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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM BLAUSER, JR., et al.,

Defendants.

Criminal Action
No. 1:21-cr-0386

Washington, DC
September 17, 2021

10:37 a.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE TREVOR N. McFADDEN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

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Defendant Bauer:

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Court Reporter:

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United States District Court
333 Constitution Avenue, NW
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P R O C E E D I N G S

DEPUTY CLERK: This is criminal case 21-386, United States of America v. William Blauser, Jr. and Pauline Bauer. Counsel, please come forward to identify yourselves for the record.

MS. FRETTO: Good morning, Your Honor. Amanda Fretto on behalf of the United States.

THE COURT: Good morning, Ms. Fretto.

MR. PETERSON: Good morning, Your Honor. May it please the Court, Jim Peterson on behalf of the Government.

THE COURT: Good morning, Mr. Peterson.

MR. BARBARI: Good morning, Your Honor. Rammy Barbari on behalf of Mr. Blauser who is appearing by telephone. I believe David Benowitz, also counsel, is appearing by telephone.

THE COURT: Good morning, Mr. Barbari.

MR. BENOWITZ: And good morning, Your Honor. David Benowitz appearing by telephone.

THE COURT: Good morning, Mr. Benowitz.

MS. HERNANDEZ: Good morning, Your Honor. Carmen Hernandez, I'm standby counsel for Ms. Bauer who is in the back of the courtroom.

THE COURT: Good morning, Ms. Hernandez.

Ms. Bauer, you're supposed to be up here, ma'am.

DEFENDANT BAUER: I'm entering a special

1 appearance, Your Honor. Pauline --

2 **THE COURT:** No, sir, you stay back.

3 **DEFENDANT BAUER:** -- from the house of Bauer, and
4 under my constitutional rights I have a choosing of counsel
5 of my choice under amendment number six.

6 **THE COURT:** All right. Ma'am, you may have a
7 seat.

8 **DEFENDANT BAUER:** I would like to admit Mr. Robert
9 Lee from the house of Lawrence, please, as counsel of my
10 choice.

11 **THE COURT:** That motion is denied, ma'am. You may
12 sit down. Before the Court is Ms. Bauer's motion to
13 dismiss --

14 **DEFENDANT BAUER:** Under Marbury v. Madison --

15 **THE COURT:** Ma'am, sit down now, please.

16 **DEFENDANT BAUER:** -- anything repugnant to the
17 Constitution is null and void.

18 **THE COURT:** The Court has considered Ms. Bauer's
19 motion to dismiss filed on September 1st. The motion
20 presents many loosely organized arguments, many of which are
21 not legal in nature, for why this Court has no authority
22 over her. These arguments can be boiled down to the
23 following proposition: That she is a so called sovereign
24 citizen answerable only to herself, not to any other legal
25 authority, including this Court. Federal law clearly

1 rejects that notion. This Court plainly has jurisdiction
2 over this case. 18 U.S.C. 3231 grants federal courts
3 original jurisdiction over all offenses against the laws of
4 the United States. She's charged with five federal
5 crimes --

6 **DEFENDANT BAUER:** Objection, Your Honor.

7 **THE COURT:** Ma'am, please sit down. She's charged
8 with five federal crimes, meaning she is subject to this
9 Court's jurisdiction under that statute. Moreover, federal
10 courts are unanimous that, as Judge Friedrich said two years
11 ago, claims based on sovereign citizen theories are
12 frivolous. That's from Charles v. Parker, 2019 U.S. Dist.
13 LEXIS 48435 from March 21st, 2019 from this district. The
14 Government's opposition to Ms. Bauer's motion quotes much of
15 the relevant case law.

16 The Court finds noteworthy the following quote
17 from the Seventh Circuit on this point. That court said,
18 "Regardless of an individual's claimed status of descent, be
19 it as a sovereign citizen, a secured-party creditor or a
20 flesh-and-blood human being, that person is not beyond the
21 jurisdiction of the courts. These theories should be
22 rejected summarily, however they are presented." That's
23 from United States v. Benabe, 654 F.3d 753 from the Seventh
24 Circuit in 2011.

25 The Court agrees with that recommendation and

1 joins the various federal courts that have rejected
2 summarily the theories presented by Ms. Bauer. That motion
3 is therefore denied.

