No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

WILLIAM F. KAETZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Filed on Behalf of:

WILLIAM F. KAETZ,
Petitioner.

Counsel of Record for this Party:

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Pittsburgh, PA 15219
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QUESTION(S) PRESENTED FOR REVIEW

1. Whether Petitioner is entitled to release pending trial where the government has failed to establish, and the lower courts' findings are unsupported by the record that, there is no condition, or combination of conditions, which can reasonably assure Petitioner's appearance at court proceedings as required (where he never failed to appear in the past in any matter) and/or reasonably assure the safety of any person or the community (where no in-person confrontation occurred and the language used did not extend beyond constitutionally protected speech) and in light of other circumstances of this particular case—to-wit: detention during the COVID-19 pandemic (such as risk of exposure to and contracting the virus and continued delay of trial), Petitioner being self-employed and the primary source of income for his household, the relatively non-serious nature of the offenses, and the length of the probable sentence of imprisonment Petitioner would receive upon conviction in this matter?

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LIST OF DIRECTLY RELATED PROCEEDINGS

Pursuant to U.S.Supr.Ct. Rule 14.1(b)(iii), the following is a list of proceedings directly related to the case in this Court on the instant Petition for Writ of Certiorari:

United States v. William F. Kaetz, 2:20-mj-9421-CRE (D.N.J.): October 26, 2020 Order of Detention Pending Trial.

United States v. William F. Kaetz, 2:20-cr-1090-JNR (D.N.J.), January 4, 2021 Memorandum Order on appeal from order of detention.

United States v. William F. Kaetz, No. 21-1075 (3d Cir.): February 43, 2021 Order denying motion for release pending trial.

United States v. William F. Kaetz, 2:21-cr-071-JNR (D.N.J.): proceedings on the January 21, 2021 filing of an Indictment.

Petitioner is unaware of any other proceeding challenging the same criminal conviction or sentence as the order(s) presently challenged in this Court, whether on direct review or through state or federal collateral proceedings.

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Petitioner, William F. Kaetz, ("Defendant") petitions for a writ of certiorari to review the February 3, 2021 judgment of the United States Court of Appeal for the Third Circuit at No. 21-1075 denying release prior to trial.

OPINIONS BELOW

The February 3, 2021 Order of the Court of Appeals, review of which is sought by this Court, is reprinted in the Appendix at A19. No petition for rehearing was filed.

The U.S. District Court for the District of New Jersey issued, at 2:20-cr-1090, an unpublished Memorandum Order on January 4, 2021 appearing at United States v. Kaetz, 2021 U.S.Dist.Lexis 637, 2021 WL 37925 (D.N.J.). The U.S. Magistrate Judge issued, at 2:20-mj-9421, an Order of Detention Pending Trial on October 26, 2020. These orders are reprinted in the Appendix at A4-18 and A1-A3, respectively.

JURISDICTION

The Magistrate Judge had jurisdiction under 18 U.S.C. §3141(a). The District Court had jurisdiction under 18 U.S.C. §3145(a) (2) and 28 U.S.C. §3231. The Court of Appeals had subject matter jurisdiction under 28 U.S.C. §3742(a) and appellate jurisdiction under 18 U.S.C. §3145(c) and 28 U.S.C. §1291. This Court has jurisdiction pursuant to 28 U.S.C. §§1254(a) and 2101(c).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> **(a)(1)** Whoever—
>
> * * *
>
> **(B)** threatens to assault, … or murder, … a United States judge, … with intent to impede, intimidate, or interfere with such … judge, … while engaged in the performance of official duties, or with intent to retaliate against such … judge, … on account of the performance of official duties, shall be punished as provided in subsection (b).
>
> * * *
>
> **(b)** ….
>
> **(4)** A threat made in violation of this section shall be punished by a fine under this title or imprisonment for a term of not more than 10 years, or both, except that imprisonment for a threatened assault shall not exceed 6 years.
>
> **(c)** As used in this section, the term—
>
> * * *
>
> **(3)** "United States judge" means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate; ….

18 U.S.C. §115(a)(1), (b)(4), (c)(3) (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member).

> **(a) In general.** Whoever knowingly makes restricted personal information about a covered person, … publicly available—
>
> **(1)** with the intent to threaten, intimidate, or incite the commission of a crime of violence against that covered person, …; or
>
> **(2)** with the intent and knowledge that the restricted personal information will be used to threaten, intimidate, or facilitate the commission of a crime of violence against that covered person, …
> shall be fined under this title, imprisoned not more than 5 years, or both.
>
> **(b) Definitions.** In this section—

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(1) the term "restricted personal information" means, with respect to an individual, … the home address, … of, … that individual;

(2) the term "covered person" means—

* * *

(B) … officer in or of, any court of the United States, …;

18 U.S.C. §119(a), (b)(1), (2)(B) (Protection of individuals performing certain duties).

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both

18 U.S.C. §875(c) (Interstate communications).

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. §922(g)(1) (Unlawful acts).

(a) …

(2) Whoever knowingly violates subsection … (g), … of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

* * * *

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) … for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, ….

#

18 U.S.C. §924(a)(2), (e)(1) (Penalties).

> **(a) Pending trial.** A judicial officer authorized to order the arrest of a person under section 3041 of this title before whom an arrested person is brought shall order that such person be released or detained, pending judicial proceedings, under this chapter.

