

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES

v.

QUAGLIN

)
)
)
)
)
)

Case No. 1:21-cr-40

DEFENDANT’S BRIEF IN REPLY TO THE GOVERNMENT’S RESPONSE TO
DEFENDANT’S THIRD MOTION FOR PRETRIAL RELEASE AND MOTION TO
COMPEL DISCLOSURE OF DOCUMENTATION ILLUMINATING THE REASONS
FOR THE UNANNOUNCED AND UNEXPLAINED TRANSFER OF DEFENDANT
FROM THE DC JAIL, FROM NORTHERN NECK REGIONAL JAIL, AND FROM
RAPPAHANNOCK REGIONAL JAIL

Defendant Christopher Quaglin, by and through counsel, hereby submits this brief in Reply to the Government’s Response to Mr. Quaglin’s Third Motion for Pretrial Release and Motion to Compel Disclosure of Documentation Illuminating the Reasons for the Unannounced and Unexplained Transfer of Defendant from the DC Jail, from Northern Neck Regional Jail, and from Rappahannock Regional Jail.¹

The Government’s Response (ECF No. 545) flouts the Court’s express instructions to investigate why Mr. Quaglin was transferred from Rappahannock to the DC Jail. Moreover, Mr. Quaglin is still unable to view his discovery, which is his right and which he has been requesting for two years. Finally, the Government provides no reason why the sheer length of his pretrial incarceration does not violate Mr. Quaglin’s due process rights. For the reasons set forth below,

¹ A similar motion was made in this case by co-Defendant Geoffrey Sills, ECF No. 533. Mr. Sills cites reports of mistreatment of pretrial detainees like Mr. Quaglin, and Richmond County, Virginia Commonwealth’s Attorney Elizabeth Tribble’s decision to terminate her office’s use of the facility for the housing of pretrial detainees due to allegations that NNRJ Superintendent Ted Hull failed to report inmate injuries. The arguments set forth in ECF No.533 to the extent they apply to Mr. Quaglin’s situation are incorporated herein.

Mr. Quaglin respectfully requests that the Court (1) order Mr. Quaglin's release to the custody of Moira Quaglin;(2) order full discovery into the reasons that Mr. Quaglin has been transferred so many times, specifically from the DC Jail in 2021, and from Northern Neck and Rappahannock in 2022; and (3) any other relief that the Court deems proper.

The Government's response flouts the Court's request to investigate why Mr. Quaglin was transferred.

On February 8, 2023, after Mr. Quaglin was mysteriously transferred for the eighth time since his detention almost two years ago, the Court's law clerk emailed counsel for Defendant and the Government. "In light of this new motion from Mr. Quaglin, we will be entering a Minute Order shortly asking the Government to respond in two weeks. Judge is particularly interested in learning why Mr. Quaglin was moved from RRJ [Rappahannock Regional Jail]. The Government is encouraged to include that information in its response." The Government was given 14 days to investigate, and that was after having 25 days to investigate the mysterious transfer from Northern Neck Regional Jail to Rappahannock Jail that occurred just days after a local newspaper revealed scandalous activity by the Jail and its warden that confirmed allegations in Mr. Quaglin's earlier filings,² and the new allegations in Mr. Quaglin's Motion regarding Rappahannock, filed on December 23, 2022. ECF No. 501.

The Government, in its response, flouted the Court's request. The Government never conducted an investigation into Rappahannock, just as it never conducted any investigation into Northern Neck Regional Jail, just as it never conducted any investigation into the DC Jail, despite a recommendation by this Court, *United States v. Worrell*, 1:21-cr-292, ECF No. 106. The full extent of the Government's investigation into why Mr. Quaglin was mysteriously moved again, and into Mr. Quaglin's serious allegations - including the allegation that he is not being

² See Northern Neck Sentinel, Vol. 5, Ed. 11, December 2023, pp. 1, 5.

provided food that he can eat - was to ask the U.S. Marshals who simply reported only that Mr. Quaglin “had been harassing medical staff.” No affidavit was attached from the U.S. Marshal Service or from the Jail; no details of the alleged “harassment” were provided, no evidence was provided, no indication that Mr. Quaglin violated a policy. No inquiry into whether the alleged “harassment” was in fact repeated unanswered requests, grievances, and pleas for food he could eat and for necessary medical treatment that was being withheld. The Court’s contempt order against the DC Jail and recommendation that the Government investigate possible civil rights violations were issued because the DC Jail withheld medical treatment from a January 6 defendant and then attempted to hide incriminating evidence from the Court. *Worrell*, 1:21-cr-292, ECF No. 108, p. 14:11-18. Based on that, the Government had a reasonable basis to investigate and verify Mr. Quaglin’s plausible allegations.

