

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 23-6964-cr

Caption [use short title]

Motion for: Withdrawing Defendant-Appellant's Appeal

Set forth below precise, complete statement of relief sought:

An order withdrawing Defendant-Appellant Luke Marshall

Wenke's Appeal

UNITED STATES v. WENKE

MOVING PARTY: Luke Marshall Wenke

OPPOSING PARTY: United States of America

☐ Plaintiff☒ Defendant☒ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY: Jay S. Ovsiovitch

OPPOSING ATTORNEY: Tiffany H. Lee AUSA

[name of attorney, with firm, address, phone number and e-mail]

Jay S. Ovsiovitch, Federal Public Defender's Office, WDNY Tiffany H. Lee, AUSA

28 E. Main St., Ste. 400, Rochester, NY 14614

U.S. Attorney's Office, WDNY, 100 State St., Ste. Ste. 500, Rochester, NY 14618

585-263-6201; jay_ovsiovitch@fd.org

585-263-6760; tiffany_lee@usdoj.gov

Court- Judge/ Agency appealed from: Hon. John L. Sinatra, Jr., U.S.D.J., W.D.N.Y.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes☐ No

Has this relief been previously sought in this court?

☐ Yes☐ No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

☒ Unopposed☐ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes☒ No☐ Don't Know

Is oral argument on motion requested?

☐ Yes☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes☒ No If yes, enter date:

Signature of Moving Attorney:

/s/Jay Ovsiovitch

Date: November 1, 2023

Service by:

☒ CM/ECF☒ Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

UNITED STATES,

Appellee,

v.

LUKE MARSHALL WENKE,

Defendant-Appellant.

Docket No. 23-6964-cr

**ATTORNEY
AFFIRMATION IN
SUPPORT OF MOTION
TO WITHDRAW THE
APPEAL**

JAY S. OVSIOVITCH, affirms and states:

1. I am an attorney duly licensed in the State of New York and admitted to practice in the United States District Court for the Western District of New York and the United States Court of Appeals for the Second Circuit. The Federal Public Defender's Office for the Western District of New York was appointed to represent defendant-appellant Luke Marshall Wenke in the District Court and continues to represent him on appeal pursuant to 18 U.S.C. § 3006A.

2. I submit this affirmation in support of Mr. Wenke's motion to withdraw his appeal

3. In 2022, Mr. Wenke was charged in a two-count indictment with cyberstalking, in violation of 18 U.S.C. §§ 2261A(2)(a) & (2)(b), and

making interstate threats, in violation of 18 U.S.C. § 875(c) (Ex. A (Indictment)). Entering into an agreement with the government, Mr. Wenke appeared in the District Court (Sinatra, J.) and pleaded guilty to the cyberstalking charge. The Court, accepting the terms of the plea agreement, sentenced Mr. Wenke to 18 months imprisonment to be followed by a three-years term of supervised release (Ex. B, at 2-3 (Judgment)).

4. Mr. Wenke began serving his term of supervised release on March 31, 2023. Approximately six weeks later a petition was filed alleging that Mr. Wenke violated a special condition of supervision directing him not have contact with the victim, his family members, or his current or prior place of employment. At the conclusion of a two-day violation hearing the Court determined that Mr. Wenke violated the condition of supervision. The Court subsequently sentenced Mr. Wenke, who had been detained, to time served to be followed by 34-months of supervised release (Ex. C, at 2-3). Following Mr. Wenke's directions, a notice of appeal was filed (Ex. D).

5. On October 18, 2023, I had a telephone call with Mr. Wenke to discuss his appeal. Our conversation addressed the issues he wanted to raise on appeal and possible outcomes. I also advised Mr. Wenke that, after my initial review of the record, I would be filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and his rights pertaining to that decision. After considering his options, Mr. Wenke returned a signed affirmation indicating that he would like to withdraw his appeal (Ex. E).

6. Assistant United States Attorney Tiffany H. Lee has no objections to this motion.

WHEREFORE, it is respectfully requested that an order be entered withdrawing Mr. Wenke's appeal.

DATED: Rochester, New York
November 1, 2023

/s/Jay Ovsiovitch
JAY S. OVSIOVITCH
Attorney for Appellant

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

UNITED STATES,

Appellee,

v.

LUKE MARSHALL WENKE,

Appellant.

Docket No. 23-6964-cr

**AFFIRMATION OF
SERVICE**

The undersigned hereby certifies that he is an employee of the Federal Public Defender's Office for the Western District of New York and is a person of such age and discretion as to be competent to serve papers.

That on November 1, 2023, he filed a copy of the attached **Motion to Withdraw the Appeal** with the Clerk of the Court using the CM/ECF system. Notification was sent to Assistant United States Attorney Tiffany H. Lee.