18 U.S.C. §3141(a) (Release and detention authority generally).

> **(a) In general.** Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—
> **(1)** Released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
> **(2)** released on a condition or combination of conditions under subsection (c) of this section;
> **(3)** temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or
> **(4)** detained under subsection (e) of this section.
>
> **(b) Release on personal recognizance or unsecured appearance bond.** The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to … []42 U.S.C. 14135a[], unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.
>
> **(c) Release on conditions.**
> **(1)** If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to … []42 U.S.C. 14135a[]; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in … []21 U.S.C. 802[], without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the

judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

* * *

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion. ….

(e) Detention.

(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

* * *

(f) Detention hearing. The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) … will reasonably assure the appearance of the person as required and the safety of any other person and the community—

(1) upon motion of the … Government, in a case that involves—

(A) a crime of violence, … for which a maximum term of imprisonment of 10 years or more is prescribed;

* * *

(E) any felony that is not otherwise a crime of violence that involves … possession or use of a firearm … (as … defined in section 921), …; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves—

(A) a serious risk that such person will flee; or

(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or … the Government, seeks a continuance. …. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses …, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. ….

(g) Factors to be considered. The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account … information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, … or involves a … firearm,…

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release … in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of release order. In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

* * *

(i) Contents of detention order. In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed …;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, … the person in charge of the corrections facility … deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

* * *

(j) Presumption of innocence. Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

18 U.S.C. §3142(a)-(c), (e)(1), (f)(1)(A) and (E) and (2), (g)-(h)(1), (i)(1) and (3)-(4), (j) (Release or detention of a defendant pending trial).

(b) Review of a detention order. If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the

person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) Appeal from a release or detention order. An appeal from a release or detention order, … is governed by … section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

18 U.S.C. §3145(b)-(c) (Review and appeal of a release or detention order).

(a)(4) the term "crime of violence" means—
(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;

18 U.S.C. §3156(a)(4)(A) (Definitions).

(a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—
(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) to afford adequate deterrence to criminal conduct;
(C) to protect the public from further crimes of the defendant; and
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. §3553(a) (Imposition of a sentence).

#

CONCISE STATEMENT OF THE CASE

A. Procedural History

On October 18, 2020, Defendant was charged in the United States District Court for the District of New Jersey at 2:20-mj-9421 by Complaint with interstate communications containing threats to injure and threaten to assault/murder a United States judge, in violation of 18 U.S.C. §§875(c) and 115(a)(1)(B), respectively, and he was arrested and made an initial appearance.[1] On October 19, 2020, Defendant was ordered detained and the undersigned was appointed to represent Defendant.

On October 23, 2020, the USA filed a motion seeking detention pursuant to 18 U.S.C. §3142(f)(1) alleging no condition(s) could reasonably assure the appearance of Defendant as required and the safety of any other person and the community because he is a danger to the community and a flight risk. On October 26, 2020, a preliminary and detention hearing was held after which probable cause was found and Defendant was detained as it was determined he posed a danger to the public. See A1-A3.

On December 15, 2020, Defendant sought review of said detention order in the United States District Court for the District of New Jersey at 2:20-cr-01090 which, on

[1] Because a District Court Judge for the District of New Jersey was alleged to have been threatened, Chief Magistrate Judge Cynthia Reed Eddy (W.D.Pa.) and District Judge J. Nicholas Ranjan (W.D.Pa.) were specially designated pursuant to 28 U.S.C. §§636(f) and 292(b), respectively, to preside over this matter.

December 23, 2020, deemed Defendant to have filed an appeal from said order.

By Memorandum Order dated January 4, 2021, A4-A18, said District Court denied Defendant's request review of the Magistrate Judge's order of detention for reasons set forth at pages 7-14 of that Order. See A10-A17.

On January 13, 2021, Defendant filed a Notice of Appeal which was docketed in the United States Court of Appeals for the Third Circuit at 21-1075. On January 19, 2021, Defendant filed a Motion for Release from Custody and a Memorandum in Support of Motion for Release from Custody.

On January 21, 2021, Defendant was charged by Indictment in the District of New Jersey at 21 cr-71 with committing the following offenses in that District:

(1) 18 U.S.C. §115(a)(1)(B) and (b)(4)—Intent to impede, intimidate and interfere with U.S. District Court Judge C.C.C. while in, and retaliate against Judge C.C.C. on account of, the performance of official duties on October 18, 2020;

(2) 18 U.S.C. §875(c)—Knowingly and willfully transmitting, on October 18, 2020 in interstate commerce, an email to, containing a threat to injure, Judge C.C.C.;

(3) 18 U.S.C. §119(a)(1)/(2)—knowingly made restricted personal information about (including the home address of) Judge C.C.C. public—on social media sites FaceBook and Twitter—with intent, and that said information would be used, to threaten and intimidate Judge C.C.C. on October 18, 2020; and

(4) 18 U.S.C. §922(g)(1)—Knowingly possessed, in and affecting interstate commerce on October 26, 2020, a firearm and ammunition after having been convicted of an offense punishable by imprisonment of more than 1 year.

On January 25, 2021, the Government's Response to Appellant's Motion for

Release from Custody was filed in the Court of Appeals. By Order dated February 3, 2021, the Court of Appeals denied Petitioner's Motion for Release from Custody. A1.

B. Factual History

Paul Safier testified he is a senior inspector with the United States Marshals Service ("USMS") for the District of New Jersey, has been with the USMS for nearly 29 years, and conducts protected investigations and threat assessments related to USMS protected persons and facilities. N.T., 10/26/2020, at 5-6.

