UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Crim. No. 1:21-cr-00159 (ABJ)
	)	
CLEVELAND GROVER	)	
MEREDITH, JR.	)	
	)	
Defendant	)	
______________________________	)	

DEFENDANT'S MOTION TO REVOKE MAGISTRATE JUDGE'S ORDER OF DETENTION PENDING TRIAL AND TO SET NEW CONDITIONS OF RELEASE

Defendant Cleveland Grover Meredith, Jr., by and through undersigned counsel, hereby moves the Court, pursuant to 18 U.S.C. § 3142(b), LCrR 47 and LCrR 46.1(b), to revoke the Magistrate Judge's Order of January 14, 2021 (Docket No. 10), ordering the pretrial detention of Defendant, and to set such conditions of release as will ensure the appearance of Defendant at future proceedings and the safety of any other person and the community. In support of this Motion, Defendant states as follows:

MEMORANDUM OF POINTS AND AUTHORITIES
RELEVANT FACTS AND PROCEDURAL HISTORY

On January 7, 2021, Defendant was arrested by FBI agents at the hotel room where he was staying in the District and taken into custody. Per the Government, Defendant arrived by truck and trailer in the District late on January 6, 2021 (after the riots at the Capitol that day) with firearms and ammunition and "transmitted numerous threatening communications to several individuals" in relation to Speaker of the House Nancy Pelosi. Government's Memorandum in Support of Pretrial Detention at 1-5. Docket No. 4. The firearms and ammunition were later seized from Defendant's trailer. The Government has not presented any evidence or information

indicating, *inter alia*, that Defendant made any "threatening communications" directly to Speaker Pelosi or posted any such communications online; took any actions while in the District to actually follow up on such allegedly "threatening communications"; ever removed the firearms or ammunition from the trailer; or ever participated in any post-January 6, 2021 riot-related activities. Indeed, per information presented at the detention hearing, Defendant was resting in his hotel room when arrested.

On January 8, 2021, Defendant was charged by criminal complaint with violations of 18 U.S.C. § 875(c) (Interstate Communication of Threats); D.C. Code § 7-2502.01(a) (Possession of Unregistered Firearm); and D.C. Code § 7-2506.01(a)(3) (Possession of Unregistered Ammunition). Ubong Apkan, Esq. of the Federal Public Defender of the District of Columbia was appointed to represent Defendant.

On January 8, 2021, Magistrate Judge Harvey presided over a Telephonic Initial Appearance in which the Government moved orally for temporary detention pending trial pursuant to 18 U.S.C. §§ 3142(f)(1)(D), (f)(1)(E) and (f)(2)(A). Magistrate Judge Harvey granted the motion for temporary detention (3-day hold), and the matter was later set for a detention hearing on January 14, 2021. Minute Entries for January 13, 2021.

On January 13, 201, the Government and defense each filed briefs on the issue of pretrial detention. Docket Nos. 4 & 5.

On January 14, 2021, a hearing was held before Magistrate Judge Harvey to address Defendant's conditions of release pursuant to 18 USC § 3142(b). A redacted transcript of the hearing is attached as Exhibit 1. At the hearing, the Government argued, *inter alia*, that Defendant had acted "under the spell of the QAnon extremist ideological conspiracy movement" and, as such, was "someone who is volatile and someone who we cannot expect to follow any

conditions of release that are issued by the court." Exhibit 1 at 23. The defense countered, *inter alia*, that 18 U.S.C. § 875(c) is not a crime of violence that is eligible for detention per 18 U.S.C. § 3142(f)(2)(A), *id.* at 4; that Defendant had made clear in other text messages that the allegedly threatening communications were not meant to be taken seriously – "LOL. I'm just having fun", *id.* at 25; that Defendant had previously participated peacefully in a rally at the Capitol in November 2020 without incident, *id.* at 26; and that, as the Government had acknowledged, Defendant is 53 years old and has no prior criminal record, *id.* at 28-30. Magistrate Judge Harvey found that the alleged "communicated threat made criminal under Section 875 is a crime of violence, making the charge sanction eligible under 3142(f)(1)(A)", *id.* at 10, and rejected defense arguments that a combination of conditions of release under 18 USC § 3142(c), such as GPS monitoring and refraining from illicit drug use, could be fashioned to ensure Defendants' appearance at future proceedings and the safety of other persons and the community, *id.* at 33. Magistrate Judge Harvey ordered that Defendant be detained pending trial, Order of Detention Pending Trial, Docket No. 10, and a preliminary hearing was set for January 28, 2021, Docket No. 10.

On January 25, 2021, the parties filed a consent motion to continue the preliminary hearing for a date after February 28, 2021, Docket No. 11, which motion was granted, Docket No. 12.

On February 4, 2021, Defendant was found not eligible for court appointed counsel and an ascertainment of counsel date of February 22, 2021 was set. Docket No. 14.

On February 11, 2021, undersigned counsel of Kiyonaga & Soltis, P.C. entered his appearance as counsel for Defendant, substituting for Ms. Apkan. Docket No. 15.

On February 17, 2021, AUSA Anthony Franks entered his appearance as substitute

counsel for the Government. Docket No. 16.

On February 22, 2021, the Court held the ascertainment of counsel/status hearing. The parties moved orally to move the date of the preliminary hearing to March 22, 2021 to allow time for discovery to be provided to undersigned counsel. The Court and parties discussed the possibility of having an arraignment in lieu of a preliminary hearing on March 22, 2021 if the Government secured an Indictment in the meantime.

On February 26, 2021, an Indictment was filed, charging Defendant with violations of 18 U.S.C. § 875(c) (Interstate Communication of Threats); D.C. Code § 7-2502.01(a) (Possession of Unregistered Firearm); D.C. Code § 7-2506.01(a)(3) (Possession of Unregistered Ammunition); and D.C. Code § 7-2506.01(b) (Possession of Large Capacity Ammunition Feeding Devices). Docket No. 17.

Defendant has been detained since January 7, 2021, a total of 66 days. Defendant has not yet been arraigned on the charges in the Indictment.

ARGUMENT

The Supreme Court has made clear that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." United States. v. Salerno, 481 U.S. 739, 755 (1987); United States v. Gloster, 969 F. Supp. 92, 96-97 (D.D.C. 1997). That is why "[t]here can be no doubt that this [Bail Reform] Act clearly favors nondetention." United States. v. Byrd, 969 F.2d 106, 109 (5th Cir. 1992). Indeed, the Bail Reform Act requires the Court to impose the "least restrictive" means of ensuring the appearance of the person and safety to the community. 18 U.S.C. § 3142(c)(1)(B). Only in "rare circumstances should release be denied," and any "doubts regarding the propriety of release should be resolved in the defendant's favor." United States v. Gebro, 948 F.2d 118, 1121 (9th

Cir. 1991); United States v. Stone, 608 F.3d 939, 945 (6th Cir. 2010) ("The default position of the law, therefore, is that a defendant should be released pending trial.").

As such, the Bail Reform Act provides that the Government may request a bail hearing only if certain conditions set forth in 18 U.S.C. § 3142(f) are present, *e.g.*, the defendant is charged with a crime of violence; faces a life sentence or a drug offense with a 10-year or greater penalty; or poses a "serious risk" that he will "flee" or "obstruct justice." *See* 18 U.S.C. § 3142(f)(1)-(2). If none of these conditions is met, "the defendant must be released pending trial under the conditions set forth in § 3142(a)." United States v. Tadlock, 399 F. Supp. 2d 747, 750 (S.D. Miss. 2005) (*citing* United States v. Byrd, 969 F.2d 106, 109 (5th Cir. 1992)); United States v. Singleton, 182 F.3d 7, 9 (D.C. Cir. 1999) ("Absent of these circumstances, detention is not an option."); United States v. Ploof, 851 F.2d 7, 9–10 (1st Cir. 1988) ("3142(f) does not authorize a detention hearing whenever the government thinks detention would be desirable, but rather limits such a hearing to the [six circumstances listed in § 3242(f)]"). Significantly, the Bail Reform Act does not permit courts to detain defendants on the basis of alleged dangerousness alone. United States v. Twine, 344 F.3d 987, 987 (9th Cir. 2003) ("We are not persuaded that the Bail Reform Act authorizes pretrial detention without bail based solely on a finding of dangerousness – the Government must first establish one of the grounds in § 3142(f) "as a prerequisite to the court considering the factor of danger . . . ."); Office of the United States Attorneys, Criminal Resource Manual: Release and Detention Pending Judicial Proceedings.

