

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES)	
)	
v.)	Criminal No. 1:21-cr-525-ABJ-1
)	
SAMUEL LAZAR)	
Defendant.)	
)	
_____)	

**DEFENDANT’S REPLY TO GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION FOR RECONSIDERATION OF PRETRIAL DETENTION AND REQUEST
TO STAY TRANSPORT TO THE DISTRICT OF COLUMBIA**

Defendant Samuel Lazar, by and through undersigned counsel, respectfully submits this Reply in support of his to Motion for Reconsideration of Pretrial Detention.

Background

Mr. Lazar has been in custody since his arrest on July 21, 2021 for conduct alleged to have occurred at the United States Capitol on January 6, 2021. On August 31, 2021, the Honorable Robin Meriweather ordered Mr. Lazar be held without bond pending trial. On September 24, 2021, Mr. Lazar filed a Motion for Reconsideration of Judge Meriweather’s Order and to stay Mr. Lazar’s transport to the District of Columbia. See ECF 27. The Government filed an opposition to both requests on October 1, 2021. See ECF 30. Mr. Lazar states the following in response to the Government’s opposition:

Argument

The Government’s opposition to Mr. Lazar’s release is predicated on its contention that Mr. Lazar is an “ongoing threat to the community” based on his “rhetoric and conduct beyond

the events of January 6.” *See* Gov’t. Opp. at 3, 6. In support of its position, the Government relies entirely on alleged conduct that occurred *prior* to January 6, 2021, some of which occurred nearly two decades ago.¹

In its argument, the Government relies heavily on a Facebook post from over a year ago with photos of Mr. Lazar with either real or replica firearms. Such reliance is misguided for several reasons. First, the Government provides no context whatsoever to the photographs, and claims there is a street in the background, purportedly asking the Court to conclude that this occurred on public property. This is simply inaccurate, as the photos were taken at a private event on private property. Second, Mr. Lazar is pictured smiling, relaxed, and in good spirits – nothing about the photographs depicts what can be perceived as threatening behavior or gestures. He is not pointing the objects at anyone or displaying them in an aggressive or violent posture. How these images demonstrate Mr. Lazar’s “ongoing threat to the community” is entirely unexplained and without evidence or merit. Further, there are no police reports, media reports, or statements from witnesses who describe a threatening or dangerous environment. The Government provides no contemporaneous information to connect these images to any type of threat to an individual or the general community at large.

The Government claims, without evidence, that Mr. Lazar drew “the concern of local citizens” by his actions depicted in these images. *See* ECF 30 at 4. The photos appear to be shared by an account labelled “Concerned Citizens of Lebanon of Pennsylvania”, but the

¹ In its Opposition, immediately upon claiming Mr. Lazar’s detention is justified by his “rhetoric and conduct beyond the events of January 6,” the Government rehashes the alleged events of January 6. ECF 30 at 3. This Court has made clear that it must look beyond a defendant’s actions on January 6 to justify a finding of dangerousness. *See United States v. Muenchel*, 2021 WL 1149196, at *8.

Government provides no information about the individual or entity behind this account. Rather, the Government seems to accept the anonymous, unverified account information at face-value and asks the Court to do the same. Needless to say, Facebook is not a reliable source of information, and this Court should exercise greater scrutiny than the Government in assessing the community's concern over Mr. Lazar's conduct.

The Government next alleges that Mr. Lazar has a history of "escalating criminal conduct." *Id.* at 4. Specifically, the Government cites three non-violent incidents from Mr. Lazar's past to argue he is an ongoing threat to the community. One incident is a nearly twenty-year old conviction that occurred weeks after Mr. Lazar turned eighteen years old. Over a decade later, Mr. Lazar misunderstood a form to purchase a firearm and was convicted of making a false statement. The Government is incorrect in its assertion that Mr. Lazar's brother attempted to purchase the firearm for him. Mr. Lazar's brother asked a question about if that was allowed and was informed that it was illegal – hence no purchase or attempted straw purchase was ever made. The third incident cited in the Government's pattern of "escalating criminal conduct" resulted in neither a conviction or even criminal charges: in 2010, Mr. Lazar attempted to purchase a firearm and was denied. These unrelated, non-violent incidents hardly amount to a pattern of behavior or a trend of increasingly transgressive conduct. These incidents fall well short of the *Muenchel* standard to establish dangerousness and an ongoing threat that extends beyond the events of January 6.