On September 24, 2020, a package mailed by Defendant containing documents relating to civil litigation pending before Judge 1 was received at Judge 1's personal residence. Id. at 6-8. There was nothing threatening or harmful in the package. Id. at 8. Defendant was interviewed later that day and said he obtained Judge 1's home address through a paid internet-based search service and he was instructed send such documents to the clerk's office at the courthouse and not the judge's home address. Id. at 9-10. On September 30, 2020, the USMS became aware Defendant left a message (Hrg Ex. 1) on Judge 1's answering service on Judge 1's publicly available chambers phone number on September 18, 2020 in which he identified himself and said he was unhappy with the pace of the civil litigation, demanded that his cases be reopened and Judge 1 recuse from the case and be removed from the bench, and said he was not going to wait 6 months to a year for another bad decision and would not take no for an

answer. Id. at 10-11, 34-35.[2]

On October 18, 2020, USMS became of aware of an email communication (Hrg Ex. 3) sent at 5:05 a.m. to Judge 1's personal email address . the USMS' mailbox, another justice management division and two other government employees of the Department of Justice on that date from Defendant which Inspector Safier read as follows (edited/redacted of Judge 1's email address, name, home address and gender):

> Hello, U.S. Marshals. I filed this case a long time ago. It is to enforce Article IV, Section 4 of the U.S. Constitution.
>
> Judge 1 has been avoiding and stonewalling the case. It is of national importance. Judge 1 is a traitor and that has a death sentence. I would rather use the pen than the sword, but as this push for communism becomes all too real there will come a time to take down those people that fail to do their job to be loyal to this nation and that will be people like traitor Judge 1.
>
> I have a motion for Judge 1's recusal, motions to reopen the case as per Judge 1's order, motions to expedite the case, and I will be filing a mandamus. I will try my best not to harm the traitor Judge 1 but, like I said, Judge 1 is a traitor and needs to be dealt with. You have an obligation to remove Judge 1. Read the court documents.
>
> The traitor Judge 1 lives at, …. Stop by and ask Judge 1 why Judge 1 is stonewalling my case. Judge 1's home address will become public knowledge very soon, and God knows who has a grievance and what will happen after that.
>
> You want to protect the traitor Judge 1, enforce the Constitution. You come after me for writing this email will prove its time to take up

[2] Defendant had attempted to subpoena Judge 1 to obtain testimony by interrogatories on the reason for Judge 1 not complying with his demand in the case. Id. at 26-27.

> arms and civil war is inevitable. Remember your oath of office. This case must be opened and move forward now. This needs to be now before the vote.

Id. at 11-15, 37-38. The email was signed by Defendant and contained his home address and a phone number subscribed to him. Id. at 15, 35. Inspector Safier believed the email to be of grave concern—and notified his superiors, the FBI, the U.S. Attorney's Office and others—for the following reasons:

> there's talk about avoiding stonewalling the case, which has been a recurring theme. The urgency of national importance. The reference of Judge 1 as a traitor; the reference to … the penalty for that being a death sentence. The comment about using the sword to take down those who fail to do their job. The reference to: I will try my best not to harm the traitor judge but the traitor judge has to be dealt with. The indication that Mr. Kaetz was going to dox the judge by publishing the judge's home address.
>
> * * *
>
> … there is an intent that others who may have a grievance will learn that and act on it. There's a reference to protection on our end and of the judge. There's an indication … that … if we come after Mr. Kaetz for this, there will be a call to take up arms and a call for insurrection.

Id. at 15-17, 39. Judge 1 was informed of the email, local police and deputy U.S. marshals were dispatched to Judge 1's residence, USMS set up surveillance on Defendant, and a criminal complaint was drafted. Id. at 17-18.

Also on October 18, 2020, Defendant had made a posting on his FaceBook account to a public forum (a New Jersey Tea Party II group) and several tweets from Defendant's Twitter account pinned to tweets on accounts with more followers than

on Defendant's Twitter account. Id. at 18-19, 22, 38. A tweet sent at or about 10:50 a.m. read (edited/redacted of Judge 1's identifying information):

> Kaetz versus the United States, et al., Fed Court New Jersey. It is to enforce Article IV, Section 4 of the U.S. Constitution. Judge 1 is stonewalling the case. Traitor Judge 1 lives at, …. Let Judge 1 feel your anger for Judge 1's violation of Judge 1's oath of office.

Id. at 18-20 (quoting Hrg Ex. 2). The FaceBook post (redacted of Judge 1's identifying information) was at approximately 10:00 a.m. and read:

> I filed this case a long time ago, Kaetz v. United States, et al., Case 2:19-cv-08100-[], Fed Court District of New Jersey. It is to enforce Article IV, Section 4 of the U.S. Constitution. Republic form of government guarantee, Judge 1 has been avoiding and stonewalling the case. It is of national importance. The traitor Judge 1 lives at, ….
>
> Please send Judge 1 a message on how you feel about Judge 1's failure to protect your rights and violate Judge 1's oath of office.

Id. at 21-22 (quoting Hrg Ex. 2). On October 18, 2020, USMS executed a warrant for Defendant's arrest at his girlfriend's residence at approximately 10:00 p.m., he tried to evade arrest and was tased and arrested. Id. at 22-23, 41-43. Upon entry into jail, Defendant said "he had an idea of what the arrest was about and that he possibly had gotten drunk and sent some emails he probably shouldn't have sent." Id. at 23.

In 2002, Defendant was arrested—and later convicted and sentenced to 3 years probation in the Eastern District of Pennsylvania—for mailing at least two letters threatening to kill IRS officials. Id. at 23-25, 44-45. In 2006, he violated probation.

Id. at 24. On or about August 26, 2019, his application to purchase a firearm was denied due to, and failing to disclose, his prior federal felony conviction. Id. at 25, 44.

