

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 23-0252 (ACR)
	.	
v.	.	
	.	
MARIO MARES,	.	Washington, D.C.
	.	Wednesday, November 15, 2023
Defendant.	.	2:46 p.m.
.	

BOND REVIEW HEARING
BEFORE THE HONORABLE ANA C. REYES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	KATHERINE E. BOYLES, AUSA U.S. Attorney's Office 157 Church Street 25th Floor New Haven, CT 06510
	RYAN SELLINGER, AUSA U.S. Attorney's Office 601 D Street NW Washington, DC 20530
For Defendant:	CAROLYN STEWART, ESQ. 1204 Swilley Road Plant City, FL 33567
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001

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P R O C E E D I N G S

(Via Teleconference)

THE DEPUTY CLERK: Criminal action 23-252,
United States of America versus Mario Mares. Would the
parties please identify themselves for the record.

MS. BOYLES: Good afternoon, Your Honor. AUSA
Katherine Boyles on behalf of the United States, and with
me on the line is AUSA Ryan Sellinger.

MR. SELLINGER: Good afternoon, Your Honor.

THE COURT: Ms. Boyles, have we met?

MS. BOYLES: Yes, we have, Your Honor.

THE COURT: Which case?

MS. BOYLES: I've been before you, along with AUSA
Sellinger, in two sealed matters.

THE COURT: Okay. Welcome back. Good afternoon.

MS. BOYLES: Thank you.

THE COURT: For the defense?

MS. STEWART: Yes, Your Honor. This is Carolyn Stewart
for the defendant, Mario Mares.

THE COURT: Okay. So the reason I got us all on the
phone is because I've been looking at the Bail Reform Act
motion.

And, Ms. Stewart, just to start, you're got going
to get anywhere with me by claiming repeatedly that this
guy is being prosecuted because of his free-speech rights.

1 He's being prosecuted because he's been indicted by a grand
2 jury for violating the law. So I don't want to hear that
3 going forward, but the actual substance of your motion is
4 actually quite a good one. And I'm worried that maybe I'm
5 missing something, so I wanted to get us all on the phone
6 before an evidentiary hearing.

7 As far as I can tell, Mr. Mares has no criminal history
8 background at all and no indicia of violence. Is that correct?

9 Is that correct, Ms. Boyles?

10 MS. BOYLES: Yes, Your Honor. No criminal history.

11 THE COURT: Okay. And then he was arrested in August
12 of 2023?

13 MS. BOYLES: Yes, Your Honor.

14 THE COURT: So about two and a half months after --
15 two years and six months after January 6?

16 MS. BOYLES: That's correct.

17 THE COURT: And there was nothing that occurred during
18 that time period? He is not subject to any crime, he hasn't
19 been accused of any violence, he hasn't posted threats to
20 people, to your knowledge?

21 MS. BOYLES: Your Honor, there are some issues that
22 we've raised initially before the magistrate judge in Texas
23 regarding concerns about potential violence, but there's not
24 been an example or instance of actual violence.

25 THE COURT: Right. Yeah, yeah. Okay. I just want

1 to make sure I understand everything so we're all on the same
2 page here. All right. So for two and a half years, he was
3 out and nothing happened so far as we're aware.

4 MS. BOYLES: That's correct, Your Honor. He did make
5 statements upon his arrest to the FBI that were particularly
6 concerning, but nothing else that we're aware of beyond those
7 statements.

8 THE COURT: Yeah, yeah, I know, but we're going to
9 go through those statements. And with respect to the FBI
10 statements, basically the concern is -- I'm just looking at
11 the -- sorry -- just looking for the actual statements here.

12 One of the statements that he made to the FBI that you're
13 concerned about is that he said he did not bring a firearm
14 into D.C., but, if he had, it would have been his lawful right
15 to do so. Right?

16 MS. BOYLES: Yes, Your Honor.

17 THE COURT: Okay. I mean, I was just having a
18 conversation with my clerk. I don't even know whether it
19 would have been illegal for him to bring a firearm into the
20 District at that time period, given Supreme Court cases. I
21 mean, I know that D.C. just a couple of months ago settled
22 with people who were convicted and put in prison for violating
23 the firearms statute here and they were freed because of the
24 most recent Supreme Court opinion, and then after that they
25 sued and D.C. settled for \$5 million. So I don't know about

1 whether it was obvious that he could or could not bring a
2 firearm into D.C. given current case law. And I'm sure
3 there's an answer to that, but his view that he had a lawful
4 right to do so doesn't seem particularly troublesome.

