Chief District Judge Eric F. Melgren: MOTION HEARING as to Michael R. Capps held on 9/12/2024. The Court strikes Michael Capps's response (Doc. 209) to the Government's Motion for Restraining Order because it is untimely. The Court directs the Government and Charles Capps to file supplemental briefing as to the limited issues discussed during the hearing by September 20, 2024. (Court Reporter Annie States) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (sn) (Entered: 09/12/2024)
09/17/2024	211	AMENDED MOTION for Order Restraining Property and Rights to Property Available for Payment of Restitution by USA as to Michael R. Capps. (Sheedy, Kathryn) (Entered: 09/17/2024)
09/20/2024	212	SUPPLEMENTAL MEMORANDUM by Charles Capps as to Michael R. Capps per 210. (Knopp, Ted) (Entered: 09/20/2024)
09/20/2024	213	SUPPLEMENTAL BRIEFING by USA as to Michael R. Capps per 210. (Sheedy, Kathryn) (Entered: 09/20/2024)
09/30/2024	214	RESPONSE TO MOTION by Michael R. Capps re 211 Amended Motion for Order Restraining Property and Rights to Property Available for Payment of Restitution. (Capps, Michael) (Entered: 09/30/2024)
09/30/2024	215	JOINT MOTION for Distribution of Funds by Charles Capps as to Michael R. Capps. (Knopp, Ted) Modified on 9/30/2024 to add Duaglo, LLC as a filer. (mam) (Entered: 09/30/2024)
09/30/2024	216	ENTRY OF APPEARANCE by attorney Ted E. Knopp on behalf of Duaglo, LLC. (Knopp, Ted) (Entered: 09/30/2024)
09/30/2024	217	JOINT MOTION to Allow Intervention by Duaglo, LLC, Charles Capps as to Michael R. Capps. (Knopp, Ted) (Entered: 09/30/2024)
10/07/2024	218	REPLY to 214 Response to 211 Motion − *Government's Amended Motion for Order Restraining Property and Rights to Property Available for Payment of Restitution* by USA as to Michael R. Capps (Sheedy, Kathryn) Modified on 10/8/2024 to link to underlying motion. (jal) (Entered: 10/07/2024)
10/09/2024	219	MOTION for Joinder *Joint Motion for Distribution of Funds* by Michael R. Capps. (Capps, Michael) (Entered: 10/09/2024)
10/15/2024	220	RESPONSE IN OPPOSITION by USA as to Michael R. Capps re 217 Joint Motion to Allow Interventio (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Sheedy, Kathryn) (Entered: 10/15/2024)
10/15/2024	221	RESPONSE IN OPPOSITION by USA as to Michael R. Capps re 219 MOTION for Joinder *Joint Motion for Distribution of Funds*, 215 Joint Motion for Distribution of Funds (Attachments: # 1 Exhibit A)(Sheedy, Kathryn) (Entered: 10/15/2024)
10/17/2024	222	MOTION for order of Judicial Recommendation for Designation to FPC Seagoville by Michael R. Capps. (Rasch−Chabot, Jacob) (Entered: 10/17/2024)
10/21/2024	223	ORDER granting 222 Motion for Order as to Michael R. Capps (1). Signed by Chief District Judge Eric F. Melgren on 10/21/2024. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 10/21/2024)
10/24/2024	224	MANDATE from 10CCA affirming decision of the District Court as to defendant Michael R. Capps (Appeal No. 23−3095) (Attachments: # 1 Judgment, # 2 10CCA

