

Honorable David G. Estudillo

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MICHAEL JASON LAYES a/k/a  
MIKEY DIAMOND STARRETT,  
  
Defendant.

NO. CR21-5334-DGE  
  
UNITED STATES’ RESPONSE IN  
OPPOSITION TO DEFENDANT’S MOTION  
TO REOPEN DETENTION HEARING  
  
*Noted on Motion Calendar: Nov. 5, 2021*

The United States of America, by and through Nicholas W. Brown, United States Attorney for the Western District of Washington, and Rebecca S. Cohen, Assistant United States Attorney for said District, files this response in opposition to the motion to reopen the detention hearing of Defendant Michael Jason Layes a/k/a Mikey Diamond Starrett. Docket 27. As discussed below, the Government asks the Court to deny the motion because the underlying reasons for Layes’ detention – the danger he presents to the community and the risk of nonappearance – have not changed.

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**I. BACKGROUND FACTS**

Michael Jason Layes a/k/a Mikey Diamond Starrett (“Layes”) is the target in an investigation into a series of arsons and a shooting at Jehovah’s Witness facilities in Thurston, Pierce, and Mason Counties between March 2018 and June 2020.<sup>1</sup> The dates and locations of the arsons and shooting under investigation are provided below as follows:

- March 19, 2018: Arson-Olympia Kingdom Hall (2225 Cain Rd SE, Olympia, WA);
- March 19, 2018: Arson-Tumwater Kingdom Hall (1199 N 9<sup>th</sup> Ave SW, Tumwater, WA);
- May 15, 2018: Shooting-Yelm Kingdom Hall (15012 Vail Rd SE, Yelm, WA);
- July 3, 2018: Arson-Olympia Kingdom Hall (2225 Cain Rd SE, Olympia, WA 98501);
- August 8, 2018: Arson & hoax device-Yelm Kingdom Hall (15012 Vail Rd SE, Yelm, WA);
- December 7, 2018: Arson-Lacey Kingdom Hall (6526 6<sup>th</sup> Ave SE, Lacey, WA);
- August 13, 2019: Arson-Puyallup Assembly Hall (11515 62<sup>nd</sup> Ave E, Puyallup, WA);
- June 24, 2020: Arson-Shelton Kingdom Hall (11 W Sentry Ct, Shelton, WA).

On September 3, 2021, the Honorable Theresa L. Fricke, United States Magistrate Judge, Western District of Washington, issued warrants authorizing the search of a residence in Olympia, Washington, where LAYES was living with his then girlfriend, a woman with the initials T.N. The warrants also authorized the search of Layes’ person, vehicle, and a Samsung S7 cell phone. 3:21-MJ-05186.

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<sup>1</sup> Due to the nature of the potential charges related to the arsons and shooting, the U.S. Attorney’s Office and Department of Justice Civil Rights Division are statutorily required to obtain certification from the Attorney General or his designee prior to instituting hate crime charges for those events. 18 U.S.C. § 247(e).

1 At approximately 6:00 a.m. on Wednesday, September 8, 2021, law enforcement  
2 executed the above referenced warrants and conducted a search of the residence. At the time  
3 they searched the residence, the Thurston County Superior Court had already issued an  
4 Extreme Risk Protection Order against Layes pursuant to RCW § 7.94, *et seq.*, finding that  
5 Layes poses a significant danger of causing personal injury to himself or others by having in  
6 his custody or control, purchasing, possessing, or receiving a firearm.

