

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY LOUIS HALE-CUSANELLI,

Defendant.

Hon. Trevor N. McFadden

Criminal No. 21-00037-TNM

**DEFENDANT'S REPLY TO THE GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION FOR MODIFICATION OF BOND**

Defendant files the instant reply to the Prosecution's Opposition to Defendant's Motion for Modification of Bond. Defendant incorporates by reference all arguments made in his original Motion for Bond Review and Motion for Modification without repeating those arguments here. In the instant motion defendant will address the Prosecution's Opposition.

Preventive detention principally addresses two issues: danger and risk of flight. In the prosecution's Opposition they do not claim that

defendant's release presents a risk of flight. They focus principally on their claim that defendant's release poses a "danger" because he professes to be a white supremacist, antisemitic and racist. Without conceding the accuracy of those allegations, the defense notes that notwithstanding that defendant may have beliefs regarding race that are repugnant, the issue at hand is whether defendant's conditional release into the community presents a danger to other persons in the community. It is in that regard the prosecution's claims are lacking.

The prosecution's motion demonstrates that the prosecution conducted a massive and thorough investigation into the defendant. As noted, they have interviewed 44 people who know the defendant regarding his background. Although many claim the defendant holds beliefs regarding race that are abhorrent, apparently none have pointed to a single instance where defendant has engaged in any violent act against any person.¹ Apparently, none have ever pointed to a single instance where defendant ever attempted to physically harm a person let alone actually physically harmed anyone. As noted previously, defendant has virtually no criminal record, let alone any record of violent crimes.

¹ The prosecution has not referenced any.

Defendant has served for approximately 11 years in the Army reserves. There have been no instances where defendant has ever been found to have engaged in any inappropriate conduct in connection with his military service. Defendant has worked as a private security contractor for HBC Inc. on a Naval Base. While on duty he is required to carry a firearm, usually a 9mm pistol, occasionally a shotgun. There have been no instances where defendant has ever been found to have engaged in any inappropriate conduct in connection with his work as a security officer let alone anything violent. In both settings defendant works with numerous colleagues who are African American and other diverse ethnic backgrounds. There is no indication defendant has ever been involved in any violent confrontations, altercations or hostilities with any of his colleagues. To the contrary, his immediate supervisor at the Navy Base Sgt. John Getz wrote a letter of support attesting to the fact that defendant was not a violent person, that his interactions with colleagues are appropriate and respectful regardless of the race of the co-workers. As the prosecution pointed out in their Opposition, Sgt. Getz is aware that defendant is a Holocaust Denier, has expressed views that are Antisemitic and consistent with being a White Supremacist. Sgt. Getz has chastised Defendant at work for making inappropriate remarks and “jokes.”

Notwithstanding Defendant expressing sentiments that are offensive and inappropriate, Sgt. Getz² clearly stated that Defendant is neither violent nor dangerous. Furthermore, Sgt. Getz noted that Defendant serves as a Union Representative on behalf of all his coworkers. He maintains a good working relationship with all co-workers including those who are non-white.³

The prosecution claims that defendant's release poses a danger to the community because he has made reference to the desirability of a civil war as expressed in some social media platforms and text messaging. However, there is no indication defendant ever did anything in relation to any potential violent act. No weapons nor explosives have ever been found nor attributed to the defendant. Defendant is not a member of any group, let alone any group advocating violence, ethnic cleansing, sedition or any other violence. There is no evidence Defendant did anything in terms of taking any steps towards committing any violent act.

² In addition to supervising Defendant at HBC as a security officer, Sgt. Getz is also a Platoon Sgt. In the United States Army. As stated in his letter of support, he would be proud to have Defendant serve under him in any of the units he supervises in the army.

³ In addition to his co-workers, for the last 3 years up until his incarceration defendant has shared an apartment with another active military person who is African American.

Obviously, the prosecution has thoroughly reviewed what are hundreds if not thousands of hours of recordings of the January 6, 2021, events at the Capitol. They have identified defendant in those recordings and have included some of those images in their pleadings in this case. Notwithstanding the rampant wide spread violence that occurred that day, between law enforcement and the protesters, there is no evidence nor allegation that defendant ever attempted to injure any other person in any way. If defendant did not engage in violence during the melee that occurred during the January 6 disturbance, it should be safely inferred that he is not inclined to engage in violence, even where violence is pervasive.

What is revealing in the prosecution's pleadings is the argument they are not able to make: they maintain that Hale-Cusanelli's release presents an unreasonable risk of danger when they cannot point to a single instance when Hale-Cusanelli ever physically injured another person, attempted to injure another person, expressed an intent to injure anyone, possessed a weapon⁴ or participated in any plan to injure anyone. There is ample evidence that Hale-Cusanelli was present and surrounded by others who were actively engaged in violence on January 6. However, there is no

⁴ He of course has lawfully possessed weapons in connection with his military service and work as a security officer. However, he owns none.

indication nor claim that he ever was a participant in the violence that was occurring around him. The allegation is that he traveled to Washington after work to hear the President's speech and to protest. At the time while others appeared in "body armor" prepared for violence, Defendant bought a suit and tie for the occasion. He marched to the Capital as part of the protest to stop the steal and followed others into the Capital where he did not break anything, steal anything nor try to hurt anyone.

The prosecution's argument is that defendant has expressed reprehensible beliefs, therefore, he is dangerous. However, notwithstanding his expressing those beliefs, he has been a law-abiding citizen his entire life except for possibly the alleged actions he took on January 6, 2021. Even when involved in that activity he did not evidence any intent, desire or attempt to physically injure anyone. He has honorably served his country through his military service for the last 11 years, he has been gainfully lawfully employed. Past is prologue. If released it may be safely assumed that defendant will resume his life as an honest hard working citizen who has no involvement in criminal activity. He has not physically injured anyone in the past, there is no reason to believe he will do so in the future. His alleged involvement in the instant case is an aberration that is not likely to be repeated. His involvement in the events of

January 6, 2021, were motivated by patriotic zeal. He considers himself a loyal patriotic United States citizen who pledged to serve his country, to defend it against enemies foreign and domestic. His actions on January 6, 2021, were not intended to subvert the United States but to defend it⁵. Like millions of others, he was gullible enough to be misled by the deception of the then President of the United States. He was told that the “election had been stolen” and it was the duty of citizens to “fight like hell to prevent the steal.” At the time the deception was being parroted by numerous elected officials as well as other charlatans masquerading as journalists.

Defendant believed them. He was motivated by a desire to serve and protect his country. Obviously, his belief was ill founded but well intentioned.

WHEREFORE for the foregoing reasons, and any others which may appear at a full hearing on this matter, and any others this Court deems just

⁵ The defense recognizes that “being misled by the President” is not likely to be successful as a legal defense to the charges at issue. However, in assessing the danger the defendant’s release pending trial presents, the defendant’s motivation is germane. It is noteworthy that having been misled to his detriment in the past, defendant has learned his lesson and is less likely to commit the same error again.