		Mandate Letter)(msb) (Entered: 10/24/2024)
10/27/2024	225	MOTION to Vacate by Michael R. Capps. (Capps, Michael) (Entered: 10/27/2024)
10/28/2024	226	ORDER granting 225 Motion to Vacate Doc 121 as to Michael R. Capps (1). Signed by Chief District Judge Eric F. Melgren on 10/28/2024. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 10/28/2024)
10/29/2024	227	REPLY TO RESPONSE TO MOTION by Duaglo, LLC, Charles Capps, Knopp Law Group, P.A. as to Michael R. Capps re 219 MOTION for Joinder *Joint Motion for Distribution of Funds Joint Reply of Charles Capps and Duaglo, LLC to United States Response in Opposition to Motion for Distribution of Funds* (Knopp, Ted) (Entered: 10/29/2024)
10/29/2024	228	REPLY TO RESPONSE TO MOTION by Duaglo, LLC, Charles Capps, Knopp Law Group, P.A. as to Michael R. Capps re 217 Joint Motion to Allow Interventio *Joint Reply of Charles Capps and Duaglo, LLC to the Response in Opposition to Intervention of Duaglo, LLC by the United States* (Knopp, Ted) (Entered: 10/29/2024)
11/05/2024	229	MEMORANDUM AND ORDER denying as moot 207 MOTION for Order Restraining Property and Rights to Property Available for Payment of Restitution; denying 211 AMENDED MOTION for Order Restraining Property and Rights to Property; denying 215 JOINT MOTION for Distribution of Funds; denying 217 JOINT MOTION to Allow Intervention; and granting 219 Motion for Joinder as to Michael R. Capps (1). Claimant Charles Capps's Objection to Garnishment (Doc. 174) is overruled. Signed by Chief District Judge Eric F. Melgren on 11/5/2024. (kas) (Entered: 11/05/2024)
11/13/2024	230	MOTION for Garnishee Order ,*Garnishee Security 1st Title* by USA as to Michael R. Capps. (Attachments: # 1 Exhibit A − Appellant's Opening Brief filed on October 26, 2024)(Sheedy, Kathryn) (Entered: 11/13/2024)
11/18/2024	231	Unopposed MOTION for order for Extension of Time to Voluntarily Surrender by Michael R. Capps. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Rasch−Chabot, Jacob) (Entered: 11/18/2024)
11/19/2024	232	ORDER granting 231 Motion for Order or Extension of Time to Voluntarily Surrender as to defendant Michael R. Capps (1). The Court therefore grants Capps' Motion and extends his self−surrender date to December 31, 2024, or later as determined by the BOP. Signed by Chief District Judge Eric F. Melgren on 11/19/2024. (msb) (Entered: 11/19/2024)
12/03/2024	233	MOTION for Reconsideration (Alter or Amend) re 229 Memorandum and Order by Charles Capps as to Michael R. Capps. (Knopp, Ted) Modified text on 12/4/2024 (mls). (Entered: 12/03/2024)
12/10/2024	234	NOTICE OF DISPOSITION OF PASSPORT as to Michael R. Capps. Passport # 640927769, issued by the USA. Passport mailed to the U.S. Department of State, tracking # 7022 0410 0003 3816 3655. (mam) (Entered: 12/10/2024)
12/17/2024	235	RESPONSE IN OPPOSITION by USA as to Michael R. Capps re 233 Motion to Alter or Amend (for Reconsideration) re 229 Memorandum and Order (Sheedy, Kathryn) Modified text (mls). (Entered: 12/17/2024)

