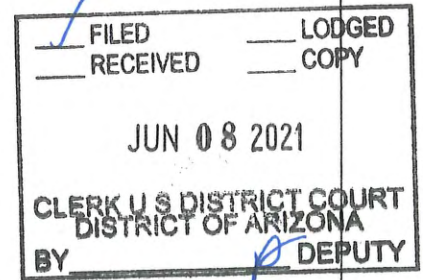
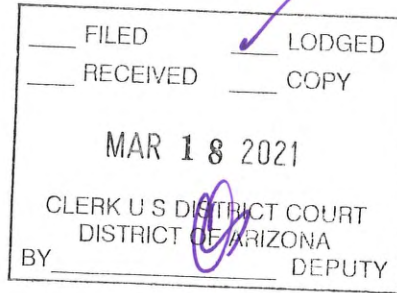


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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

Kevin Thomas Kerr,
Defendant.

No. CR 20-00513-DLR

PLEA AGREEMENT

Plaintiff, the United States of America, and the defendant, KEVIN THOMAS KERR, hereby agree to dispose of this matter on the following terms and conditions:

1. PLEA

The defendant will plead guilty to Count One of the Indictment charging the defendant with a violation of 18 United States Code (U.S.C.) § 875(c), Interstate Communications Containing Threat, a Class D felony offense.

2. MAXIMUM PENALTIES

a. A violation of 18 U.S.C. § 875(c) is punishable by a maximum fine of \$250,000, a maximum term of imprisonment of 5 years, or both, and a term of supervised release of up to 3 years. A maximum term of probation is five years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:

(1) make restitution to any victim of the offense pursuant to 18 U.S.C.

SCANNED

1 § 3663 and/or 3663A, unless the Court determines that restitution would not be
2 appropriate;

3 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
4 fine is not appropriate;

5 (3) serve a term of supervised release when required by statute or when a
6 sentence of imprisonment of more than one year is imposed (with the understanding that
7 the Court may impose a term of supervised release in all other cases); and

8 (4) pay upon conviction a \$100 special assessment for each count to
9 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

10 c. The Court is required to consider the Sentencing Guidelines in determining
11 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
12 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
13 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
14 the Court accepts.

15 3. AGREEMENTS REGARDING SENTENCING

16 a. Recommendation: Acceptance of Responsibility. If the defendant makes
17 full and complete disclosure to the U.S. Probation Office of the circumstances surrounding
18 the defendant's commission of the offense, and if the defendant demonstrates an
19 acceptance of responsibility for this offense up to and including the time of sentencing, the
20 United States will recommend a two-level reduction in the applicable Sentencing
21 Guidelines offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense
22 level of 16 or more, the United States will move the Court for an additional one-level
23 reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G.
24 § 3E1.1(b).

25 b. Non-Binding Recommendations. The defendant understands that
26 recommendations are not binding on the Court. The defendant further understands that the
27 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
28 recommendation.

1 c. Stipulation: Probation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United
2 States and the defendant stipulate that the defendant shall be sentenced to 5 years'
3 probation. The United States reserves the right to withdraw from this plea agreement if, in
4 advance of sentencing, the defendant is granted pretrial release and violates any condition
5 of the terms of such pretrial release.

6 d. Stipulation: Mental Health Testing and Treatment. Pursuant to Fed. R. Crim.
7 P. 11(c)(1)(C), the United States and the defendant stipulate that during any period of court
8 supervision (i.e., probation or supervised release), the defendant shall participate in a
9 mental health assessment and participate in mental health treatment as determined to be
10 necessary by a medical professional and/or mental health professional providing mental
11 health treatment, and the defendant shall follow any treatment directions by the treatment
12 provider. The defendant shall take medicine as prescribed by a medical professional
13 providing mental health treatment, unless the defendant has a good faith belief that the
14 medication implicates a significant liberty interest, at which time the defendant must
15 immediately notify the probation officer so that the Court can promptly hold a hearing.
16 The defendant must contribute to the cost of treatment in an amount to be determined by
17 the probation officer.

18 e. Stipulation: No Contact. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United
19 States and the defendant stipulate that the defendant shall not knowingly have any contact,
20 direct or indirect (whether in person or by telephone, letter, email, or any other
21 communications method), with any victims, including: (1) "A.F." (whose name is listed in
22 the unredacted Indictment) or any member of his immediate family; (2) any office or
23 employee of Jackson Lewis P.C.; (3) any office or employee of PRAHealthSciences; and
24 (4) any office or employee of any Johnson & Johnson company.