4 Ms. Fretto, where do things stand?

5 **MS. FRETTO:** Good morning, Your Honor. Today the
6 Government would like to present two basic points. First,
7 in both cases, the Government will be requesting a
8 continuance. We'll be requesting 60 days as well as
9 exclusion of time. And we're asking the Court to make
10 findings under the ends of justice provision pursuant to 18
11 U.S.C. section 3161(h)(7)(B). Before the Court is also the
12 Government's motion to revoke pretrial conditions for
13 Ms. Bauer in light of her noncompliance.

14 **DEFENDANT BAUER:** Objection.

15 **THE COURT:** Ma'am, you'll have an opportunity to
16 speak. Please sit down.

17 You're seeking 60 days, Ms. Fretto?

18 **MS. FRETTO:** Yes, Your Honor.

19 **THE COURT:** All right. And so I read your status,
20 it was a little unclear to me about when you think things
21 are actually going to be up and available for attorneys.

22 **MS. FRETTO:** Yes, Your Honor. So at this point,
23 we have made additional documents available via USAfx until
24 defense counsel has access to the database. We are
25 continuing to provide updates to the Court, and I believe

1 that we will be providing an additional status update to the
2 Court in the next two to four weeks. So that way, the Court
3 is apprised of all of the incremental steps that we're
4 taking towards getting that database up and running and
5 available to the defense.

6 **THE COURT:** So I'm still not hearing a -- what
7 you're saying is you don't know?

8 **MS. FRETTO:** At this point I don't think that we
9 have a date certain, however we are coming closer to that.
10 We've already ingested a large volume of data into the
11 database, and we are working to get access for defense
12 counsel. It's my understanding that that access should
13 happen at some point this year, however the Government does
14 not have a date certain. We certainly will provide the
15 Court with a detailed status update in the next two to four
16 weeks.

17 **THE COURT:** Okay. Are you in plea negotiations
18 with either of the parties in this case?

19 **MS. FRETTO:** Yes, Your Honor. In fact, we
20 communicated with counsel for Mr. Blausen. We're continuing
21 those negotiations. We're requesting 60 days, and we do
22 anticipate that within the next 60 days we should be closer
23 to being able to extend a formal plea offer for their
24 consideration, and either acceptance or denial of that plea
25 offer. At this point, we have not learned from Ms. Bauer

1 whether she is interested in a plea offer.

2 **THE COURT:** So it sounds like you haven't made a
3 plea offer to either party?

4 **MS. FRETTO:** That's correct, Your Honor.
5 However -- we had hoped to already extend a plea offer to
6 Mr. Blauser, however we have additional work to do and we
7 hope to get that done within the next 60 days.

8 **THE COURT:** All right. This feels like it's
9 lagging here. I mean, this case was brought in in June. I
10 don't understand why there aren't plea offers out if you
11 want to make one.

12 **MS. FRETTO:** Your Honor, there is an additional
13 step that the Government would like to take before we make a
14 formal plea offer to Mr. Blauser. If the Court would like
15 to hear that further, we would ask that the parties approach
16 ex parte.

17 **THE COURT:** Well, I don't think we have those
18 little phones up. I don't think that's going to be
19 necessary. But we need to move faster than we have to date
20 now.

21 **MS. FRETTO:** Yes, Your Honor, we understand and we
22 will do so.

23 **THE COURT:** Okay. Mr. Barbari, what's your
24 position?

25 **MR. BARBARI:** Your Honor, the Government's

1 representations to the Court are correct. We are in
2 communication with them about negotiations, and we do not
3 object to the continuance for at least -- for the 30 to 60
4 days. I think 60 days is fine with us.

5 **THE COURT:** And you're willing to toll?

6 **MR. BARBARI:** Yes, Your Honor. I've spoken with
7 Mr. Blauser, and we are willing to toll Speedy Trial through
8 that next date.

9 **THE COURT:** All right. Ms. Bauer, do you wish to
10 be heard?

11 **DEFENDANT BAUER:** Yes, sir.

12 **THE COURT:** So ma'am, the specific question right
13 here is whether we should continue the case and come back in
14 about two months.

15 **DEFENDANT BAUER:** I would like to settle this
16 matter today before the Court, sir. They've had nine months
17 in this dog and pony show. What exculpatory evidence was
18 offered to the grand jury for the indictment, the true bill,
19 the marine contract? What evidence under Brady v. Maryland
20 was not presented to them? Was it not presented that the
21 Capitol Police were leading people into the building? I
22 have a picture of that, and you have put it on my PACER
23 account.