12/23/2024	236	TRANSCRIPT ORDER FORM: Transcript Requested Minute Entry 9/12/2024 re 193 Notice of Appeal filed by Michael R. Capps. (kmc) (Entered: 12/26/2024)
12/26/2024	237	REPLY TO RESPONSE TO MOTION by Charles Capps as to Michael R. Capps: Re 233 MOTION for Reconsideration 229 Order on Motions (Knopp, Ted) (Entered: 12/26/2024)
12/27/2024	238	CERTIFIED MAIL RECEIPT returned re 234 Notice of Disposition of Passport addressed to U.S. Department of State. (kas) (Entered: 12/27/2024)
12/31/2024	239	NOTICE OF APPEAL TO 10CCA by Michael R. Capps re 229 Memorandum and Order. (kmc) (Entered: 12/31/2024)
12/31/2024		APPEAL FEE STATUS: filing fee not paid re: 239 Notice of Appeal on behalf of Defendants Michael R. Capps. CJA 23 filed on 5/30/2023. (THIS IS A TEXT ONLY ENTRY−NO DOCUMENT IS ASSOCIATED WITH THIS TRANSACTION) (kmc) (Entered: 12/31/2024)
12/31/2024	240	PRELIMINARY RECORD ON APPEAL transmitted to 10CCA as to Michael R. Capps re 239 Notice of Appeal. (Attachments: # 1 Preliminary Packet)(kmc) (Entered: 12/31/2024)
12/31/2024	241	APPEAL DOCKETED in 10CCA on 12/31/2024 and assigned Appeal No. 24−3204 re 239 Notice of Appeal filed by Michael R. Capps. (kmc) (Entered: 01/02/2025)
01/03/2025	242	ORDER of 10CCA abating this case pending the district court's decision on Doc No. 233, Motion for Reconsideration as to Michael R. Capps re 239 Notice of Appeal. (Appeal No. 24−3204) (kmc) (Entered: 01/03/2025)
01/21/2025	243	LETTER FROM 10CCA advising petition for writ of certiorari filed re 101 Notice of Appeal as to Michael R. Capps. (Supreme Court No. 24−6330 / Appeal No. 23−3095) (mam) (Entered: 01/21/2025)
01/23/2025	244	ORDER as to Michael R. Capps. The Government's Motion for Garnishee Order (Doc. 230) is denied without prejudice. Signed by Chief District Judge Eric F. Melgren on 1/23/2025. (mam) (Entered: 01/23/2025)
01/23/2025	245	MEMORANDUM AND ORDER as to Michael R. Capps. Claimant's Motion to Alter or Amend (Doc. 233) is denied. Signed by Chief District Judge Eric F. Melgren on 1/23/2025. (mam) (Entered: 01/23/2025)
01/23/2025	246	JUDGMENT RETURNED EXECUTED as to Michael R. Capps on 12/31/2024. (mam) (Entered: 01/24/2025)
01/25/2025	247	MOTION to Reduce Sentence by Michael R. Capps. (Capps, Michael) (Entered: 01/25/2025)
01/26/2025	248	Supplemental MOTION to Reduce Sentence by Michael R. Capps. (Capps, Michael) (Entered: 01/26/2025)
01/27/2025	249	ORDER as to Michael R. Capps re 248 Supplemental MOTION to Reduce Sentence filed by Michael R. Capps, 247 MOTION to Reduce Sentence filed by Michael R. Capps. The Federal Public Defender's Office shall have up to and including 2/10/2025 in which to notify the Court if they intend to represent this defendant or not. Signed by Chief District Judge Eric F. Melgren on 1/27/2025. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (cm) (Entered: 01/27/2025)