The Government’s lack of curiosity, blithe dismissal, willful blindness, and deliberate indifference to Mr. Quaglin’s plausible allegations about the DC Jail shocks the conscience. The Government is aware that inmates were able to bribe guards to smuggle weapons into the Jail, but according to the Government everything is ok because “the bad actors were arrested.” Even though this Court has recommended a comprehensive investigation for civil rights abuses, and prominent members of Congress from both sides of the aisle have repeatedly urged an investigation, the Government is content that the arrest of some low-level guards puts the matter to rest. There is no need, according to the Government, for further investigation to determine if the “systemic failures” go higher up the chain of command.

Mr. Quaglin’s allegations at the DC Jail where he is currently being detained include but are not limited to (1) 22 hours of lock down during the week, and 48 hours of continuous lockdown on the weekends; (2) no food for 48 hours; (3) no hot water to shower and days

without showers at all; (4) no soap; (5) periods of time without toilet paper; (6) failure to provide Personal Protective Equipment to prevent life threatening infections;³ (7) no laundry; (8) no access to the grievance procedure; (9) and denial of his Constitutional right to access to counsel and to participate in his defense. ECF No. 519-7.

Mr. Quaglin has been detained in the DC Jail as a pretrial detainee for almost a full month. There has not been one day when he received three meals that he could eat, some days when he received none. Now the Jail has illegally punished him and has taken away his commissary. He literally has nothing to eat, and the Government does not investigate or even respond to these allegations. Worse, the Government somehow argues that starving him is not a “compelling reason.” If starvation is not a compelling reason for release, nothing is.

Mr. Quaglin’s motion was supported by an affidavit, and Mr. Quaglin can provide copious evidence should the Court open up discovery into the DC Jail’s civil rights violations. The Government, for its part, provides no evidence or affidavit, and does not dispute many of Mr. Quaglin’s allegations, including the fact that the DC Jail is not providing him with food he can eat. The Government’s response is “Respectfully, none of these complaints meet the high standard for pretrial release,” and that the remedy is to transfer Mr. Quaglin to yet another facility. The Government misstates the law. “Pretrial detention is the exception, not the norm, under the Bail Reform Act, *see United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95

³ The Government makes short shrift of Mr. Quaglin’s “complaint” that the Jail has not provided him with shower shoes to protect him from filth in the Jail showers, and does not consider that without shower shoes inmates risk serious infection that could enter the body and cause serious illness. The Jail continues to insist that inmates wear face masks to protect them from COVID, but refuses to provide Personal Protective Equipment for the filthy communal showers, where the risk of infection is greater by many magnitudes. “In cases involving the denial of medical care or the failure to prevent harm, the Eighth Amendment prohibits officials from acting with ‘deliberate indifference to inmate health or safety.’” *Robertson v. District of Columbia*, Civil Action No.: 09-1188 (RMU), at *8 (D.D.C. Aug. 16, 2010) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *accord Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

L.Ed.2d 697 (1987), and the government's burden is thus a heavy one” *United States v. Klein*, 533 F. Supp. 3d 1, 5 (D.D.C. 2021).

The Government has run out of facilities to the point that Mr. Quaglin has come full circle back to the DC Jail. The Government cannot escape the fact that the jails, among other things, are incapable of providing gluten free diets and therefore they shuttle Mr. Quaglin around until such time as civil rights abuses - and accompanying liability exposure - come to light. The Government has not met its burden of justifying Mr. Quaglin’s prolonged pretrial detention. The only remedy for this injustice is to release Mr. Quaglin to the custody of Moira Quaglin so that he can prepare for his trial.