Defendant resides with his sister and daughter (Catherine). Id, at 28. Catherine is a co-plaintiff with him in a civil case pending before Judge 1 relating to Catherine's arrest for violating a presently active restraining order. Id. at 28-29, 39-40.

On October 26, 2020, the FBI executed a search warrant of Defendant's residence and seized an older-style bolt-action rifle and ammunition. Id. at 29, 48.

Catherine Kaetz testified she is 28 years old and Defendant's daughter and resides with Defendant and his sister (Carolyn Kaetz). N.T., 10/26/2020, at 49. She is unemployed due to the COVID-19 pandemic, works per diem at Defendant's business and is looking for full-time employment. Id. at 50. Defendant is self-employed doing interior commercial installations. Id. at 50. Catherine frequently visits her mom who lives two hours away and Catherine recently stayed an entire week at her mom's house. Id. at 53-54. If, as Defendant's custodian, she saw Defendant doing anything in violation of an order of release, she would report such violation to authorities. Id. at 52-53. Catherine is a party with her dad to a civil case regarding her false arrest which is pending before Judge 1; Catherine is frustrated with how the case is proceeding—that Judge 1 is ignoring proper procedure to move the case along. Id. at 55-56.

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REASONS FOR GRANTING THE WRIT

"In our society liberty is the norm, and detention prior to trial…is the carefully limited exception." United States v. Salerno, 481 U.S. 739, 755, 107 S.Ct. 2095, 2105, 95 L.Ed.2d 697, 714 (1987). Indeed, 18 U.S.C. §3142 contains a presumption of release: "The judicial officer shall order the pretrial release of the person on personal recognizance." In its request for detention, the USA relied solely upon the fact Defendant is charged with a crime of violence as defined in 18 U.S.C. §3156(a)(4) but alleges no facts supporting either contention that he is a danger to any person and no condition, or combination of conditions, will reasonably assure his appearance. The USA failed to provide any evidence Defendant is a serious flight risk, meaning a higher degree of risk than the average case/person, required by 18 U.S.C. §3142.

It is undisputed all of Defendant's family, friends, resources, employment, and community activity are all based in and around Paramus, NJ. He has not been in much trouble in his past and has appeared for all court hearings and meetings when required. Accordingly, under 18 U.S.C. §3142(f)(2), the USA has to prove by clear and convincing evidence he poses a serious risk of flight or that he will obstruct or intimidate a witness or juror. The USA failed to submit any evidence of either factor. As such, Defendant will concentrate on the listed reason he was detained—whether he is a danger to any person or the community under §3142(f)(1)(A).

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Defendant concedes he is charged with a crime of violence which triggers application of §3142(f)(1)(A). However, he disagrees with the conclusion the USA proved or could ever prove he is a danger to any person or the community requiring pretrial detention. Defendant should be released upon personal recognizance as described in §3142(a) and (b). Moreover, a condition or set of conditions exists which can reasonably assure the safety of any one person or the community. Many of those same conditions will also assure Defendant's appearance. Since risk of flight or non-appearance does not seem to be the issue of concern in this matter, Defendant will focus on the factors surrounding a danger to any one person or the community.

When §3142(f)(1) is triggered, the Bail Reform Act sets out the factors which a court should consider in deciding whether a person is bailable on a condition or set of conditions that can assure the safety of any one person or the community.

The Nature and Circumstances of the Offense(s) Charge

Filing a complaint or indictment is merely an accusation and not an indicator of guilt. Testimony from the preliminary hearing reflects: an email was sent; Defendant likely sent it; and the email contains strong language. Additionally, a single post was made on Facebook and several tweets were pinned to other Twitter posts from social media accounts likely maintained by Defendant in which Judge 1's home address was disclosed and people were urged to contact Judge 1 to present any grievances they

have with Judge 1. Further, an older style bolt-action rifle (operability was not yet determined) and ammunition was found at Defendant's home on October 26, 2020.

An email, like a letter, contains parts: an address, greeting, body, salutation and, at times, enclosures/attachments to which the writer may reference to permit a more accurate and precise interpretation of the words used within the body of the email. Approximately 59 pages of materials were attached to the email to provide context to the email.[3] The two most instructive and meaningful attachments to the email are the motion to reopen and the motion to recuse. The email directs the reader to review the court papers included as attachments. Defendant clearly views his civil complaint against governmental figures as important to national security and the November 2020 election. His perceived significance of this matter drives his frustration resulting in an email to the USMS, the agency charged with protecting the courts, asking them to review all the materials and take action against Judge 1—investigate and remove Judge 1 from the bench. Attachment of court filings shows Defendant intended to

[3] The attachments to the email included several documents filed at ECF Docs. 32, 32-1, 32-2, 32-3, 32-4, 33, 33-1, 33-2, and 33-3 at 2:19-cv-08100 on July 27, 2020. Those documents are a one-page motion to reopen case, a 41-page amended civil complaint demanding a jury trial, a one page proposed civil action order, a one page certificate of service, an eleven page motion for recusal of Judge 1, a one page proposed civil action order, and a one page certificate of service. The email attachments also included photocopies of the priority mailing envelope used to mail the court papers. The attachments to the email are similar in nature, if not exact copies of, the materials mailed directly to Judge 1's residence.

move forward, as he always did, through court action and not physical action. Indeed, in the email, he mentions his proclivity to use the pen.

