

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MATTHEW MONTALVO,

Defendant.

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Case No. 1:22-CR-146

**DEFENDANT'S MOTION TO
AMEND CONDITIONS OF RELEASE BY ALLOWING HIS WIFE TO KEEP HER
FIREARM IN THEIR RESIDENCE**

Defendant Matthew Montalvo, by and through undersigned counsel, moves this Court to amend, or modify, one of the conditions of release that were imposed upon him. *See* D.E. 14. Specifically, Mr. Montalvo requests that his wife be allowed to keep her lawfully-owned firearm in their residence, and thus modify, or clarify, the condition of the release order prohibiting him from possessing a firearm to allow this modification. *Id.* at 2, ¶ 7(k). In support of this request, he states the following grounds:

I. FACTUAL AND PROCEDURAL HISTORY

1. These charges stem from the events at the United States Capitol building on January 6, 2021. The Government later charged hundreds of individuals, including Montalvo, with federal misdemeanors in the District of Columbia. Specifically, the Government charged Montalvo with the following misdemeanors: 18 U.S.C. 1752(a)(1); TEMPORARY RESIDENCE OF THE PRESIDENT; Entering and Remaining in a Restricted Building or Grounds; 18 U.S.C. 1752(a)(2); TEMPORARY RESIDENCE OF THE PRESIDENT; Disorderly and Disruptive Conduct in a Restricted Building or Grounds; 40 U.S.C. 5104(e)(2)(D); VIOLENT ENTRY AND DISORDERLY CONDUCT ON CAPITOL GROUNDS; Disorderly Conduct in a Capitol

Building; and 40 U.S.C. 5104(e)(2)(G); VIOLENT ENTRY AND DISORDERLY CONDUCT ON CAPITOL GROUNDS; Parading, Demonstrating, or Picketing in a Capitol Building. D.E. 8.

2. Previously, on April 26, 2022, the FBI arrested Mr. Montalvo, and they brought him before a Magistrate in the Middle District of Florida for his initial appearance. Subsequently, at his first appearance before a Magistrate in the District of Columbia the release conditions were imposed on him prohibiting him from possessing firearms or weapons. D.E. 14.

3. Mr. Montalvo now seeks an order from this Court that amends, or modifies, the conditions of release imposed upon him by Magistrate Judge Meriweather. Specifically, Mr. Montalvo requests that the condition prohibiting him from possessing a firearm, D.E. 14 at 2 (§7(k)), be modified to allow his wife to possess and keep her firearm in their residence. Both the Government and Pretrial Services object to this request.

4. In sum, his wife has a valid Florida Concealed Weapons Permit from the state Department of Agriculture (Florida WX1229490) and seeks to have her firearm in their residence for her access only. To assuage the Court's concerns, the Montalvos will stipulate to placing and keeping the firearm in a locked safe or container, which only she has access to, when the firearm is in their residence. Certainly, their constitutional rights are limited on the Government's powers—not theirs.

II. ARGUMENT

“If a person is ordered released by a magistrate judge . . . the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.” 18 U.S.C. § 3145(a)(2). The statute “does not specify the standard of review to be applied by a district court reviewing a magistrate judge’s release or detention order.” *United States v. Owens*, No. 21-CR-286 (BAH), 2021 WL 2188144, at *5 (D.D.C. May 28, 2021). And

though the D.C. Circuit has not explicitly answered that question, every other circuit deciding the issue has concluded that a “district court reviews a magistrate judge’s release or detention order *de novo*.” *United States v. Chrestman*, 525 F. Supp. 3d 14, 23 n.5 (D.D.C. 2021) (collecting cases).

As such, this Court is free to consider for itself what “least restrictive further condition, or combination of conditions, . . . will reasonably assure the appearance of [Mr. Montalvo] as required and the safety of any other person and the community.” 18 U.S.C. § 3142(c)(B); *see also United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (noting that the Bail Reform Act of 1984 “mandates release of a person facing trial under the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person as required”). Pretrial conditions of release cannot “amount to punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (finding that such conditions violate the Fifth Amendment’s Due Process Clause).

The Second Amendment to the Constitution, as interpreted by the U.S. Supreme Court in *McDonald v. Chicago*, 561 U.S. 742 (2010), relying in part on *Heller v. District of Columbia*, 554 U.S. 570 (2008), protects a private person’s right to possess firearms in states and localities. While that right may be subject to reasonable restrictions, its importance as a recognized, constitutionally-based freedom guaranteed to the American citizenry must fairly be given considerable weight before it can appropriately be restricted. In Mr. Montalvo’s case, the current restriction is neither reasonable nor justified by the circumstances. He now requests that one such condition, which prohibits him from possessing a firearm, be modified to allow his wife to keep her lawfully-owned firearm in their residence.

(A) Mr. Montalvo is Not a Danger to Any Other Person or the Community

First, there is no specific evidence to suggest that Mr. Montavlo is a danger to any other person or the community at large. He has no criminal record, is a gainfully-employed, and none of his alleged conduct in this matter involves violence. Undoubtedly, the Government has not charged him with hurting or assaulting anyone or destruction of property. He has no criminal history of violence either.

(B) Mr. Montalvo Does Not Pose a Risk of Nonappearance

Second, there is no evidence to suggest that Mr. Garcia is a risk of nonappearance. Since being released, his performance on pretrial supervision has been exemplary; he has “appeared” as required for all video conference hearings; and he communicates with his supervising probation officer whenever required.

(C) The Firearm Restriction Violates His Wife And/Or His Second Amendment Rights

Critically, the firearm restriction in the conditions of release unlawfully infringes upon their Second Amendment rights. The Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *D.C. v. Heller*, 554 U.S. 570, 635 (2008). And while “unvirtuous” citizens, e.g. those convicted of crimes punishable by terms of imprisonment in excess of a year, may be stripped of their Second Amendment rights, neither Mr. Montalvo nor is wife is a felon. *See United States v. Yancey*, 621 F.3d 681, 684–85 (7th Cir. 2010) (reasoning that “most scholars of the Second Amendment agree that the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the government could disarm ‘unvirtuous citizens’” (citations omitted)). There are no factors showing them to be a danger to others. They have never been convicted of anything. Neither is a “prohibited person” under 18 U.S.C. § 922(g) that would make possession of firearms illegal. The allegations against

him do not include any alleged assault against any person, or even the vandalizing or destruction of property.

For this reason, the firearm restriction as applied to Mr. Montalvo in this case is unconstitutional because it prohibits his wife from using a gun “for the core lawful purpose of self-defense.” *Heller*, 554 U.S. at 630. As allowed by Florida law, she has a permit to carry a concealed handgun for self-defense purposes before these charges. *See also* Fla. Stat. § 790.06. To obtain this permit, she had to satisfy distinct criteria including, for example, that she not suffer from “a physical or mental infirmity that prevents the safe handling of a handgun” and that she have completed “an approved firearms safety and training course, or its equivalent, which involves the actual firing of handguns and instruction in the laws of governing the carrying of a concealed handgun and the use of deadly force.” *See* § 790.06(2)(c-h). To be clear, of course Mr. Montalvo is not seeking to carry a concealed firearm or have access to firearm in his residence. Rather, he only seeks to have the conditions of release clarified, or modified, so that his wife may lawfully possess a firearm in accordance with all state, federal, and local laws.

(D) D.C. Courts Have Allowed January 6 Defendants to Possess Firearms in Some Fashion

Recently, in the case of *United States v. Charles Hand*, 1:22-CR-111-01 (JEB), the Defendant moved for possession of his shotgun due to the danger of wild animals around his home in rural Georgia, citing his recent killing of six-foot water moccasin with a shovel that approached him. Over the Government’s objection, the court granted his motion to possess a shotgun, but mandated it must be locked in storage and only used for defense against wild animals.

Additionally, in the *United States v. Tina Logsdon*, 1:22-cr-23-02 (TFH) (D.D.C.), Judge Thomas F. Hogan reversed a firearms restriction placed on a January 6 defendant. In that

case, defendant Tina Logsdon had been charged with a family member, her spouse. Ms. Logsdon. They moved the District Court to lift the firearms restriction that had been imposed at the initial hearing. The Government, after seeking the firearms restriction at both the Rule 5 Hearing in Ohio and at the initial appearance in this District, ultimately chose not to oppose lifting the firearms restriction, so long as Ms. Logston would still be prohibited from possessing “other weapons or destructive devices.” Ms. Logston agreed to that. (ECF Docket #20, March 7, 2022). Likewise, the Montalvos will agree to the same restriction. Judge Hogan then granted Ms. Logsdon’s request to have the firearms restriction lifted. (Minute Order, ECF Docket #21, March 9, 2022). Judge Hogan also added a condition that, when meeting with any U.S. Pretrial Services officers, Ms. Logsdon should not possess a firearm.

Also, in *United States v. Loruhamah Yazdani-Isfehiani*, Case No. 1:22-cr-543-03 (CRC), Judge Cooper granted relief to a defendant seeking to lift a firearms restriction imposed as a condition of bond. There, Magistrate Judge Farruqui had issued the restriction the Government sought. Judge Cooper did not find the proffered rationale sufficient to ban the defendant from possessing firearms in one’s home. Although he did continue to limit the defendant’s possession of firearms to possession within the defendant’s home, rather than authorizing any carrying. This common-sense, more limited restrictions on this defendant’s Second Amendment rights should be considered by this Court, as its statutory charge to impose only the “least restrictive” conditions necessary.

III. CONCLUSION

Given Mr. Montalvo’s background, characteristics, and the nature of the offenses with which he has been charged, the release condition prohibiting him from possessing a firearm by not allowing his wife to keep her firearm in their residence is unduly restrictive. The condition is

neither necessary to address either a concern as to his danger to the community nor his risk of nonappearance, because Mr. Montalvo poses no such danger or risk.

Finally, the condition, as applied to Mr. Montalvo in this case, is unconstitutional under both the Second and Fifth Amendments. Nothing about Mr. Montalvo's history, characteristics, or the charges at issue in this case suggest that he is a part of the "unvirtuous" citizenry to which firearm rights may be withheld. As such, the restriction essentially amounts to pretrial punishment without due process of law.

The blanket non-possession firearms restriction for all January 6 cases violates a basic principle in our criminal justice. Our system is not designed to, nor should it, treat defendants in bulk, much less as fungible, indiscriminately in assembly-line-like manner. Any bond condition should not be considered a "standard condition" of pretrial release without an examination into both the need for the restriction, and whether or not it is justified in the circumstances presented to the Court, taking into account the nature of the case (here, no charges of violence or destruction of property) along with this Defendant's background. And, this Court must remain mindful that the governing "least restrictive" paradigm was imposed for an important reason: Mr. Montalvo is presumed innocent unless and until proven guilty.

For these reasons, Mr. Montalvo respectfully requests that the Court amend his conditions of release by allowing his wife to keep her firearm in their house. He understands that he must continue to abide by all other conditions listed there, or else be subject to the penalties and sanctions discussed on the release order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was efiled to the Office of the Clerk, United States District Court, District of Columbia, 333 Constitution Ave., N.W. Washington D.C. 20001, Room 1225 and to the Office of the United States Attorney, 555 4th St N.W., Washington D.C. 20530, on June 21, 2022.

/s/Aubrey Webb