01/28/2025	250	ENTRY OF APPEARANCE on behalf of USA by Jared S. Maag (Maag, Jared) (Entered: 01/28/2025)
01/31/2025	251	ORDER of 10CCA to Supplement Record on Appeal re 193 Notice of Appeal. (Appeal No. 24−3083) (kao) (Entered: 01/31/2025)
01/31/2025	252	SUPPLEMENTAL RECORD ON APPEAL retrieved by 10CCA re 193 Notice of Appeal. No. of Volumes: 3. Supplemental Volume I − Pleadings, Supplemental Volume II − Sealed Pleading, Supplemental Volume III − Government's Exhibit 1. (Appeal No. 24−3083) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (kao) (Entered: 01/31/2025)
02/01/2025	253	Renewed Motion to Expedite Consideration of Defendant's Motion for Compassionate Release re 247 Motion to Reduce Sentence by Michael R. Capps. (Capps, Michael) Modified on 2/3/2025 to correct docket text and motion event (kas). (Entered: 02/01/2025)
02/05/2025	254	MOTION to Dismiss Compassionate Release Motions re 247 , 248 , and 253 by USA as to Michael R. Capps. (Attachments: # 1 Exhibit RIS − Warden FCI Florence)(Maag, Jared) Modified on 2/6/2025 to update docket text (kas). (Additional attachment(s) added on 2/6/2025: # 2 REDACTED Exhibit) (kas). Modified on 2/6/2025 to update motion event (kas). (Entered: 02/05/2025)
02/08/2025	255	RESPONSE TO MOTION by Michael R. Capps re 254 MOTION (Capps, Michael) (Entered: 02/08/2025)
02/10/2025	256	COMBINED NOTICE OF APPEAL AND CONDITIONAL MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL by Duaglo, LLC, Charles Capps as to Michael R. Capps re 245 Order on Motion for Reconsideration. (Knopp, Ted) Modified on 2/11/2025 to correct event type and update docket text (kas). (Entered: 02/10/2025)
02/10/2025	257	Correspondence Received on Behalf of Defendant (per EFM). (ca) (Entered: 02/10/2025)
02/10/2025	258	NOTICE OF APPEAL TO 10CCA by Duaglo, LLC, Charles Capps as to Michael R. Capps re 229 Memorandum and Order and 245 Memorandum and Order. (RE−FILED DE 256 FOR ADMINISTRATIVE PURPOSES) (kas) (Entered: 02/11/2025)
02/11/2025		APPEAL FEE STATUS: filing fee not paid re 258 Notice of Appeal. (ca) (Entered: 02/11/2025)
02/11/2025		APPEAL FILING FEE PAID ONLINE BY CREDIT CARD: re: 258 Notice of Appeal (paid $605 Appeal fee; Credit Card Receipt Number BKSDC−6582575) (Knopp, Ted) (Entered: 02/11/2025)
02/11/2025	259	PRELIMINARY RECORD ON APPEAL transmitted to 10CCA re 258 Notice of Appeal. (Attachments: # 1 Preliminary Packet)(ca) (Entered: 02/11/2025)
02/12/2025	260	APPEAL DOCKETED in 10CCA on 2/12/2025 and assigned Appeal No. 25−3025 re 258 Notice of Appeal filed.(ca) (Entered: 02/12/2025)
02/12/2025	261	RESPONSE TO MOTION by USA as to Michael R. Capps re 247 MOTION to Reduce Sentence (Maag, Jared) (Entered: 02/12/2025)
02/14/2025	262	

		MEMORANDUM AND ORDER denying 247 Defendant's Motion to Reduce Sentence; denying 248 Supplemental Motion to Reduce Sentence; denying 253 Renewed Motion to Expedite Consideration of Defendant's Motion for Compassionate Release; denying as moot 254 Government's Motion to Dismiss Compassionate Release Motions. Signed by Chief District Judge Eric F. Melgren on 2/14/2025. (ca) (Entered: 02/14/2025)
02/14/2025	263	MOTION for Reconsideration re 262 Memorandum and Order by Michael R. Capps. (Capps, Michael) (Entered: 02/14/2025)
02/16/2025	264	TRANSCRIPT ORDER FORM: Transcript Already on File re 258 Notice of Appeal filed by Duaglo, LLC, Charles Capps (Knopp, Ted) (Entered: 02/16/2025)
02/18/2025	265	ORDER granting in part and denying in part 263 MOTION for Reconsideration re 262 Memorandum and Order as to Michael R. Capps (1). The Court stays its February 14 Order, and Defendant may file a reply on or by February 26, 2025. Signed by Chief District Judge Eric F. Melgren on 2/18/2025. (ca) (Entered: 02/18/2025)
02/19/2025	266	TRANSCRIPT of Motion Hearing held September 12th, 2024, as to Michael R. Capps before Judge Eric F. Melgren, Court Reporter Annie States, 316−315−4334, annie_states@ksd.uscourts.gov. Transcript purchased by: Michael Capps. **NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy is located on our website at www.ksd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 5/20/2025. (as) (Entered: 02/19/2025)
02/19/2025	267	Correspondence Received on Behalf of Defendant. (ca) (Entered: 02/19/2025)
02/23/2025	268	REPLY TO RESPONSE TO MOTION by Michael R. Capps re 263 MOTION for Reconsideration. (Attachments: # 1 Exhibits A−T)(Capps, Michael) (Entered: 02/23/2025)
02/23/2025	269	SUPPLEMENTAL REPLY TO RESPONSE TO MOTION by Michael R. Capps re 263 MOTION for Reconsideration. (Capps, Michael) (Entered: 02/23/2025)
02/24/2025	270	ORDER of 10CCA re 258 Notice of Appeal, abating appeal pending the district's court ruling on 256 Motion (Appeal No. 25−3025). (ca) (Entered: 02/24/2025)
02/25/2025	271	LETTER FROM 10CCA as to Michael R. Capps stating writ of certiorari is denied re 101 Notice of Appeal (Appeal No. 23−3095). (ca) (Entered: 02/25/2025)
02/26/2025	272	MANDATE from 10CCA: dismissing appeal as to Michael R. Capps. (Appeal No. 24−3204) (Attachments: # 1 Transmittal Letter)(kmc) (Entered: 02/26/2025)
02/27/2025	273	MEMORANDUM AND ORDER denying 256 Motion for Extension of Time to File Notice of Appeal as to Michael R. Capps (1). Signed by Chief District Judge Eric F.