7 Two individuals were present at the residence when law enforcement arrived on  
8 September 8, 2021, Layes and T.N. Law enforcement found six firearms in the residence,  
9 including a weapon made from a Remington 870 Express Magnum, 12-gauge shotgun  
10 bearing Serial Number C568363M, found in Layes' bedroom. The firearm was tucked  
11 between the mattress and the bedroom wall. T.N. told agents that she does not own any  
12 firearms and that all guns in the house belong to Layes. Likewise, Layes made statements to  
13 law enforcement confirming his knowledge and possession of the firearm. Due to the overall  
14 length of the firearm and the length of its barrel, the firearm cannot be legally manufactured,  
15 possessed or transferred in the United States without registration pursuant to the National  
16 Firearms Act (NFA). ATF determined that the firearm in question is not registered to Layes  
17 with the NFA Branch as a Weapon Made from a Shotgun, as required by law. *See*  
18 Complaint (Dkt. 1).

19 Law enforcement therefore conducted a probable cause arrest of Layes the morning of  
20 the search. Later that same day Magistrate Judge Fricke signed a Complaint charging Layes  
21 with one count of unlawful possession of an unregistered firearm, in violation of Title 18,  
22 United States Code, Sections 5861(d) and 5845(a)(2), and Layes made his initial appearance  
23 before the Court. The Court conducted a detention hearing on September 13, 2021, and  
24 ordered Layes detained pending trial after concluding "there are no conditions which the  
25 defendant can meet which would reasonably assure the defendant's appearance as required  
26 or the safety of any other person and the community." Dkt. 10. Judge Fricke made the  
27 following findings in support of her detention order:  
28

1 Mr. Layes/Starrett has no current residential address, and his former place of  
2 residence was with his girlfriend in a home owned by her family. This factor  
3 weighs in favor of detention -- because the government proffered that his  
4 girlfriend is no longer willing to have the defendant live with her – she  
5 considers him too dangerous and unstable.

6 Thurston County Superior Court also issued an extreme risk protective order,  
7 which, according to RCW 7.94.040(2), means the Court determined that Mr.  
8 Layes/Starrett is not allowed to possess or control any firearms, and found (by  
9 a preponderance of the evidence) a significant danger that he would cause  
10 personal injury to himself or others. This weighs in favor of detention.

11 Mr. Layes/Starrett has a business of his own, and professional credentials, so  
12 his employment is a factor that weighs in favor of release. Yet, he lacks  
13 community support– the defense did not disclose to U.S. Pretrial Services any  
14 friends or family who would verify Mr. Layes/Starrett’s information, nor did  
15 the defense disclose to Pretrial Services the name of anyone who would be  
16 willing to be a third-party custodian, or allow him to live in their place of  
17 residence. Moreover, the government proffered that individuals who know Mr.  
18 Layes/Starrett were interviewed; these individuals reported the defendant has  
19 an extreme drug or alcohol problem. The defense did not give Pretrial Services  
20 any information that would allow Pretrial Services to formulate a plan to  
21 address any drug or alcohol problems; in order to craft conditions of supervised  
22 release to mitigate this type of risk, the defendant would need to cooperate with  
23 Pretrial Services. The facts show that he would be unlikely to conform his  
24 behavior to assist Pretrial Services in his supervision, or to follow the Court’s  
25 orders.

26 During the detention hearing, the government proffered that they have specific  
27 evidence of (but have not yet charged) Mr. Layes/Starrett’s activities of  
28 allegedly setting fires near Jehovah’s Witnesses places of worship in the  
Western District of Washington between March 2018 and June 2020. The  
government also stated that the defendant’s girlfriend indicated: the defendant  
told his girlfriend that he heard voices, and the voices were telling the  
defendant to hurt her, or to hurt her parents, and the voices told him they would  
kill him.

Dkt. 13.

1 On September 22, 2021, a federal grand jury in this District issued a one count  
2 Indictment with the same firearm-related charge. Dkt. 12. Trial is presently scheduled for  
3 November 29, 2022. Dkt. 25.

4 On October 19, 2021, after a closed hearing, the Court granted a motion for  
5 withdrawal filed by the Office of the Federal Public Defender and determined that Layes can  
6 proceed *pro-se* with the assistance of stand-by counsel. Dkt. 19-20. The Court subsequently  
7 appointed attorney Lance Hester to serve in this role. Dkt. 21.