Moreover, the email was not sent in secret, was not sent solely to Judge 1 and was sent to many others, including several DOJ email addresses, so that delivery to persons with power in the courts would receive and review it and its attachments. One is hard pressed to imagine a scenario that an email intended to threaten a judge would be sent to the very organization tasked with protecting judges. If so, perhaps that person was not thinking clearly. It is not surprising that an odd 5:00 a.m. email may have been sent by someone who had too much to drink. Upon being arrested, Defendant purportedly said he "had possibly gotten drunk and sent some emails he probably shouldn't have sent." N.T., 10/26/2020, at 23. The timing of the email and his inebriation provides some meaningful context. The voluminous attachments to, and the time of, the email and Defendant's blood alcohol content, all of which provide insight into the context of the email, a list of conditions could be easily developed to monitor Defendant and assure the safety of any one person or the community.

The social media posts ascribed to Defendant urge others to air any grievances they have with Judge 1 by sending them to Judge 1's home address which Defendant found gets the attention of Judge 1, the USMS, and others and there is no indication he wanted any action for redress to be made in a manner other than what Defendant had

undertaken—to-wit: by court filings and/or correspondence.

The rifle found at Defendant's home was not connected to any threat and, while possession by Defendant thereof was prohibited, the date of acquisition is unknown. The application to purchase a firearm in New Jersey was in 2019, pre-pandemic, pre-unemployment, and is unrelated in fact and temporally to this matter.

Conditions which can reasonably assure safety of the community are use of a third-party custodian, curfews, EHM tethers with GPS, voice recognition software used by pretrial services, and conditions of work release windows only if the custodian is present with Defendant. He could also be ordered to stay out of certain boroughs, townships or counties in and around the relevant areas of New Jersey.

The Weight of the Evidence

To prove a person is guilty of violating 18 U.S.C. §875(c), a jury must find beyond a reasonable doubt he knowingly and willfully transmitted a communication in interstate commerce to a District Court Judge with the specific intent to issue a threat or with specific knowledge the communication would be viewed as a threat.

> Section 875(c) contains both a subjective and objective component, and the Government must satisfy both in order to convict a defendant …. The Supreme Court focused on the subjective component. It held that to satisfy the subjective component of Section 875(c), the Government must demonstrate beyond a reasonable doubt that the defendant transmitted a communication for the purpose of issuing a threat or with knowledge that the communication would be viewed as a threat.

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> The Government must also satisfy the objective component, … to prove beyond a reasonable doubt that the defendant transmitted a communication that a reasonable person would view as a threat. The objective component … shields individuals from culpability for communications that are not threatening to a reasonable person, distinguishing true threats from hyperbole, satire, or humor. See Watts v. United States, 394 U.S. 705, 708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969). It requires the jury to consider the context and circumstances in which a communication was made to determine whether a reasonable person would consider the communication to be a serious expression of an intent to inflict bodily injury on an individual. See Virginia v. Black, 538 U.S. 343, 360, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003).

United States v. Elonis, 841 F.3d 589, 596–597 (3d Cir.2016), cert. denied sub nom. Elonis v. United States, --- U.S. ---, 138 S.Ct. 67, 199 L.Ed.2d 21 (2017) (footnote omitted).

To find a person guilty of violating 18 U.S.C. §115(a)(1)(B), a jury must find beyond a reasonable doubt he threatened to murder a United States Judge with the intent to impede, intimidate, or interfere with such judge in the performance of official duties, or with intent to retaliate against such judge on account of the performance of official duties. Said threat must be a "true threat." The language used must be something more than that which is protected by the First Amendment—

> The First Amendment protects vehement, scathing, and offensive criticism of public officials, including United States judges. Should you find that the defendant's statements for which he is charged were no more than mere political hyperbole then you may be justified in finding that no threat was in fact made.

United States v. Turner, 720 F.3d 411, 426 (2d Cir.2013), cert. denied sub nom.

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Turner v. United States, 574 U.S. 814, 135 S.Ct. 49, 190 L.Ed.2d 29, reh'g denied, 574 U.S. 1020, 135 S.Ct. 698, 190 L.Ed.2d. 405 (2014) (citation omitted). Context matters. The alleged communication in this matter involves not solely an email, but also the documents that were attached to it. As the jury was instructed in Turner,

> [W]hether a particular statement is a threat is governed by an objective standard. That is, a statement is a threat if it was made under such circumstances that a reasonable person hearing or reading the statement and familiar with its context would understand it as a serious expression of an intent to inflict an injury. An absence of explicitly threatening language does not preclude you from finding the statement to be a threat.
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> It is not necessary for the government to prove that the defendant intended to carry out the threat, that the defendant had the ability to carry out the threat, or that the defendant communicated the threat to the victims. The relevant intent is the intent to communicate the threat.
>
> In determining whether the charged statements constitute a threat, you should consider the context in which they were made. Written words or phrases and their reasonable connotations take their character as threatening or harmless from the context in which they are used, measured by the common experience of the society in which they are published. This includes the circumstances in which they are uttered as well as the circumstances of the person who uttered them.

Turner, 720 F.3d at 426 (citation omitted).

The crime of 18 U.S.C. §119(a) proscribes knowingly making public restricted personal information of a covered person for the purpose of threatening or retaliating or inciting a crime of violence against said covered person with (1) intent to do so or (2) intent and knowledge that the information disclosed will be used for that purpose.

> in a prosecution under 18 U.S.C. §922(g) and §924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.

Rehaif v. United States, --- U.S. ---, ---, 139 S.Ct. 2191, 2200, 204 L.Ed.2d 594, 605 (2019). Considering the weight of the evidence, the USA is not likely to convict Defendant of violating 18 U.S.C. §§115(a)(1)(B), 119(a)(1) or (2), or 875(c).