The Government's only other piece of evidence supporting its contention that Mr. Lazar poses an ongoing threat also occurred prior to January 6 and consists of another Facebook post. The language here is undeniably harsh. However, as the Government admits, Mr. Lazar did not write those words himself. *See* ECF 30 at 4. Nor, as the Government suggests, did he "adopt[]

the words as his own” by merely clicking a ‘love’ link below the post. *Id.* at 4. To put it simply, a single, out-of-context post written by another individual does not stand in for Mr. Lazar’s point of view. There is also no evidence that Mr. Lazar is the one who circled the post. Anyone familiar with social media understands how that could have been done by anyone, screenshot, and then shared – the government’s assumption that it was Mr. Lazar who circled the post is baseless.

Additionally, the Government’s characterization of this language as “online rhetoric” is revealing. *Id.* at 4. The Oxford Learner’s Dictionary defines rhetoric as: “speech or writing that is intended to influence people, but that *is not completely honest or sincere*” (emphasis added)². “Not completely honest or sincere” is an apt description for much of the commentary on social media, including the post the Government has chosen to highlight. Ten months ago, Mr. Lazar clicked a ‘love’ button under a social media post. The Government does not point to any social media post or statement by Mr. Lazar in the nine months since January 6. Instead, the Government is asking the Court to rely on a single online message written by someone else ten months ago to support its effort to continue to deny Mr. Lazar his liberty. The government fails to show that Mr. Lazar currently presents an ongoing threat to the community.

These isolated pieces of evidence, dating from ten months ago to nearly twenty years, fail to coalesce into a picture of someone who is a danger to the community. Mr. Lazar was not arrested until July 21, 2021, over six months after the events of January 6, 2021. The Government cannot point to a single moment during those six months where Mr. Lazar posed a danger to his community. During that time, Mr. Lazar was active in his community. He went to church, spent time with family and friends, and tended to his business obligations. He also

² <https://www.oxfordlearnersdictionaries.com/us/definition/english/rhetoric>

attended political events. At no time did he harm or threaten another individual or the community-at-large. Since his arrest, Mr. Lazar has been fully cooperative and respectful in all interactions with law-enforcement.

Unfortunately, the Government has shown *itself* to be a threat to Mr. Lazar's safety. In its Opposition to Mr. Lazar's request for release, after detailing the factors described above, the Government makes the wholly unsubstantiated claim that Mr. Lazar "has demonstrated specific animosity towards the Black population and expressed a desire to commit violence against them." ECF 30 at 6. The Government's cites no evidence for this volatile accusation and nothing in its Opposition— or in the entire case file, for that matter — can reasonably be understood to support such a bold claim.³ Nevertheless, since the Government filed its Opposition with this inflammatory allegation, Mr. Lazar has been placed into isolation at the detention center where he is currently in custody, presumably for his own protection. The Government, in its zeal to deny Mr. Lazar his liberty, has in fact jeopardized his physical safety. To be clear, Mr. Lazar has no specific animosity towards Black people and is not a threat to their safety — and there is no evidence to support such a claim.

Mr. Lazar is a loyal, engaged, well-liked member of his community in Western Pennsylvania. The diverse group of individuals who took it upon themselves to write letters to the Court on his behalf illustrates the high regard in which those who know him hold Mr. Lazar. Any concerns the Court may have about Mr. Lazar — and counsel asserts there should be none — can be addressed by the imposition of strict conditions of release, including home confinement.

³ The rhetorical Facebook post highlighted by the Government includes a reference to BLM, presumably standing for Black Lives Matter. It appears that the Government is attempting to draw an equivalence between a particular organization and all Black people, but this appears to be the best possible explanation for the Government's incendiary claim.

Mr. Lazar's partner, Autumn Hickey, has been approved by Pretrial Services as a third-party custodian, and remains willing and able to fulfill that role. For these reasons, as well as those described in Mr. Lazar's initial Motion for Release, this Court should Order Mr. Lazar's release from custody.

Transport to the District of Columbia

In its Opposition to Mr. Lazar's request to stay his transport to the District of Columbia, the Government merely makes the conclusory claim that Mr. Lazar's presence in the District of Columbia jail is necessary for further proceedings. No reason is given as to why this is the case. The case has been able to proceed thus far without Mr. Lazar's presence in the District of Columbia. Several of Mr. Lazar's co-defendants are not in custody and have been able to participate in all court proceedings remotely. This Court should continue to stay Mr. Lazar's transport to the District of Columbia.

WHEREFORE, for the reasons detailed in his Motion for Reconsideration as well as those detailed *supra*, Mr. Lazar respectfully reiterates his request that the Court release him from custody.

Respectfully Submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October,2021, I caused a true and correct copy of the foregoing Motion to be delivered via CM/ECF to Assistant United States Attorney Douglas Collyer, DOJ-USAO, Gateway Building, 14 Durkee Street, Room 340, Plattsburgh, NY, 12901.

_____/s/_____
David Benowitz