8 On or about October 15, 2021, Layes emailed the Court with a subject line of “Re-  
9 Open Detention Hearing.” The Court construed the email as a motion to re-open detention  
10 and noted the motion for November 5, 2021. Dkt. 29-30. Layes’ motion/email began by  
11 explaining that he was “writing to request a re-opening of [his] detention hearing” and stated  
12 that he would list the “reasons in support of the re-opening below. . .” Dkt. 29. Layes then  
13 included five numbered paragraphs setting forth the reasons he believes detention should be  
14 reopened, including (1) that he is not a danger to society and is innocent with respect to the  
15 “attacks against Jehovah Witnesses (JW) churches;” (2) that he did not threaten his girlfriend  
16 with a shotgun; (3) that he is not “mesmerized by fire;” (4) that he has a clean criminal  
17 record and there was no violence in his past relationships; and (5) that his conduct with  
18 respect to the firearms charge was merely negligent, not criminal in nature. Dkt. 29.

## 19 II. LAW AND AUTHORITY

### 20 A. Detention Standard and Presumption

21 The Bail Reform Act provides that a court should detain a defendant pending trial if  
22 “no condition or combination of conditions . . . will reasonably assure the appearance of the  
23 person as required and the safety of any other person and the community.” 18 U.S.C.  
24 § 3142(f). The United States bears the burden of showing that defendant poses a danger to  
25 the community by clear and convincing evidence, and it bears the burden of showing that a  
26 defendant poses a flight risk by a preponderance of the evidence. *United States v. Gebro*,  
27 948 F.2d 1118, 1120 (9th Cir. 1991).

1 The Bail Reform Act identifies four factors that a court should consider in analyzing  
2 detention issues: “(1) The nature and circumstances of the offense charged, including  
3 whether the offense . . . is a crime of violence . . . ; (2) the weight of the evidence . . . ; (3) the  
4 history and characteristics of the person, including . . . family ties, employment, financial  
5 resources, length of residence in the community, community ties, past conduct, history  
6 relating to drug or alcohol abuse, criminal history, . . . ; and . . . (4) the nature and  
7 seriousness of the danger to any person or the community that would be posed by the  
8 person's release . . . .” 18 U.S.C. § 3142(g). “Of these factors, the weight of the evidence is  
9 the least important, and the statute neither requires nor permits pretrial determination of  
10 guilt.” *United States v. Gebro*, 948 F.2d 1118, 1121 (9<sup>th</sup> Cir. 1991).

11 Finally, at a detention hearing the government may present evidence by way of an  
12 evidentiary proffer sufficient to make the court aware of the defendant's role in the offense,  
13 the weight of the evidence against the defendant, and other relevant factors. *See, e.g. United*  
14 *States v. Salerno*, 481 U.S. 739, 743 (1987); *United States v. Winsor*, 785 F.2d 757 (9<sup>th</sup> Cir.  
15 1986); *United States v. Cardenas*, 784 F.2d 937 (9<sup>th</sup> Cir.), vacated as moot upon defendant's  
16 conviction, 792 F.2d 906 (9<sup>th</sup> Cir. 1986).

17 **B. Standard to Reopen Detention Proceedings**

18 As set forth above, this Court previously entered an order of permanent detention  
19 pending trial. As a result, the present motion is a request to reopen the detention proceeding.  
20 Pursuant to 18 U.S.C. § 3142(f), a detention hearing:

21 may be reopened, before or after a determination by the judicial officer, or at  
22 any time before trial, if the judicial officer finds that information exists that  
23 ***was not known to the movant at the time of the hearing*** and that has a  
24 ***material bearing*** on the issue of whether there are conditions of release that  
25 will reasonably assure the appearance of such person as required and the safety  
26 of any other person and the community.