First, no reasonable person is going to interpret that the email and attachments sent to several email addresses at 5:00 a.m. by a drunk person was done with the intent to communicate a true threat or that the content of what was written contained a threat. The sections of the email (while not considering any of its attachments) the USMS finds most concerning are: "I filed this case long ago", "[Judge 1] has been avoiding and stonewalling the case.", "I have motions for [Judge 1's] recusal, motions to reopen the case as per [Judge 1's] orders, motion to expedite the case, and I will be filing a mandamus.", "You have an obligation to remove [Judge 1]. Read the Court documents.", "Stop by and ask [Judge1] why [Judge 1] is stonewalling my case."

The USA believes such language is threatening. The list of those statements within the email are merely a list of items filed by Defendant at one of his cases. The mentioned items are merely a listing of the items included in a package addressed to Judge 1. USMS Inspector Safier testified there was "nothing alarming or threatening about what was sent to Judge 1's home." N.T., 10/26/2020, at 8:24.

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Defendant did not try to secret his identity within the email, social media posts, nor with the package mailed to Judge 1's home address. Normal behavior when attempting to communicate a threat to someone may be to try to hide one's identity—hiding one's identity may be considered circumstantial proof of an ill-intent. A repetitive theme in the allegations is Defendant's identity is never hidden or obscured in any way. His being consistent about his purpose in the voicemail, the mailed package, the email and attachments thereto, and the social media posts is proof that he wants Judge 1 to take action on his case—to reopen it and recuse herself. No statements in any of the communications are threatening. He clearly identifies himself consistently in the voicemail, mailing, email and social media posts.

Retaliation is also not suggested in any communication. Defendant sought Judge 1's removal from the bench—not by physical force, but by a motion in civil court filed with Judge 1. His view, contained in email attachments, is Judge 1's rulings evince a socialist viewpoint. Through his civil action, he seeks enforcement of Article IV, Section 4 of the United States Constitution by the Court and Defendant did not threaten to enforce that provision on his own or incite others to take such action on their own. In the email to numerous people, including Judge 1 and the general email box of the USMS and other DOJ officials, he is asking law enforcement to take action over the investigation of judges who violate their oath.

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However, Deputy Safier interprets these statements in isolation. Defendant previously sent a package to Judge 1's home, and called the court's chambers seeking action on his case. He clearly uses the courts to file his claims. In the email he simply uses a few phrases to express his frustration with the slow pace of Judge 1's work. He reminds the USMS that they have an obligation to remove a bad judge. In the email, he is not conveying his scheme to take action against Judge 1. Defendant is merely summarizing his positions in documents already filed with the court.

The weight of the evidence cannot fully be considered if the measuring is not done while balancing Defendant's First Amendment rights. True threats/incitement are not protected communications. Judge Pooler's dissent in Turner is instructive:

> The true threats category distinguishes true threats from purported threats that are mere "political hyperbole," even if "vituperative, abusive, and inexact." Watts, 394 U.S. at 708. Similarly, the incitement category distinguishes incitement from the "advocacy of the use of force or of law violation." Brandenburg, 395 U.S. at 447. To distinguish true threats from political hyperbole, we use an objective test, "namely, whether an ordinary, reasonable recipient who is familiar with the context of the communication would interpret it as a threat of injury."…. To distinguish incitement from advocacy, we look to whether the communication "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Brandenburg, 395 U.S. at 447; see also Hess v. Indiana, 414 U.S. 105, 108–09, 94 S.Ct. 326, 38 L.Ed.2d. 303 (1973) (1973) (finding no incitement where the "statement was not directed to any person or group of persons").

Turner, 720 F.3d at 430 (Poole, J., dissenting) (citations omitted).

Defendant's email did not contain a threat, a threat of injury, nor a threat

directed to inciting or producing imminent lawless action on behalf of Defendant. All of the above applies also to the social media posts detailed in the hearings at issue. In those social media posts, Defendant only states to "send a message" on Facebook and on Twitter to let the message convey to Judge 1 how seriously an oath should be taken. For the more strongly worded tweet, it did not contain any mention of urgency or immanency on the writer's or the reader's part.

Lastly, the offense of treason is located at 18 U.S.C. §2381 and it states, *inter alia*, "Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or …." The USA emphasizes the email's reference to a death sentence being a possible statutory maximum penalty in a treason case. Other than being an accurate statement of the law, execution of a death sentence is only carried out by the government. United States Representative from Georgia, Majorie Taylor Greene said very similar words about the Speaker of the House of Representative and third in the line of succession to the United States Presidency, Nancy Pelosi and Representative Green has not been removed from Congress, let alone arrested. The obvious and most reasonable reading of the email along with the actions of Defendant indicates that he has filed papers with the court upon which he wants action.

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Taking into account the evidence and the principles of protected speech, a conviction in this matter for violating 18 U.S.C. §§115, 119 or 875 is unlikely.

The History and Characteristics of the Person

Defendant was born in New Jersey, lived in Pennsylvania while married, and, upon divorce in 2006, moved back to his home state of New Jersey. He is a dedicated family man and businessman who helps others when he can. He is not wealthy. He is a self-employed professional who gets paid job by job and lives paycheck to paycheck. He's been self-employed since 2010. He is a professional carpenter and installer of commercial retail establishments. Meaning, he builds out infrastructure for retail businesses including their product display, inventory storage, and cashier workstations. Prior to 2010, he also had his own business, Kaetz Workshop. Some of his work has been used in major television commercials. After his divorce, he was left with little but his children and siblings. He is proud of what he has built over the last 20 years. COVID-19 restrictions, unemployment, and his recent undue extended detention has put all of his hard work and accomplishments at risk.