5 I mean, he said, "I have a constitutional right to bear
6 arms no matter what." Now, obviously, that's a broad reading
7 of the Second Amendment, probably some people might be
8 perfectly happy with it, but I'm not sure that that indicates
9 that he's going to commit violence. And then --

10 MS. BOYLES: Yes --

11 THE COURT: Go ahead. Respond to that if you want.

12 MS. BOYLES: Yeah. All I was going to say was my
13 understanding of the detention hearing that proceeded in Texas
14 is that the magistrate there was concerned that the defendant
15 would not follow conditions that had been set. And so the
16 suggestion --

17 THE COURT: Yeah, I read the whole -- yes, I read the
18 whole transcript, Ms. Boyles. I read the whole transcript.
19 And the reason I'm going through this is because I read the
20 transcript and I don't understand how he came to the decision
21 he made. I mean, there was no -- well, let me just go through
22 it so we're all on the same page. I just want to keep doing
23 what I'm doing.

24 So we have that FBI statement, and then we have the second
25 FBI statement.

1 FBI says: "Do you think we're at a point where we're
2 ready for another revolution, yes or no?"

3 And he says: "This country has come to somewhere where
4 everybody needs to look at it and say what are we doing.
5 And like I said, if you -- the law and everybody's good,
6 it's good. But when you cross that line of tyranny, man,
7 yes. You should be strung up like in the old days and hung
8 for tyranny."

9 FBI: "You feel strongly about that."

10 Mares: "I mean, if you're corrupt, yes."

11 I mean, that's obviously not ideal, but that's -- you
12 know, that's a flag, essentially. I'm not sure if it's a red
13 flag; maybe it's a yellow flag. He owns a bunch of guns and
14 rifles, apparently. It's beyond me why people buy so many
15 rifles and guns, but they do have a constitutional right to
16 do so.

17 And, so far as I'm aware, there's no assertion that any of
18 these guns that he's been associated with he had without a
19 permit or was somehow carrying illegally, putting aside carrying
20 them into the Capitol, right?

21 MS. BOYLES: So they were illegal to carry into the
22 Capitol. There's no --

23 THE COURT: Yeah, yeah. Of course.

24 MS. BOYLES: -- them illegally outside of D.C. Under
25 Texas law, he was abiding by Texas law.

1 THE COURT: Okay. So when he had all these guns in
2 Texas, he was abiding by Texas law.

3 MS. BOYLES: Yes, Your Honor.

4 THE COURT: Okay. All right. And so then we get
5 to what I guess is really the heart of the matter, unless
6 I'm missing something, which is these posts that he made,
7 which, Ms. Stewart, I mean, they are pretty troubling.

8 So he has a post on December 27, 2020: "I believe that
9 every #patriot should on January 6 if you can't make it to DC
10 you should go to your state capitol and local mayors offices
11 heavily armed and drag out and either jail or execute all the
12 known CORRUPT #politicians for treason!"

13 I mean, that's pretty bad, Ms. Stewart.

14 MS. STEWART: Yes, Your Honor, but --

15 THE COURT: I'm not -- I haven't asked you to speak
16 yet. You will have your time.

17 MS. STEWART: Oh, okay.

18 THE COURT: I just want to get through this.

19 MS. STEWART: All right. Thank you. Okay.

20 THE COURT: And then we have another post on Christmas
21 Eve; I guess he wasn't out Christmas shopping.

22 He has: "Fuckin #Pelosi, you are not pulling anyone out of
23 the Whitehouse by their hair" -- blah, blah, blah, blah, blah,
24 lots of "f" word, lots of "f" word -- "WE ARE GOING TO FIND YOU
25 AND WE THE PEOPLE WITH NO MERCY ARE GOING TO HANG OR EXECUTE

1 YOU!!! WE HAVE HAD ENOUGH!! YOU BETTER HOPE TRUMP FINDS YOU
2 FIRST!!!"

3 Okay. So, obviously, that's pretty bad.

4 And then on Christmas -- ironic, Ms. Stewart, given that
5 apparently your client, based on all the letters I've read,
6 is quite the devout Christian. I don't know how Jesus would
7 feel about threatening to kill and execute people but, you know,
8 to each his own, I guess.

9 All right. So on December 25th we have: "Time to start
10 the LYNCHING party!! #PATRIOTS coming for you corrupt
11 #politicians."

12 So, Ms. Boyles, those are the three tweets that I am aware
13 of where there's actual -- or social media posts where there
14 are actual threats of violence. Am I missing anything else?