		Melgren on 2/27/2025. (ca) (Entered: 02/27/2025)
02/27/2025	274	ORDER − the Court lifts its stay on the Memorandum and Order (Doc. 262), dated February 14, 2025 and files the Order in its original form as to Michael R. Capps. Signed by Chief District Judge Eric F. Melgren on 2/27/2025. (ca) (Entered: 02/27/2025)
02/27/2025	275	MOTION for Leave to Appeal by Michael R. Capps. (Capps, Michael) (Entered: 02/27/2025)
02/27/2025	276	NOTICE OF APPEAL TO 10CCA by Michael R. Capps re 262 Memorandum and Order, 274 Order lifting stay on DE 262. (ca) (This is a refiling of 275 which was filed using incorrect event) (Entered: 02/28/2025)
02/28/2025		APPEAL FEE STATUS: filing fee not paid re 276 Notice of Appeal on behalf of Defendant Michael R. Capps. CJA 23 filed on 5/30/2023. (THIS IS A TEXT ONLY ENTRY−NO DOCUMENT IS ASSOCIATED WITH THIS TRANSACTION) (ca) (Entered: 02/28/2025)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, *Plaintiff,* vs. MICHAEL R. CAPPS, *Defendant.*	Case No. 21-10073-EFM

MEMORANDUM AND ORDER

This matter comes before the Court on pro se Defendant Michael Capps's Motions to Reduce Sentence (Docs. 247, 248, and 253). He seeks early release from prison for family circumstances and health care reasons. The Government opposes Defendant's motions. For the reasons stated below, the Court denies Defendant's motions.

I. Factual and Procedural Background

On December 21, 2022, Defendant was found guilty on 12 counts, including one count of bank fraud, three counts of false statements to a bank and the Small Business Administration, four counts of wire fraud, and four counts of money laundering. On May 11, 2023, the Court sentenced

Defendant to 27 months' imprisonment, to be followed by two years of supervised release.[1] Defendant appealed his conviction to the Tenth Circuit on May 17, 2023, and the Court allowed Defendant's release during his appeal.

On August 13, 2024, the Tenth Circuit affirmed this Court's judgment, and the mandate was issued on October 24, 2024. On November 18, 2024, Defendant filed a motion for extension of time to voluntarily surrender and requested the self-surrender date of December 31, 2024. The Court granted Defendant's request, and Defendant surrendered on that date.

On January 25 and January 26—a mere three weeks after reporting to prison—Defendant filed Motions to Reduce Sentence, requesting immediate release from prison.[2] On February 1, 2025, Defendant filed a third motion, entitled a "Renewed Motion to Expedite Consideration of Defendant's Motion for Compassionate Release." In this motion, he seeks expedited consideration of his motions.

Defendant asserts that his father's health is poor following a recent shoulder surgery and fall in which he broke two ribs and his hand. Defendant contends that his father is unable to care for himself and that Defendant is the only available caregiver to help him. In addition, Defendant asserts that he faces ongoing health risks due to the prison's alleged inability to maintain his CPAP device and alleged lack of access to mental health treatment. The Government opposes Defendant's motions.

[1] Defendant was also ordered to pay $318,647.21 in restitution, and the Court entered a forfeiture judgment in the amount of $178,193.17. The Court will not set forth all the restitution issues here. Suffice to say, there have been numerous disputes. Defendant is currently appealing the Court's rulings on those issues.