Defendant is a loyal American who, unlike many politicians, believes that the oath of office means something and the bill of rights in U.S. Constitution means something. Lately, this has involved the filing of federal and state lawsuits to redress his grievances. Since he was unable to afford to pay lawyers to aid him and advise

him during these lawsuits, Defendant has proceeded to assert his rights *pro se*, which has led to a sharp, steep, and continuing learning curve.

When not working, Defendant spends time with his family, fiancé, and gym. Through his local gym(s) in Paramus, he has dedicated much of his personal time to raise money for individuals and national causes. He decided to run in the NYC Marathon to raise funds to fight cancer. See A20. He had to dedicate time to train for the marathon. He also participated in other fundraisers. To help fight breast cancer, he participated in Barbells for Boobs and Making Strides for Breast Cancer. See A21. He also dedicated time to particpate in cycling events to raise money for cancer research. He often involed his children in these endeavors. See A22-A23. Other than dedicating himsef and his family to helping raise money for cancer reaserch, he also spent time raising money for our oceans. The annual Gold's Gym Boardwalk Workout raises money for Clean Ocean Action, a group dedicated to keeping our oceans and beaches safe and clean. See A24. Another type of boardwalk workout in which he participated helped raise money for relief of NJ residents after Hurricane Sandy devastated the eastern shoreline of NJ. See A25. At his local Crossfit Gym, he routinely participated in an annual workout event to help raise funds for the Lt. Michael Murphy Memorial Scholarship via The Murph Challenge which raised money for area veterans and to help establish a museum on Long Island, NY for U.S.

Navy SEALs and a Sea Cadet Training Facility. See A26.

Defendant is sociable and has many friends with whom he likes to spend time. Attached to the motion filed in connection with the appeal to the District Court are four letters of support evincing Defendant's good-hearted nature. Trae Seely, President of Commercial Décor Group, Inc., describes him as "prompt and reliable and has a polite and accommodating manner" and his work with most of the high-end retailers in Manhattan and throughout the Northeast as being "expert level … detailed and meticulous." Seely closes by saying Defendant will be hired by the company again as his "character and work ethic has been consistently good."

Scott Usher, President of Metro Light and Power, LLC, describes a ten-year long friendship and professional relationship with Defendant who is open about his current situation with Mr. Usher. While describing him as "diligent, competent and nothing but affable," Mr. Usher states Defendant is not timid or shy to speak up in defense of others or situations he views is not fair. Indeed, Mr. Usher relates that trait as being all bark and no bite, although he does concede Defendant's mouth (or fingers) got himself into more trouble than he anticipated when that email was sent.

Robert Schneider reveals Defendant helped get him a job as a contractor for Commercial Décor Group and has known Defendant for 4 years and describes him as "conscientious, respectful, professional and a hard worker." Mr. Schneider closes

with stating that he knows Defendant has "concern[] for his children and fiancé."

Defendant's daughter, Catherine Kaetz, readily admits that

> Corona hit all of us hard. The drastic change of life, routine, jobs, hobbies, sociability and our outlets of our emotions that made us go through our lives more peacefully. Isolation has effects on the psyche. It's been difficult to keep that inner peace and balance.

Prior to COVID-19, she tells how her life with her father became closer as they began to share their feeling and experiences. She goes on to explain that her dad "loves nature and animals, and even wants his own mini apiary in the backyard."

Defendant is a complex person who puts the needs of others in front of his own. America would be better off if more people followed in Defendant's footsteps and dedicated some personal time to raise money and awareness for cancer research, clean beaches, clean oceans, hurricane relief, and our veterans. COVID-19 hit the eastern United States, especially the NYC and Northern NJ area, extremely hard and the interaction and attachments Defendant had with his work, his friends and his gym fractured. The lockdowns and isolation which disconnected him from his life lasted longer than anyone could have imagined. Defendant found himself out of work and isolated from friends and living off of savings. Defendant found himself interacting ever more with social media while also using his time to prosecute the civil actions he had filed. The combination of isolation, fatigue, unemployment, and the fantasy world of social media was the unfortunate spark resulting in a late-night, inebriated

email being sent to the USMS, the DOJ, and Judge 1.

At the October 26, 2020 hearing, the USA provide no evidence of serious risk of flight. The pretrial services report makes it clear Defendant is the breadwinner of his household and provides employment opportunities for his daughter, Catherine, who was proposed as the third-party custodian. That report indicates he has strong ties to northern NJ. Although Defendant has been in trouble in the past, he has never failed to appear for a court hearing. The USA used a potential violation of probation as a reason he could not comply with conditions of pretrial release, but that effort failed in that there is no reliable evidence of record, and the pretrial services report does not mention, that Defendant was found to be in violation of probation.

A condition which would benefit Defendant is pretrial services connecting him with a mental health provider for evaluation, counseling, and/or treatment.

Nature and Seriousness of Danger to Any Person or the Community

The email, its attachments, and the other communications with Judge 1 were not communications a reasonable person would conclude were threatening.

Pretrial Services Bond Report

The W.D.Pa. Pretrial Services did not conduct their own pretrial interview of Defendant and the pretrial services of NJ did not provide an opinion on whether there was a condition or set of conditions which would "reasonably assure" the appearance

of Defendant and safety of any other person and the community. Defendant should be released on his own recognizance. Nonetheless, the following conditions would, in the least restrictive way, assure the safety of the community or any other person:

- mental health evaluation and treatment;
- home detention without EHM;
- Curfew;
- Work release;
- Travel restrictions—tri-state area or 180-miles radius from Paramus, NJ for work only (to be expanded upon proof of good behavior and controlled by Probation office with job location verification);
- Review of proposed civil action filings by probation office with time for judicial review if such a filing arouses concern (no opinion on the merits); and
- No contact with Judge 1.