When the Government moves for pretrial detention based on an alleged crime of violence, the first question is thus whether under 18 U.S.C. § 3142(f) the crime at issue constitutes a "crime of violence." 18 U.S.C. § 3142(f)(1)(A). Prior counsel argued at the

detention hearing that 18 U.S.C. § 875(c) (Interstate Communication of Threats) is not a crime of violence under 18 U.S.C. § 3142(f)(1)(A), Exhibit 1 at 3-4, Defendant's Motion for Release from Custody, Docket No. 5, which arguments are incorporated in full herein.

If the Court determines that the crime at issue constitutes a crime of violence under 18 U.S.C. § 3142(f)(1)(A), the Court must hold a hearing to determine whether any condition or combination of conditions set forth in 18 U.S.C. § 3142(c) "will reasonably assure the appearance" of the defendant and "the safety of any other person and the community." 18 U.S.C. § 3142(f)(1)(A). The Court, in making these determinations, must take into account "the available information" concerning four factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including the person's character, community ties, criminal history and failures to appear at court proceedings; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. § 3142(g); United States v. Floyd, 11 F. Supp. 2d 39 (D.D.C. 1998). The Court "must be persuaded by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the safety of a person or the community." United States v. Calabrese, 436 F. Supp. 2d 925, 926 (N.D. Ill. 2006). Per 18 U.S.C. § 3145(b), this Court retains the authority to review a Magistrate Judge's order detaining a defendant.

As to the first factor – the nature of the offense – the evidence proffered at the detention hearing, while referencing violent-sounding rhetoric, did not reveal that such allegedly threatening communications were intended to be taken seriously. Indeed, as explained *supra*, no evidence was presented that suggested that Defendant made any "threatening communications" directly to Speaker Pelosi or posted them online; took any actions while in

the District to actually follow up on such allegedly "threatening communications"; ever removed the firearms or ammunition from the trailer; or ever participated in any post-January 6, 2021 riot-related activities. Indeed, Defendant confirmed in contemporaneous text messages that the allegedly threatening communications were not meant to be taken seriously – "LOL. I'm just having fun". Exhibit 1 at 25.

As to the second factor – the weight of the evidence – the Government contended at the detention hearing that the "texts speak for themselves," Exhibit 1 at 22, but there was no evidence presented at the detention hearing that suggested that Defendant intended to issue a threat or had the purpose of issuing a threat. The Supreme Court, in interpreting the elements of the crime of Interstate Threats under 18 U.S.C. § 875(c), has held that negligence is not sufficient as the mental state for this offense. Elonis v. United States, 575 U.S. 723 (2015). Rather, the Government must prove beyond a reasonable doubt that the defendant transmits a communication *with the intent* to send a threat, *for the purpose* of issuing a threat or *with knowledge* that the communication will be viewed as a threat. *Id.* *See also* United States v. Kane, 2020 WL 1660058 at *2 (U.S. Dist. Ct. W.D. Washington, April 3, 2020); Ninth Circuit Model Criminal Jury Instruction 8.47B, Transmitting A Communication Containing a Threat to Kidnap or Injure (approved September, 2015).[1] Accordingly, as to these elements of the crime at issue, the weight of the evidence is weak.

As to the third factor – the history and characteristics of the person – there appears to be no dispute that Defendant has no prior criminal record, has otherwise led a law abiding life, has never failed to appear in court and has a stable residential address and ties to his local community. *See* Exhibit 1 at 30. Per 18 U.S.C. § 3142(g)(3)(B), a court is supposed to give

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[1] The Court in Elonis declined to decide whether a recklessness *mens rea* would be legally supported. Elonis, 575 U.S. at 2012-2013.

special consideration under this factor to whether at the time of the charged offense the defendant was on probation, parole, or other release for another offense – clearly, not the case here. Floyd, 11 F. Supp. 2d. at 41.

As to the fourth factor, a defendant may not be detained unless there is "clear and convincing evidence" that a defendant presents a danger to the community. 18 U.S.C. 3142(f)(2)(B). The Government did not meet this burden. The Government presented no evidence, for example, that Defendant has a prior history of committing violent acts; has ever taken any actions that showed an intent to follow up on any allegedly threatening or inflammatory communications; or has ever illegally possessed any weapons or shown any intent to use any weapons in a manner to incite violence. At the detention hearing, the Government noted that Defendant had attended in the past a rally outside the home of Georgia's Governor armed with a rifle. Exhibit 1 at 22-23. The Government went on to contend that "the nexus between a machine of violence and his [Defendant's] political beliefs and previously discussed issues in extremely concerning." *Id.* at 23. But, as the Government acknowledged, Georgia is an open carry state, *id.* at 22-23, and the Government presented no support for its sweeping contention that Defendant legally possessed a weapon that day as part of a "machine of violence" as opposed to, for example, possessing the weapon for self defense in the event that violence erupted at the rally. In any case, Defendant is willing to abide by a combination of stringent conditions, set forth below, that would reasonably assure the safety of other persons and the community.

Nor does Defendant pose a "risk of flight, given defendant's lack of ties to the community" under § 3142(f)(2)(A), as the Government contended at the detention hearing. Exhibit 1 at 4; Gov't Memo in Support of Pretrial Detention at 6, Docket No. 4. Under §

3142(f)(2)(A), ordinary risk of flight is not a permissible basis for detention; rather, the statute only authorizes detention if there is a "serious risk" that a defendant will flee. *Id.* And the Government bears the burden of proving risk of nonappearance or risk of flight by "a clear preponderance of the evidence." *See* United States v. Karni, 298 F. Supp. 2d 129, 131 (D.D.C. 2004); United States v. Himler, 797 F.2d 156, 160 (3d Cir. 1986) (defendant "may be detained only if the record supports a finding that he presents a serious flight risk."); Motamedi, 767 F.2d at 1406-07; United States v. Townsend, 897 F.2d 989, 994 (9th Cir. 1990). That burden has not been met by the Government. Defendant does not pose any serious risk of flight, as he has no prior convictions and has no history of failing to appear at court proceedings – key considerations. In addition, Defendant is a devoted father to his two sons, ages 15 and 17, and shares ongoing responsibility for their care with his ex-spouse, a responsibility he would not abandon by going into hiding; has maintained a stable residence in North Carolina where he has owned an established business enterprise; and has a stable family structure with deep roots in its local community. Exhibit 1 at 30. Calabrese, 436 F. Supp. 2d at 927 ("Flight is always more likely when a defendant has little or nothing to lose by absconding.") Moreover, Defendant is willing to immediately surrender his passport to the Pretrial Services Agency upon order of the Court. *See* United States v. Cruz, 363 F. Supp. 2d 40, 47 (D.P.R. 2005) (denying the Government's motion to detain a person who frequently traveled internationally, had two passports and other fraudulent documents in his possession, and faced an advisory sentence of 33-41 months imprisonment where the "vast majority of [his] family, economic and social ties are in this jurisdiction" and "the government has presented no concrete evidence to the effect that defendant was fleeing the jurisdiction, or was taking affirmative steps to do so. . . .").

While the Court is to consider each of these four factors listed in 18 U.S.C. § 3142(g), these factors are to be considered only in the context of evaluating the likelihood that the person will fail to appear at future proceedings or will pose a danger. Motamedi, 767 F.2d at 1408. Accordingly, even if a defendant is deemed to allegedly pose a danger to others or to the community, the defendant must be released if the Court determines there is a condition or combination of conditions under 18 U.S.C. § 3142(c) that "will reasonably assure ... the safety of any other person and the community." Kane, 2020 WL 1660058 at *3 (*citing* United States v. Hir, 517 F.3d 1081, 1091-92 (9th Cir. 2008)).