Mr. Quaglin has not been provided access to view his discovery in almost two years

The fact remains that as of this filing, Mr. Quaglin has been denied access to view his individual discovery, and has never had access to the 44,000 hours of voluminous discovery. The Government has no answer other than assuring the Court that the discovery is on its way, albeit not “at the pace which [Mr. Quaglin] prefers.” Mr. Quaglin “prefers” to view his discovery before he goes to trial, and the Government is incapable of doing so and has failed at every turn to do so. The Government twice failed to transfer Mr. Quaglin’s electronic storage devices containing his discovery with Mr. Qualgin - once when he was transferred from the DC Jail to Northern Neck and once when he was transferred from Rappahannock to the DC Jail - and the Government has done nothing to expedite or facilitate his access to discovery,

The Government alleges without evidence or affidavit that “the DC Jail has a comprehensive discovery system available for defendants, which includes January 6-specific discovery tools that permit inmates, like Quaglin, to review electronic evidence.” The Government cannot claim to know anything about the DC Jail or its “comprehensive discovery

system,” after refusing to investigate the Jail. Further, the Government is so blissfully unaware of the activities of the Jail that when counsel for Mr. Quaglin contacted the Government that Mr. Quaglin had disappeared for days, it took the Government 24 hours to confirm if Mr. Quaglin was even there.

The fact is, Mr. Quaglin has submitted numerous requests at every opportunity for access to evidence.com and relativity.com and has not been provided with access. The Government’s assurance that access is just around the corner is baseless speculation. When Mr. Quaglin’s attorney visited Mr. Quaglin at the Jail, he tried to drop off a digital storage device, but was rejected. When he arrived to visit a few days later with an electronic storage device, he was denied a visit entirely. Even if Mr. Quaglin was in possession of an electronic storage device, he is denied access to a laptop. And finally, even if he had access to a laptop, laptops are only provided when prisoners are not locked down, and Mr. Quaglin is locked down for 22 out of 24 hours a day, leaving at most two hours a day for preparation, assuming that Mr. Quaglin foregoes showering, exercise, and other activities that he can only do when he is not locked down.

Unlike Mr. Quaglin who provided a declaration supporting his allegations, “the Government has offered only conclusory statements to justify its position.” *Gates v. Schlesinger*, 366 F. Supp. 797, 800 (D.D.C. 1973). The Government provides no evidence that Mr. Quaglin can access his discovery because there is none. Mr. Quaglin cannot prepare for his trial in the DC Jail. The Government has had not one, two, or three strikes, but eight strikes, and should not be given yet another chance to transfer Mr. Quaglin to yet another Jail, or more likely, back to a jail that Mr. Quaglin has already been detained. The only remedy is to order Mr. Quaglin’s release to the custody of Moira Quaglin.

The Government provides no reason why the sheer length of his pretrial incarceration does not violate Mr. Quaglin's due process rights.

"It is well settled that so long as pretrial detention is administrative rather than punitive, it is constitutional." *United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000). Pretrial detention violates due process when it "become[s] excessively prolonged, and therefore punitive," rather than regulatory. *United States v. Salerno*, 481 U.S. 739, 747-48 & 747 n.4 (1987). Mr. Quaglin has been detained for 23 months without trial and has repeatedly argued that his detention is unconstitutionally punitive.

The Government cites, with nothing more, *United States v. Dupree*, 833 F. Supp. 2d 241, 251-52 (E.D.N.Y. 2011), for the proposition that "the length of detention ... does not in and of itself offense due process." ECF No. 545, at 4. The Government acknowledges, and it is not in dispute, that 23 months of pre-trial detention may offend due process, even if there has been no change in circumstances. *See United States v. Accetturo*, 783 F.2d 382, 388 (3d Cir. 1986) ("[A] determination under the Bail Reform Act that detention is necessary is without prejudice to a defendant petitioning for release at a subsequent time on due process grounds."); *United States v. Ojeda Rios*, 846 F.2d 167, 168-69 (2d Cir. 1988) (ordering the defendant's release because "due process can[not] tolerate any further pretrial detention" while acknowledging that the Court was "understandably reluctant to release Ojeda Rios from pretrial confinement given allegations of appellant's past pattern of violent acts and disregard of his obligations under United States laws.").