15 MS. BOYLES: No, you're not, Your Honor. Thank you.

16 THE COURT: Okay. And these happened before January 6,
17 so before he was at the Capitol.

18 MS. BOYLES: Yes, Your Honor.

19 THE COURT: Okay. And when he was at the Capitol,
20 he was apparently there for about two hours. And there's an
21 allegation that he was carrying a gun, and the grand jury did
22 indict him on that offense; but there's no allegation that he
23 participated in any violence himself, right? You all say that
24 he was in an area where there was violence and he should have
25 been aware of it, but there's no allegation that he engaged in

1 any violence. Correct?

2 MS. BOYLES: That's right, Your Honor.

3 THE COURT: Okay. And then, again, two and a half
4 years go by and he hasn't executed -- or tried to execute or
5 carried out on any of these social media threats. Right?

6 MS. BOYLES: That's correct.

7 THE COURT: Okay. And then what I've got are about 15
8 support letters -- were these support letters in front of the
9 magistrate?

10 MS. STEWART: Your Honor, there was only, I think,
11 two of them and the person was there, the justice of the
12 peace; and then another person, Plummer, either a letter or in
13 person; and then also his wife. I don't know if the defense
14 submitted all of the other support letters. I'm not sure that
15 they did. I think they just relied on those three people
16 representing the community.

17 THE COURT: All right. Well, so, Ms. Boyles, I don't
18 know if you had a chance to look at these letters, but I got
19 a letter from his wife, obviously, a law enforcement official,
20 a business person, a bank CEO, his bank teller, an assistant
21 pastor, a farmer, a number of people who have worked together
22 both on farm, welding, and financial industries.

23 I've had people who've known him for over 20 years, in
24 some cases I think 23 to 25 years, and all of them say the
25 same thing, which he's a law-abiding citizen, has never to

1 their knowledge, other than of course the allegations with
2 respect to January 6, ever violated the law, they all would
3 feel very comfortable with him in a small town, and none of
4 them have ever seen any indicia of violence. He also
5 apparently has contributed mightily to his community including
6 through something as simple as volunteer work.

7 So I guess my question, Ms. Boyles, is -- I mean, I guess
8 that these social media posts are pretty bad, but nothing
9 before or after those posts support that he's not a law-
10 abiding citizen.

11 And the reason -- I don't want to put you on the spot,
12 because I know if you want one you're going to have an
13 evidentiary hearing, but first -- and I know that my court
14 reporter has been working yeoman's hours to try to get
15 everyone out of hearing prior to -- I guess you guys finally
16 decided on a day on December 8, but I gotta to tell you,
17 unless I hear something dramatically different at that
18 evidentiary hearing other than these posts, or maybe the FBI's
19 going to convince me, I don't know, I mean, I don't see how I
20 could possibly keep this guy in jail.

21 And so I guess my question -- one of my questions is,
22 Ms. Boyles, in light of the fact that you now have all of
23 these letters, can the government -- does the government want
24 to rethink its position? That's not a rhetorical question.
25 I mean, I think you should consider it. If you want to put

1 the burden on me, I mean, I'll do it. I have a job to do.

2 Secondly is, I don't want this guy in jail for another
3 three or four weeks because of scheduling issues if I do
4 decide to release him. So what I would also like to do is
5 see if we can all figure out a way -- if you want, have an
6 evidentiary hearing -- get this done before December 8.

7 So, Ms. Boyles, I've said a lot, and I'm going to let you
8 talk.

9 MS. BOYLES: I appreciate that, Your Honor. So if I
10 could ask you just one question: Have you been able to review
11 our motion for pretrial detention that was filed in Texas?

12 THE COURT: I have.

13 MS. BOYLES: Okay. So I just wanted to make sure
14 that that was in front of you.

15 Your Honor, I think in this case the government is in
16 the position of being very concerned, obviously, about any
17 kind of violence happening in the Capitol, and the idea of
18 an individual coming into D.C. with weapons, knowing, as the
19 government alleges and the grand jury alleges, that he knew he
20 was not supposed to be carrying weapons, and then even on the
21 day of his arrest two and a half years later is still
22 maintaining that, no matter what, he could still bring weapons
23 into the Capitol, given some of the other posts and the text
24 messages that are also documented in our original filings,
25 which we did intend to supplement today -- I appreciate the

1 Court kind of cutting to the chase here. Given all of that
2 background, we do maintain that it's appropriate to detain him
3 at this time given the potential for violence as well as the
4 concerns over whether or not he would abide by conditions.