There are various conditions set forth in 18 USC § 3142(c) – including several not proposed or not fully explored at the detention hearing – that would reasonably assure that Defendant, if released, would appear in court as required and that Defendant would not endanger any other person or the community.

First, Defendant's parents, Wendy Meredith and Cleveland Grover Meredith, Sr., have agreed to take third-party custody of Defendant, assume close supervision of Defendant and report promptly to the Court any potential violation of a release condition per 18 USC § 3142(c)(1)(B)(i). Indeed, both are willing to strictly monitor Defendant and do whatever else may be necessary to ensure his full compliance with any conditions of release imposed by the Court. Both are willing, as well, to appear before the Court to answer any questions and/or to allow an inspection of their home by the Pretrial Services Agency. Defendant's parents had not been proposed as third-party custodians at the detention hearing.

Defendant's parents are ideally positioned to ensure that Defendant will appear before the Court as required and will not pose a danger to the safety of any other person or the community while on pretrial release. Both have occupied responsible positions within their

respective professional careers and have been active in volunteer and other community activities – Mr. Meredith is Chairman of the Board of W.C. Meredith Company, Inc. based in East Point, Georgia, and Ms. Meredith recently retired from running her own interior design firm. They have no firearms in their home. Both are law abiding citizens and have had no contacts with the criminal justice system.

Second, Defendant is willing to strictly abide by any home detention/GPS monitoring that the Court may order and/or to abide by a specified curfew per 18 USC § 3142(c)(1)(B)(vii). In any case, Defendant's parents live on a remote, secluded island in South Carolina where Defendant's movements could be easily monitored. Their home is in a small, gated island community with limited access to the mainland – visitors can only access the island through two gates that are manned 24 hours a day by a private security firm which logs all entries/exits. Defendant would request only that he be allowed to travel to appointments for medical treatment, if such treatment could not be provided via Zoom, or to the District to assist with issues relating to legal representation and/or to attend court proceedings. While GPS monitoring had been referenced in the detention hearing, this specific option of having Defendant reside with his parents in this unique setting was not been addressed.

Third, Defendant would agree to undergo available medical, psychological or psychiatric treatment, and remain in a specified institution if required for that purpose, if so directed by his primary health care provider or mental health care provider per 18 USC § 3142(c)(1)(B)(x), including treatment from a medical professional familiar with cognitive and other therapies for persons who fall prey to adherence to QAnon beliefs. Defendant's willingness to undergo this type of treatment was not discussed at the detention hearing.

Fourth, Defendant would agree to abide by "specified restrictions on personal or group

associations," per 18 USC § 3142(c)(1)(B)(v). Specifically, Defendant would agree not to knowingly make contact, whether in person, by telephone, via social media or otherwise, with any person or group associated with QAnon; to not access any websites or other areas of the internet associated with QAnon; and to not post directly or indirectly on any social media sites. Defendant's willingness to abide by these restrictions was not discussed at the detention hearing.

Fifth, Defendant would agree, per 18 USC § 3142(c)(1)(B)(viii), to relinquish all firearms, destructive devices or other dangerous weapons within his constructive possession or registered in his name directly to law enforcement officials in Haynesville, NC, his city of residence. While detained, Defendant has provided a power of attorney for personal matters to an attorney based in Atlanta, Georgia who could arrange for these firearms to be relinquished without direct involvement by Defendant. Defendant would agree, of course, not to seek or obtain access to any other firearms, destructive devices or other dangerous weapons by any other means. While this issue was broached at the detention hearing, since then undersigned counsel has taken steps to ensure that this relinquishment of firearms could be done promptly, securely and without any concerns of access by Defendant to such firearms.

Sixth, Defendant would agree to refrain from any use of alcohol or controlled substances without a prescription from a licensed medical provider per 18 USC § 3142(c)(1)(B)(ix). Per the Government, illicit substances were recovered from the Defendant at the time of his arrest, Exhibit 1 at 23, such that compliance with this restriction would help ensure Defendant's mental stability and his ability to comply fully with all conditions of release.

Seventh, Defendant would agree, per 18 USC § 3142(c)(1)(B)(vi), to report on a regular basis to a designated law enforcement agency, such as the Beaufort County Sheriff's Department (which has jurisdiction over Defendant's parents' place of residence), or to the

Pretrial Services Agency. While this is a standard release condition, in this case arrangements could be made to coordinate closely with the Beaufort County Sheriff's Department to ensure strict compliance.

Eighth, Defendant would agree, per 18 USC § 3142(c)(1)(B)(xiv), to relinquish his passport to the Pretrial Service Agency and, per 18 USC § 3142(c)(1)(A), to not commit any federal state or local crimes while on pretrial release.

Lastly, if need be, Defendant would also agree to execute a bail bond with solvent securities in an appropriate amount as a further step to ensure his appearance at any future proceedings per 18 USC § 3142(c)(1)(B)(xii). In any event, Defendant has been made aware of the severe consequences of any failure to appear at subsequent court dates pursuant to 18 U.S.C. § 3146.

In short, Defendant is fully willing to abide by these new and heightened proposed conditions of release, or such other combination of conditions of release that the Court may order, in order to ensure his appearance at future proceedings and the safety of any other person or the community.

Undersigned counsel sought the position of the Government regarding this Motion. Anthony Franks, the assigned AUSA, has communicated that the Government does not consent to this Motion.

WHEREFORE, Defendant Cleveland Grover Meredith, Jr. respectfully requests that the Court revoke the Magistrate Judge's Order of January 14, 2021 (Docket No. 10), ordering the pretrial detention of Defendant, and set such conditions of release as will ensure his appearance at future proceedings and the safety of any other person and the community. A

proposed Order is attached. Pursuant to LCrR 47(f), Defendant requests a hearing on this Motion.

Respectfully submitted,

KIYONAGA & SOLTIS, P.C.

/s/ Paul Kiyonaga
____
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March 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2021, a true and correct copy of the foregoing Defendant's Motion to Revoke Magistrate's Order of Detention Pending Trial and to Set Conditions of Release was served via the ECF system on the on the following attorneys for the Government:

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/s/ Paul Y. Kiyonaga
____
Paul Y. Kiyonaga

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Crim. No. 1:21-cr-00159 (ABJ)
	)	
CLEVELAND GROVER	)	
MEREDITH, JR.	)	
	)	
Defendant	)	
________________________________	)	

PROPOSED ORDER

Upon consideration of Defendant's Motion to Revoke Magistrate Judge's Order of Detention Pending Trial and to Set Conditions of Release and any responses thereto, it is this ____ day of 2021, hereby

ORDERED that Defendant's Motion to Revoke Magistrate's Order of Detention Pending Trial and to Set Conditions of Release is **GRANTED**, and it is further

ORDERED that Defendant shall be released pending trial on the conditions set forth in such Motion.

____
The Honorable Amy Berman Jackson
United States District Judge

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EXHIBIT 1

1 BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2

3 UNITED STATES OF AMERICA, . Case Number 21-mj-17

4 Plaintiff, .

5 vs. .