Dupree simply states that there are certain exceptional circumstances where the lengthy pretrial detention is justified. For instance, in *Dupree*, the defendant was initially released and then subsequently orchestrated and committed a second crime during his pretrial release. Mr. Quaglin's case is obviously not analogous because Mr. Quaglin didn't do that. In the cases cited

by *Dupree* that included lengthy pretrial detentions of more than a year, including *United States v. El-Gabrowny*, 35 F.3d 63, 65 (2d Cir. 1994), *United States v. El-Hage*, 213 F.3d 74, 78 (2d Cir. 2000), *States v. Morrison*, No. 04-CR-699, 2006 U.S. Dist. LEXIS 50219, at *3, 31 (E.D.N.Y. July 21, 2006), and *United States v. Berrios-Berrios*, 791 F.2d 246, 252 (2d Cir. 1986), the defendants were all deemed substantial and unusual flight risks, and the risk of flight was a substantial factor in determining that their sentences did not violate due process.

El Hage was a foreign national with multiple forged passports in his possession. El-Gabrowny was a native of Lebanon who had lived for years abroad in Pakistan, Sudan, and Kenya, and his co-defendant, arch terrorist Osama Bin Ladin was still at large. *See also Morrison*, 2006 U.S. LEXIS 50219, at *2 (“defendant was ordered detained as a risk of flight”); *United States v. Gonzales Claudio*, 806 F.2d 334, 336 (2d Cir. 1986) (detained because of risk of flight). The Government never argued that Mr. Quaglin is a flight risk. *See* ECF No. 8, at 29-31.

The Government does not even attempt to show how Mr. Quaglin’s case is unique or how his unusually long pretrial detention does not violate due process. ECF No. 545, at 4. Almost two years ago, in the Government’s Memorandum for pretrial detention, the Government argued that Mr. Quaglin’s case is unique because it is a January 6 case. But over the past two years many January 6 defendants have been granted pretrial release, so therefore, the Government can no longer argue that a January 6 defendant is per se ineligible for pretrial release. *See, e.g., United States v. Klein*, 533 F. Supp. 3d 1, 19 (D.D.C. 2021) (ordering the release of a January 6 defendant and finding that “the specific concerns in the wake of the January 6 events over future protests and violent attacks on the government—on January 20, March 4, and otherwise—have dissipated to some degree now three months later, even though troops and defenses remain present.”). The Government has to show more, but it cannot.

In fact, in *United States v. Torres*, 995 F.3d 695, 709-10 (9th Cir. 2021), the Ninth Circuit stated that a twenty-one-month detention is "significant under any metric and is deeply troubling," and that if the detention went on much longer, "regardless of the risks associated with Torre's release, due process will require that he be released if not tried." In that case, the defendant was a five-time convicted violent drug dealer, caught with an outstanding warrant, a gun with live ammunition, and 64 grams of methamphetamine.

In *United States v. Zannino*, 798 F.2d 544, 547 (1st Cir. 1986), the charges against the defendant were "of the gravest order," but the Court found that 16 months would have been unconstitutionally excessive for pretrial detention, but for the fact that the defendant had delayed his trial. Here the Government does not argue and cannot argue that Mr. Quaglin has delayed his trial, because the Government does not dispute that the Government deprived Mr. Quaglin of his right to view his discovery.

The Government does not cite a single case analogous to Mr. Quaglin to show why his case is special and justifies excessive pretrial detention the length of which has been deemed unconstitutional in other cases. The burden is on the Government to do so, and it has not met its burden. *Klein*, 533 F. Supp. 3d at 5. ("Pretrial detention is the exception, not the norm, under the Bail Reform Act, see *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), and the government's burden is thus a heavy one").

Accordingly, for that reason alone, Mr. Quaglin should be released to the custody of Moira Quaglin.

CONCLUSION

For the foregoing reasons, and for all of the reasons cited in all previous motions and filings requesting Mr. Quaglin's release, Mr. Quaglin respectfully requests that he be released

from pretrial custody immediately to the custody of his wife Moira Quaglin and that the Court order the disclosure of documents illuminating the mysterious transfers..

Dated: February 28, 2023

Respectfully submitted,

/s/ Jonathan Gross

Jonathan Gross
2833 Smith Ave, Suite 331
Baltimore, MD 21209
(443) 813-0141
jon@clevengerfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being served on opposing counsel via email on

February 28, 2023

/s/ Jonathan Gross