27 18 U.S.C. § 3142(f) (emphasis added). That is, Layes has the initial burden to present  
28 information that is both (i) material and (ii) truly “new,” meaning that it was not available to  
him at the time of the original detention hearing. “Courts have interpreted strictly the

1 statutory provision authorizing the reopening of a detention hearing, holding that hearings  
2 should not be reopened if the evidence proffered was available at the time of the hearing.”  
3 *United States v. Jerdine*, 2009 WL 4906564, at \*3 (N.D. Ohio Dec.18, 2009) (citing *United*  
4 *States v. Dillon*, 938 F.2d 1412, 1415 (1st Cir.1991); *United States v. Hare*, 873 F.2d 796,  
5 799 (5th Cir.1989); *United States v. Peralta*, 849 F.2d 625, 626–27 (D.C.Cir.1988)).

### 6 III. ARGUMENT

7 As a preliminary matter, none of the arguments Layes relies upon in support of his  
8 motion are based on new evidence that was not available to him at the time of the detention  
9 hearing, and Layes does not argue to the contrary. This fact alone compels a denial of his  
10 motion to reopen detention.

11 In any event, regardless of whether Layes’ motion is based on new evidence not  
12 available to him at the time of the detention hearing, the information presented does not have  
13 a material bearing on the risk Layes would pose to the community if released.

14 As proffered by the government at the detention hearing, Layes is the primary suspect  
15 in a string of seven arsons and one shooting targeting Jehovah’s Witness religious facilities  
16 in Thurston, Pierce, and Mason Counties between March 2018 and June 2020. In at least  
17 one of the arsons, there were people inside the facility at the time of the arson. This is not  
18 surprising, as some Jehovah’s Witness facilities in the area have residences on the property  
19 and inside the main buildings. Thus, it is common for people to be present, even in the  
20 middle of the night, making Layes’ actions even more dangerous.

21 There is strong evidence that ties Layes to the arsons and shooting, which can be  
22 summarized in general terms as follows:

- 23 ○ Law enforcement has obtained electronic evidence that places devices owned and  
24 controlled by Layes at and near the scenes of some of the arsons during the  
relevant time periods.
- 25 ○ Electronic evidence also shows that accounts registered by Layes were used to  
26 conduct searches of the relevant locations and searches related to the Jehovah’s  
27 Witness religion.

- 1       ○ An individual matching the physical characteristics of Layes and a vehicle that
- 2           matches the description of Layes' car were captured on surveillance video at some
- 3           of the scenes.
- 4       ○ Electronic evidence also shows that accounts registered by Layes were used to
- 5           conduct searches of the relevant locations and searches related to the Jehovah's
- 6           Witness religion.

7       Numerous friends and family members have also reported to law enforcement that

8       Layes told them he was haunted by spirits who told him to do bad things. They also

9       explained that Layes believes these spirits are the dead Jehovah's Witness relatives of an ex-

10      girlfriend, and that Layes hates the Jehovah's Witness religion. These friends and family

11      members also reported heavy drug and alcohol use by Layes, as well as serious mental health

12      issues.

13      Due to the nature of Layes' conduct and the information about his beliefs, mental

14      health, drug and alcohol abuse, and access to firearms, the government respectfully submits

15      that there are no conditions or combination of conditions that can reasonably assure the

16      safety of the community or his appearance for future court proceedings if he is released

17      pending trial. This is especially true because Layes has not articulated any proposed release

18      plan and it is not known where he would reside if released, or with whom. Prior to his arrest,

19      Layes was living at T.N.'s home, a place where he is no longer welcome, as T.N. has

20      indicated to law enforcement that she is afraid and does not want to see him.

21      Under these circumstances, Judge Fricke's prior findings and conclusions with respect

22      to detention are equally true today, and the issue of detention should remain closed.

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**IV. CONCLUSION**

For the reasons set forth above, the United States respectfully requests that the Court deny Layes’ motion to reopen the issue of detention.

DATED this 28th day of October 2021.

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