[2] The Federal Public Defender's office declined representation of Defendant in this matter.

II. Legal Standard

The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), allows a defendant to seek early release from prison provided certain conditions are met. First, a motion for compassionate release may only be filed if: (1) "the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf;" or (2) 30 days have lapsed "from the receipt of such a request by the warden of the defendant's facility, whichever is earlier."[3] Exhaustion is a mandatory claim-processing rule in the Tenth Circuit.[4]

If a defendant satisfies the exhaustion requirement, district courts use a three-part test when deciding a defendant's motion.[5] This test requires the Court to consider whether (1) "extraordinary and compelling reasons" warrant the sentence reduction, (2) "such reduction is consistent with applicable policy statements issued by the Sentencing Commission," and (3) reduction is consistent with the applicable sentencing factors set forth in 18 U.S.C. § 3553(a).[6] If the Court denies the motion because the defendant fails to meet one of the prerequisites, it may do so without

[3] 18 U.S.C. § 3582(c)(1)(A).

[4] *United States v. Hemmelgarn*, 15 F.4th 1027, 1030–31 (10th Cir. 2021).

[5] *United States v. McGee*, 992 F.3d 1035, 1042–43, 10th Cir. 2021) (quoting *United States v. Jones*, 980 F.3d 1098, 1107 (6th Cir. 2020)); *see also United States v. Maumau*, 993 F.3d 821, 832 (10th Cir. 2021) (discussing and employing the same three-part test).

[6] *McGee*, 992 F.3d at 1042 (citations and internal quotation marks omitted).

addressing all three factors.[7] If, however, the Court grants the motion, the Court must address all steps.[8]

III. Analysis

Defendant requests early release from prison to care for his ailing father. In addition, Defendant contends that the prison is inappropriately managing his health conditions. The Government asserts that Defendant is not an appropriate candidate for a sentence reduction. The Court finds that Defendant cannot establish an extraordinary and compelling reason warranting a reduction in sentence.

A. Exhaustion

Defendant submitted a compassionate release request to the Warden of his facility on January 20, 2025. Defendant then filed two of his motions for compassionate release with this Court five days later, prior to exhausting his administrative remedies. The Government originally—and rightly so—asserted that Defendant had not exhausted his administrative remedies and requested dismissal of Defendant's motions.[9]

On February 8, 2025, however, Defendant filed a response to the Government's motion in which he attached the Warden's January 27, 2025, denial of Defendant's request for compassionate release. The Government concedes that Defendant now meets the exhaustion requirement. Thus, although Defendant's motions originally could have been dismissed for failure to exhaust, the

[7] *Id.* at 1043 (citation omitted); *see also United States v. Hald*, 8 F.4th 932, 942–43 (10th Cir. 2021) (explicitly stating that a district court can choose which order to consider the three steps, and "[i]f the most convenient way for the district court to dispose of a motion for compassionate release is to reject it for failure to satisfy one of the steps, we see no benefit in requiring it to make the useless gesture of determining whether one of the other steps is satisfied.").

[8] *McGee*, 992 F.3d at 1043 (citation omitted).

[9] Doc. 254 (Government's Motion to Dismiss Compassionate Release Motions).

Court now finds that Defendant has satisfied the exhaustion requirement in § 3582(c) and will proceed to determine the merits of Defendant's motion.

B. Extraordinary and Compelling Reasons

In determining whether a defendant presents an extraordinary and compelling reason warranting a sentence reduction, the Court considers whether the reduction is "consistent with applicable policy statements issued by the Sentencing Commission."[10] On November 1, 2023, the Sentencing Commission issued new sentencing guidelines, including a policy statement, which is now included within the text of the guidelines.[11] Some of the circumstances that may be relevant when deciding if a defendant presents an extraordinary and compelling reason for a sentence reduction include: (1) the medical circumstances of the defendant; (2) the age of the defendant and a serious deterioration in health; (3) the family circumstances of the defendant; (4) the defendant was the victim of sexual or physical abuse while incarcerated by or at the direction of an employee of the correctional facility; and (5) any other circumstances or combination of circumstances that are similar in gravity to the first four circumstances.[12] In addition, an unusually long sentence may be a consideration but only if there has been a change in the law; the defendant has served at least ten years of the unusually long sentence; and the change in law would "produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed."[13]

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[10] 18 U.S.C. § 3582(c)(1); *see also McGee*, 992 F.3d at 1042.