6 CLEVELAND GROVER MEREDITH, JR., . January 14, 2021
. 3:20 p.m.

7 Defendant. .
- - - - - - - - - - - - - - - -

8

9 PUBLIC TRANSCRIPT OF DETENTION HEARING
(SEALED PORTION REDACTED)

10 BEFORE THE HONORABLE G. MICHAEL HARVEY
UNITED STATES MAGISTRATE JUDGE

11

12 APPEARANCES:

13 For the Government: AHMED BASET, AUSA
United States Attorney's Office

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15

16 For the Defendant: UBONG AKPAN, AFPD
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19

20

21 Official Court Reporter: SARA A. WICK, RPR, CRR
333 Constitution Avenue Northwest

22 U.S. Courthouse, Room 4704-B
Washington, D.C. 20001

23 202-354-3284

24

25 Proceedings recorded by stenotype shorthand.
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S
2 (All participants present via telephone or video
3 conference.)
4 THE COURTROOM DEPUTY: Judge, we have case 21-mj-17,
5 United States of America versus Cleveland Meredith, Junior.
6 This is scheduled to be a continued detention hearing by video.
7 Will the parties please introduce themselves for the Court,
8 beginning with the government.
9 MR. BASET: Good afternoon, Your Honor. Ahmed Baset
10 on behalf of the United States.
11 THE COURT: Good afternoon.
12 MS. AKPAN: Good afternoon, Your Honor. This is Ubong
13 Akpan on behalf of Mr. Meredith.
14 THE COURT: Good afternoon.
15 PRETRIAL SERVICES OFFICER: And Christine Schuck with
16 Pretrial Services.
17 THE COURT: Good afternoon.
18 This matter has been scheduled for a detention hearing.
19 Mr. Baset, are you ready to proceed?
20 MR. BASET: Yes, Your Honor.
21 THE COURT: Ms. Akpan, are you ready as well?
22 MS. AKPAN: Yes, Your Honor.
23 THE COURT: Okay. Government, go right ahead.
24 MR. BASET: Your Honor, would you like us to address
25 the issues that were the subject of the briefs yesterday?

1 THE COURT: Yes. I mean, I have to rule on that
2 issue. It's a threshold issue. I think you should address
3 whatever arguments you want to make. You can address the four
4 factors. I have reviewed your filing. I thank you for filing
5 that last night.
6 MR. BASET: You're very welcome.
7 I do think that, Your Honor, the government has cited to a
8 few cases that support the notion that interstate communication
9 of threats is indeed a crime of violence. There is force that
10 is being threatened with respect to injury. And so we do
11 believe as a threshold matter that a detention hearing is
12 warranted.
13 And I am happy to further address the conditions as far as
14 the factors for whether or not he should be released if Your
15 Honor does rule that a hearing is appropriate.
16 THE COURT: Okay. Let me -- I'm happy to rule on that
17 threshold issue first.
18 Ms. Akpan, do you want to add anything, having reviewed the
19 government's brief?
20 MS. AKPAN: Yes, Your Honor. I just would like to --
21 I did not have the time to file a written reply, but I just
22 wanted to note for the record --
23 THE COURT: Sure.
24 MS. AKPAN: -- a response to the government's
25 briefing.

1 The government lays out three cases, the *Santoro* case which
2 we have already argued is not a crime of violence and is an
3 incorrect analysis. Regarding the *United States v. Choudhry*
4 case that the government relies on, Your Honor, that's a 2013
5 case. In that case the threat analysis was based on the
6 residual clause, and after that, the Supreme Court overruled
7 that in 2019. So that case again is in 2013, again based on the
8 crime of violence based on the residual clause, and it was
9 invalidated by the Supreme Court and had already been
10 invalidated by the Supreme Court in *Johnson* and *Davis*.
11 Thirdly, Your Honor, the *Christy* case that the government
12 relies on, the way it reads it appears to be just a conclusory
13 statement regarding the threats charge as a crime of violence.
14 Your Honor, the government also cites to Mr. Meredith being
15 a flight risk. We disagree with that. I can go into those
16 factors as well. The government states that he is a serious
17 risk of flight because he has no ties to this community.
18 THE COURT: Ms. Akpan, let me just address the
19 threshold issue, because there is no reason to get to all these
20 factors unless I do rule in the government's favor, although I
21 will just skip to the conclusion. I am going to rule in the
22 government's favor, but I do want to make a record basis for my
23 decision. So bear with me for a few minutes, and I will put the
24 basis for my decision on the record, and you will have an
25 opportunity to respond to the four Bail Reform Act factors.

1 First, I do agree with Ms. Akpan that the Bail Reform Act
2 requires the government to first establish one of the grounds in
3 Section 3142(f) as a prerequisite to the Court considering
4 whether the defendant should be detained pretrial as a danger to
5 the community. So it's not every case that the government can
6 walk into court and say that the individual is a danger.
7 Rather, what the individual's charged with must fall into one of
8 those 3142(f) categories, or some other issue with respect to
9 the defendant's criminal background can also make them
10 potentially eligible for detention.
11 Here, the defendant has no criminal record, and the only
12 basis that I can see on which the government could argue that he
13 is a danger or be eligible to argue that he is a danger is with
14 respect to the 18 U.S.C. 875(c) charge and whether or not that
15 is a crime of violence as that phrase is defined under the Bail
16 Reform Act. Under 3142(f)(1)(A), it makes crime of violence
17 eligible for a detention hearing and a finding by the Court that
18 the defendant should not be released as a danger.
19 Ms. Akpan did make one additional argument, before I get to
20 her main argument, with respect to 3142(f)(1)(A) in that the 10
21 year or more condition not only modifies the act part of the
22 list of 3142(f)(1)(A) but also the crime of violence condition,
23 that is, that it is only crimes of violence that could be
24 subject to 10 or more years in terms of a sentence that would
25 qualify under that section of the statute.

1 I don't read it that way. I think the most natural reading
2 of the 10 years or more condition that other courts have
3 found -- and that's at the end of the quoted list in Section
4 3142(f)(1)(A) -- is that the condition modifies only the last
5 category in the list, which is not pertinent here.
6 Stated another way, the 10 years or more condition at the
7 end of the list found in that is not a further narrowing of the
8 category of crimes of violence, the first category in that list.
9 Provided that the defendant is charged with a crime of
10 violence as that phrase is defined in the Bail Reform Act, he or
11 she is eligible for detention if the danger, regardless of
12 whether the offense is 10 years or more. That is how I read the
13 statute. There's any other number of courts that have read the
14 statute in the same way, including that *Santoro* case.
15 Nevertheless, the Court must also find that the defendant
16 has in fact been charged with a crime of violence as that phrase
17 is defined in the Bail Reform Act. The Bail Reform Act defines
18 that phrase as any offense that has as an element of the offense
19 the use, attempted use, or threatened use of physical force
20 against the person or property of another.
21 There's also the residual clause, and Ms. Akpan is correct
22 that that clause has been deemed unconstitutional in other
23 contexts. I don't rely upon it here. I rely instead on the
24 elements clause, which I just described.
25 To make the decision under the categorical approach as

1 directed by the Supreme Court, the decision whether or not a
2 crime is in fact a crime of violence under that definition, the
3 Court is not to look at the facts underlying the charge at
4 issue, not look at what the defendant is actually alleged to
5 have done, but at the elements of the crime as the statute
6 defines them. That is, you must look at whether the use of
7 physical force or violence or threatened use of such force is an
8 element of the crime.
9 Here, Section 875(c), the crime at issue that the defendant
10 is charged with, criminalizes the interstate communication of a
11 threat to injure the person or a threat to kidnap any person.
12 It's explained under the case law that a threat to injure
13 another is criminalized by Section 875(c) and would meet the
14 legal definition of a crime of violence. Plainly it does in my
15 view, and a number of courts have so held, including the *Santoro*
16 case. The government cites at least one other which I think is
17 applicable, the *Christy* case. They cite as well to *United*
18 *States vs. Cain*, which is at 2020 Westlaw 1660058, Western
19 District of Washington case in 2020, as well as the *United*
20 *States v. Cooper*, which can be found at 2019 Westlaw 474 259454,
21 Federal District of Tennessee case from 2019, both of which
22 concluded that 875(c) is a crime of violence.
23 The defense raises a question, though, as to whether or not
24 the analysis in those cases is correct. The question raised by
25 the defense is whether the statute by its own terms also

1 criminalizes a threat to kidnap any person and whether that
2 should change the analysis.
3 The defendant is right that under the categorical approach,
4 assuming that the statute is not divisible -- which is an issue
5 I'm not going to address here; I don't think I need to -- a
6 court must presume that the charge rests upon nothing more than
7 the least of the acts criminalized.
8 So although the government may not intend to prove that
9 Mr. Meredith threatened to kidnap anyone in this case, only that
10 he threatened to injure other people, I must under the
11 categorical approach nevertheless consider whether under this
12 statute a threat to kidnap any person meets the statutory
13 definition of a crime of violence. If it does not, then there
14 is no basis to hold him. It would not then qualify as a crime
15 of violence.
16 The defendant points to cases where courts have held that
17 kidnapping is not a crime of violence, I'm sure an odd
18 conclusion to many people, a layperson and perhaps attorneys
19 alike, but that's the *Jenkins* case. There's a few others as
20 well, a Seventh Circuit case. They came to that conclusion
21 because while kidnapping can be committed with the use of force,
22 it can also be committed without the use of force. That is, a
23 person could be kidnapped under the law without their knowledge
24 through trickery or deception, which would be a nonviolent way
25 of committing kidnapping.