A paper copy of the attached motion was mailed to Defendant-Appellant Luke Marshall Wenke, at is his last known address, via the United States Postal Service:

Mr. Luke Wenke, USM No. 83837-509
Cattaraugus County Jail
301 Court St.
Little Valley, NY 14755

/s/Jay Ovsiovitch
JAY S. OVSIOVITCH
Counsel to Appellant

EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES
for the Western District of New York

**November 2021 GRAND JURY
(Impaneled November 5, 2021)**

THE UNITED STATES OF AMERICA

INDICTMENT

-vs-

Violations:

**LUKE MARSHALL WENKE
(Counts 1-2)**

Title 18, United States Code,
Section(s) 875(c) and 2261A
(2 Counts)

COUNT 1

(Cyberstalking)

The Grand Jury Charges That:

Between on or about September 22, 2020 and on or about January 24, 2022, in the Western District of New York, and elsewhere, the defendant, LUKE MARSHALL WENKE, with the intent to harass and cause substantial emotional distress to Victim 1, a person known to the Grand Jury, did use an interactive computer service and facility of interstate and foreign commerce to engage in a course of conduct that placed Victim 1 in reasonable fear of the death of, or serious bodily injury to, Victim 1, or that caused, attempted to cause, and would reasonably be expected to cause substantial emotional distress to Victim 1.

All in violation of Title 18, United States Code, Sections 2261A(2)(a) and 2261A(2)(b).

COUNT 2

(Making Interstate Threats)

The Grand Jury Charges That:

Between on or about January 23, 2022, and January 24, 2022, in the Western District of New York, and elsewhere, the defendant, LUKE MARSHALL WENKE, did knowingly, willfully, and unlawfully, and for the purpose of issuing a threat and with knowledge that the communication would be viewed as a threat, transmit communications in interstate commerce, that is, an email that contained threats to injure the person of another, specifically, Victim 1, a person known to the Grand Jury.

All in violation of Title 18, United States Code, Section 875(c).

DATED: March 15, 2022.

TRINI E. ROSS
United States Attorney

BY: *s/DAVID J. RUDROFF*
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716/843-5806
David.Rudroff@usdoj.gov

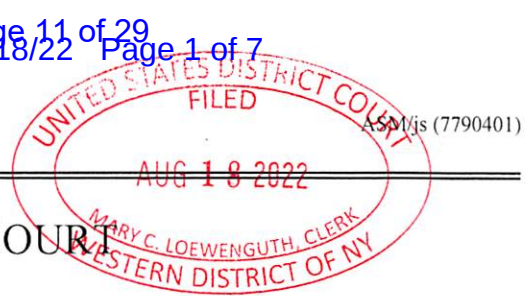
A TRUE BILL:

s/FOREPERSON

EXHIBIT B

AO 245B

(Rev. 10/19) Judgment in a Criminal Case
 Sheet 1



UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA

v.

Luke Marshall Wenke

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:22CR00035-001

USM Number: 83837-509

Alexander J. Anzalone & Marianne Mariano
 Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
 which was accepted by the court.

☐ was found guilty on count(s) _____
 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2261A(2)(A),	Cyberstalking	01/24/2022	1
18 U.S.C. § 2261A(2)(B)			

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 18, 2022

Date of Imposition of Judgment

Signature of Judge

John L. Sinatra Jr., U.S. District Judge

Name and Title of Judge

Date

August 18, 2022

Judgment — Page 2 of 7

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
18 months

The cost of incarceration fee is waived.

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Three (3) years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

U.S. Probation Officer's Signature _____

Date _____

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant is to participate in a mental health treatment program, including a mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave such treatment until completion or as ordered by the Court. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall complete an anger management program. The probation officer will supervise the details of the defendant's participation in the program, including the selection of a provider and schedule.

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall not have any contact, directly or indirectly, including through social media, telephone, text, mail, or email, with the victim, R.G., his family members, or his current or prior places of employment.

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0	\$ 0	\$ 0

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
--------	----------	----------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall pay a special assessment of \$100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court (WD/NY), 2 Niagara Square, Buffalo, New York 14202.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate.
---	--------------	-----------------------------	---

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

EXHIBIT C

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA

v.

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Luke Marshall Wenke

Case Number: 1:22CR00035-001

USM Number: 83837-509

Alexander J. Anzalone

Defendant's Attorney

THE DEFENDANT:

☐ admitted guilt to violation of charge(s) _____ of the term of supervision.

☒ was found in violation of charge(s) #1 _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
#1	Initiating Contact with the Victim	May 13, 2023

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated charge(s) _____ and is discharged as to such violation(s) charge(s).