5 Now, I do take the Court's point and appreciate the fact
6 that, with all this community support rallying behind him,
7 that is a point that the Court should consider and may be less
8 of a concern now that we have those letters and that we have
9 that documentation that the Texas magistrate judge did not
10 have the benefit of.

11 But, you know, at the end of the day, this is a case about
12 -- this is a case about coming to D.C., knowing that he was
13 violating the laws of D.C., and bringing in weapons that we
14 know exponentially increase the likelihood and the potential
15 for violence and what that violence looks like.

16 I don't have anything else to offer the Court today. We
17 are still happy to file a responsive filing, but I understand
18 if the Court wishes to rule today.

19 THE COURT: Oh, I'm not planning. I mean, if you
20 guys want time to file, I'm not going to rule today. I'm not
21 putting you on the spot that way. I mean, I would love to
22 rule today, but I don't think that's fair to you all.

23 Ms. Stewart, can you explain these posts to me? I mean,
24 so far as I can tell, the statements to the FBI and these
25 posts are the linchpins of why he was detained pretrial and --

1 I mean, they're not nothing. I mean they're pretty bad.

2 Is there anything that you can do on those things?

3 MS. STEWART: Well, I can, Your Honor. Thank you.

4 You know -- and I'd like to start off with he made these posts,
5 but he did not bring weapons into D.C. So I'll go back to the
6 posts. He was, I would say, angry.

7 He was inundated -- and I'm not blaming social media.
8 He'll take responsibility for making very bad posts and being
9 ashamed and embarrassed of them.

10 First, he was on a platform with all of about 10 or 12
11 viewers. So we can put that into perspective. He was not on
12 Twitter; he was on Facebook. He -- you know, somebody else
13 hacked into his account. So he wasn't on those major platforms.

14 But he made those posts, and that's -- I think this is the
15 bad situation of what I'll call the "sewer" of social media,
16 where both sides and the middle are being riled up and wound up
17 by all of the different *this is happening, this is happening,*
18 with the different claims.

19 But he was hearing and seeing news, whether he has the radio
20 on when he's out doing his welding work or in the truck driving
21 between places, and he's hearing, you know, Nancy Pelosi say
22 "we're going to drag Trump out of the White House," and I think
23 as an American he found it very disconcerting to have members
24 of Congress threatening violence against the president. And
25 two wrongs don't make a right, and he'll say that to this day.

1 He has no good excuse for those other than it angered him.
2 So that's the angriest anybody in the world has ever seen
3 Mr. Mares. He's never picked up a weapon. He's never hit
4 anybody. I know the government keeps saying he brought them in
5 because they pointed at his, you know, body fat and called that
6 a weapon, and we'll deal with demonstrations to show that that's
7 actually impossible with putting a weapon under a shirt to show
8 is almost ludicrous --

9 THE COURT: If you're going to do that, I suggest
10 you make sure that it's the exact same weapon that they're
11 alleging he had --

12 MS. STEWART: Right.

13 THE COURT: -- because otherwise they're going to
14 object.

15 MS. STEWART: Right.

16 THE COURT: But anyway, we'll get to that later.
17 All right.

18 MS. STEWART: Right. Right.

19 THE COURT: Well, let me say this:

20 Ms. Boyles, I'm obviously going to let the government have
21 -- you have a right to oppose the motion, and you don't have
22 to answer today, but do you need an evidentiary hearing?
23 Because I don't need to hear from the wife. I mean, I read
24 her testimony before. I have her letter before me. I have
25 letters that the magistrate didn't have. If you want me to

1 hear from your FBI agent, I guess we can do that.

2 But if this would just save everyone time and energy
3 enough, we can do this on the papers. But again, Ms. Boyles,
4 I just want to make clear that I'm going to give you all
5 whatever hearing you want, and you can maybe tell us tomorrow
6 what you want if you don't know right now.

7 MS. BOYLES: Your Honor, at this point I would say --
8 I don't think that we need an evidentiary hearing. Your Honor
9 has primarily the information that we were going to be
10 presenting in our opposition. The government maintains that
11 detention is appropriate in this case.

12 However, if the Court wishes to rule on the current papers,
13 being the defense's motion that was filed here and our memo
14 that was filed in Texas that's filed here at docket entry 16,
15 Exhibit 4, we would rest on our original memo and are
16 comfortable with the Court ruling today.

17 THE COURT: All right. Terrific. Thank you, Ms. Boyles.

18 So I am going to order his release. I do think I need to
19 make some findings. So we're going to write up a short order.
20 We will get that posted probably not until tomorrow, and I
21 will work with our probation people to figure out -- where is
22 he being held right now?