1 I would note that the D.C. Circuit has not addressed that
2 issue. There are courts in other jurisdictions that have held
3 that kidnapping is a crime of violence. For the parties, *In Re*
4 *Hull*, 979 F.3d at 339, a Fifth Circuit case, *United States v.*
5 *Ross*, 969 F.3d 829. That's an Eighth Circuit case. Both of
6 those cases are from 2020. So there is a dispute in the case
7 law about whether or not kidnapping is a crime of violence or
8 not.
9 In any event, even were I to assume that kidnapping is not
10 a crime of violence because it can be committed without the use
11 of force, this is not a kidnapping case. This is a threats
12 case. And unlike with kidnapping, every definition of "threat"
13 or "threatened" that I have seen conveys the notion of the
14 intent to inflict harm. I just refer the parties to the *Elonis*
15 case, a Supreme Court case at 135 Supreme Court 2001 at page
16 2008, which reviews a number of definitions with respect to what
17 a threat is. I would note Black's Law Dictionary defines
18 "threat" as a communicated intent to inflict harm or loss on
19 another.
20 And further, the Supreme Court in *Elonis* held that other
21 legal principles require that the government prove in every
22 875(c) case the defendant is conscious of the threatening nature
23 of his communication. Further, the Fourth Circuit has held that
24 the third element of an 875 charge requires the prosecution to
25 show that, quote, a reasonable recipient who is familiar with

1 the context in which the statement is made would interpret the
2 statement as a serious expression of an intent to do harm.
3 Based on all that, I conclude that a threats charge under
4 875, whether a threat to injure or a threat to kidnap, would
5 qualify as a crime of violence. It does necessarily, I believe,
6 include threat of a use of force. Stated another way, I do not
7 see how even a threat to kidnap could be committed without a
8 threat of at least an implied use of physical force against the
9 person or property of another. And the defendant has not cited
10 any cases that have held otherwise. Admittedly, there's not a
11 lot of cases out there or any on this issue.
12 But a threat -- in my mind, a threat to trick someone into
13 being kidnapped just makes no sense to me. *Santoro* held there
14 must be a realistic probability, not a theoretical possibility,
15 that the statute could be applicable without the threatened use
16 of force. Even if one were to imagine such a hypothetical
17 threatened kidnap by trickery scenario, it's just not something
18 that in my judgment would ever occur in the real world.
19 For that reason, I do not find that there is any realistic
20 probability that 875 criminalizes such conduct. Rather, it
21 criminalizes the threatened use of force, whether to injure
22 another or to kidnap. I conclude that the communicated threat
23 made criminal under Section 875 is a crime of violence, making
24 the charge sanction eligible under 3142(f)(1)(A).
25 So that's my ruling on that issue. Government, I will hear

1 you now on the four factors with respect to this defendant's
2 detention under the Bail Reform Act.
3 MS. AKPAN: Your Honor, I do apologize. I think I
4 should have addressed two preliminary matters.
5 THE COURT: Okay. Go right ahead. I know there's one
6 that my clerk told me about. So yes.
7 MS. AKPAN: Yes, Your Honor. On Friday when we had
8 the initial appearance, because of the limited time and the time
9 of day that we had it, I was not able to conclude finishing the
10 financial affidavit form and asked that I be appointed for the
11 initial appearance. I should have also asked that I be
12 appointed for the detention hearing. So we are making that
13 request right now.
14 THE COURT: Okay. I will permit you to represent him
15 here today. When can you get me that affidavit, Ms. Akpan?
16 MS. AKPAN: I will endeavor my best to get it done
17 today, Your Honor. Communication to the jail has been a
18 challenge this week.
19 THE COURT: I would like you to submit it by close of
20 business tomorrow. All right?
21 MS. AKPAN: Thank you, Your Honor.
22 The second preliminary matter, I do have another hearing at
23 3:45. I have alerted Judge Bates's courtroom. I'm happy to
24 start and then come right back in, however Your Honor wants me
25 to proceed.

1 THE COURT: What do you have with Judge Bates?
2 MS. AKPAN: It's a status conference before Judge
3 Bates, Your Honor.
4 THE COURT: Mr. Tran, can you reach out to Judge Bates
5 and say that Ms. Akpan is going to be delayed because she is in
6 the middle of a detention hearing in one of these -- in the
7 case? All right? We are still in the middle of this hearing.
8 THE COURTROOM DEPUTY: Yes, Your Honor.
9 MR. BASET: Thank you, Your Honor. If I may inquire
10 initially, there are sensitive aspects about Mr. Meredith's
11 health conditions that I believe should not be made public. Is
12 there a mechanism by which these matters can be discussed under
13 seal?
14 THE COURT: Yes. There is a public line. Mr. Tran,
15 do we go into a breakout room? What do we do? What's the best
16 way for the government to convey its information and Ms. Akpan's
17 response?
18 THE COURTROOM DEPUTY: I could move the parties
19 accordingly. I would just need to identify the parties that
20 would need to participate and hear.
21 THE COURT: It's going to be me, the two government
22 attorneys, Ms. Akpan, the defendant, the court reporter, and
23 yourself so you can see what's going on.
24 THE COURTROOM DEPUTY: Okay. I can do that, Judge. I
25 just need a few moments.

1 THE COURT: So government, would it assist you to do
2 it right here at the beginning and just get whatever it is you
3 want to say out?
4 MR. BASET: Yes.
5 THE COURT: All right. That's what we will do, then.
6 MR. BASET: Can we just not mention this part, then,
7 and then we will discuss --
8 THE COURT: I think it's easier if you make a record
9 now so then you can refer to it. Give Mr. Tran a moment, and he
10 will move us into the room.
11 MR. BASET: Thank you.
12 (Beginning of sealed proceedings.)
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18 (End of sealed proceedings.)
19 THE COURTROOM DEPUTY: Okay. All parties should be
20 back on the line.
21 THE COURT: Okay. Government, go right ahead.
22 MR. BASET: Thank you, Your Honor. The government is
23 now prepared to address the four factors relating to detention.
24 To begin, there are no conditions or combination of
25 conditions that will ensure the community's safety or his return

1 to the jurisdiction.
2 Specifically put, the defendant drove to D.C. to
3 participate in a violent insurrection on the Capitol on
4 January 6th, and when he missed that opportunity to participate
5 in one of the most hellish days in this city, the nation's
6 history, he remained in the city and continued to communicate
7 multiple threats to multiple people about shooting political
8 leaders in the head, to include Congresswoman Nancy Pelosi and
9 D.C. Mayor Muriel Bowser.
10 And so to that end, in assessing the nature of the offense
11 and whether the offense is actually a crime of violence
12 pertaining to that first factor, the misogynistic and violent
13 rhetoric that are expressed in these texts are horrific and
14 essentially unparalleled.
15 We know, for instance, that, number 1, these texts have
16 become increasingly violent over the last several weeks,
17 culminating in specific threats of violence against specific
18 people, and that includes hostility and violent hostility
19 towards our leaders, as mentioned, Nancy Pelosi and Muriel
20 Bowser, and not only just general threats but specific threats
21 about how he is going to kill them, what type of specific
22 ammunition he is going to use to kill them, including the fact
23 that he wanted to use armor-piercing bullets to accomplish this.
24 And it just so happens to be that armor-piercing bullets are
25 among the types of ammunition that were recovered from his

1 trailer.