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.



August 10, 2023

Date of Imposition of Judgment

Signature of Judge

John L. Sinatra Jr., U.S. District Judge

Name and Title of Judge

Date

AO 245D (Rev. 11/16) Judgment in a Criminal Case for Revocations
Sheet 2— Imprisonment

MGZ/jad (7790401)

Judgment — Page 2 of 5

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :
Time Served

The cost of incarceration fee is waived.

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____ .
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____ .
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **34 months**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

U.S. Probation Officer's Signature _____

Date _____

AO 245D (Rev. 11/16) Judgment in a Criminal Case for Revocations
Sheet 3B — Supervised Release

MGZ/jad (7790401)

Judgment—Page 5 of 5

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant is to participate in a mental health treatment program, including a mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave such treatment until completion or as ordered by the Court. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall complete an anger management program. The probation officer will supervise the details of the defendant's participation in the program, including the selection of a provider and schedule.

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall not have any contact, directly or indirectly, including through social media, telephone, text, mail, or email, with the victim, R.G., his family members, friends, associates, or his current or prior places of employment.

EXHIBIT D

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Western District of New York

Caption:

UNITED STATES

v.

LUKE MARSHALL WENKE

Docket No.: 22-CR-35(JLS)

Hon. John L. Sinatra, Jr.

(District Court Judge)

Notice is hereby given that Luke Marshall Wenke appeals to the United States Court of

Appeals for the Second Circuit from the judgment ☒ other

(specify)

entered in this action on August 14, 2023
(date)

This appeal concerns: Conviction only ☐ Sentence only ☐ Conviction & Sentence ☒ Other ☐

Defendant found guilty by plea ☐ trial ☐ N/A ☒

Offense occurred after November 1, 1987? Yes ☒ No ☐ N/A ☐

Date of sentence: August 3, 2023 N/A ☐

Bail/Jail Disposition: Committed ☒ Not committed ☐ N/A ☐

Appellant is represented by counsel? Yes ☒ No ☐ If yes, provide the following information:

Defendant's Counsel: Jay S. Ovsiovitch

Counsel's Address: Federal Public Defender's Office, W.D.N.Y.

28 E. Main St., Ste. 400, Rochester, NY 14614

Counsel's Phone: 585-263-6201

Assistant U.S. Attorney: Tiffany H. Lee

AUSA's Address: United States Attorney's Office

138 Delaware Ave., Buffalo, NY 14202

AUSA's Phone: 585-399-3951

/S/Jay Ovsiovitch

Signature

EXHIBIT E

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

UNITED STATES,

Appellee,

v.

LUKE MARSHALL WENKE,

Defendant-Appellant.

Docket No. 23-6964-cr

**DEFENDANT'S
AFFIRMATION IN
SUPPORT OF
MOTION TO DISMISS
THE APPEAL**

LUKE MARSHALL WENKE, affirms and states:

1. I am the appellant in the above referenced case.
2. In 2022, the government charged me with cyberstalking and making interstate threats. I entered into an agreement with the government in which I would plead guilty to cyberstalking and, if the Court accepted the plea, be sentenced to 18-months imprisonment to be followed by a three-year term of supervised release. On April 8, 2022, I appeared before the Honorable John L. Sinatra, Jr., in the Western District of New York, and pleaded guilty to the cyberstalking charge. He accepted my plea and sentenced me to 18-months imprisonment and imposed a three-year term of supervised release.

3. On March 31, 2023, I began serving my term of supervised release. Several weeks later, my Probation Officer filed a petition alleging that I violated one of my conditions of supervision that prohibited me from having contact with the victim of my offense, his family members, or his current or prior place of employment.

Though I was not initially taken into custody, in June the Court detained me based on the government's motion. A violation hearing was held over two days and the Court determined that I violated the condition of supervised release. In August, Judge Sinatra sentenced me to time served followed by 34-months of supervised release.

4. After the Court informed me, at sentencing, that I had a right to appeal its judgment, I directed my attorneys to file a notice of appeal.

5. On October 18, 2023, I spoke by telephone with my attorney, Assistant Federal Public Defender Jay Ovsiovitch, about my appeal. During our conversation we discussed whether there were any non-frivolous issues to raise on appeal, and possible outcomes that could be expected. He also stated that there was a possibility that

he might file a brief pursuant to *Anders v. California*, explained why he would file an *Anders* brief and what it would mean to my appeal.

6. As a result of our discussion I concluded that I want to withdraw my appeal.

WHEREFORE, it is respectfully requested that an order be entered dismissing my appeal in *United States v. Wenke*, docket number 23-6964-cr.

DATED: Little Valley, New York
10/25, 2023



Luke Marshall Wenke