25 f. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
26 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
27 event more than \$10,000, to all victims directly or proximately harmed by the defendant's
28 "relevant conduct," including conduct pertaining to any dismissed counts or uncharged

1 conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes
2 an “offense” under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that
3 such restitution will be included in the Court’s Order of Judgment and that an unanticipated
4 restitution amount will not serve as grounds to withdraw the defendant’s guilty plea or to
5 withdraw from this plea agreement.

6 g. Assets and Financial Responsibility. The defendant shall make a full
7 accounting of all assets in which the defendant has any legal or equitable interest. The
8 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
9 transfer any such assets or property before sentencing, without the prior approval of the
10 United States (provided, however, that no prior approval will be required for routine, day-
11 to-day expenditures). The defendant also expressly authorizes the United States Attorney’s
12 Office to immediately obtain a credit report as to the defendant in order to evaluate the
13 defendant’s ability to satisfy any financial obligation imposed by the Court. The defendant
14 also shall make full disclosure of all current and projected assets to the U.S. Probation
15 Office immediately and prior to the termination of the defendant’s supervised release or
16 probation, such disclosures to be shared with the U.S. Attorney’s Office, including the
17 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
18 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
19 under this agreement and the law.

20 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

21 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
22 sentencing, shall dismiss the following charges: Count Two of the Indictment.

23 b. This agreement does not, in any manner, restrict the actions of the United
24 States in any other district or bind any other United States Attorney’s Office.

25 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

26 a. If the Court, after reviewing this plea agreement, concludes that any
27 provision contained herein is inappropriate, it may reject the plea agreement and give the
28

1 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
2 11(c)(5).

3 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
4 vacated, or reversed at any time, this agreement shall be null and void, the United States
5 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
6 any charges that have been dismissed because of this plea agreement shall automatically
7 be reinstated. In such event, the defendant waives any and all objections, motions, and
8 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
9 restrictions in bringing later charges or proceedings. The defendant understands that any
10 statements made at the time of the defendant's change of plea or sentencing may be used
11 against the defendant in any subsequent hearing, trial, or proceeding subject to the
12 limitations of Fed. R. Evid. 410.

13 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

14 The defendant waives (1) any and all motions, defenses, probable cause
15 determinations, and objections that the defendant could assert to the indictment or
16 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
17 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
18 judgment against the defendant, or any aspect of the defendant's sentence, including the
19 manner in which the sentence is determined, including but not limited to any appeals under
20 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
21 (habeas petitions), and any right to file a motion for modification of sentence, including
22 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
23 collateral attack, or other motion the defendant might file challenging the conviction, order
24 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
25 bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial
26 misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

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28 //

1 **7. DISCLOSURE OF INFORMATION**

2 a. The United States retains the unrestricted right to provide information and
3 make any and all statements it deems appropriate to the U.S. Probation Office and to the
4 Court in connection with the case.

5 b. Any information, statements, documents, and evidence that the defendant
6 provides to the United States pursuant to this agreement may be used against the defendant
7 at any time.

8 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
9 cooperation shall include providing complete and truthful responses to questions posed by
10 the U.S. Probation Office including, but not limited to, questions relating to:

11 (1) criminal convictions, history of drug abuse, and mental illness; and

12 (2) financial information, including present financial assets or liabilities
13 that relate to the ability of the defendant to pay a fine or restitution.

14 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

15 Nothing in this agreement shall be construed to protect the defendant from
16 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
17 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
18 monetary penalties, including restitution imposed by the Court, shall be due immediately
19 upon judgment, shall be subject to immediate enforcement by the United States, and shall
20 be submitted to the Treasury Offset Program so that any federal payment or transfer of
21 returned property the defendant receives may be offset and applied to federal debts (which
22 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
23 payments, the schedule of payments shall be merely a schedule of minimum payments and
24 shall not be a limitation on the methods available to the United States to enforce the
25 judgment.

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28 //

1 **9. ELEMENTS**

2 **Interstate Communications Containing Threat**

3 **18 U.S.C. § 875(c)**

4 On or about March 6, 2020, in the District of Arizona and elsewhere:

- 5 1. The defendant knowingly transmitted a communication in interstate or
6 foreign commerce;
- 7 2. The message threatened to kidnap or injure another person; and
- 8 3. The defendant transmitted the communication for the purpose of issuing a
9 threat or with knowledge that the communication would be viewed as a
10 threat.

11 **10. FACTUAL BASIS**

12 a. The defendant admits that the following facts are true and that if this matter
13 were to proceed to trial the United States could prove the following facts beyond a
14 reasonable doubt:

15 On March 6, 2020, as part of an ongoing series of harassing
16 communications, I knowingly placed an interstate phone call
17 to "A.F." (whose true name is listed in the unredacted
18 Indictment), in which I threatened to injure and kill him.
19 Specifically, while I was living in the state of Illinois, I left a
20 voicemail for A.F. at his place of work. A.F. was employed at
21 a law firm in Arizona and engaged in legal representation. In
22 the voicemail, among other things, I threatened to kick A.F. in
23 the genitals and to rip his skull in half. The threatening
24 voicemail also included anti-Semitic slurs. I left this voicemail
25 for the purpose of issuing a threat and with knowledge that it
26 would be viewed as a threat.

27 b. The defendant shall swear under oath to the accuracy of this statement and,
28 if the defendant should be called upon to testify about this matter in the future, any
29 intentional material inconsistencies in the defendant's testimony may subject the defendant
30 to additional penalties for perjury or false swearing, which may be enforced by the United
31 States under this agreement.

32 //

33 //

APPROVAL AND ACCEPTANCE OF THE DEFENDANT

I have read the entire plea agreement with the assistance of my attorney. I understand each of its provisions and I voluntarily agree to it.

I have discussed the case and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I shall waive my rights to plead not guilty, to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present evidence in my defense, to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination, all with the assistance of counsel, and to be presumed innocent until proven guilty beyond a reasonable doubt.

I agree to enter my guilty plea as indicated above on the terms and conditions set forth in this agreement.

I have been advised by my attorney of the nature of the charges to which I am entering my guilty plea. I have further been advised by my attorney of the nature and range of the possible sentence and that my ultimate sentence shall be determined by the Court after consideration of the advisory Sentencing Guidelines.

My guilty plea is not the result of force, threats, assurances, or promises, other than the promises contained in this agreement. I voluntarily agree to the provisions of this agreement and I agree to be bound according to its provisions.

I understand that if I am granted probation or placed on supervised release by the Court, the terms and conditions of such probation/supervised release are subject to modification at any time. I further understand that if I violate any of the conditions of my probation/supervised release, my probation/supervised release may be revoked and upon such revocation, notwithstanding any other provision of this agreement, I may be required to serve a term of imprisonment or my sentence otherwise may be altered.

This written plea agreement, and any written addenda filed as attachments to this plea agreement, contain all the terms and conditions of the plea. Any additional agreements, if any such agreements exist, shall be recorded in a separate document and

1 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
2 be in the public record.

3 I further agree that promises, including any predictions as to the Sentencing
4 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
5 (including my attorney) that are not contained within this written plea agreement, are null
6 and void and have no force and effect.

7 I am satisfied that my defense attorney has represented me in a competent manner.

8 I fully understand the terms and conditions of this plea agreement. I am not now
9 using or under the influence of any drug, medication, liquor, or other intoxicant or
10 depressant that would impair my ability to fully understand the terms and conditions of this
11 plea agreement.

12 26-Feb-2021
13 DATE

14 
15 KEVIN THOMAS KERR
16 Defendant

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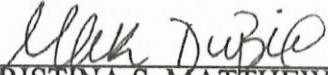
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20 APPROVAL OF DEFENSE COUNSEL

21 I have discussed this case and the plea agreement with my client in detail and have
22 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
23 constitutional and other rights of an accused, the factual basis for and the nature of the
24 offense to which the guilty plea will be entered, possible defenses, and the consequences
25 of the guilty plea including the maximum statutory sentence possible. I have further
26 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
27 assurances, promises, or representations have been given to me or to the defendant by the
28 United States or any of its representatives that are not contained in this written agreement.
I concur in the entry of the plea as indicated above and that the terms and conditions set
forth in this agreement are in the best interests of my client. I agree to make a bona fide

1 effort to ensure that the guilty plea is entered in accordance with all the requirements of
2 Fed. R. Crim. P. 11.

3
4 March 18, 2021
DATE



KRISTINA S. MATTHEWS
MARK D. DUBIEL
Attorneys for Defendant

6
7 **APPROVAL OF THE UNITED STATES**

8 I have reviewed this matter and the plea agreement. I agree on behalf of the United
9 States that the terms and conditions set forth herein are appropriate and are in the best
10 interests of justice.

11 PAUL ANTHONY MARTIN
12 Acting United States Attorney
District of Arizona

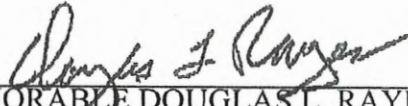
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14 February 26, 2021
DATE


WILLIAM G. VOIT
Assistant U.S. Attorney

Digitally signed by WILLIAM VOIT
Date: 2021.02.26 17:51:03 -07'00'

16
17 **ACCEPTANCE BY THE COURT**

18
19 6/8/2021
20 DATE


HONORABLE DOUGLAS L. RAYES
United States District Judge