IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**Case No. CR23-0036 - CJW**
vs.	)	
	)	**SENTENCING MEMORANDUM**
ALEXANDER WESLEY LEDVINA,	)	
	)	
Defendant.	)	

Comes Now, defendant Alexander Wesley Ledvina, by and through counsel, and hereby submits this Sentencing Memorandum pursuant to the Court's Orders:

I. The Defendant does not intend to call any witnesses.

II. The Defendant will ask that the Court consider the following exhibits at the sentencing hearing:

A1 – A7: Character letters.

B1: Photo

III. In addition to the issues set forth in the Final Presentence Report, Mr. Ledvina makes the following Constitutional challenges to the sentencing:

(1) Objection to Judicial fact finding on acquitted or uncharged conduct; and,

(2) Arguing the Ex Post Facto Clause and the application of "in connection with another felony."

IV. There are four issues identified in the Final Presentence Investigation Report for the Court to resolve at sentencing:

(1) Offense level reduction to level 6 for possessing all ammunition

and firearms solely for lawful sporting or collection purposes, USSG §2K2.1(b)(2); **(WITHDRAWN)**

(2) Four-level increase for possessing firearms in connection with another felony offense, USSG §2K2.1(b)(6)(B); **(WITHDRAWN)**

(3) Two-level reduction as a zero-point offender, USSG §4C1.1(a); **(WITHDRAWN)**, and

(4) Whether Mr. Ledvina qualifies for a downward variance under all of the sentencing factors under Title 18 USC §3553(a), including his background, severe drug addiction, overstated criminal history, and a combination of all of the factors.

A brief in support of these issues will be filed separately.

Respectfully Submitted

/s/ Michael K. Lahammer

Michael K. Lahammer, Li 014693
425 2nd Street SE, Suite 1010
Cedar Rapids, IA 52401
Phone: 319-364-1140
Attorney for the Defendant
Email: mike@lahammerlaw.com

Copy to:
Adam John Vander Stoep, AUSA
Jessica K. Clark, Senior USPO

I certify that I electronically filed the above on June 20, 2024, via CM/ECF, and all parties of record were notified accordingly.
/s/ Michael K. Lahammer

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**Case No. CR 23-0036 CJW**
vs.	)	
	)	**DEFENDANT'S BRIEF IN**
ALEXANDER WESLEY LEDVINA,	)	**SUPPORT OF SENTENCING**
	)	**ISSUES AND DOWNWARD**
	)	**VARIANCE**
Defendant.	)	

Comes Now, defendant Alexander Ledvina, by and through counsel, and submits this Brief in Support of Sentencing Issues and Downward Variance, offering the following in support:

I. ISSUES

Defendant raises the following issues for purposes of his sentencing hearing, recognizing that current caselaw is contrary to his position, and ***only to preserve the record:***

(1) Objection to Judicial fact finding on acquitted or uncharged conduct; and,

(2) Arguing the Ex Post Facto Clause and the application of "in connection with another felony," as applied to his case.

In addition, the following are the issues identified in the Final Presentence Report as needing to be decided by the Court:

(3) Offense level reduction to level 6 for possessing all ammunition and firearms solely for lawful sporting or collection purposes, USSG §2K2.1(b)(2); (WITHDRAWN)

(4) Four-level increase for possessing firearms in connection with another felony offense, USSG §2K2.1(b)(6)(B); (WITHDRAWN).

Mr. Ledvina acknowledges that the 4-level increase for connection to another felony is applicable based upon the evidence of the distribution of marijuana only, and based upon current evidentiary standards.

(5) Two-level reduction as a zero-point offender, USSG §4C1.1(a); (WITHDRAWN), and

(6) Whether Mr. Ledvina qualifies for a downward variance under all of the sentencing factors under Title 18 USC §3553(a), including his background, severe drug addiction, overstated criminal history, and a combination of all of the factors.

II. ARGUMENTS

(1) Objection to Judicial fact finding based upon acquitted or uncharged conduct.

Mr. Ledvina recognizes that current 8th Circuit and U.S. Supreme Court precedent is directly against this argument, as held in *US v. Watts*, 519 U.S. 148 (1997) and *Witte v. US,* 515 U.S. 387 (1995). While it may be precluded by current 8th Circuit precedent, such precedents are not overturned by the U.S. Supreme Court without being presented and preserved in a lower court. Ledvina believes half the U.S. Supreme Court has already expressed they believe the practice of

using acquitted or uncharged conduct is unconstitutional. Mr. Ledvina acknowledges preclusion by binding precedent, and is merely preserving the issue for further review.

