

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
v.)	
)	CRIM NO. 21-CR-198-TSC
TROY ANTHONY SMOCKS,)	Judge: Chutkan
)	
Defendant.)	

**REPLY TO MEMORANDUM IN OPPOSITION TO MOTION FOR
RECONSIDERATION OF DETENTION ORDER**

COMES NOW Troy Anthony Smocks, by and through counsel, and submits its Reply in response to the government’s Memorandum in Opposition to Motion for Reconsideration of Detention Order (Dkt. No. 22). In support thereof, Mr. Smocks states as follows.

1. The government makes much of the defendant’s criminal record. However, despite multiple convictions, what is not present within these convictions is of note as well. First, none of Mr. Smocks’ convictions involve any violent act or assaultive behavior. Second, despite encounters with the criminal justice system, there is no conviction for violating any court order, contempt of court, or for failing to appear in court. Third, his most recent conviction is over fifteen years old, having been convicted in March of 2006. Finally, it appears that his most recent period of supervision of five years, from January 2014 to January

2019, ended administratively at the end of the five years, and there has been no conviction since.

2. While the government argues that the government's evidence is "overwhelming," it bases its argument on its predetermined conclusion that Mr. Smocks is guilty of the alleged threats simply because he admitted to the fact that he owns the account and that he admitted to writing the posts (Opposition at 8). However, the government chooses to ignore that simply making the statements is enough to have a conviction. As required by the Supreme Court in Elonis v. United States, 575 U.S. 373 (2015), the government needs to show that Mr. Smocks possessed "the *mens rea* or guilty mind, as to every element of the offense." See Luna Torres v. Lynch, 578 US. ____ (2016)(slip opinion at 15). Accordingly, the government is going to have to prove that my client had the *mens rea* required to make his statement an illegal threat. The defense submits that in the context of the statements made, and the fact that Mr. Smocks denied making the statement as a threat, the government's case is not as "overwhelming" as suggested.

3. The court can take steps to assure that Mr. Smocks is not a danger to the community and/or a risk of flight. His passport has already been seized. He already has a place to reside, with his niece in Missouri, Ms. LaToya Harris. Ms. Harris has indicated to undersigned counsel that Mr. Smocks may reside with her,

and she is amenable to having whatever equipment is necessary in order to assure GPS surveillance compliance. The court can place a GPS device on Mr. Smocks to assure his whereabouts are always known. In addition, the court can limit his use of social media and/or electronic media to assure no further postings on his part which may be perceived as threats.¹

WHEREFORE, for the reasons and arguments made above and in its original Motion for Reconsideration of Detention Order, Defendant Troy Anthony Smocks prays that the court release defendant.

Respectfully submitted,

TROY ANTHONY SMOCKS
By Counsel

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¹ If the court chooses to place such a restriction on him, the defense would respectfully request that the court allow him to use a computer for the purposes of court hearings as well as communications with his attorney and/or the legal defense team.

Certificate of Service

I hereby certify that a true copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system this 13th day of April, 2021, which will send a notification of such filing (NEF) to the following to all counsel of record.

/s/John L. Machado

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