24 Was there not exculpatory evidence presented to
25 the grand jury for this indictment of the Capitol Police

1 saying, "Protest, do not destroy; protest, do not destroy"?
2 These videos are available, they're out there to the public.
3 Under a constitutional court, there must be a corpus
4 delicti. There is no corpus delicti. I did no harm, I did
5 no damage. A dead entity cannot be a victim.

6 **THE COURT:** All right. So am I understanding
7 correctly that you -- it sounds like you want to resolve
8 this as quickly as possible?

9 **DEFENDANT BAUER:** Yes, sir.

10 **THE COURT:** And you're not comfortable with
11 waiting 60 days?

12 **DEFENDANT BAUER:** That is correct, sir.

13 **THE COURT:** Okay.

14 **DEFENDANT BAUER:** And as far as the pretrial
15 revocation, I gave my address the last time I was here in
16 court.

17 **THE COURT:** We'll deal with that in just a minute.
18 I do want to hear from you on that, but let's deal with one
19 thing at a time.

20 So I think -- I certainly understand Ms. Bauer's
21 concern about this dragging on. I think what we'll do is
22 come back in about a month instead and --

23 **DEFENDANT BAUER:** Sir, I have a business to run,
24 and every time I come down here it's a two-day event. I
25 have to close my business or I have to hire more help. And

1 I don't have any help, because everyone is getting
2 unemployment and no one wants to work. Do you have any idea
3 how hard it is and how much of an inconvenience it is, and
4 how much I'm being deprived of life, liberty and the pursuit
5 of happiness right now?

6 **THE COURT:** All right, ma'am. We will deal with
7 that in a moment.

8 **DEFENDANT BAUER:** How do you arrest people without
9 evidence? How do they not have the evidence?

10 **THE COURT:** Thank you, ma'am. You may have a seat
11 now. I'm looking at Friday, October 29th at 2:00 p.m.

12 Ms. Fretto, are you available then?

13 **MS. FRETTO:** Yes, Your Honor.

14 **THE COURT:** Mr. Barbari, are you available then?

15 **MR. BARBARI:** We are, Your Honor.

16 **THE COURT:** All right. Ms. Hernandez, are you
17 available then?

18 **MS. HERNANDEZ:** Yes, Your Honor. I have a
19 3:00 p.m. in front of Judge Moss, but I should be okay
20 unless the Court is planning to have a lengthy hearing.

21 **THE COURT:** Okay. And Ms. Bauer, are you
22 available on Friday, October 29th at 2:00 p.m.?

23 **DEFENDANT BAUER:** Sure.

24 **THE COURT:** Okay. We'll set this for a continued
25 status conference on Friday, October 29th at 2:00 p.m. I do

1 think it's appropriate to toll --

2 **DEFENDANT BAUER:** Your Honor, can I --

3 **THE COURT:** -- the Speedy Trial clock. Ma'am --

4 **DEFENDANT BAUER:** Can I raise an objection right
5 now?

6 **THE COURT:** You just had an opportunity to talk.
7 You will have an opportunity --

8 **DEFENDANT BAUER:** Can I please? This is --

9 **THE COURT:** Ma'am --

10 **DEFENDANT BAUER:** -- a challenge of jurisdiction
11 objection.

12 **THE COURT:** Okay.

13 **DEFENDANT BAUER:** You are challenging me to --

14 **THE COURT:** Ma'am, please sit down.

15 **DEFENDANT BAUER:** You're challenging me with case
16 law, sir. I have unrebutted from the secretary of state --

17 **THE COURT:** Ma'am, I'll give you an opportunity to
18 speak in just a moment.

19 **DEFENDANT BAUER:** -- and the prosecuting attorney.
20 I have an unrebutted affidavit of repudiation removing me
21 from citizenship under the 14th Amendment where it made us
22 all slaves. I have a deed of reconveyance where I took back
23 the title of my, all capital letters, vessel. I have my
24 patent of nativity where --

25 **THE COURT:** Ma'am, ma'am, I need to talk right

1 now. I will give you an opportunity to speak again in a few
2 minutes.

3 So we'll set this for a status conference on
4 October 29th at 2:00 p.m. I do think it's appropriate to
5 toll the Speedy Trial clock in light of the ongoing
6 discovery that is being produced to counsel, and the various
7 motions that are getting filed in this case. Therefore, I
8 find that the interests of justice outweigh the interests of
9 the defendants and the public in a speedy trial to the
10 extent that we are waiving -- or tolling the Speedy Trial
11 clock until that next hearing.