[11] *See* U.S.S.G. § 1B1.13.

[12] *Id.* § (b)(1)–(5).

[13] *Id.* § (b)(6).

In this case, Defendant first requests compassionate release to take care of his father. He asserts that his father recently had shoulder surgery and suffered a fall in which he broke two ribs and his hand. He states that his father is unable to take care of himself. Defendant states that he is the only available caregiver because his sister works full time and has underlying health conditions.

Section § 1B1.13(b)(3)(C) provides that "[t]he incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent" may be an extraordinary and compelling reason for release. The plain language of § 1B1.13(b)(3)(C), however, requires that Defendant be the *only* available caregiver.[14] Defendant fails to make this demonstration. The record reflects that Defendant has several half-siblings that could be Defendant's father's caregiver.[15] Thus, Defendant simply cannot establish that he is the only available caregiver.

Furthermore, the Court finds that Defendant's father is not incapacitated within the meaning of the guidelines. "'Incapacitation' within the meaning of § 1B1.13(b)(3) typically means that the individual is 'completely disabled' and 'cannot carry on any self-care' or 'is totally confined to a bed or chair.'"[16] Here, the evidence indicates that Defendant's father is recovering from shoulder surgery and then suffered a fall in which he broke two ribs and his hand. Although

[14] *Id.* § (b)(3)(C); *see also United States v. Davis*, 2024 WL 4436600, at *2 (D. Kan. Oct. 7, 2024) (denying the defendant's request for early release after finding that the defendant was not the only available caregiver because the defendant's three sisters could help even though the sisters had busy lives).

[15] The Court has reviewed Defendant's Presentence Investigation Report ("PSI") which states that Defendant has four paternal half-siblings, one of which is deceased. Another half-sibling, Tammy Boyer, provided an affidavit in which she averred that she herself was ill and was unable to take care of their father. There is no information on the other two half-siblings' ability to care for Defendant's father. The Court also notes, however, that the PSI indicates that Defendant and his father were estranged for quite some time, and in 2023, Defendant only had contact with his father once or twice a year.

[16] *United States v. Smith*, 2024 WL 4102041, at *2 (E.D. Ky. Aug. 27, 2024) (citing *United States v. Steele*, 2024 WL 1928945, at *3 (S.D. Ohio May 1, 2024)); *see also United States v. Striganivicz*, 2025 WL 52006, at *2–3 (E.D. Pa. Jan. 8, 2025) (citing cases in which courts found that incapacitation means "completely disabled" or cannot "carry on any self-care and is totally confined to a bed or chair.").

Defendant's father may have limited mobility, these conditions do not incapacitate him within the meaning of the guidelines.[17] The Court expresses its sympathy for Defendant's father's health challenges, but these circumstances simply do not indicate that he is incapacitated. Thus, because Defendant is not the only available caregiver and because Defendant's father is not incapacitated within the meaning of the guidelines, Defendant fails to present an extraordinary and compelling reason warranting release.

Defendant additionally contends that his medical circumstances warrant an early release from prison. Section 1B1.13(b)(1) provides that the medical circumstances of the defendant may provide an extraordinary and compelling reason for release. Specifically, a consideration under § 1B1.13(b)(1)(C) is whether the defendant is "suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death."[18]

Defendant asserts that he faces ongoing health risks due to the alleged inability to properly maintain his CPAP device and due to lack of access to mental health treatment. There simply is insufficient evidence showing that Defendant is suffering from a medical condition that requires long-term specialized medical care and/or that he is not being provided with appropriate medical care. Thus, Defendant fails to present an extraordinary and compelling reason based on his health care concerns that warrants early release.

[17] *See Steele*, 2024 WL 1928945, at *3 (stating that hip and knee replacement surgeries do not fall within the meaning of incapacitation).

[18] U.S.S.G. § 1B1.13(b)(1)(C). Sections 1B1.13(b)(1)(A) and (B) are wholly inapplicable to Defendant.

C. Section 3553(a) Factors

The Court's conclusion is bolstered by a consideration of the applicable sentencing factors enumerated in 18 U.S.C. § 3553(a).[19] Some of these factors include the nature and circumstances of the offense; the need for the sentence imposed to reflect the seriousness of the offense, afford adequate deterrence, and protect the public from future crimes by the defendant; and the need to avoid unwarranted sentence disparities.[20]

Defendant was found guilty on 12 counts related to COVID-19 fraud in 2022. He was sentenced to 27 months' imprisonment. The Court allowed his release while he appealed his conviction to the Tenth Circuit, and it also allowed an extension of time for Defendant to self-surrender after the Tenth Circuit's mandate was issued. Defendant reported to prison on December 31, 2024, and he filed a motion for release after serving only 25 *days* of his 27-month sentence. At this point, he has only served 45 days and granting him release would constitute a sentence reduction of approximately 95%. Reducing Defendant's sentence to time served is completely unwarranted and would not reflect the seriousness of Defendant's criminal conduct nor provide adequate deterrence or appropriate punishment.[21] Accordingly, the Court finds that Defendant does not demonstrate extraordinary and compelling reasons to warrant his early release from prison.

[19] *See* 18 U.S.C. § 3582(c)(1) (stating that the court should consider the factors set forth in § 3553(a) when determining the length of imprisonment).

[20] 18 U.S.C. § 3553(a).

[21] The Court also notes that Defendant has objected to every means the Government has sought to obtain restitution from Defendant this past year. He has filed no less than 10 motions, and Defendant has paid very little of the restitution amount.

IT IS THEREFORE ORDERED that Defendant's Motion to Reduce Sentence (Doc. 247), Supplemental Motion to Reduce Sentence (Doc. 248), and Renewed Motion to Expedite Consideration of Defendant's Motion for Compassionate Release (Doc. 253) are **DENIED**.

IT IS FURTHER ORDERED that the Government's Motion to Dismiss Compassionate Release Motions (Doc. 254) is **DENIED AS MOOT**.

IT IS SO ORDERED.

Dated this 14th day of February, 2025.

ERIC F. MELGREN
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, *Plaintiff,* vs. MICHAEL R. CAPPS, *Defendant.*	Case No. 21-10073-EFM

ORDER

The Court previously imposed a stay on its Order (Doc. 262) Denying Defendant's Motions to Reduce Sentence, staying the Order so Defendant could file a Reply to the Government's Response by February 26, 2025. Defendant has now filed his reply.[1] The Court has reviewed Defendant's submissions, and they do not contain any materially new allegations or arguments that change the Court's decision. Thus, the Court lifts its stay on its previous order denying Defendant's motions for release and filed that Order in its original form.[2]

[1] Defendant filed two replies.

[2] Defendant captioned one of his replies as a "Verified Consolidated Reply to Government's Response and Motion for Reconsideration." Doc. 268. The Court's Order was stayed to receive Defendant's Reply and thus Defendant could not file a motion for reconsideration of the Court's stayed order. Thus, the Court considers Defendant's motion for reconsideration (if in fact he filed such a motion; the submission is unclear) moot.

IT IS THEREFORE ORDERED that the Court lifts its stay on the Memorandum and Order (Doc. 262), dated February 14, 2025 and files the Order in its original form.

IT IS SO ORDERED.

Dated this 27th day of February, 2025.

ERIC F. MELGREN
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS (Wichita Docket)

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL CAPPS,

Defendant.

Case No. 21-10073-EFM

NOTICE OF APPEAL

Notice is hereby given that Defendant, Michael Capps, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the Order of the United States District Court for the District of Kansas, entered on February 27, 2025, lifting the stay on its Memorandum and Order (Doc. 262) and denying Defendant's Motions to Reduce Sentence.

This appeal is taken pursuant to 28 U.S.C. § 1291 and Federal Rule of Appellate Procedure 4(b).

Dated: February 27, 2025

Respectfully submitted,

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