23 MS. STEWART: Your Honor, he's in the D.C. jail, the
24 D.C. detention facility. I think it's over on E Street, 19th.
25 It's in D.C.

1 THE COURT: Okay. Ms. Boyles, I am going to impose
2 conditions of probation. Do you want to work together with
3 Ms. Stewart to get those to me what you want? Ms. Stewart,
4 he's not going to be allowed anywhere near any kind of gun.
5 I'm talking not even a Nerf gun. Are we clear?

6 MS. STEWART: Yes, Your Honor.

7 MS. BOYLES: Your Honor, I was just going to say,
8 I'm happy to work with Ms. Stewart on precise conditions, but
9 just to forecast for the Court, we would also be seeking very
10 strict conditions on any contact whatsoever with anyone who
11 may be a codefendant or a witness in this case.

12 THE COURT: Yes.

13 MS. BOYLES: I believe Mr. Mares understands who those
14 persons would be, and we want to make sure there is absolutely
15 no contact with those individuals.

16 THE COURT: Yes. I mean --

17 MS. STEWART: Your Honor, if I may be heard --

18 THE COURT: Sure.

19 MS. STEWART: If I may be heard, you know, it is a
20 small-town America. And I think I went through this in the
21 motion, but I think such an order, since this was done prior
22 to his knowledge, sealed with the other two codefendants in
23 this same case that they receive the order. I don't think we
24 can say no contact, you know, where if they all -- there's one
25 restaurant, and they're all in there. It's no talking, no

1 exchange of words, no calls. I think we have to allow for the
2 fact that they may end up in the same grocery store at the
3 same time and just to ignore each other.

4 THE COURT: All right. Well, Ms. Boyles, draft some
5 language along those lines.

6 But, Ms. Stewart -- yeah. She's going to get what she
7 wants, basically, because your guy is getting out of jail,
8 which is better than what he was going to have in the next
9 few weeks or months.

10 So, Ms. Boyles, if you want a no contact, just make sure
11 that she has, and we have, the exact people so there's no
12 dispute down the line that there was someone he didn't know
13 about --

14 MS. BOYLES: Sure.

15 THE COURT: -- that you all thought he should have
16 known about.

17 MS. BOYLES: Yes, Your Honor.

18 THE COURT: No firearms anywhere. I'm going to find
19 the strictest no-firearm, whatever, I can find.

20 Pretrial Services? Okay. We're going to get -- we're
21 going to get Pretrial -- I'm going to figure out how to get
22 this done as quickly as possible to ensure that there are
23 conditions of release.

24 Ms. Stewart, please explain to your client that the
25 Second Amendment, while a cornerstone of our democracy, is not

1 without some limitations, including that I can put limitations
2 on him during pretrial probation, okay?

3 MS. STEWART: Your Honor, absolutely no problem with
4 that. Yes.

5 THE COURT: Okay. All right. Ms. Boyles, thank you.
6 I appreciate your work. Ms. Stewart, thank you.

7 MS. STEWART: Your Honor, can I ask something before we
8 get into this? And I explained this in the motion. I know
9 the government all the time wants to put ankle bracelets and
10 all this other stuff.

11 Can we dispense with that ahead of time so that we can come
12 up with something reasonable, least restrictive? I just -- I
13 just don't want to have that we're both coming in arguing and
14 the minds aren't going to meet. He runs all over the county
15 working. He's going to be out of GPS range. He's going to be
16 in barns and metal buildings that the signal won't --

17 THE COURT: I'm not putting him on home confinement,
18 so why would he have an ankle bracelet?

19 MS. STEWART: Exactly. That's my point.

20 MS. BOYLES: Your Honor, we do typically, in cases like
21 this, ask for electronic monitoring, not that that would keep
22 him within home detention situations, that that would give
23 authorities the ability to locate him if there were to be any
24 kind of issue.

25 THE COURT: All right. Well, I don't think that's

1 necessary here, Ms. Boyles. I mean, look. My guess is, given
2 where he lives, if you wanted to find out where he was, you
3 would know in about 10 minutes. And if he's gonna flee --
4 you know, given everything I have in front of me, I can't
5 imagine that he's going to flee, but if you feel strongly,
6 work something out with Ms. Stewart.

7 MR. SELLINGER: Your Honor, can I be briefly heard on
8 that? This is AUSA Ryan Sellinger.

9 THE COURT: Yeah, sure.

10 MR. SELLINGER: So one of the things we're going for,
11 which we're going to articulate and provide to the Court, is
12 the stay-away. And the individuals and their home locations
13 and the electronic monitoring would be significantly easier,
14 and frankly necessary, to enforce the stay-away.