12 So Ms. Hernandez, if you could approach, ma'am. I
13 think I read your concerns, one, about kind of you getting
14 discovery but are not able to provide it to Ms. Bauer yet
15 because she hasn't signed the form. And secondly, you are
16 interested in filing a motion to dismiss on the obstruction
17 charge, is that correct?

18 **MS. HERNANDEZ:** Correct, but I have no authority
19 from Ms. Bauer to do that.

20 **THE COURT:** All right. Anything else we should
21 discuss?

22 **MS. HERNANDEZ:** The Court should understand
23 there's little communication between Ms. Bauer and myself.
24 And she has asked that I be ceased and -- I think she filed
25 a motion for me to cease and desist. So as long as the

1 Court continues to order me to remain in the case, I will.

2 **THE COURT:** Yes, I'd like you to remain. So
3 Ms. Bauer, as I think you know, the Government is providing
4 a lot of discovery about this case, some of which I think
5 you've received, other parts of which they want you to sign
6 a form saying that you are not going to publicly release it.

7 Are you willing to sign that form, ma'am?

8 **DEFENDANT BAUER:** No, sir. That would be a tacit
9 agreement, and that would bring me back into the water and I
10 have put myself on the land.

11 **THE COURT:** Ma'am, if you're not willing to sign
12 it, that's fine.

13 **DEFENDANT BAUER:** It also doesn't give me access
14 or my co-counsel access to any of the files, only
15 Ms. Hernandez. And that is trying to get me to contract.
16 Governments are instituted among men deriving their just
17 powers from the consent of the governed.

18 **THE COURT:** Okay. So the other issue I wanted to
19 talk with you about is this motion to dismiss that
20 Ms. Hernandez wants to file. Frankly, it's a -- I have not
21 looked into this issue, but I know that other judges in this
22 courthouse have been raising concerns about whether this
23 obstruction of justice count is appropriate.

24 **DEFENDANT BAUER:** Well, yes.

25 **THE COURT:** Would you like her to file that on

1 your behalf?

2 **DEFENDANT BAUER:** No, I would not. I'll file my
3 own motion, thank you.

4 **THE COURT:** Okay.

5 **DEFENDANT BAUER:** And I would like to ask this to
6 be dismissed today on that count of obstruction of justice.
7 If this was an official proceeding, why was AOC six blocks
8 away? If it was a -- if it was an official proceeding, then
9 we can just declare anything an official proceeding? I
10 mean, think about this for a minute.

11 **THE COURT:** So ma'am, it looks like you have a
12 number of documents there. If you'd like to submit them,
13 I'm happy to consider that. I know you have other
14 business you need --

15 **DEFENDANT BAUER:** I was not the first person into
16 the Capitol. I did not dismiss anything, and they don't
17 have proof of that. They don't even have a witness
18 available for that.

19 **THE COURT:** So --

20 **DEFENDANT BAUER:** Under the rules, they have to
21 have a witness.

22 **THE COURT:** Ma'am, I'm going to ask you to sit
23 down now.

24 **DEFENDANT BAUER:** Sir, can I please just reiterate
25 on my challenge of jurisdiction here?

1 **THE COURT:** How long is it going to take?

2 **DEFENDANT BAUER:** Okay, I have never claimed to be
3 a sovereign citizen. I am not a sovereign citizen. I am
4 not a citizen.

5 **THE COURT:** All right. Ma'am, I need you --

6 **DEFENDANT BAUER:** I am one of we the people, the
7 creator of government. This is Constitution Day, I do not
8 agree to a bar court.

9 **THE COURT:** Okay. Thank you, ma'am. If you could
10 sit down now, please.

11 Ms. Schuck, you're here from Pretrial Services.
12 Can you give me the report on Ms. Bauer's pretrial release
13 status.

14 **MS. SCHUCK:** Good morning, Your Honor. Christine
15 Schuck, Pretrial Services. Pretrial Services is requesting
16 that Ms. Bauer be removed from all supervision programs
17 because she is not amenable to supervision. She has last
18 reported to the Western District of Pennsylvania, who's
19 doing courtesy supervision for us, on the 30th of June. She
20 has not verified her address with the Western District of
21 Pennsylvania. She has not surrendered her passport to the
22 Western District of Pennsylvania. And she has not verified
23 her address. And when they attempted to do what they call a
24 home assessment on the 12th of August, she refused to allow
25 them to conduct that tour. She is not amenable to

1 supervision, so we're requesting that she be removed.