2 In addition, he expressed extreme animus toward this city

3 of Washington, D.C., and the people that live in it. As he's on

4 his way, for instance, he sent a text message that he is heading

5 to the city for, quote, target practice. He indicates his

6 desire to burn the city down. He even goes so far as to

7 indicate, and these are his own words, that he took affirmative

8 steps in assessing how to accomplish this goal insofar as he

9 strategized the best way to assault the city. And he is calling

10 for things like war.

11 And so clearly, this is somebody who relished in the

12 carnage of January 6th as well, reflecting in a text that he

13 thinks that Muriel Bowser was stupid for calling it a domestic

14 act of terrorism. So he relished even after seeing what had

15 happened.

16 Moreover, there is a continued indication from him of the

17 potential for future violence. Specifically, there are texts

18 that indicate that he wanted to stay a day later to, quote, fuck

19 with these commies, in addition a text stating that "I predict

20 that within the next 12 days many in our country will die." And

21 frankly, that's not a risk that we can take with his release

22 into the community.

23 Finally, on this first point of the seriousness of this

24 offense, he took substantial steps to see these threats through.

25 He might have indicated that these threats were in jest and that

1 these are protected First Amendment types of speech, as
2 Ms. Akpan had argued. However, he in his own words during the
3 interview tells officers that he knew that his speech was not
4 protected and that he knew he had crossed the line.
5 And moreover, we know that these weren't just idle words
6 because he actually took steps. He booked a hotel room. He
7 drove from his home to Colorado with a trailer, a cache full of
8 artillery and ammunition, and then he drove to D.C. with all of
9 these weapons, to include over 2,500 rounds of ammunition, two
10 guns, including one AR-style semiautomatic rifle that is used by
11 the Israeli military. He also brings with him a scope,
12 suggesting that he wanted to identify specific targets or at
13 least hone in on them, and extended clip magazines, at least
14 three of them, and armor-piercing bullets as mentioned before.
15 What is especially concerning to see as well is that he even
16 went so far as to apply duct tape to one of the magazines, the
17 extended clip magazine, ostensibly so that he can more rapidly
18 fire the bullets.
19 And so these are steps that are taken to effectuate the
20 threats that he's communicated. And even so, he arrives to the
21 city a day late, and after missing out, he remains in the city
22 and continued to --
23 THE COURT: Can I ask you, that's the one oddity here.
24 If he is so intent on coming here and doing these things, why
25 wasn't he here on the 6th?

1 MR. BASET: Our investigation at this point has
2 revealed that he was late, his car broke down, and that he was
3 trying to show up but that his car malfunctioned and he arrived
4 late.
5 So even after that, his threats on the 7th are about House
6 Speaker Nancy Pelosi. And so when that opportunity passes him
7 by on the 6th, he then considers other means of achieving
8 whatever nihilistic, idealogical visions he might have about the
9 government, including assassinating political leaders.
10 And so as to this first condition or factor, the nature of
11 the offense, it's quite clear that this is as violent as
12 possible types of rhetoric and fortunately was something that
13 was discovered and stopped before anything could have gotten
14 worse.
15 As far as the second factor, the weight of the evidence, it
16 is uncontrovertible what has happened here. The texts speak for
17 themselves. The defendant in post-custodial interviews admits
18 that the texts were things that he had communicated, and
19 frankly, the evidence that was recovered from his trailer
20 further substantiates his mind-set.
21 The government, we have addressed at some level the history
22 and characteristics of the defendant, but this would also
23 include things such as past conduct. He acknowledged going to a
24 rally at Governor Kemp's house in Georgia, and he attended that
25 with an AR-style rifle that was in his possession. Granted, it

1 is an open carry state, but the nexus between a machine of
2 violence and his political beliefs and previously discussed
3 issues is extremely concerning.
4 Additionally, he has acknowledged drug use, including on
5 the night of this offense. And additionally, that day, even
6 prior to this offense being committed, along the same time that
7 he is communicating these threats, around 3:00 p.m. that
8 afternoon, he actually assaults a citizen or resident of the
9 city who he gets into a road rage issue with because that
10 individual had double-parked their car, and he head-butts this
11 person. An eyewitness who is standing nearby he uses the N-word
12 against. So he, over the course of the 24 hours that he was in
13 the city or less than, committed no less than three offenses,
14 including gun possession, communicating these threats, and
15 assaulting people in our city. So that just goes to show the
16 mental state that he was in.
17 And finally, it also dovetails well into the fourth and
18 final factor I would like to address, which is the dangerousness
19 to the community. I think a lot of that has been addressed
20 above, but one fine point or final point I would make on that is
21 that this is somebody who we believe is under the spell of the
22 QAnon extremist ideological conspiracy movement. And that
23 especially makes him someone who is volatile and someone who we
24 cannot necessarily expect to follow any conditions of release
25 that are issued by this court, an institution of the government

1 that this conspiracy, this ideological conspiracy movement
2 detests.
3 And so for all of the above reasons, there are no
4 conditions or set of conditions that would ensure this
5 community's safety, the nation's safety, and his release -- or
6 his return to this jurisdiction.
7 THE COURT: Okay. Thank you.
8 Ms. Akpan?
9 MS. AKPAN: Thank you, Your Honor.
10 Your Honor, we are requesting that the Court release
11 Mr. Meredith. He is a 53-year-old father of two children. He
12 is presumed innocent of the charges. The Bail Reform Act is
13 written to favor release. That is what the law says. It is
14 written to favor release. And there are conditions, about 14
15 conditions listed in 18 U.S.C. 3142(c). Several of them could
16 be put in place to ensure the safety of the community and his
17 appearance to court, and Mr. Meredith would comply with any of
18 those conditions.
19 Just listing out at the outset, there's a condition that a
20 person can remain in the custody of a designated person who
21 agrees to assume supervision and report any violations, report
22 to law enforcement regularly, comply with a curfew. Your Honor
23 can impose a GPS monitor, refrain from using illicit drugs or
24 alcohol, or remove -- and not possess firearms.
25 With all of those conditions that are listed in the Bail

1 Reform Act, again encouraging courts to release individuals
2 regardless of the charge, we have to look at that and are
3 required to look at that closely.
4 As to the four factors, the nature and circumstances of the
5 offense, I would note at the outset, Your Honor, that the
6 government is proceeding by proffer. However, the agent who
7 is -- who was involved in investigating the case, I understand,
8 is present here and has routine information from the government
9 on some of the text messages. And I think, Your Honor, the
10 government's summary, of course, is their summary, but we can
11 look more closely at the text messages that are clear that
12 Mr. Meredith has said and explained allegedly that these
13 statements were made in jest and that he was homeless, namely in
14 the criminal complaint, for example, Your Honor. These text
15 messages were not -- these were text messages with individuals
16 who were either friends or people that Mr. Meredith knew. They
17 were not posted online. And in these -- and in this
18 communication, again namely in the criminal complaint, in that
19 conversation an individual said to Mr. Meredith, "Be careful.
20 I'm worried about you," to which he replied, "LOL. I'm just
21 having fun." And he explained that he was locked in his hotel
22 room.
23 Your Honor, I think that mitigates against this idea that
24 the government said at the outset that he came to D.C. and drove
25 to D.C. to participate in a violent insurrection. The evidence

1 that the government has provided shows and the government's own
2 evidence has shown that Mr. Meredith had previously come to the
3 Washington, D.C., area in November to participate in a rally at
4 that time. Again, the government's own evidence shows that at
5 that time, according to what the government is saying his
6 statements were, was that that November rally was a lot of fun,
7 people were really nice and friendly, and so he was coming back
8 to D.C. to participate in that sort of rally that took place in
9 November.
10 Now, when the authorities arrived at his hotel room, Your
11 Honor, he wasn't found with firearms in his hands. In fact, he
12 complied with the officers. He did exactly what they asked. He
13 even answered questions to them without requesting an attorney
14 be present.
15 In reference to the text messages, there are statements,
16 again from the government's own evidence, showing that
17 Mr. Meredith intended his comments to be a joke. Whether they
18 were received that way or not is a separate question, but he
19 intended the information to be a joke.
20 And I only raise that, Your Honor, because when you look at
21 the threats statute and what is required and what a jury would
22 have to look at, they do have to look at the full context of the
23 text messages, not just the parts that the government pulls out
24 but the entire picture, and that's what the law requires.
25 So obviously, Your Honor, we would dispute all of these

1 allegations, but I do want to at least let the Court know that
2 again without admitting any guilt Mr. Meredith is definitely
3 remorseful for his conduct in these actions, and not just saying
4 it -- I'm not just saying that today. In the evidence that the
5 government has provided, he stated that he recognizes his
6 statements were possibly out of line but he intended them as a
7 joke and possibly wouldn't be received well.
8 Now, as to the final arm, Your Honor, the government -- I
9 can't recall which brief it is, but they made this reference to
10 Mr. Meredith coming from Colorado. He is actually a resident of
11 North Carolina. My understanding is that he is a resident of
12 North Carolina. Just looking at the map, Your Honor, if he
13 intended to come from North Carolina to D.C. for the purpose of
14 committing any of these acts that the government is claiming, he
15 could have done so at any other time. He was coming from
16 Colorado for a reason. My understanding is he had been on a
17 trip there and took a number of firearms heading there. Again,
18 the government's own evidence claiming that he was coming from
19 Colorado and had put a lot of firearms in his trailer heading in
20 that direction, the government's own evidence says that
21 according -- that he allegedly explained that when he got close
22 to D.C. he realized that he probably couldn't have firearms, so
23 he placed them in his trailer. And when the officers arrived on
24 the scene and spoke with him, he didn't have firearms in his
25 room. He had them in the trailer and led the officers to the

1 trailer as to where these firearms were located.
2 So Your Honor, at least as to the nature and circumstances
3 on the misdemeanor offenses, I can understand the government's
4 concern, but the misdemeanor offenses, again, that's not really
5 the focus here. It's the threat. And I as I stated, the full
6 context of those statements have to be put into place.
7 In reference to the assault, Your Honor, I did ask the
8 government to provide me the information that they cite in their
9 brief. I have not received that. So I ask the Court to not put
10 a lot of weight on that, because again we are entitled to see at
11 least some of what they are relying on. But without much
12 context, we don't know what actually took place. The government
13 refers to a head-butting. We don't know if this was in defense
14 of any other action of an individual. So without that actual
15 evidence, I would submit that the Court has to put at least some
16 of those possible offenses in context in analyzing that.
17 As to the weight of the evidence, that is the least of the
18 important factors when evaluating whether a person can be
19 released. Even evidence of guilt doesn't mean that a person
20 can't be released. That's what the law says. And there are
21 several cases that say that the weight of the evidence is the
22 least important factor.
23 Moving on to the third factor, which is the history and
24 characteristics of the defendant, as I stated before,
25 Mr. Meredith is 53 years old, has two sons, had an amicable

1 divorce from his ex-wife, which also indicates a person who
2 isn't a fighting person. My understanding from him is that he
3 has participated heavily in his church, even traveled to help
4 build houses in other countries, grew up in a religious home,
5 provides for his ex-wife and his sons and also his roommate.
6 I will read from a few points that his character reference
7 had stated in a letter that I provided to the government and to
8 the Court in which the character reference states that, "I know
9 him as a staunch and even in-your-face patriotic person but not
10 a troublemaker. I've never seen him give any indications of
11 being anything other than a genuine and responsible person."
12 And she states that she has no reservations whatsoever about
13 assisting and maintaining a curfew and removing firearms from
14 the home. We spoke to her, and she would be happy to do
15 whatever the Court requires, including report him if he is in
16 violation of any conditions of release.
17 Again, I think Your Honor can look to the conduct after.
18 There's no indication he drove to D.C. for the purpose of doing
19 what the government is claiming. He stated in these text
20 messages, allegedly stated in these text messages that he was in
21 his room there resting, and when the government authorities
22 found him, that's exactly what he was doing.
23 As to the nature -- the dangerousness to the community,
24 Your Honor, danger to the community is not -- the government
25 relied on two points in their opposition to my motion that

1 Mr. Meredith poses a serious risk of flight because -- I
2 apologize. I meant to address dangerousness to the community.
3 Again, we look at the community, not just simply where the
4 charge took place but also in the place where the defendant
5 resides and has ties. My understanding is there's no criminal
6 history here. He has substantial ties in the North Carolina
7 community. There is also a third-party custodian ready and
8 available to supervise. There are a list of conditions that can
9 be put in place to make sure -- I'm sorry. Can you hear me?
10 THE COURT: I was on mute. I'm sorry. Who are you
11 proposing be the third-party custodian?
12 MS. AKPAN: Ms. Jeffers, who provided her
13 information --
14 THE COURT: Oh, okay. I just wanted to know if it was
15 the same person.
16 MS. AKPAN: Yes.
17 THE COURT: All right. Thank you.
18 MS. AKPAN: Yes. A third-party custodian could be in
19 place. GPS monitoring could be in place as well to make sure if
20 Your Honor orders that Mr. Meredith either stay at his home in
21 North Carolina or any place period, that he be monitored
22 electronically and also supervised by a third-party custodian.
23 That way the Court could not -- the community wouldn't have to
24 be concerned that they didn't know where he was. He would
25 comply with any curfew requirements on top of that.

1 The Bail Reform Act, Your Honor, does require the least
2 restrictive conditions, but Mr. Meredith would comply with even
3 the most restrictive conditions. If Your Honor wanted to put in
4 place all 14 of the conditions, he would comply with that and
5 with the understanding that if he were to violate any of them he
6 will be finding himself at the D.C. Jail. And again, not
7 possess firearms, report to law enforcement on a regular basis,
8 refrain from any use of alcohol or anything, and not contact any
9 of the witnesses, again that exact list in the Bail Reform Act,
10 3142(c).
11 I did want to address the risk of flight now which the
12 government raised in their briefing. Again, there has to be a
13 serious risk of flight. That is usually mitigated by an
14 individual turning over their passport and seeing authorities.
15 I would submit that that would be very difficult to do, to flee
16 the country when you're on GPS monitoring. And in a case like
17 this, Your Honor, I would assume that the authorities would
18 definitely be monitoring Mr. Meredith.
19 And so with that, Your Honor, we believe that there are
20 conditions that can be put in place, even the strictest of the
21 conditions that Mr. Meredith would be more than compliant with
22 in order to show the Court that he is someone who would not
23 violate the conditions and could be released under the strictest
24 of conditions and assure his appearance and the safety to the
25 community.

1 Thank you.

2 THE COURT: If I could hear the recommendation from

3 Pretrial, please.

4 PRETRIAL SERVICES OFFICER: Good afternoon, Your

5 Honor. Christine Schuck, Pretrial Services.

6 Pretrial Services's recommendation is there are no

7 combination of conditions that will assure the safety of the

8 community.

9 THE COURT: Okay. Government, any response to

10 anything Ms. Akpan said?

11 MR. BASET: Yes, if I may make a few points.

12 The first is that Ms. Akpan's suggestion that the weapons

13 and the ammunition were brought to the District unintentionally

14 or without much thought I think is disavowed by his texts,

15 specifically where he indicates he would like to use the

16 armor-piercing bullets that he is bringing with him to shoot the

17 mayor of D.C., as well as texts that he is sending on the

18 afternoon or evening of the 7th where he is talking about all

19 the weapons that he has in his car, including all the rounds of

20 ammunition.

21 Additionally, the notion that these statements, these

22 things that he said were just in jest is also undercut by the

23 statements that he makes to FBI agents who are interviewing him

24 after his arrest. He is actually specifically asked if he

25 posted things for -- and this is with respect to social media

1 posts, but if he posted things for reaction or if he believed
2 the things that he was saying. It was a little of both. And
3 frankly, we are in no position to take such a risk on someone
4 who might think it might be a little of both, that it could
5 actually be serious and it is kind of joking, especially given
6 his personal characteristics that the government has raised, as
7 well as sort of the fact that the only way to really sort of
8 prevent him from necessarily using social media or leaving a
9 house, he can't be baby-sat 24 hours a day, and the fact that he
10 has access to things like social media could further make his
11 ideological bent more serious and more likely to cause the sort
12 of actions that are going on in his head or about the thoughts
13 that are going on in his head, and we can't risk him maybe
14 believing it should happen or maybe not, especially given the
15 current threat assessments that are hovering over the city over
16 the next couple of weeks certainly with respect to political
17 violence that is -- that we're all aware of and concerned about.
18 THE COURT: Okay. Thank you.
19 Having heard all the arguments and having read through the
20 briefs submitted by both sides, I am going to grant the
21 government's request and order Mr. Meredith be detained pending
22 trial in this case as I believe I cannot fashion a combination
23 of conditions that would reasonably assure the safety of the
24 community.
25 Mr. Meredith, I will be issuing a detention memo shortly

1 which will outline or detail the basis for my decision, but I
2 will provide you some of my thinking here today for your benefit
3 and the benefit of family members who may be on the line
4 listening today.
5 Mr. Meredith, you don't have any prior contacts -- or
6 convictions, I should say, with the criminal justice system.
7 You have no prior failures to appear or indications that you
8 would not follow the orders of the Court. So that part of your
9 background I think does weight in favor of your release here
10 today.
11 I have also considered, though, some of the things that
12 were discussed during the sealed section, and in addition to
13 what I am about to say, what we discussed in there certainly
14 supports my decision and forms part of the basis for it, which I
15 think would also fall into that category of your history and
16 characteristics.
17 But even with somebody who doesn't have any criminal
18 convictions, in my view sometimes the nature and circumstances
19 of the offense are so serious and indicative of the danger that
20 the individual poses to the community were he or she to be
21 released that detention is justified. I think this is one of
22 those cases.
23 We unfortunately get our fair share of these 875 cases here
24 in D.C. Ms. Akpan pointed out and the government concedes,
25 would agree the government is going to ultimately have to show

1 that this was a true threat, that this is not a joke. And I
2 always look at these cases that come across my desk with an eye
3 towards that.
4 I would agree with the government, though. When I look at
5 this case, for all the reasons I'm about to say, this would
6 indicate to me that this was in fact a true threat and that, you
7 know, a person charged with or what you are charged with doing
8 would represent a danger to the community.
9 The government indicated that this -- the allegations in
10 this case are unparalleled. If I have had a more concerning
11 threats case come before me, I don't remember it. It's
12 certainly right up there.
13 Here, I start first with the threats themselves. They are
14 numerous. They are graphic. They have a level of intensity
15 that is of concern to the Court. Just to review a few, there
16 are threats not only to the Speaker of the House, but Office of
17 the Mayor, graphically talking about putting bullets or running
18 them over. There are also broader threats, I think, to the D.C.
19 community, indicating that it's wartime, that you're just three
20 and a half hours outside the city, three and a half hours from
21 target practice, that D.C. should burn to the ground. So those
22 are very concerning threats that I think do appear to have been
23 serious when made.
24 There is also a concern to the Court, though, that you
25 travelled to come here. Often we have threats made elsewhere,

1 on the Internet, people sitting in their basement and making
2 threats to elected officials in D.C. Here, you took steps to
3 come here and continued this threatening communication as you
4 did so and even after you got here. You drove all the way
5 across the country, from Colorado, and you brought with you the
6 means to make good on your threats.
7 I am very concerned about all the fire power that was found
8 in the vehicle, a 9-millimeter handgun, a rifle with a
9 telescopic scope, thousands of rounds of ammunition, including
10 320 armor-piercing rounds, high-capacity magazines. I just
11 don't see any lawful purpose for which you could possibly have
12 with that sort of fire power in this city. You are not
13 authorized to have those firearms in this city.
14 When I combine it with the texts, the threats, the context
15 of what was going on last week, I think you represent a certain
16 danger were you to be released.
17 I also consider the strength of the government's evidence.
18 Ms. Akpan is correct that it is the least of the considerations,
19 but nevertheless, it does appear here the government has a solid
20 case against you. The threats were found -- the threatening
21 messages were found on your cell phone, exchanged with other
22 individuals who I assume the government could call as witnesses.
23 You yourself admitted that the texts found on the cell phone
24 were yours. The guns were found in your vehicle, in a truck
25 behind your vehicle, and you admitted that as well.

1 So that's a pretty solid threats and possession of firearms
2 case. Obviously, I am not making that decision. That's
3 ultimately a decision for the jury to make if you wish to go to
4 trial. The Bail Reform Act requires me to consider the strength
5 of the government's evidence, and I do believe it is strong. So
6 I believe that that factor also weighs in favor of your
7 detention here today.
8 The final factor, what it all comes down to is the
9 seriousness and nature of the danger that your release would
10 pose, and for all the reasons I've said, I do believe you would
11 pose a danger, and I do not believe that I could fashion
12 conditions of release that could reasonably assure the safety of
13 the community, frankly any community at this time.
14 I do not see the point in sending you back to Colorado or
15 North Carolina. I would not feel like that is sufficient even
16 with GPS monitoring, given what has happened so far in this case
17 that the government alleges that you did in terms of travel to
18 get here. GPS monitoring is imperfect, and I don't think we
19 have room for error when it comes to you.
20 So for all these reasons, I'm going to order that you be
21 held in this case.
22 Do we have a next date, Mr. Tran? Have we set a next date,
23 or do we need to do that now?
24 THE COURTROOM DEPUTY: I'm checking now, Judge.
25 THE COURT: Maybe the parties remember. I think we

1 decided to hold off until I made my decision.
2 MR. BASET: Your Honor, if I can interject.
3 THE COURT: Sure.
4 MR. BASET: I do understand that the defendant is
5 scheduled to be booked tomorrow on the Superior Court charge of
6 simple assault for a warrant arising out of that incident. I
7 understand that there's a date of January 15th, I believe, that
8 might have been set.
9 THE COURT: In his Superior Court case, you mean?
10 MR. BASET: Well, he still has to be booked on that
11 case.
12 THE COURT: I don't have any role in that. He will
13 have to be taken over there. I'm just trying to grab the next
14 date in this case. I don't have it in front of me. Typically,
15 I don't set the next date until we have had the hearing because
16 that is going to impact whether he is entitled to a preliminary
17 hearing.
18 Two weeks from today would take us out to January the 28th.
19 So that is when I am proposing that we schedule his preliminary
20 hearing. It's a pretty booked-up day, but I think I could
21 squeeze it in at 3:00 on January the 28th, if that works for the
22 parties. Government?
23 MR. BASET: That's a fine date for the government.
24 Thank you.
25 THE COURT: Okay. Ms. Akpan?

1 MS. AKPAN: That's fine for me, Your Honor. Thank
2 you.
3 THE COURT: All right. So that will be January 28th
4 at 3:00. That will be another virtual hearing, and that will be
5 for a preliminary hearing, assuming Mr. Meredith is not indicted
6 before then.
7 Anything further we need to cover here today? Government?
8 MR. BASET: No. Thank you, Your Honor.
9 THE COURT: Ms. Akpan?
10 MS. AKPAN: No. Thank you, Your Honor.
11 THE COURT: All right. The parties are excused.
12 (Proceedings adjourned at 4:23 p.m.)
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1 CERTIFICATE OF OFFICIAL COURT REPORTER

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3 I, Sara A. Wick, certify that the foregoing is a

4 correct transcript from the record of proceedings in the

5 above-entitled matter.

6

7 Please Note: This hearing occurred during the

8 COVID-19 pandemic and is, therefore, subject to the

9 technological limitations of court reporting remotely.

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12 /s/ Sara A. Wick January 17, 2021

13 SIGNATURE OF COURT REPORTER DATE

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