15 THE COURT: Okay. Hold on --

16 -- (parties overspeaking) --

17 THE COURT: Hold on. What about Ms. Stewart's concern
18 that he might be out of GPS range given where he lives? What
19 can we do about that?

20 MR. SELLINGER: Your Honor, I'm not sure. From our
21 perspective, we're obviously, you know, in the position we
22 are where we're opposing release and we have, as I just said,
23 significant safety concerns. So I think that, given that he
24 is being released, it is the least restrictive condition. I
25 don't know -- I don't even know what a GPS range is. So I'm

1 not sure of what could be done to accommodate that, but we
2 think electronic monitoring, at a minimum, is necessary under
3 these circumstances.

4 MS. STEWART: Okay. Your Honor, if I may, I mean,
5 I do know these devices, and I do know the problems from
6 multiple other people, attorneys and defendants, and the fact
7 of the matter is there's a requirement to be in cell phone
8 range if you're in a building or something else and you're not
9 outside, and these are rural areas where he's not going to be.
10 And then he's going to get ten calls, go stand here, stop your
11 work, go plug in, do this, and it serves no purpose because
12 it's not going to be an immediate warning.

13 And I think if the other two unnamed-to-date codefendants
14 are also told to stay away, we can tell them don't drive down
15 that road; if you have to, go do business somewhere else,
16 don't go down the road where their house is. I think we can
17 make that order specific enough.

18 And the other thing I'm very concerned about is -- this has
19 happened to other people who do outside work around machinery,
20 is those ankle bracelets are dangerous. They run loose. They
21 get caught on things. We could cause a serious injury. And
22 to what purpose? He's not a flight risk. Because that's what
23 those were designed for, actually, to keep child predators in
24 a certain area and for flight risk, which he's not.

25 So I really, really want to object and argue against doing

1 something like that, because this could cause injury to him.

2 THE COURT: All right. Well, Mr. Sellinger, if
3 Mr. Mares goes to the local Dunkin Donuts and you have the GPS
4 he's at the Dunkin Donuts, I don't know, I assume the other
5 defendants, or the other stay-away people, don't have GPS
6 bracelets. So even if you knew that, you wouldn't know that
7 they were together. And I mean -- I guess these guys aren't
8 stupid enough to go to the house to meet if they have a GPS
9 anklet.

10 MR. SELLINGER: So, Your Honor, we haven't anticipated
11 and drafted the stay-away order that we're now discussing, but
12 I imagine that there would be a location or locations that
13 would be included as part of that stay away, and the way to
14 enforce a stay-away for a location is both I guess someone
15 letting us know, and then also GPS monitoring. And so that's
16 -- it's not just for individuals. It's also for locations.

17 MS. STEWART: Well, his cell phone gives pings and
18 locations. So, again, if he's in a cell phone area, if
19 somebody wants to go back and check, Your Honor, you know, the
20 government can put into Google to tell where he was or for the
21 cell phone towers to provide that as opposed to risking him
22 being injured and precluding his work where, you know, he's
23 going to be places where again that GPS signal's not going to
24 get through the metal barn and again -- it just leads to let's
25 say he's violating his conditions of release. That's all it

1 does at this point, other than offering to injure him.

2 THE COURT: All right. Hold on, everyone. Just let
3 me think about this for a moment.

4 Okay. First, we need to get Pretrial Services involved,
5 so I'm going to ask for their views on this. It seems to me
6 that there should be some sort of compromise that we can
7 figure out that would address the government's concern.

8 I mean, I have to tell you, Ms. Boyles and Mr. Sellinger,
9 the reason -- and I'm not just saying he has to -- I think the
10 actual concern here is just minimal. I mean, the guy
11 was out for two and a half years doing nothing after January
12 6, so -- you know. You know. I hope to God I don't get
13 proven wrong, but...

14 MS. BOYLES: If I could just be heard for a moment on
15 that, I do think that the government's specific concern at
16 this point is what's changed in the past two and a half years
17 is Mr. Mares is now aware that two members of his community
18 have been involved in the criminal justice system as part of
19 this case and as a part of this investigation, and he knows
20 who those individuals are.

21 And so we do have a heightened safety concern, as with any
22 cooperator in any criminal case, that there's a potential
23 threat to those individuals. So the request for electronic
24 monitoring is to make sure that we can be assured of their
25 safety. And if there is some kind of violation, understanding

1 that they may cross paths in common areas in their community,
2 we do think a method for verifying that he has not otherwise
3 violated a potential stay-away order that we will draft is of
4 paramount importance for the safety of those individuals.