2 **THE COURT:** Okay. And specifically you said she's
3 supposed to be reporting by telephone is that?

4 **MS. SCHUCK:** Yes, Your Honor, weekly by phone.

5 **THE COURT:** Weekly?

6 **MS. SCHUCK:** Yes.

7 **THE COURT:** And the last time was in June?

8 **MS. SCHUCK:** June 30th.

9 **THE COURT:** Okay. Thank you, ma'am.

10 Ms. Fretto, anything you want to add to your
11 motion to revoke?

12 **MS. FRETTO:** Your Honor, we'll submit on
13 everything in the Government's motion to revoke as I believe
14 it contains all the updated information. To the extent it's
15 not clear, it is our understanding that Ms. Bauer was
16 supposed to report weekly. However, she's only done so
17 twice since supervision began.

18 **DEFENDANT BAUER:** Objection.

19 **THE COURT:** Okay. Ma'am, I'd love to hear from
20 you on this. So the Government is suggesting that you have
21 not followed my directions, you've not allowed the Pretrial
22 Services to tour your home, and you've not been in contact
23 with the Probation Office. If you'd approach and --

24 **DEFENDANT BAUER:** Wouldn't that be agreeing to a
25 tacit agreement, sir?

1 **THE COURT:** Ma'am, if you could approach the
2 podium here so we can hear you.

3 **DEFENDANT BAUER:** Sir, I have a right to my
4 self-determination. I'm presumed innocent until proven
5 guilty. I do not want to agree to any tacit agreements that
6 puts me back into the water. I have put myself on the land,
7 sir, okay. I am not under the jurisdiction of this Court.
8 I am here by special appearance. You invited me here, I am
9 here.

10 **THE COURT:** Okay. So am I correct in
11 understanding --

12 **DEFENDANT BAUER:** I did give my address the last
13 time I was here. The court reporter came over and asked me
14 for it also. I stood right here and gave my address.

15 **THE COURT:** I remember that.

16 **DEFENDANT BAUER:** Okay. And I told you my
17 passport is missing. I do not, on my search warrant, have a
18 list of what they took. Therefore, what they took they
19 stole from my house where I inhabit. They are telling me
20 that I didn't do any of this. They are lying right here in
21 front of the Court. You know for a fact that I did do that.

22 **THE COURT:** So ma'am, I think the main concerns
23 I've heard are --

24 **DEFENDANT BAUER:** No one contacted me to do a
25 virtual of my place where I inhabit. They showed up without

1 any knowledge of me coming -- or them telling me they were
2 coming. I was at work. I am not leaving my work, shutting
3 my business down to go do some kind of a tour of my home,
4 which is an invasion of my rights.

5 **THE COURT:** Okay. And --

6 **DEFENDANT BAUER:** Also, sir, they should not be
7 able to lie about my credibility. The FBI has been watching
8 me ever since day one. Don't tell me they haven't, I know
9 they have, okay. They know where my home is. They know
10 where I am at 24 hours a day. I am at my restaurant 14 to
11 15 hours a day, and when I'm not there I don't want to be
12 around people. I am not a danger to society, sir. For five
13 months they let me run around without arresting me. I am an
14 asset to my community. I have letters to prove it.

15 **THE COURT:** Ma'am --

16 **DEFENDANT BAUER:** I also have two affidavits that
17 I would like to give you today from sworn witnesses that
18 were there on January 6th.

19 **THE COURT:** All right. Ma'am, am I correct in
20 understanding that you've not been in contact with the
21 Probation Office?

22 **DEFENDANT BAUER:** No, sir, I don't want to agree
23 to a tacit agreement which puts me back into the water, sir.

24 **THE COURT:** Okay. Thank you, ma'am, you may have
25 a seat.

1 Ms. Hernandez, is there anything you wish to add
2 to what Ms. Bauer has said?

3 **MS. HERNANDEZ:** Your Honor, I would oppose on her
4 behalf any motion to revoke. None of the charges -- first
5 of all, as the Court well knows, the Bail Reform Act
6 requires the Court to impose the least restrictive
7 conditions. As she has stated, she runs a restaurant in
8 this town, she's there 14 hours a week (sic). She's showed
9 up in court every time the Court has ordered her, so there
10 should be no concern about her failure to appear. And
11 she has -- and none of the charges which she's charged with
12 create a presumption that -- of dangerousness or that she
13 should be detained.

14 So if what Pretrial Services office is requiring
15 is that she not be supervised, I think under the
16 circumstances, given that she's such a public person in her
17 community -- that is, she runs a restaurant which is well
18 known, she's there so many hours a week, that given the
19 nature of the charges against her, she has no prior
20 convictions. I know that her sister wrote a letter when we
21 were in front of Magistrate Faruqui which is very
22 complimentary of her work.

23 So I would suggest to the -- I would recommend --
24 I would request that the Court not revoke, that reduce
25 the -- if what Pretrial is asking is that she not have any

1 supervision, I would submit to the Court that she could be
2 on unsupervised until she shows that she's not going to show
3 up for court. But she has shown up even though, as she's
4 explained, it's a hardship for her to show up.

5 **THE COURT:** Thank you, ma'am.

6 Ms. Bauer, you have a very powerful advocate on
7 your behalf whether you want her or not. I understand
8 you're a small business owner. I don't want to have to lock
9 you up. I don't want you to lose your restaurant. Frankly,
10 I'm not terribly concerned about you being a danger to the
11 community, but I am very concerned about you being willing
12 to follow the conditions that this Court imposes.

13 Are you willing to maintain contact with
14 Probation?

15 **DEFENDANT BAUER:** Does that put me in a tacit
16 agreement, sir?

17 **THE COURT:** Ma'am, I don't know what a tacit
18 agreement is. What I'm asking you to do --

19 **DEFENDANT BAUER:** I gave you an affidavit that
20 explained all of that.

21 **THE COURT:** All right. Ma'am, that's a decision
22 you've got to make. I'm asking you are you willing to do
23 what I'm telling you to do?

24 **DEFENDANT BAUER:** I feel that it's a violation of
25 my rights, sir.

1 **THE COURT:** Okay. Under the Bail Reform Act, a
2 judicial officer must find that there is clear and
3 convincing evidence that a person has violated any other
4 condition of release. I do find so in this case. I find
5 that the defendant has repeatedly failed to maintain contact
6 with Probation as directed by this Court. I also find that
7 the defendant has failed to allow for a home inspection as
8 specifically directed by this Court. I also find that
9 the --

10 **DEFENDANT BAUER:** May I interject here?

11 **THE COURT:** Ma'am, you need to sit down.

12 **DEFENDANT BAUER:** Mr. Blauser agreed to a home
13 inspection --

14 **THE COURT:** Ma'am, you need to sit down now.

15 **DEFENDANT BAUER:** -- and something came missing
16 out of his home.

17 **THE COURT:** I find that the defendant is unlikely
18 to abide by any condition or combination of conditions of
19 release. I don't like doing this, I feel bad for you,
20 ma'am, but you've made clear throughout that you believe
21 you're above the law, and we can't allow that. I find that
22 your release should be revoked. I'll ask you to -- I'll ask
23 the marshals to take you into custody.

24 **DEFENDANT BAUER:** No. You can shoot me on the way
25 out the door, I'm not going back to jail. No. Let go of

1 me. Let me go. Why are you doing this? Why? What is
2 wrong with you? What is wrong with you? Why are you doing
3 this? This is so unconstitutional.

4 (Defendant Bauer taken into custody and no longer
5 present in the courtroom)

6 **THE COURT:** All right.

7 **MS. HERNANDEZ:** Your Honor?

8 **THE COURT:** Yes, Ms. Hernandez.

9 **MS. HERNANDEZ:** May I ask that the Court stay its
10 order until an appeal is taken, or maybe come back later
11 this afternoon and let her see -- I mean, as I understand
12 what the Court is asking, is for her to make a phone call to
13 Pretrial Services once a week or twice -- whatever number of
14 times, which she should be able to do. And also I guess
15 some sort of virtual of her home. I mean, I would say her
16 home was searched by the FBI, so it's not like it hasn't
17 been, I don't know, examined.

18 But I don't know if the Court is willing to just
19 let her sit for a while and then come back and hold another
20 hearing, because otherwise she's there over the weekend.

21 **THE COURT:** Thank you, Ms. Hernandez. I
22 appreciate your advocacy. I think the problem is not the
23 home inspection, the problem is that she is not willing to
24 do what I direct her to do. I don't have any confidence
25 that she is going to maintain any conditions of release.

1 So I do want to talk about discovery, though.
2 Ms. Bauer is now going to be incarcerated. Is there any
3 reason you can't be turning over, Ms. Fretto, discovery to
4 Ms. Hernandez and Ms. Hernandez making it available to her
5 at the D.C. jail?

6 **MS. FRETTO:** Your Honor, of course Ms. Bauer has
7 not signed attachment A, so we would ask that Ms. Hernandez
8 abide by the terms of the protective order and not send
9 those highly sensitive materials to Ms. Bauer without her
10 first signing the form.

11 **THE COURT:** What are you concerned about with her
12 being in jail?

13 **MS. FRETTO:** Your Honor, the Government's serious
14 concerns here have to do with the privacy, safety and
15 security of the witnesses and victims whose private
16 information is on these materials. So I guess there are two
17 points the Government's trying to make here. One, we are
18 developing a system for defendants to review highly
19 sensitive material in the jail without being provided with a
20 physical copy. We're working on a means for them to view
21 that on a system, and so they will have the ability to do
22 that.

23 However, in my e-mail correspondence with
24 Ms. Hernandez, Ms. Hernandez wanted to forward e-mail those
25 highly sensitive materials to the defendant. We do not want

1 that to happen, because we do not have any faith that
2 Ms. Bauer will not publicize or publicly release all of that
3 very sensitive, private information.

4 **THE COURT:** How can she do that at the jail?

5 **MS. FRETTO:** Your Honor, it is my understanding
6 that the -- that individuals are able to write letters and
7 are able to communicate electronically while at the jail.
8 So if she is given a hard copy of a highly sensitive
9 document that does happen to contain PII, for example -- and
10 I have personally reviewed hundreds of documents that are in
11 this case, and it does include home addresses for
12 individuals who have submitted tips in this case. So if
13 Ms. Bauer were to get a physical copy, she could then mail
14 that to whoever she wanted. But we are developing a system,
15 and so that way individuals can view that information from a
16 secure location.

17 **THE COURT:** All right. Ms. Hernandez, what's your
18 thought on how we can make sure --

19 **MS. HERNANDEZ:** So the Government's description is
20 not accurate. I have actually set up through the
21 Administrative Office of the U.S. Courts federal defender's
22 system a box of -- an online box similar to what the
23 Government uses. And I have -- and they have set it up so
24 that Ms. Bauer would be able to view but not download. So
25 as to the highly sensitive materials -- I mean, she could --

1 it's true she could copy down information and release it
2 that way. But I am not asking to e-mail to her the highly
3 sensitive materials. Number two, some of the highly
4 sensitive -- or much of the highly sensitive materials are
5 the CCTV videos from inside the Capitol. I would note that
6 the Chief Judge has been releasing those to the media as
7 they get introduced or attached as exhibits. So even though
8 the Government's position is this is highly sensitive, in
9 fact it's getting out there.

10 With respect to what could happen at the jail, I
11 was just in -- I have a defendant in the Oath Keepers
12 conspiracy which is a 20-defendant case. Ms. Peterson, the
13 first assistant public defender, has been working on all
14 this discovery very closely. This is what she said
15 yesterday with respect to review of discovery at the jail.
16 With respect to electronic materials, if we, defense
17 counsel, mail it to the jail, they will make it available to
18 the defendants within four to six weeks after they receive
19 the electronic material. But the jail only has 12 laptops
20 for all of the defendants who need to view discovery.

21 And the discovery in these cases -- the videos are
22 extensive. I mean, as she described it, I think we're going
23 to continue that trial because of the inability of the jail
24 defendants to view the discovery. Just there's not enough
25 laptops, there's not enough time. I don't know how much --

1 how long these videos are, but my understanding is there
2 could be hundreds of hours of videos.

3 And with respect to the -- so with respect to the
4 highly sensitive stuff, if it's about redacting information,
5 I would ask the Government to redact personal information.
6 Give me the same information, redact what they believe to be
7 highly sensitive so that she can have a copy. And
8 attachment A, obviously, Your Honor, she's not willing to
9 sign these things. But I would submit that my understanding
10 of the record -- the protective order requires that the
11 person -- the defendant sign this attachment and then file
12 it with the Court. The co-defendant in this case has not
13 filed -- I mean, maybe he has signed it and maybe it has
14 been forwarded to the prosecutors, but he has not signed it
15 and he's getting highly sensitive materials.

16 I would hope that there's a way to resolve it.
17 The least possible way to resolve it is by allowing -- with
18 her in jail. I'm just telling the Court that I don't have a
19 client in jail right now that requires January 6th
20 materials. But from those attorneys in the Oath Keepers
21 case, particularly Ms. Peterson, it's impossible to allow
22 them to review the extensive materials that is being
23 produced. There's just -- the jail is not set up for it.

24 **THE COURT:** Okay. Thank you, ma'am. So first I
25 want to note for the record Ms. Bauer has been removed. She

1 was making repeated outbursts, talking over me, and the
2 marshals had to remove her from the courtroom. I'm not
3 going to make any decisions right now given that she's out
4 of the courtroom.

5 I do think -- I mean, Ms. Fretto, you face a bit
6 of a conundrum here. Regardless of the difficulty of any
7 other prisoner having access to materials in jail, you have
8 asked to lock up someone who is self-represented and who's
9 refusing to sign your form. We've got to figure out some
10 way to get her the material that she's entitled to while
11 she's in custody.

12 **MS. FRETTO:** May I?

13 **THE COURT:** I'm happy to hear from you.

14 **MS. FRETTO:** If I may make three points. The
15 first point being over the last week, I have reviewed
16 hundreds of documents, and I've identified a very large
17 subset of documents that I do think that I can redact in
18 such a way that they can be produced as not sensitive. Now,
19 these documents are the documents that pertain most directly
20 to Ms. Bauer's case. So I will take on that responsibility,
21 and we will make those redactions. And then we will provide
22 that material not designated under the protective order so
23 that way she can have those materials.

24 However, there is a larger universe. Because
25 there are hundreds and hundreds of defendants in this case,

1 there are additional materials that are going to be ingested
2 into this database that do contain home addresses, PII, and
3 that does put at risk the privacy, safety and security of
4 those witnesses and victims. So the Government would ask
5 that if Ms. -- if the defense is asking that Ms. Bauer not
6 have to sign attachment A, then they file a motion to
7 modify. So that way the Government has an opportunity to
8 provide a written response, a thorough response, to the
9 Court about why that will not be sufficient.

10 And two, we would ask that if the defense is now
11 making arguments that access to discovery is not sufficient
12 or somehow impedes their rights under the Constitution, that
13 they file a motion so that the Government can provide the
14 Court with a written, fulsome response. Because we do have
15 arguments to all of these, and we do have a process in place
16 that I think the Court will be amenable to and agree that
17 the Government is in fact getting the discovery necessary to
18 these defendants.

19 **THE COURT:** Okay. So let's see where we are at
20 the end of October, but kind of recognizing that Ms. Bauer
21 is not going -- is now locked up. She's representing
22 herself. You need to make sure that she's getting the
23 information that she needs.

24 Mr. Barbari?

25 **MR. BARBARI:** Yes, Your Honor, just one quick

1 logistical thing. May Mr. Blauser still appear remotely for
2 the October 26th (sic) hearing?

3 **THE COURT:** Yes, he may.

4 **MR. BARBARI:** Thank you, Your Honor.

5 **THE COURT:** All right. Anything further from you,
6 Mr. Barbari?

7 **MR. BARBARI:** No, Your Honor.

8 **THE COURT:** Ms. Fretto?

9 **MS. FRETTO:** Nothing further. Thank you, your
10 Honor.

11 **THE COURT:** And Ms. Hernandez?

12 **MS. HERNANDEZ:** Your Honor, would the Court
13 consider setting in a review of detention early next week?
14 I'm going to try to talk to her and see if she'll consent to
15 the conditions that the Court imposed, which is to allow the
16 home inspection and to contact Pretrial Services on a weekly
17 basis by phone.

18 **THE COURT:** I'm not going to set anything now, but
19 I'm happy to review a motion for reconsideration.

20 Thanks folks, have a good weekend.

21 (Proceedings adjourned at 11:14 a.m.)

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C E R T I F I C A T E

I, Jeff M. Hook, Official Court Reporter,
certify that the foregoing is a true and correct transcript
of the record of proceedings in the above-entitled matter.

October 4, 2021

DATE



Jeff M. Hook

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