Just last year in *McClinton v. US*, 143 S.Ct. 2400 (2023), at least 4 justices discussed this issue. They denied cert, however, because it was anticipated that the Sentencing Commission would remove considering acquittal and uncharged conduct by a judge under preponderance of evidence in the November 2023 amendments. "As many jurists have noted, the use of acquitted conduct to increase a defendant's Sentencing Guidelines range and sentence raises important questions that go to the fairness and perceived fairness of the criminal justice system." *Id.* (Sotomayor, J respecting denial of cert.) at 2401. "The Court's denial of Certiorori today should not be misinterpreted...If the Commission does not expeditiously or chooses not to act, however, this Court may need to take up the Constitutional issues presented," *Id at 2403*. "As Justice Sotomayor explains, the Courts denial of Certiorari should not be misinterpreted. The use of acquitted conduct to alter a defendant's sentencing Guidelines range raises important questions." *Id.* Kavanaugh, J. joined by Gorsuch, J. and Barrett, J. respecting denial of Certiorari) (also explaining waiting on November 2023 amendments) at 2403.

Because Mr. Ledvina is fighting acquitted/uncharged conduct, and judge found facts to increase his sentence, he recognizes that by the time a writ in his

case reaches SCOTUS, it will be 2025, so the U.S Supreme Court will likely be ripe to consider the issue. Other justices in the past have expressed an issue with the use of acquitted and uncharged conduct. See *U.S. v. Bell*, 808 F. 3d 926, 928 (DC Cir. 2015), (Kavanaugh, J. Concurring in denial of rehearing en banc); *U.S. v. Sabillen-Umana*, 772 F.3d 1328, 1331 (10th Cir. 2014), (Gorsuch, J.) *U.S. v. Watts*, 519 US 148, 170 (1997), (Kennedy, J. dissenting). This shows that at least 4 justices are leaning towards voting to grant Certiorari in a case presenting the issue.

Moreover, Justice Thomas has joined a statement in the past against using both acquitted and uncharged conduct, showing likely a 5th vote. "The 6th amendment, together with the 5th Amendment's Due Process Clause, requires that each element of a crime either be admitted by the defendant or proved to the jury beyond a reasonable doubt," *Jones v. U.S.*, 574 US 948 (2014) (Scalia, J., joined by Thomas and Ginsburg, JJ. dissenting from denial of cert.) (quoting *Alleyne v. U.S.* 570 US99, 104 (2013) "Any fact that increases the penalty to which a defendant is exposed constitutes an element of a crime, *Appendi v. New Jersey*, 530 U.S. 466, 483 n.10 (2000) and must be found by a jury, not a judge." id. (*Quoting Cunningham v. California*, 549 U.S. 270, 281) (2007) "with one exception: That the fact of a prior conviction...may be found by a judge." *Id.* at 949 n (emphasis added and citation omitted) In Ledvina's case, the "in connection with other

felonies" are not prior convictions, one is an acquittal under a lesser offense and the other conduct is mere accusations.

"Allowing judges to rely on acquitted or uncharged conduct could impose higher sentences than they otherwise would impose seems a dubious infringement of the rights to due process and a jury trial." *Bell,* Supra at 928. (*Citing in re Winship,* 397 US 358 (1970). "It is far from certain whether the Constitution allows...[changing a defendants sentence] based on facts the Judge finds without the aid of a jury or the defendants consent." *Sabillon-Umana*, 772 F.3d at 1331 (Gorsuch, J.)

As Ledvina's case is a clear example of, it allows punishment for crimes the government can't prove by using other offenses with totally different elements as a proxy for what they really want a conviction for. This is unacceptable under the 5th and 6th Amendments as shown above. *US v. Canania*, 532 F.3d 764, 776-778 (8th Cir. 2008) (Bright, J. concurring) which takes the view of these Justices in a case similar to Ledvina. The defendants were convicted of a drug trafficking offense but acquitted of 924(c) but were punished through the enhancement being argued in this case by unconstitutional fact-finding. In Ledvina's case, they clearly want to punish him for 924(c) and drug trafficking but want to take the lower-standard route so they don't risk losing under the proper process and standard of evidence. Mr. Ledvina was only convicted of mere possession of a gun as a drug user, not

using a gun in furtherance of drug trafficking, a violent felony. He wasn't even charged or convicted of trafficking drugs or of a violent crime, so the alternative attempt to punish him for this conduct violates the 5th & 6th Amendments.

Current 8th Circuit precedent relies on *US v. Watts*, 519 US 148 (1997) and *Witte v. US*, 515 US 387 (1995) to reject Ledvina's arguments. However, as shown at least 5 current justices disagree. Even Justice Alito, who made clear he'd vote to uphold the practice, acknowledged that "the only specific challenge to consideration of acquitted conduct in *Watts* is based on the Double Jeopardy Clause, rather than due process or the jury trial right". *McClinton* at 2405 (Alito, J. concurring denial of Cert.) The same is true for *Witte*. It might be argued that because Ledvina had a bench trial that he does not have standing for this argument, but he was clearly never charged with the "connected felonies" and did not make a plea or consent to a bench trial regarding them. Mr. Ledvina only consented to bench trial in 922(g) and 924(a)(1)(A). As a result, he does have standing to challenge denial of jury trial to these allegations. In fact, he arguably could also have standing to say he was denied indictment by a grand jury.

(2) Arguing the Ex Post Facto Clause and the application of "in connection with another felony.