5 And with regard to Ms. Stewart's suggestion that we could
6 somehow just ping his phone, as I'm sure Your Honor
7 understands, that would require getting a search warrant.
8 I'm not actually sure that we could get -- I haven't looked --

9 THE COURT: It's not even practical because he can just
10 leave his phone in his house.

11 MS. BOYLES: Saying we could track his phone --

12 THE COURT: You don't have to convince me on that,
13 Ms. Boyles. That's a nonstarter.

14 MS. STEWART: Well, Your Honor, I would put in --

15 THE COURT: Yes --

16 MS. STEWART: Okay.

17 THE COURT: Go ahead.

18 MS. STEWART: I don't know why Ms. Boyles thinks this
19 is news. ██████████ told Mr. Mares over a year ago that he
20 was having to get a lawyer and he was being prosecuted in some
21 way or another. This isn't news. Mr. Mares could care less
22 about what ██████████ and ██████████ say. He doesn't care about
23 them. And as a matter of fact, as I mentioned in my motion,
24 it's all the more to his benefit if the government wants to
25 bring him as a witness. His view is bring them on because

1 their testimony and their prior inconsistent statements are
2 to his benefit.

3 Their safety is of paramount importance to him. He doesn't
4 want to see any injury come to them, nor has he ever in his
5 entire life injured any person. And to say we're going to
6 essentially put on something that would be a punishment, not
7 a least restrictive means of saying he abides by release
8 conditions but using it almost as a punishment just against
9 him, it doesn't even make sense unless all three are wearing
10 ankle monitors. And none of them need to be wearing ankle
11 monitors, based on where they live and everybody knows what's
12 going on.

13 THE COURT: Okay. Here's what we're going to do.
14 I'm going to ask Pretrial Services to weigh in. If Pretrial
15 Services recommends ankle bracelets, I am going to require
16 that. However, I am going to ask for -- I am going to give
17 Ms. Stewart the right to update me every 21 days. We'll
18 figure out some language where if it's actually causing issues
19 with respect to his work or with respect to dropped cell
20 phones or whatever, then I will revisit it.

21 So basically, Ms. Stewart, I'm just -- I'm not going to
22 assume it's going to be a problem. If Pretrial Services wants
23 the ankle bracelet that the government makes -- I mean, I tend
24 to agree that your logic sounds better. But I am letting the
25 guy out of prison, so seems like an ankle bracelet is something

1 he would prefer to trade than prison.

2 But, again, if it becomes the problem that you think it's
3 going to become, then I'll give you the right to come back,
4 and we can have another phone call and we can figure out if it
5 actually is needed or if it's actually more hassle than it's
6 worth. Okay?

7 MS. STEWART: Thank you very much, Your Honor.

8 MS. BOYLES: Your Honor?

9 THE COURT: Yes, Ms. Boyles.

10 MS. BOYLES: I apologize. I don't perhaps know the
11 precise language of what I'm asking for, but I would ask,
12 I guess nunc pro tunc, to redact the names that Ms. Stewart
13 just put on the record because --

14 THE COURT: Yeah. Could you please -- Ms. Court
15 Reporter, I'm ordering that those names be stricken from
16 the record.

17 MS. BOYLES: Thank you, Your Honor.

18 THE COURT: All right. Anything else?

19 MS. STEWART: Your Honor, if I may, do we have at least
20 a projected time when he will be able to walk out the doors?
21 I know we're going to do release conditions. Can we have a
22 date, because we want to have his wife there with IDs. He
23 obviously has to get back to Texas, and I plan to go up and
24 assist him in getting outside the prison doors, or the jail
25 doors.

1 THE COURT: Yeah. There's also going to be a D.C.
2 stay-away order. So that should be part of your conditions as
3 well. I have no idea how all this works. I'm actually trying
4 to figure it out as we speak. I want this guy out of prison.
5 He shouldn't be in prison. I will make this happen as quickly
6 as I can. I just don't know how long that will take. If you
7 guys can agree on the probation -- if we can talk to Pretrial
8 and get that done tomorrow, or Friday at the latest, I mean
9 I'll enter the order as soon as I get the go-ahead.

10 MS. STEWART: Okay, Your Honor. Well, I'd ask that the
11 government and I come to an agreement by no later than close
12 of business tomorrow.

13 THE COURT: Well, I'm doing a lot to Ms. Boyles right
14 here. Ms. Boyles, please try to get it tomorrow if you can.
15 I want this guy out of prison, okay?