If the Court initially requires more intensive supervision, it can (also) require:

- EHM with work release and GPS location and geofencing;
- Limited access to internet and social media platforms;
- Limited access to computers and smart devices.

Oversight and supervision conditions are used on every offender arrested by state and federal authorities. Conditions of supervision are the normal tools used to make sure any other person and the community are kept safe pretrial.

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Severity of the Charged Offenses

There are two ways to measure the severity/seriousness of any given offense. The first is to look at the statutory maximum penalty. The second is to consult the Sentencing Guidelines which measure seriousness on a numerical scale ranging from 1 to 43. An offense level of 43 results in a guideline range of "life" while an offense level of 1 results in a short period of probation, or 0-6 months incarceration.

The statutory maximum punishment for violating §115 is 6 years under the facts of this case. See 18 U.S.C. §115(b)(4). For offenses under 18 U.S.C. §§119(a)(1) or (2) and 875(c), the maximum penalty is 5 years. For an offense under 18 U.S.C. §922 (g)(1), the maximum penalty is 10 years under the circumstances of this case. See 18 U.S.C. §924(a)(1). Thar offense is a Class C felony while the other offenses are Class D felonies. See 18 U.S.C. §3559(3) and (4). There are fines and other conditions as part of any sentence after a conviction, but for these purposes, incarceration length is the best gauge for assessing the seriousness of the offense.

The sentencing guideline section used to determine the base offense level ("BOL") for offenses under 18 U.S.C. §§115 and 875(c) under the facts of this case is the same—U.S.S.G. §2A6.1. The BOL for these offenses starts at 12. U.S.S.G. § 2A6.1(a)(1). Depending upon the assessment of case-specific conduct, the total offense level ("TOL") for each offense could be adjusted 2 to 4 levels upward.

The sentencing guidelines sets the BOL for an offense under 18 U.S.C. §119 at 9, U.S.S.G. §2H3.1(a)(1), but, depending upon assessment of case-specific conduct, the TOL could be adjusted 8 to 10 levels upward, U.S.S.G. §2H3.1(b)(2).

The sentencing guidelines the BOL for an offense under 18 U.S.C. §922(g)(1) at 14 under the circumstances of this case. U.S.S.G. §2K2.1(a)(6)(A).

With potential reduction of 2-3 levels for acceptance of responsibility, the highest TOL could be 12 (for the offense of 18 U.S.C. §922(g)(1)). With a Criminal History Category of I and a TOL of 12, Defendant faces a guideline range sentence of 10-16 months, a Zone C sentence. This is the guideline sentence before the Court applies any §3553(a) factors which should result in a variance downward.

Defendant was arrested on October 18, 2020 and is not expected to proceed to trial until after March 2021 where his continued detention could potentially exceed his possible sentence. Continued detention does not further any goal described in 18 U.S.C §3553(a). Releasing Defendant with or without conditions will help achieve any goals the USA and this Court have in mind as appropriate. Prior to establishing guilt, Defendant should be released before he has lost his family, friends, and business.

COVID-19 Exposure Concerns

Because Defendant's case is not the most serious on the federal dockets,

because of his lack of recent criminal history, and because a condition or series of conditions exist to reasonable assure the safety of any one person or the community, his continued detention only serves to expose him to COVID-19 in a closed living facility where normal CDC precautions are impossible. This case will not result in a severe sentence and should not result in Defendant having to fight COVID-19 from behind bars when he has the ability to take care of himself at home with his family.

Fair Consultation with Defense Counsel

COVID-19 restrictions when coupled with the distance between Defendant and counsel serves to reduce access to counsel in any material way. Counsel is only able to communicate with Defendant via telephone. Although the Essex County Correctional Facility does permit video calls, said calls are not free and there is no guarantee the communications will not be recorded or otherwise subject to overhearing by other inmates or correctional professionals. Video calls are still very limiting when counsel needs to share materials and documents with Defendant.

Defendant is also limited in the length of time he can talk with his lawyer. He is also limited to the time of day. This case is the single most important event in his life right now and he should have free, unfettered access to his lawyer.

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CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant the following relief:

(1) issue a Writ of Certiorari to the United States Court of Appeals for the Third Circuit on the Questions presented in the instant Petition;

(2) schedule briefing and argument on the merits;

(3) vacate the February 3, 2021 Order of the United States Court of Appeals for the Third Circuit at 21-1075 affirming the denial of pretrial release;

(4) remand the matter to the United States Court of Appeals for the Third Circuit with directions to, in turn, remand the matter to the United States District Court for the District of New Jersey for the expedited preparation of a full and adequate report from the probation office and/or other pre-trial services organization addressing all relevant matters for assessing whether Defendant should be detained or released prior to trial and, after receipt and review of said report and any supplementary information submitted by the parties, determined whether a supplemental detention hearing should be held and, after such a hearing is conducted and completed or found unnecessary, determine if there are any condition or combination of conditions which will reasonably assure Defendant's appearance at future court proceedings and the safety of any person and the community and, if so, order Defendant's release pre-trial upon such condition or combination of conditions; and

(6) such other relief as this Court deems appropriate.

Respectfully submitted,

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Attorney for Petitioner