This argument will have some overlap with the previous ex post facto, and 5th & 6th Amendment arguments. The Ex Post Facto clause prohibits Congress

from passing a law to punish prior conduct and the executive branch from applying a law to conduct prior to its enactment. The clause not only applies to new crimes but also to laws that "increase the punishment" of conduct committed before the law was passed even if the crime already existed. *Collins v. Youngblood*, 497 US 37, 46 (1990) "The ex post facto clause looks to the standard punishment prescribed by a statute, rather than the sentence actually imposed." *Lindsay v. Washington*, 301 US 397, 401 (1937). Further, it is well settled that the clause applies to state and federal guidelines regimes. See *Miller v. Florida*, 482 US 423 (1987) (Finding state guidelines law void as applied to petitioner because it applied amendments to pre-amendment conduct); *US v. Bell,* 991 F.2d 1445, 1449-52 (8th Cir. 1993) (ex post facto clause applies to the federal guidelines).

An act passed after alleged conduct cannot be used to punish said conduct even if part of it occurred after it was passed- only the conduct after it was in effect. *Rosenberg v. US,* 246 US 273, 290 (1953). "[m]oreover, the fact that the sentencing authority exercises some measure of discretion will also not defeat an ex post facto claim.: *Peugh v. US,* 569 US 530, 539 (2013) (*Citing Garner v. Jones*, 529 US244, 253 (2007).

In Ledvina's case, the Government is trying to punish him for conduct that took place before the enhanced version of the penalty provision he was indicted under was passed. Ledvina's indictment is for possession that took place on or

about August 11, 2022. The penalty provision (924(a)(8)) he was indicted under was passed on June 25, 2022. Pub. L. 117-159, § 12004(c)(2) part of the bipartisan Safer Communities Act of 2022. However, not only is Government "in effect attempting to have him charged with and convicted of one crime but sentenced for another," they are applying the enhanced version of the statute to conduct that took place before its enactment. *US v. Pirani*, No. 03-2871, 2004 US App. LEXIS 16117 at *30, (8th Cir Aug. 5, 2004) overruled on other grounds by 406 F.3d 543(8th Cir. 2005).

For example, the enhancement for possessing a firearm in connection with another felony included the alleged incident that was the basis of the dismissed 3rd degree harassment charge in state court. (PSI ¶41). This is a discrete event that clearly would have taken place well before the version of 924(a)(8) that Ledvina was indicted for passed. This not only serves to "circumvent the constitutional requirement that a jury (or consent to a judge) find all elements of a crime beyond a reasonable doubt," and Ledvina's 5th amendment right to indictment by a Grand Jury for that matter, but to punish him for it under a law passed after the fact. To make that even clearer, the government is even claiming that the so-called "victim" of that alleged incident is a victim of his crime of conviction – effectively ex post facto amending the indictment to apply to this pre-enactment conduct.

To be clear, "a law can run afoul of the [ex post facto] clause even if it does not alter the statutory maximum punishment attached to a crime." (*Peugh*, supra at 546) (*Citing Lindsey v. Washington*). So even if it merely affects the range of guidelines, the clause still applies. Particularly in a case such as this where the statutory maximum in fact was raised by 50%. "The presence of discretion does not dispute the protections of the Ex Post Facto Clause." *Garner* at 253.

These same principles apply to the allegation of drug trafficking. Any alleged trafficking being used, absent an actual conviction in particular prior to June 25, 2022, that is used as a predicate to apply USSG §2k2.1(b)(6)(B) also violates the clause as it essentially punished possession that occurred prior to the enactment of the version of 924(a)(8) under which Ledvina was indicted. Any conviction after can only be attacked on sufficiency of evidence and the other Constitutional grounds.

Any use of testimony of alleged trafficking involving the government's witnesses who are alleged to have participated in drug activities with Ledvina is in clear violation of the Clause. Thus any alleged trafficking the Government can get their witnesses to testify to and punish Ledvina for would violate the Clause. Further, the allegation is actual possession with intent – not conspiracy. So they can't be used as acts in furtherance of one that proceeded past June 25, 2022. To be sure, no controlled buys or seized drugs from these prior dates exist.

What should also be factored in this is that this conduct is not even involving prior convictions. See *US v. Tucker*, 404 US 443 (1972) (Illegal prior convictions may not be considered at sentencing). These are raw, unindicted, uncharged and unconvicted (one of which was dismissed for insufficient evidence under lesser offense) allegations that took place prior to the law's enactment. Using 924(a)(8) to punish Levina for this violates the Constitution on all grounds mentioned. Ledvina's sentence would unquestionably be lesser without the enhancements.

(3) Whether Mr. Ledvina qualifies for a downward variance under all of the sentencing factors under Title 18 USC §3553(a), including his background, drug addiction, overstated criminal history, and a combination of all of the factors.

Following the Supreme Court's ruling in *Booker*, the United States Sentencing Guidlelines became effectively advisory in all cases. *Booker,* 125 S.Ct. at 756-57. The result is that district courts must now impose a sentence that is "sufficient but not greater than necessary" to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2), after considering these factors listed in §3553(a)(1), (a)(3), and (a)(5)-(7):

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;
(2) the kinds of sentences available;
(3) the guidelines and policy statements issued by the Sentencing Commission, including the guideline range;

(4) the need to avoid unwarranted sentencing disparity among defendants with similar records that have been found guilty of similar conduct;
(5) the need to provide restitution to any victim of the offense.

Essentially, Section 3553(a) requires district courts to impose a sentence that is "sufficient but not greater than necessary" to comply with the four purposes of sentencing set forth in Section 3553(a)(2): retribution, deterrence, incapacitation, and rehabilitation. These purposes are not just another "factor" to be considered along with the others above, but instead set an independent limit on the sentence a court may impose.

It is important to note that all the factors set forth in §3553(a) are subservient to §3553(a)'s mandate to impose a sentence that is not greater than necessary to comply with the four purposes of sentencing. *Booker* suggests that not any one of these factors is to be given greater weight than any other factor. The bottom line is that the Court should impose a sentence that is ***minimally sufficient*** to accomplish specified purposes of sentencing, and the guidelines are only one of the five equally important factors to be considered in determining the minimally sufficient sentence.

a. §3553(a)(1) – Nature and circumstances of offense and Ledvina's history and characteristics.

Here, the circumstances are that Ledvina possessed guns while using marijuana, and making a false statement during the purchase of a firearm.

However, his clean record and lack of other charges show that the firearms were not used in any other crimes. Nobody was shot with them, they were not used in any robberies. Further, Mr. Ledvina didn't have them straw purchased; he openly bought them himself. He didn't lend them to criminals to use, and he wasn't practicing in an unlicensed gun business. In addition, he is not in a gang or terrorist group. These firearms also were not NFA items nor were there any illegal attachments on them. The circumstances are really quite benign.

As to Ledvina's personal characteristics, he has zero criminal history points due to his clean record. He does not have a history of violence. He has strong community ties and a strong family support system. Unlike most defendants with federal cases, Mr. Ledvina does not have a record. At the time of his arrest, he worked as a low-voltage electrician and IT tech at the Iowa City VA hospital – a federal building. He was far from engaging in other criminal activity; he was attempting to further his career. He also had plans to go back to college fall 2023, in the event that Title 18 USC §922(g)(3) was declared unconstitutional prior to his indictment.

b. Respect for the Law/Retribution

"The length of the sentence should reflect the 'harm done' and 'gravity of the defendant's conduct" *US v. Walker*, 252 F.Supp 3d 1269, 1291 (D. Utah 2017) (Giving 33 days time served and supervised release sentence for robbing banks as a

career offender who's guidelines were 151-188 months), *aff'd* 918 F.3d 1134 (10th Cir 2019) (*Quoting S. Rep. No 98-225*, at75 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3258.

Ledvina would also cite a PEW research article stating that there is a large percentage of Americans who use marijuana and think it should be legal. In addition, recently President Biden gave pardons for federal convictions for simple possession of marijuana. Finally, there is currently a process implemented by the federal government for the rescheduling of marijuana.

Merely possessing guns is not a grave offense – considering the millions across the U.S. who own guns. There is practically no harm done. Nobody received any physical or financial injuries (besides Ledvina's family and Ledvina). No property was damaged. It is by definition a victimless crime. Certainly no gun stores were harmed, as they got thousands of dollars out of Mr. Ledvina purchasing the firearms. It is a prohibition offense that many would believe is not inherently wrong. The so-called victim's alleged harm is so minimal to non-existent that the state case was a simple misdemeanor and was dismissed – on the states motion - due to lack of evidence as at least one of the witnesses told the prosecutor they didn't even remember the incident.

With no statutory minimum, "just punishment, including for solely retributive ends, can be accomplished by a set of other sanctions that do not

necessarily include incarceration." *Walker* at 1291. In Ledvina's case, time served with supervised release would be more appropriate than a significant period of incarceration. Mr. Ledvina has now been locked up in county jails for over a year. Even a sentence of time in a halfway house would be more appropriate than incarceration in this case.

c. Adequate Deterrence

There are two types of deterrence this factor refers to: Individual Deterrence (preventing recidivism) and General Deterrence (deterring others from committing the same offense.)

Individual deterrence involves Ledvina's personal characteristics. "Studies reviewed by the Office of Justice Programs and National Institute of Justice concluded that prisons can exacerbate, not reduce recidivism." *Walker* at 1294. It was found that "compared to non-custodial sanctions, incarceration has a null or mildly criminogenic impact on future criminal involvement...[this assessment] calls into question wild claims that imprisonment has strong specific deterrent effects." *Office of Justice Programs, National Institute of Justice, Five Things about Deterrance*, US DOJ (May 2016) (hereafter "Five Things") (*Quoting Daniel S. Nagin, Francis T. Cullen and Cheryl Leno Johnson, Imprisonment and Reoffending, Crime and Justice: A Review of Research*, vol. 38 (2009).

The US Sentencing Commission conducted a study that found offenders

sentenced to probation had a lower re-arrest rate than those sentenced to imprisonment (35.1% compared to 52.5%) while highest recidivism rates were associated with offenders receiving longer sentences. *USSC, Recidivism Among Federal Offenders: A Comprehensive Overview*, Part IV (March 2016).

With the health of Ledvina's Grandfather deteriorating and his sister moving to Massachusetts, sending Ledvina to prison for an even longer period of incarceration would only serve to disrupt and strain family ties and connections to the community. "Research has shown that the disruption in family ties during incarceration actually increases the criminal behavior of ex-inmates." *Kimberly Bahna, "It's a Family Affair" – The Incarceration of the American Family: Confronting Legal and Social Issues*, 28 U.S.F L. Rev. 271, 275 (1994). "The relationship between family ties and lower recidivism has been consistent across study populations, different periods and different methodological procedures." *Shirley R. Klein et al; Inmate Family Functioning, 46 Int'l J. Offender Therapy & Comp. Criminology* 95, 99-100 (2002). This further shows that in this individual case time served and supervised release satisfies the specific deterrence factor.

In the USSC's 2010 survey of US District Judges, 62% said family ties and responsibilities are "ordinarily relevant" to the consideration of a departure or variance. *USSC, Results of Survey of United States District Judges January 2010-March 2010,* table 13 (June 2010).

Further, the Court should not consider lightly the experience of Mr. Ledvina already serving a year in county jails, and the threat of going back for violating release. "The data shows long prison sentences do little to deter people from committing future crimes." *NIJ, Five Things*. As a result, time served serves a specific deterrence.

As relates to general deterrence, studies show that "there is little evidence that increases in length of already long prison sentences yield general deterrent effects that are sufficiently large to justify their social and economic costs." *Daniel Nagin, Deterrence in the Twenty-First Century, Crime and Justice in America*; 1975-2025 (2013) (hereafter "Deterrence") at 201. In fact, the studies show that it's the "certainty of apprehension and not the severity of the legal consequence ensuing from apprehension" that is more effective deterrent. *Id* at 202. "Not surprisingly, the survey finds that knowledge of sanction regimes is poor...For individuals for whom sanction threats might affect their behavior, it is preposterous to assume that their perceptions conform to the realities of the legally available sanction options and their administration." *Id*. at 204. Thus, "it is clear that lengthy prison sentences cannot be justified on a deterrence-based, crime-prevention basis." *Id* at 202.

These conclusions show "that lengthy prison sentences" including in this case, "cannot be justified on deterrent grounds" *Id* at 253. The likelihood that a

would-be marijuana user in possession of a gun would hear about Mr. Ledvina receiving over a year in jail and 3 years of supervised release and be less deterred from doing so is so remote as to defy any meaningful conclusion that this case requires a longer custody sentence

d. Protecting the Public and Incapacitation

This factor is intertwined with specific individual deterrence factors and Ledvina's specific characteristics. For that matter, facts show Ledvina is statistically and by pattern less likely to commit future crimes. He has zero history points, because he wasn't inclined to commit crimes in the first place. Rather than flee or go endanger the public by committing crimes after his house was raided, he instead attempted to further my career for the 10 months following the raid before he was arrested. Rather than commit crimes, he was actively trying to civically litigate his case, which entailed going into the "hornets' nest" to make pro se filings knowing that the U.S. Marshall's could have grabbed him at any time. (*See, In the Matter of the Search Warrants*, No. 22-mj-162 (NDIA)). This shows to any rational neutral observer that the Government themselves did not think Mr. Ledvina was actually a threat. It defies common sense. If they did think he was a threat, they would have arrested him on the spot following the raid on his residence rather than giving him 10 months to wreak further havoc.

It should be noted, that while Mr. Ledvina was arguing is civil case, he even

informed the Court and the Government that he had to leave the State of Iowa (for work), and needed an extended time period to file a reply brief, although Mr. Levina was not obligated to do so.

e. Sentence Disparities and Rehabilitation

Halfway house or supervised release conditions would provide any treatment that the Court thinks Mr. Ledvina would need, and much more effectively than a prison surrounded by hardened criminals. Further, vocational training and work would be more effectively attained in the real world. Ledvina's supervisor at Captain Clean has provided a letter saying that Ledvina was a good employee, and would evidently rehire him. There is no equivalent to working in the field when it comes to vocational training.

Here is a list of similarly and worse situated defendants, where they were given very light sentences to rebut any argument that time served for Ledvina would result in a "sentencing disparity".

US v. Walker, 252 F. Supp. 3d 1269 (D. Utah 2017) (receiving 33 days time served and supervised release where convicted of bank robbery as a career offender with guidelines of 151-188 months) aff'd 918 F. 3d 1134 (10th Cir 2019).

US v. Gala, No. 50-cr-27 (W.D.VA. April 2, 2024) (19 months time served after convicted of 922(g)(3) and possession with intent of fentanyl and granted early termination of a 3 year supervised release term).

US v. Brown, No. W-19-cr-73-ADA (W.D. Tex. Oct. 31, 2023) (Convicted of 922(g)(3), sentenced to time served and 3 years supervised release. Violated by using and arrested for possession of marijuana, sentenced again to time served and supervised release.

US v. Bean, No. W-21-CR-54 (W. D. Tex. Mar 6, 2024) R&R for violating supervised release after being sentenced to time served and 3 year supervised release after 922(g)(3) conviction.

US v. ONeal, No. W-18-CR-86 ((W. D. Tex. June 13, 2023) R&R on violation after being sentenced to time served for 12 months 1 day following 922(g)(3) with 3 years supervised release.

US v. Mathis, No. W-21-CR-64 (W. D. Tex. May 12, 2023) Sentenced to time served and 3 years supervised release.

US v. Noye No. 19-cr-78 (NDIA July 22, 2020) Title 18 USC §922(g)(3) conviction sentenced to 18 months after pretrial release when Court determined he lied on forms to receive 8 guns, 1 of which was recovered from a juvenile in a foot chase; another person used one in a shooting; falsely reporting 6 stolen, one of which he reported he had pawned prior; purchased firearms for juveniles; used false report of stolen guns to commit insurance fraud; had witness testify to illegally selling prescription pills and THC cards in "significant amounts" that were corroborated by text messages. Violated pretrial release, had marijuana confiscated in traffic stop. Defendant was approximately Ledvina's age with a criminal history point.

US v. Burnside, 467 F.Supp 3d 659 (NDIA 2020) Title 18 USC §922(g)(3), received 24 months after pretrial release and got compassionate release 7 months early after being granted self-surrender. Case involved drug deal related shootout less than 4 weeks after lying on form about drug use; sold drugs via social media posts, was seen in possession with at least 3 different firearms.

US v. Clark, No 19-cr-64-PLR-HB6-2, 20-cr-14-HB6 (E. D. Tenn. July 1, 2020) Convicted of 922(g)(3) and 924(c), granted pretrial release. Violated it with OWI & Eluding charges. Estimated range of only 21-27 months and released pending sentencing.

The 8th Circuit, "may not require extraordinary circumstances to justify a sentence outside the guidelines," *US v. Davis*, 20 F. 4th 1217, 1221 (8th Cir. 2021) (internal quotes & citations omitted) (Sentence of 2 months time served and supervised release was not so unreasonably lenient as to warrant abuse of

discretion when the guideline range was 46-57 months because district court did not overlook any §3553 factors). For sure, the guidelines are to be treated as advisory and the "sentencing court does not enjoy the benefit of legal presumption that the Guidelines sentence should apply." *Rita v. US,* 551 US 338, 351)(*Citing US v. Booker*, 543 US 220, 259-260 (2004).

A time served sentence is sufficient to satisfy the sentencing factors in this case. As the Supreme Court has said, "Offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty." *Gall v. US*, 552 US 38, 48 (2007).

It is respectfully requested that the Court impose a sentence that is sufficient but not greater than necessary to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2), by granting the request for a variance, and imposing a sentence of time served in this case.

Respectfully Submitted,

/s/ Michael K. Lahammer
Michael K. Lahammer
Li 014693
425 2nd Street SE, Ste. 1010
Cedar Rapids, IA 52401
Phone: 319-364-1140
Attorney for the Defendant
Email: mike@lahammerlaw.com

6-16-2024 RICHARD LEDVINA (FATHER)

Your Honor:

I am writing this plea on behalf of my son, Alex, for your consideration in rendering sentencing.

Alex graduated from Washington High School here in Cedar Rapids with honors, and received various awards and medals for both academic and athletic achievements.

He also attended the University of Iowa and wishes to pursue his degree in Computer Science. He has employment waiting for him as well at Captain Clean, and will be gainfully employed.

As for his character, I can honestly attest that I have never known him to lie or be dishonest. This is unusual, as almost every child tells a lie at one time or another.

Exhibit A-1

Despite the image of him being created by his situation, he is overall law abiding, which is reflected by the fact that up until this point, he had a clean criminal record, save for one minor misdemeanor offense some ten years prior, unlike most defendants who appear before you.

Alex has a kind heart, especially regarding children and animals. He has two neices who adore him, look up to him, and love to spend time with him. They miss him dearly. He also has a special bulldog that I am currently taking care of. This certainly leaves an empty place in his heart.

For these reasons, that's why I plead with you to extend mercy and to keep these pleas in mind when passing judgement

Rudad Ledoux

June 16, 2024

Your Honor,

My name is Michelle. I am Alex's Mom. Because of my deteriorating health, I came to depend on Alex's help. I don't have a license, so I'm unable to do simple things like, groceries, doctor appointments, and most importantly in the year before Alex was arrested, my son dropped everything on at least two occasions and rushed over to take me to the hospital. He stayed with me every moment so I wouldn't be

Exhibit A-2

alone.

He and his father chose opposite shifts solely to make sure el have any assistance needed. Not long ago, el lost my Mother and Alex lost his beloved Grandmother. Even amongst his own grief, he has never failed to be here to listen, to comfort and most importantly to share our pain so el didnt feel alone.

My Dad, is in very bad health. Of my two children, Alex is the

one who has steadfastly stayed near and dear to his family. My daughter and grandchildren live in another state. However, no matter how far the miles are between us, we are a tight knit family and we know that we can depend on each other for moral support. We have a very small family. If someone is missing it's felt deeply by each and every one of us.

Alex really loved his job. And like myself would never be far

away in case any of need him.

Alex is gifted with the curiousity of wanting to have more knowledge and the intelligence to take any and all knowledge, from the topics of Physics all the way to showing compassion for not only his family and friends, but for anyone who can't find their own voice. He has it in him, the determination and the motivation to make a difference.

If he can't find the answers, the solutions or even the words

within himself, he will do everything in his power to find them.

My son also has the immeasureable love for not only his own dog, "Betsy," but all our family pets. To us, they are "Family."

Thank you for your consideration for my heartfelt words. The love I have for Alex is unconditional.

Sincerely,

Michelle Nemecek

Your Honor,

My name is Marleen Nemecek. I am a Homemaker and farmwife. I have known Alex for 20 years. He is my nephew. Alex has always been a helpful person. He helps out wherever needed. He is willing to give of himself. He looks out for our younger family members. Making things fun and adventurous for them. He is a loyal to the people he cares about. He always looks out for those who are at a disadvantage or handicapped. He has a sense of fairness

Exhibit A-3

and justice that many young people are lacking these days. He's always been honest. I've never known of him to steal or lie. Please consider my testimonial on his behalf. Marleen Nowack

06/11/2024

Your Honor:

My name is Kurt Ledvina and I am Alexander Ledvina's uncle. I work as a Ramp Transport Driver for FedEx Express in Cedar Rapids and have been employed there since 2015. Before that, I worked at US Cellular for 19 years holding various positions in that time including customer service, collections, and sales. I am writing to you to ask for some leniency in his sentence you are about to give him. One reason I ask this from you is because Alex has a clean criminal record. He is not a multiple time criminal offender. If this was his second time in this position, I would say he is a habitual offender and deserves a harsher sentence. However, he is not a multiple time offender and I ask that you consider giving him a second chance at living his relatively young life and I believe you will never see him again in the court system.

I think Alex has a lot to offer society. He is very adept with computers and mathematics. When he was a child he wanted to work in the computer industry. I think if he would put his abilities in that field, he could become a productive member of society. Alex was diagnosed with Asperger's syndrome as a child, which may explain his proficiency with math and computers. I think he felt somewhat of as an outsider growing up because he wasn't "normal" acting and I think he tried to change his image in the wrong way. I think he's had time to reflect on his life and will hopefully look to going back to working in the computer field which always interested him.

Alex has a kind heart as demonstrated when he's around animals. He has an elderly dog that he really loves and took care of. His dog is now with Alex's father. He grew up having various animals, including dogs, around him and he always enjoyed playing with them and looking after them. Alex has always been kind to animals, which is a sign he has a kind personality. Alex had just started a job at the University of Iowa doing some kind of network transition for the university, which he really liked. Before that, he was doing concrete finishing work, which is not easy to do. I think if you grant him some leniency, he will go back to working concrete until he can get back into working with computer networks.

Your honor, I ask that you give Alex a second chance. He's been in jail for a year now. I think he's had time to reflect on his life and what he could have done differently. I ask for you to grant him leniency in his first offense. If you see him again in your court in the future, I won't be writing to you again. Please consider giving Alex another chance at adulthood and not make him waste away in prison where he will not have any future. Thank you for your consideration.

Kurt Ledvina

Exhibit
A-4

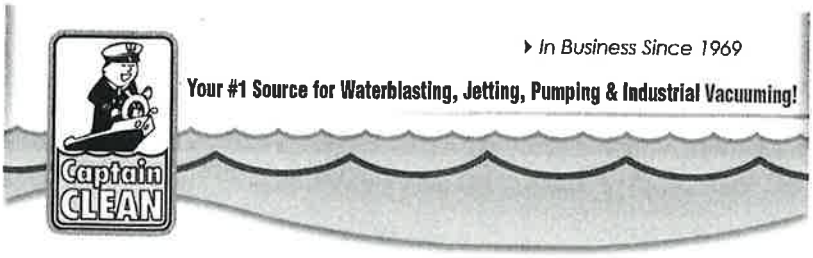
To Whom this Concerns,

My name is Darren Wischstadt. I am currently a semi truck driver, as well as a farmer. I am writing this letter in regards to Alex Ledvina. I have known Alex for about 16 years. I met Alex through my stepdad. Alex has been a very productive member of society. And my understanding is he did not commit any violent offences towards anyone. And do not see him being any sort of threat to the public or himself in any way. Alex is a very family-oriented person and would help anyone in need. He has always attended family events and has always offered a helping hand when needed or asked

Alex and I have always shared a love for politics and enjoy discussion what is going on in the world. In my opinion, I believe Alex has done his time served and has learned from this mistake. I am asking the court to grant time served and be allowed to get back to his life and family.

Darren Wilbert Wischstadt

Exhibit
A-5



Cedar Rapids, IA
2740 6th Steet SW 52404
Phone: 319-362-2400

Clinton IA
2243 Lincolnway 52732
Phone: 563-242-1115

4/12/2024

To Whom it may concern:

Alex Ledvina was employed by Captain Clean Ltd. from 11/16/22-4/12/2023.

Alex left our employment for another position elsewhere.

While Alex was employed at Captain Clean his attendance was good / he worked well with others.

Alex gave 2 weeks' notice when he left Captain Clean for another position elsewhere.

Regards,

Larry Lehman
VP/GM

Exhibit
A-6

Your Honor,

I am writing this letter in support of my brother, Alexander Ledvina, who stands before you today. I can attest to the fact that he is a responsible and trustworthy person who is capable of change. I believe that Alex deserves the chance to be rehabilitated and make a positive contribution to society.

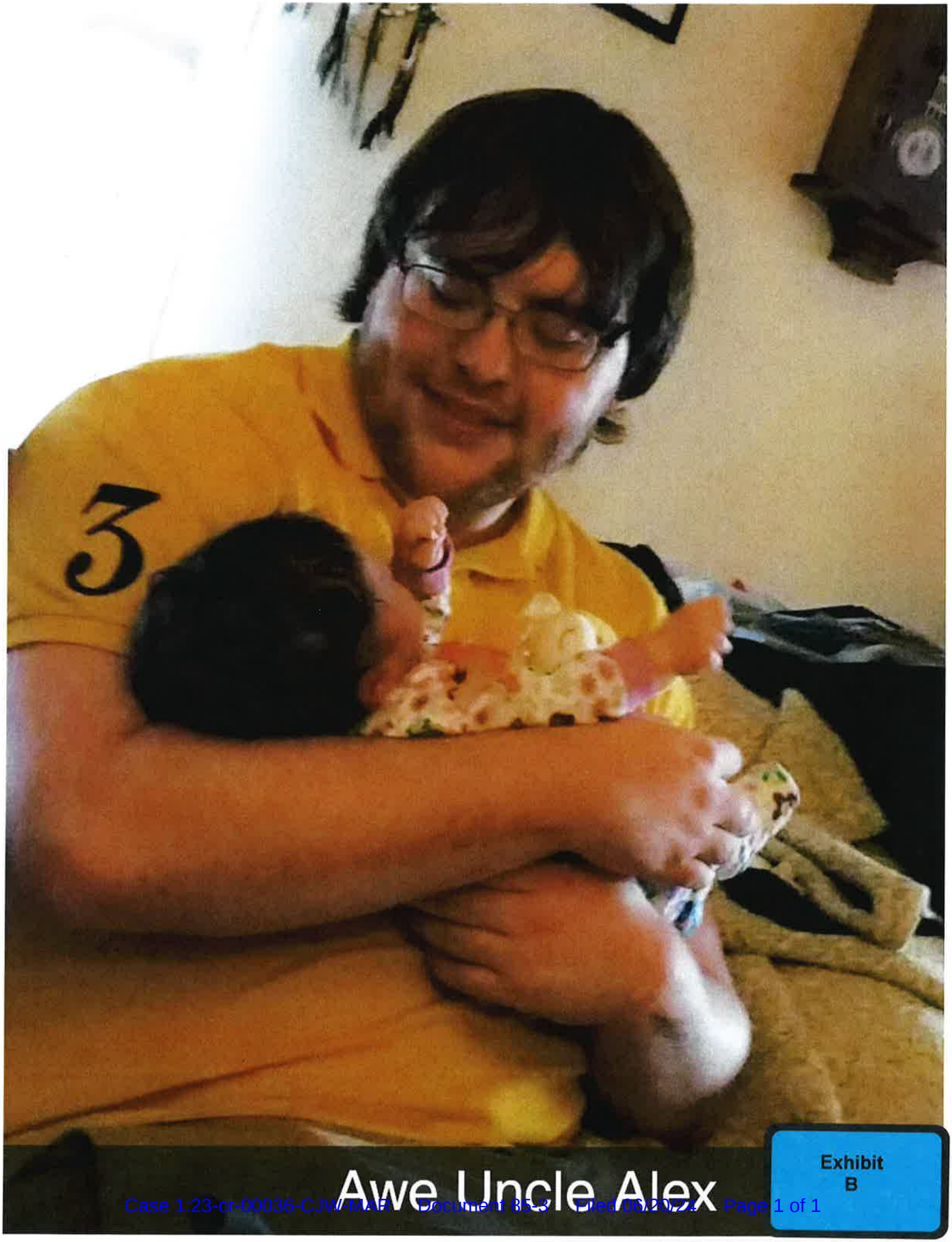
I understand the severity of the charges and the possible consequences. Please would you consider a sentence of rehabilitation (half way house) rather than incarceration as this would be more beneficial for Alex and society. Alex was working before his arrest and he is ready and excited to work again. - I've even heard his previous employer is willing to hire him again because he was such a great employee.

My family and I miss my brother very much. His time away has been very hard on everyone. My parents are aging and will rely on my brother more as time goes on. I respectfully ask that you consider my words and offer Alex leniency and a second chance.

Sincerely,

Cassandra Ledvina

Exhibit
A-7



Exhibit
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