16 MS. BOYLES: Absolutely, Your Honor. And I apologize,
17 one more matter for the Court's consideration: At our prior
18 status conference, you had tolled the speedy trial between
19 that status conference and whenever we held this detention
20 hearing, so I would be asking the Court to make a interest-
21 of-justice finding, until we can set another status conference,
22 to continue tolling speedy. I don't know if you want to put
23 something specific on the calendar, but at least toll speedy
24 in the interim while we certainly get these immediate issues
25 sorted out and continue to provide discovery and allow

1 Ms. Stewart to do whatever investigation she needs to do on
2 this case.

3 THE COURT: All right. Well, Ms. Stewart, I assume
4 that's okay with you. I'm not going to make it endless,
5 though, Ms. Boyles.

6 MS. BOYLES: Of course.

7 THE COURT: Do you guys have an idea of when you want
8 to go to trial or when you guys will be ready -- I want to get
9 a trial date is what I want to get.

10 MS. STEWART: Well, from the defense's position,
11 Your Honor, I mean, I'd like to have a status conference
12 somewhere by perhaps 10 or 15 January, and from there to be
13 able to give an assessment, because there is more discovery we
14 need to request. There's a lot of video that we need to go
15 through to see, and it's not just what the government gave us,
16 what we don't have that exonerates him. So I ask --

17 THE COURT: Okay. And you're okay with tolling the
18 Speedy Trial Act until -- Ms. White, we have the 16th free,
19 right, for a status hearing?

20 THE DEPUTY CLERK: 16th of which month, Your Honor?

21 THE COURT: January 16th. Do we have that free for a
22 status conference?

23 THE DEPUTY CLERK: You'll still be in trial,
24 Your Honor.

25 THE COURT: What's the next date that we have?

1 THE DEPUTY CLERK: The 21st.

2 THE COURT: Oh, that's what it was, the 21st.

3 Can you guys do a status conference hearing on the 21st?

4 MS. STEWART: Yes, Your Honor, for the defense.

5 MS. BOYLES: I'm sorry. Tuesday the 23rd? The 21st
6 is a Sunday.

7 THE COURT: All right. January 23rd. Can we all do
8 the 23rd?

9 MS. BOYLES: Yes, Your Honor.

10 MS. STEWART: I will be in another trial, so the --
11 after that. So the following week will be okay if there's
12 available time then?

13 THE COURT: All right.

14 Ms. White, how's January 30 look?

15 All right. Can we all do January 30 at 11 a.m. Eastern?

16 MS. BOYLES: Yes, Your Honor. Would you like that in
17 person?

18 THE COURT: No. I think we can do it by video.

19 Okay. Ms. Stewart, does that work for you?

20 MS. STEWART: Yes, Your Honor. Thank you.

21 THE COURT: All right. So, basically, what we're
22 doing going forward is you all are going to draft up release
23 conditions, we're going to reach out to Pretrial Services.
24 I'm going to draft up an order with the release conditions.
25 I'm going to enter that order as soon as possible unless I

1 enter -- unless Pretrial Services recommends something that
2 you all didn't agree to or unless there's some dispute.

3 I'll obviously give the parties time to think about that,
4 but otherwise I'm entering an order as soon as you guys get
5 agreement on these conditions. And I'm hopeful that that can
6 happen Friday, and ideally no later than Monday. And then we
7 are all going to meet again on January 30th at 11 a.m. Eastern.

8 By that point I want you all to come up with three proposed
9 trial dates and an idea of how long you think trial will last
10 and whether you have any idea whether you want a jury or a
11 bench trial, which of course I will not hold you to, but we
12 need notice. Anything else that we should be discussing?

13 MS. BOYLES: Just to make the record clear, you are
14 tolling speedy trial between now and January 30th?

15 THE COURT: Yes, I am, with no objection from the
16 defense.

17 MS. BOYLES: That's all for the government, Your Honor.
18 Thank you very much.

19 THE COURT: All right. Ms. Boyles, did I give you all
20 the *Brady* speech the last time we met?

21 MS. BOYLES: Yes. I have gotten the speech both in
22 this case and in others.

23 THE COURT: Great. All right. I'm just going to wear
24 a T-shirt from now on for my criminal status conferences.

25 (Laughter)

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MS. BOYLES: Thank you, Your Honor.

THE COURT: Thank you, everybody.

MS. STEWART: All right. Thank you very much,
Your Honor.

MR. SELLINGER: Thank you, Your Honor. Take care.

(Proceedings adjourned at 3:25 p.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne