

APPENDIX

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APPENDIX A

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff—Appellant,

v.

KYLE WAGNER,

Defendant—Appellee.

No. 26-1294

Appeal from the United States District Court for the
Eastern District of Michigan at Detroit.
No. 2:26-cr-20059-1—Denise Page Hood, District
Judge.

Decided and Filed: August 12, 2026

Before: NORRIS, BLOOMEKATZ, and
HERMANDORFER, Circuit Judges.

COUNSEL

ON BRIEF: Danielle Asher, UNITED STATES
ATTORNEY'S OFFICE, Detroit, Michigan, for

Appellant. Jean Pierre Nogues, OFFICE OF THE FEDERAL COMMUNITY DEFENDER, Detroit, Michigan, for Appellee.

HERMANDORFER, J., delivered the opinion of the court in which NORRIS, J., concurred. BLOOMEKATZ, J. (pp. 18-42), delivered a separate dissenting opinion.

OPINION

HERMANDORFER, Circuit Judge. A grand jury indicted Kyle Wagner for cyberstalking and transmitting interstate threats. The conduct giving rise to the indictment followed a series of escalating communications in which Wagner threatened federal law-enforcement officers and their supporters, solicited resources to evade detection by the authorities, and entertained an inquiry about killing a former government official. A magistrate judge ordered Wagner detained pretrial. But the district court changed course and permitted Wagner's release. Though acknowledging that the record exhibited some risk of Wagner's danger, the district court reasoned that certain release conditions—like requiring Wagner's assurances that he will limit his internet access and avoid making additional threats—would adequately ensure public safety. The Government appealed and sought an emergency stay of the release order, which we granted. We now reverse the district court's decision.

3a

I

A

Kyle Wagner is a self-professed member of Antifa¹—short for anti-fascist—based in Minneapolis, Minnesota.

Wagner has stated that he’s willing to die in what “he view[s] as” an “ideological battle” against “violent fascist government actions and its supporters.” Wagner Br. 3-4. Around January 2026, Wagner undertook a series of escalating steps to oppose Immigration and Customs Enforcement’s actions in Minneapolis and broadcast his efforts to a social-media following. As the month progressed, Wagner’s social-media posts transitioned into direct calls for violence against federal agents and their supporters.

A few examples paint the picture. Wagner proclaimed that the situation in Minneapolis was “kill or be killed.” E.D. Mich., Complaint, R.1, PageID 9. In that same post, Wagner encouraged his online followers to “hunt” ICE by “sacrific[ing]” their

¹ Referencing a 2025 Executive Order, the Government identifies Antifa as “a designated domestic terrorist organization.” Gov’t Br. 24; *see* Designating Antifa as a Domestic Terrorist Organization, 90 Fed. Reg. 46,317 (2025) (describing Antifa as “a militarist, anarchist enterprise” that “uses illegal means to organize and execute a campaign of violence and terrorism”). Wagner disputes that characterization and claims that Antifa is instead “a broad, community-based movement composed of individuals organizing against racial and economic injustice.” Wagner Br. 19 n.9 (citation omitted). Because our decision turns only on evidence of Wagner’s specific conduct, we can leave the parties’ broader debate about the nature of Antifa to the side.

“vehicles.” *Id.* at PageID 8. In other posts, Wagner declared that he and his followers were “f**king coming for” ICE and were “coming for [ICE’s supporters] too.” *Id.* at PageID 6, 13. Wagner urged his followers to “f**king fight” ICE and “put[] hands” on law-enforcement agents and “take their f**king guns.” *Id.* at PageID 11, 23-24. He suggested that he and his followers should “have a little f**king fun” by “identify[ing] every single” ICE agent, “at the barrel of a gun” if necessary. *Id.* at PageID 17. Wagner also lamented that protestors had yet to “march on f**king Whipple”—the federal building in Minneapolis—“with guns.” *Id.* at PageID 26. He therefore directed his followers to “[g]et your f**king guns and stop these f**king people.” *Id.* Wagner prefaced that directive by exclaiming that he was “not talking about peaceful protests anymore.” *Id.* Other videos of Wagner’s stressed that Minneapolis was “where ICE has come to die.” *Id.* at PageID 16.

At points, Wagner disavowed any intent to commit physical aggression. Still, Wagner’s followers—spanning Minnesota and beyond—understood him to be calling for violence. In response to one of Wagner’s posts, an Instagram user referenced firearms, commenting that it’s “[t]ime for [ICE agents] to meet your friends. Namely AR15 and 9MM.” *Id.* at PageID 17. Others expressed interest in joining Wagner’s “cause” from out of state. *Id.*

Wagner also sought tangible resources from his followers to aid his efforts to “organize.” *Id.* at PageID 13. Wagner specifically requested funds to help him “evade” detection by law enforcement. *Id.* And he provided the name of several financial-payment

accounts for use in transferring him money. *Id.* In all, Wagner's followers sent him between \$10,000 and \$15,000.

After Wagner posted calls for "[b]oots on the ground" to a local intersection near ICE agents and urged his followers to "[g]et your f**king guns and stop these f**king people," Instagram deleted Wagner's account. *Id.* Yet he quickly resurfaced with a different account—employing the username "@antifa.kaos"—and a new series of online postings. *Id.* at PageID 27. Among other things, Wagner used his updated account to publish a video of him distributing gas masks and riot shields at a protest.

Wagner's activities were not just public facing. In one private Signal chat, a user allegedly contacted Wagner with a request to help "kill" a man named J.P., a former high-ranking government official. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 131, 139. Wagner responded in the chat that "we do stuff, me and my family of friends" and "[w]e like to know about people who deserve consequences." *Id.* at PageID 131. He then asked for "credible verifiable information" that he could pass onto his "team" so it could "assess the situation." *Id.* at PageID 131-32. In another chat, Wagner allegedly stated that he "may have found" the address and phone number of N.S., an individual "who did investigative work." *Id.* at PageID 134-35.

On January 29, 2026, Wagner allegedly "doxxed" J.S., "a pro-ICE individual," by publishing what he claimed was J.S.'s name, phone number, birth month and year, and address. E.D. Mich., Complaint, R.1, PageID 5. Alongside that information, Wagner

described J.S. as a “bb nazi boy” and said “we can all knock on strangers doors . . . See you soon kiddo — stay safe out here.” *Id.* at PageID 30. After the alleged doxxing, J.S. and Wagner apparently discussed fighting in a cage match. In a subsequent post, Wagner allegedly published what he thought was the address and phone number of J.S.’s parents.

B

Several days later, the Government filed a criminal complaint charging Wagner with one count of cyberstalking and one count of transmitting interstate threats for his alleged doxxing of J.S. Wagner was subsequently arrested in Minnesota. During his arrest, Wagner allegedly began “pushing” agents and “spitting on them” while stating that he would “beat” them. D. Minn., Detention Hearing Tr., R.13, Page 38. He also told the arresting agents “[d]on’t let me out.” *Id.* During his booking photo, Wagner flashed two middle fingers at the camera. His message: “This is for the judge.” *Id.* at Page 21.

Following a detention hearing, a magistrate judge in Minnesota ordered Wagner detained pretrial under the Bail Reform Act. In the detention order, the magistrate judge stated that Wagner was “a danger to the community” given his “implied threat to injure, harass or intimidate J.S. and his parents” and his “voluminous” social-media posts “encourag[ing] his supporters to join him in obstructing, impeding, and assaulting officers.” D. Minn., Detention Order, R.11, Page 3. The magistrate judge further explained that Wagner’s “lack of job security,” “admitted lack of stable housing,” and expressed “desire to ‘evade’ law enforcement” rendered him a flight risk. *Id.*

Wagner's criminal case was then transferred to the Eastern District of Michigan, where the Government had filed the criminal complaint. A grand jury in the Eastern District of Michigan later indicted Wagner for one count of cyberstalking, 18 U.S.C. § 2261A(2), and one count of interstate communications involving threats, *id.* § 875(c).

Meanwhile, Wagner appealed the magistrate judge's detention order. The district court held an evidentiary hearing and argument on the pretrial-detention factors. *See id.* § 3142(g). At the hearing's conclusion, the district court issued an oral ruling revoking the magistrate judge's detention order and releasing Wagner.

The district court's subsequent written order memorialized Wagner's release to his mother's home in Minnesota subject to a series of conditions. Those conditions required, among other things, that Wagner submit to GPS monitoring, "refrain from posting on social media," forgo accessing the internet with anything other than two approved devices (one phone and one computer), and that he "[n]ot engage in assaultive, threatening, or harassing behavior or statement[s]." E.D. Mich., Release Order, R.23, PageID 118.

The Government appealed the district court's order and sought a stay pending appeal. We granted the motion for a stay in a prior order.

Since then, the Government has obtained a second grand jury indictment against Wagner in the District of Minnesota. That indictment charges Wagner and several others with conspiracy to impede or injure a federal officer, solicitation to commit a crime of

violence, and transmitting interstate threats. Wagner has entered a plea of not guilty.

II

The Bail Reform Act sets out the factors courts must use in determining whether to detain or allow the release of a criminal defendant before trial. In the mine-run case, the Act's policy favors release. *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010). But like any "default position," that policy can be overcome. *Id.* Relevant here, the statute directs that courts "shall order the detention of a defendant pretrial if "no condition or combination of conditions will reasonably assure the appearance" of the defendant "as required and the safety of any other person and the community." 18 U.S.C. § 3142(e)(1).

When assessing those risks, courts must consider (1) "the nature and circumstances of the offense charged," (2) "the weight of the evidence against the" defendant, (3) the defendant's "history and characteristics," and (4) "the nature and seriousness of the danger to any person or the community that would be posed by the [defendant's] release." *Id.* § 3142(g). The Government must prove dangerousness by clear and convincing evidence. *Stone*, 608 F.3d at 945.

For the reasons below, we hold that the Government has met its burden of proving Wagner's dangerousness. And given the nature of Wagner's prior conduct, we further conclude that no condition or combination of conditions will reasonably assure the safety of J.S. and the community. The Bail Reform Act therefore mandates Wagner's pretrial detention.

A

We begin with the standard of review. When assessing pretrial detention under the Bail Reform Act, we have held that “mixed questions of law and fact” and “legal conclusions” are subject to “de novo consideration.” *United States v. Hazime*, 762 F.2d 34, 37 (6th Cir. 1985). More recently, in *Stone*, we reiterated that the “ultimate question whether [pretrial] detention is warranted” is subject to “de novo” review. 608 F.3d at 945 (citing *Hazime*, 762 F.2d at 37). By contrast, “[w]e review the district court’s factual findings for clear error.” *Id.* Our framework—de novo review for the ultimate application of the statutory factors to the detention determination, and clear-error review for findings of fact—tracks the circuits’ prevailing approach to reviewing detention decisions under the Bail Reform Act. See Jefri Wood, *The Bail Reform Act of 1984* § VII, pp.57-58 (Fed. Jud. Ctr. 4th ed. 2022) (collecting cases).

The dissent favors a more deferential standard for reviewing the ultimate detention conclusion. And it reads our precedents to leave that option on the table. But *Hazime* directly addressed when and how deference factored into review of detention determinations. See 762 F.2d at 36-37. And it concluded that de novo review governed the ultimate issue of detention. *Id.* That *Hazime* then remanded for further consideration does not mean the standard “did not contribute to the judgment,” Dissenting Op. 28 (citation omitted)—after all, had the dissent’s across-the-board deference rule prevailed, *Hazime* might have simply affirmed. So like other courts and

commentators,² we take *Hazime* and *Stone* to mean what they say: We review de novo “whether detention is warranted.” *Stone*, 608 F.3d at 945.

Subsequent caselaw developments do not license a departure from that rule. No intervening Supreme Court decision contains “directly applicable analysis” that is “inconsistent” with what “we’ve said” about the standard of review for detention decisions. *RLR Investments, LLC v. City of Pigeon Forge*, 4 F.4th 380, 390 (6th Cir. 2021) (citation omitted). The dissent’s reliance on different standard-of-review analyses in other law-fact contexts does not reveal anything that “mandates modification” of our Bail Reform Act decisions. *Id.* (citation omitted). So whatever the first-instance case for applying deferential review, we lack power here to revisit our precedents. *See Soaring Eagle Casino & Resort v. NLRB*, 791 F.3d 648, 662 (6th Cir. 2015).

We also disagree with Wagner’s argument that *United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002), supports abuse of discretion review. *Chilingirian* involved a convicted defendant’s request for release pending appeal—not release pretrial—and never cited *Hazime*. *Id.* Instead, *Chilingirian*’s abuse-of-discretion assertion rested exclusively on *Lee v. Jabe*, 989 F.2d 869 (6th Cir. 1993). *Lee*, though, dealt with a state prisoner’s challenge to the denial of bail pending adjudication of a federal habeas petition. *Id.*

²*See, e.g.,* Wood, *Bail Reform Act* § VII, p.58; *United States v. Manafort*, 897 F.3d 340, 346 n.2 (D.C. Cir. 2018); *United States v. Westbrook*, 780 F.2d 1185, 1189 n.7 (5th Cir. 1986).

at 870. *Lee* is not a Bail Reform Act case, and so it does not implicate our Bail Reform Act rule.

B

We now turn to the merits. The Government argues that Wagner is a danger to both J.S. and the broader community. It also argues that Wagner is a flight risk. We agree with the Government that it carried its burden on dangerousness. Because that conclusion is sufficient to support Wagner's detention, we need not address risk of flight.

To establish a defendant's dangerousness, the Government must "identify an articulable threat posed by the defendant to an individual or the community." *United States v. Munchel*, 991 F.3d 1273, 1283 (D.C. Cir. 2021). That requirement does not limit detention to only those defendants who have "engaged in violence" personally. *Stone*, 608 F.3d at 947 n.6 (collecting cases). A "threat" sufficient to establish dangerousness "need not be of physical violence, and may extend to non-physical harms." *Munchel*, 991 F.3d at 1283 (citation omitted). And when determining whether the Government has met its burden of proving dangerousness, "we may consider as evidence" conduct that "does not relate to the offenses charged." *Stone*, 608 F.3d at 953; *see also United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1991). With those points in mind, we consider the four § 3142(g) factors in turn.

1. Nature and Circumstances of the Offense. Wagner's conduct led a grand jury to indict him on two felonies involving threatened harm to others—cyberstalking and transmitting threats through interstate communication. The cyberstalking charge

alleges that Wagner acted “with the intent to kill, injure, harass, and intimidate” J.S. by using “the internet and the social media application Instagram[] to engage in a course of conduct that caused, attempted to cause, and would reasonably be expected to cause substantial emotional distress to J.S.” E.D. Mich., Indictment, R.10, PageID 49-50 (citing 18 U.S.C. § 2261A(2)). The interstate-threats charge alleges that Wagner “knowingly transmitted in interstate commerce” a “communication containing a threat to injure” J.S. “with knowledge” and “reckless disregard that the communication[] would be viewed as a threat.” *Id.* at PageID 50 (citing 18 U.S.C. § 875(c)). Both charges stem from Wagner’s attempt to “doxx[]” J.S. and his parents with a message that, in context, appears to threaten J.S. with harm. E.D. Mich., Complaint, R.1, PageID 29-30. Given those charges, the nature and circumstances of the offenses weigh in favor of Wagner’s detention on dangerousness grounds. *See United States v. Hagar*, 822 F. App’x 361, 369 (6th Cir. 2020) (deeming similar charges “extremely serious”).

Neither Wagner nor the dissent disputes that the charged offenses are serious. And indeed, this Court has before characterized Wagner’s charged offenses—cyberstalking and transmitting interstate threats—as categorically “crimes of violence.” *United States v. Lidderdale*, 2025 U.S. App. LEXIS 33235, at *9-10 (6th Cir. Dec. 18, 2025) (collecting cases). Wagner’s interstate-threats charge requires a “threat to kidnap any person or [a] threat to injure the person of another.” 18 U.S.C. § 875(c). Courts have likewise read the cyberstalking statute to cover a more limited

category of threatening speech. *See, e.g., United States v. Yung*, 37 F.4th 70, 80 (3d Cir. 2022). That forecloses the district court’s observation that the charged offenses could sweep in minor conduct like schoolyard “bullying.” E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 149-50. So discounting Wagner’s charges on that ground was legally unsound.

That leaves Wagner to argue that the “alleged criminality in this case” lacks weight given the particulars of his conduct. Wagner Br. 15. Driving Wagner’s position is that the threats were “directed at a single individual, J.S.,” “who purposefully trolls his political opponents to generate responses and views by followers.” *Id.* But we are aware of no rule that permits cyberstalking or interstate threats so long as the victim has a controversial persona. Nor is now the time to litigate the Government’s ability to ultimately prove Wagner’s guilt at trial. Wagner posted J.S.’s information and address to his many followers, called J.S. “nazi boy,” and said “see you soon kiddo.” E.D. Mich., Indictment, R.10, PageID 50 (cleaned up). A grand jury concluded that such communications constituted evidence of “a threat to injure the person of another.” *Id.* The district court, too, indicated that the specific charges against Wagner were “very serious.” E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 149-50. All that weighs against attempts to mitigate the nature and circumstances of Wagner’s offenses by downplaying the risk of potential harm to J.S or others.

Nor are we persuaded by the dissent’s comparative assessment of Wagner’s conduct. The fact that Wagner’s conduct could have been worse does not

mean it weighs in favor of dangerousness only “slightly.” Dissenting Op. 30. To the contrary, the district court noted that “there are a lot of things” in the record “that point to at least some active . . . concerns relative to [the] danger posed by the defendant” to J.S. and others. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 146-47. We agree.

2. *Weight of the Evidence.* The “weight of the evidence” also points towards Wagner’s dangerousness. 18 U.S.C. § 3142(g)(2). “This factor goes to the weight of the evidence of dangerousness, not the weight of the evidence of the defendant’s guilt.” *Stone*, 608 F.3d at 948.

Wagner’s specific incident with J.S. followed weeks of posts that included communications the district court found could be interpreted as “actual threats” against federal law-enforcement authorities and their supporters. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 145. Those posts—appearing in the record verbatim—included calls for Wagner’s followers to “put[] hands on” ICE, “fight” ICE, and “[g]et your f**king guns and stop” ICE. E.D. Mich., Complaint, R.1, PageID 23-24, 26. In some of those posts, Wagner explained that he was “done with peaceful protests,” that he was “not talking about peaceful protests anymore,” and that it was “kill or be killed.” *Id.* at PageID 9, 24, 26. Such threatening statements “weigh[] strongly in favor of dangerousness.” *Stone*, 608 F.3d at 949.

In addition to those posts, Wagner communicated with a Signal user about killing J.P., a former government official. In that conversation, which occurred two days before his arrest, Wagner said that

if the user provided him with “credible verifiable information,” he would pass it along to “people who can” mete out “consequences” to J.P. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 131. The unknown Signal user responded “[h]ow can I trust you?” *Id.* at PageID 132. The record reflects that Wagner and the unknown user then connected via an incoming call. *Id.* Afterwards, the user sent additional information about J.P., including a “phone number, address, [and] E-mail.” *Id.* In response, Wagner stated, “[w]e have to walk through fire.” *Id.* That Wagner pitched himself as able to assist in soliciting a murder evidences his dangerousness. So does a separate January 2026 incident in which Wagner distributed a “current address” for an individual named N.S. with the message: “I may have found where he’s hiding.” *Id.* at PageID 135.

Wagner’s counterarguments do not persuade. To start, Wagner contends that “[t]he government’s case on the charged offenses is weaker than its brief suggests.” Wagner Br. 16. And throughout these proceedings, Wagner has insisted that his prosecution boils down to a political vendetta. But those responses do not affect the detention calculus. As already explained, the “weight of the evidence” referenced in § 3142(g)(2) “goes to the weight of the evidence of dangerousness, not the weight of the evidence of the defendant’s guilt” on the indicted offenses. *Stone*, 608 F.3d at 948. Wagner’s characterization also does not account for the grand jury’s indictment, which “by itself, establishes probable cause to believe that [Wagner] committed the crime[s] with which he is charged.” *Id.*

Wagner next takes issue with the Government's reliance on his social-media posts and chats to prove dangerousness. His argument is both legally and factually flawed. As a legal matter, "we may consider as evidence of dangerousness" a defendant's "statements indicating a violent intent" even though those statements "do[] not relate to the offenses charged." *Id.* at 953. Courts routinely consider a defendant's threatening statements, among other speech, when determining whether the defendant poses a danger to the community.³

As for the facts, they do not support the characterization of Wagner's posts as exclusively calls to "practice non-violent obstructive protest techniques." Wagner Br. 19-20. The district court acknowledged the "very strong argument that there was some protection of the public involved" in detaining Wagner pretrial. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 147. And the record supports that finding. Wagner, among other things, called for his followers to "f**king fight" ICE, "put[] hands on" ICE, and "[g]et your f**king guns and stop these f**king people." E.D. Mich., Complaint, R.1, PageID 23-24, 26. Wagner also called for his followers to "hunt ice" and expressed frustration that they had yet to "march on f**king Whipple with guns." *Id.* at PageID 8, 26.

³*See, e.g., id.* at 953-54; *United States v. Martinez-Torres*, 181 F.3d 81, at *2 (1st Cir. 1998) (per curiam); *United States v. Torres*, 2023 WL 7391694, at *3 (10th Cir. Nov. 8, 2023) (per curiam); *see also United States v. Muhtorov*, 702 F. App'x 694, 696, 702 (10th Cir. 2017) (per curiam); *United States v. Lucero*, 2025 U.S. App. LEXIS 1662, at *2-3, 12 (10th Cir. Jan. 27, 2025).

Now that Wagner's threats have come under legal scrutiny, he seeks to cast them as empty bravado. But given Wagner's assertions that he was "done with peaceful protests now" and "not talking about peaceful protests anymore," several of Wagner's posts can only be understood as calls for violence. *Id.* at PageID 24, 26. Wagner's followers understood them as such, with one responding that it was time for federal agents to meet an "AR15 and 9MM." *Id.* at PageID 17. If messages calling to "march on" a federal building "with guns," "put[] hands on" ICE, and "[g]et your f**king guns and stop these f**king people" don't "promote[] physically assaulting and using weapons against federal agents," Dissenting Op. 31 (citation omitted), it's hard to imagine what words would. For good reason, then, the district court accepted that some of Wagner's posts could be read as "actual threats." E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 145.

Wagner cannot avoid consequences for those threats by shifting the focus to times he chose more tempered words. *Cf. United States v. Martinez-Torres*, 181 F.3d 81, at *2 (1st Cir. 1998) (per curiam). That is especially so because Wagner's threats had "escalated in volume and violence" around the time of his arrest. *Lidderdale*, 2025 U.S. App. LEXIS 33235, at *12 (quoting *United States v. Gillenwater*, 749 F.3d 1094, 1101 (9th Cir. 2014)). Even accepting that Wagner himself did not present any "physically active" concerns of danger, E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 146-47, that does not disprove dangerousness. A defendant need not have "engaged

in violence” to warrant detention. *Stone*, 608 F.3d at 947 n.6.

Nor does the record support efforts to brush away Wagner’s private communications involving a request to “kill” J.P. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 131. Wagner claims that “an undercover federal agent” contacted Wagner about J.P. as part of an “attempt[] to trick Wagner” into incriminating himself. Wagner Br. 11. But Wagner provides no evidence to support that claim. And even if true, it does not help Wagner. Regardless of who contacted him, Wagner does not dispute the allegations that he agreed to pass along J.P.’s information to his “team” so they could “assess the situation” and potentially mete out “consequences.” E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 131-32. The dissent’s assertion that Wagner was intending to “forward” J.P.’s “information” to the “international criminal court” fares no better. Dissenting Op. 33 (quoting E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 139). The proffered conversation shows that Wagner entertained a request to help “kill” J.P., not criminally refer him. E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 131.

Wagner’s counter that he lacked sufficient notice that the Government intended to proffer the J.P. conversation does not alter the district court’s decision to admit that evidence into the record. “The government may proceed in a detention hearing by proffer.” *United States v. Webb*, 238 F.3d 426, at *2 (6th Cir. 2000); *see also Stone*, 608 F.3d at 948-49. And “[t]he rules concerning admissibility of evidence in criminal trials do not apply to the presentation and

consideration of information at the [detention] hearing.” 18 U.S.C. § 3142(f); *see also United States v. Wind*, 527 F.2d 672, 675 (6th Cir. 1975). So the district court did not err by allowing the Government to introduce Wagner’s conversation about J.P., particularly since Wagner has not disputed the accuracy of that information.

3. *Nature and Seriousness of the Danger.* Next, “the nature and seriousness of the danger to any person or the community that would be posed by [Wagner’s] release” is significant. 18 U.S.C. § 3142(g)(4). Internet-based threats like those Wagner is charged with making pose well-documented harms. *See United States v. Wheeler*, 776 F.3d 736, 745 n.4 (10th Cir. 2015); *see also Elonis v. United States*, 575 U.S. 723, 747-48 (2015) (Alito, J., concurring in part and dissenting in part); Chief Justice John G. Roberts, Jr., *2024 Year End Report on the Federal Judiciary* 6-7 (2024) (discussing dangers of “dox[x]ing”). Wagner’s “threatening statements regarding law enforcement officers” are also strong evidence that he “would pose a serious danger to the community if released” pending trial. *Stone*, 608 F.3d at 953; *see also United States v. Davis*, 2024 WL 3372682, at *2 (5th Cir. July 11, 2024) (per curiam). So are Wagner’s private communications about J.P., which further indicate a willingness to entertain targeted threats on specific individuals.

Wagner disagrees. In doing so, he defends the district court’s apparent attempt to draw equivalency between Wagner’s threats and the actions of federal law enforcement. Specifically, the district court remarked during the detention hearing that

“protection of the public” was “kind of like a two-way street” that “depends on what side of the street you’re on whether or not an individual might feel they are protected or in need of protection.” E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 147. Both Wagner and the Government interpret that remark as a “compar[ison]” between “Wagner’s actions in the community to those of ICE.” Wagner Br. 21. In context, it thus appears that the district court may have discounted the dangerousness of Wagner’s threats based on its view that ICE also threatened the public. Any reasoning along those lines was error. The Bail Reform Act focuses on the danger the *defendant* poses to “any other person and the community.” 18 U.S.C. § 3142(e)(1). The district court’s views on the Executive Branch’s immigration policy have no bearing on that inquiry.

4. *Defendant’s History and Characteristics.* That leaves Wagner’s history and characteristics. Those “weigh[] slightly against dangerousness,” as Wagner has no violent criminal history. *Stone*, 608 F.3d at 951. But “a prior record of violence” is not “essential” to proving that a defendant is dangerous for detention purposes. *Rodriguez*, 950 F.2d at 89. So too, “a person could be deemed a danger to the community sufficient to justify detention even without posing a threat of committing violence in the future.” *United States v. Hale-Cusanelli*, 3 F.4th 449, 456 (D.C. Cir. 2021). And for the reasons already discussed, the Government “has met its burden” of “prov[ing] dangerousness by clear and convincing evidence” despite Wagner’s lack of a violent criminal history. *Rodriguez*, 950 F.2d at 89.

C

We also agree with the Government that no condition or combination of conditions will “reasonably assure” the safety of J.S. and the community. 18 U.S.C. § 3142(e)(1). In ordering Wagner’s release, the district court concluded that the various conditions it imposed—including GPS monitoring, home detention, a third-party custodian (Wagner’s mother), device restrictions, and a prohibition on social-media posting—would mitigate Wagner’s dangerousness. We see two principal defects with that conclusion.

First, the conditions of release mostly “hinge on” Wagner’s “good faith compliance.” *United States v. Tortora*, 922 F.2d 880, 886 (1st Cir. 1990). That is “particularly” true here, as the “crimes with which [Wagner] is charged” are “not readily susceptible to effective monitoring” because they “involve communications” with others. *United States v. Hir*, 517 F.3d 1081, 1093 (9th Cir. 2008). Yet the record evidence leaves little confidence that Wagner will comply with the conditions of release.

Wagner’s actions around the time of his arrest undercut his asserted promises to abide by the court-imposed conditions. Those actions include (1) flashing two middle fingers to the camera during his booking photo while stating “[t]his is for the judge,” (2) “spit[ting] in the face” of the arresting agents, (3) warning those agents not to “let [him] out” and that he would “beat” them, and (4) seeking—and obtaining—resources to “evade” federal law enforcement. D. Minn., Detention Hearing Tr., R.13, Page 21, 38; E.D. Mich., Complaint, R.1, PageID 13.

Moreover, Wagner has failed to appear for state criminal proceedings multiple times, was once “[l]isted as an absconder” by a state court, and had an active warrant for his arrest in Iowa at the time of his detention hearing. E.D. Mich., Pretrial Services Report, at 4-5. Wagner’s pattern of failing to appear for prior judicial proceedings further “demonstrate[s] a disregard for law enforcement and court-imposed restrictions.” *United States v. Moore*, 2024 WL 3294950, at *2 (6th Cir. Apr. 17, 2024). All told, the record evidence points toward “an unacceptably high risk that” Wagner will disregard the conditions that the district court found necessary to mitigate his dangerousness. *Hir*, 517 F.3d at 1093.

Second, the online nature of Wagner’s conduct further diminishes the effectiveness of the district court’s conditions of release. Wagner could, for example, “easily evade[]” the device-monitoring requirement by accessing another device that is not equipped with the monitoring software. *Tortora*, 922 F.2d at 887. Indeed, Wagner has already allegedly evaded a social-media company’s limitations on posting once before by creating and posting from a new account. And the district court’s release order, which authorizes Wagner to leave home confinement for “employment,” “education,” and various other reasons, E.D. Mich., Release Order, R.23, PageID 116, would provide Wagner with ample opportunities to “access the internet” via unmonitored devices, *United States v. Carpenter*, 2023 U.S. App. LEXIS 2386, at *7-8 (6th Cir. Jan. 30, 2023). Yet the district court failed to address the Government’s argument that internet-monitoring conditions are easily

circumvented or problematic given Wagner's particular history of internet activity.

Similarly, the GPS-monitoring and home-detention conditions "cannot be expected to prevent" Wagner "from committing crimes or deter him from participating in felonious activity within the monitoring radius." *Tortora*, 922 F.2d at 887. Neither condition prevents Wagner from accessing the internet and "committing further criminal conduct" within the confines of his mother's home "or inducing others to act in his stead." *United States v. Espino*, 2021 U.S. App. LEXIS 6755, at *5-6 (6th Cir. Mar. 8, 2021). Appointing Wagner's mother as a third-party custodian is no silver bullet, either. As Wagner's counsel stated, Wagner's mother "doesn't know everything that her son does." E.D. Mich., Detention Hearing Day 2 Tr., R.24, PageID 141. And it's unreasonable to expect her to "monitor[]" Wagner's "compliance with conditions of bail twenty-four hours a day, seven days a week." *United States v. Dono*, 275 F. App'x 35, 37-38 (2d Cir. 2008).

Wagner and the dissent maintain that the district court's proposed conditions adequately address the danger he poses. Wagner emphasizes that most of his actions "were online," which the district court addressed by "imposing strict device restrictions" and "social media restrictions." Wagner Br. 21-22. And he says he can only "get around" those restrictions by "defeating Pretrial Services internet monitoring software or colluding with his third-party custodian." *Id.* at 22.

That position overstates the effectiveness of the district court's proposed conditions and the difficulty

of circumventing them. Examples highlighting the failings of internet-access limitations abound in our caselaw.⁴ And in the pretrial-release context, we have explained that “the myriad of Internet-capable devices, including those that work with data plans rather than wifi access, render policing a defendant’s Internet use almost impossible.” *United States v. Watt*, 2024 U.S. App. LEXIS 13950, at *5 (6th Cir. June 7, 2024) (cleaned up); *see also United States v. Orena*, 986 F.2d 628, 632 (2d Cir. 1993) (“[E]lectronic surveillance systems can be circumvented by the wonders of science and of sophisticated electronic technology,” and “monitoring equipment can be rendered inoperative.” (citation omitted)). That observation applies to Wagner, as the district court allowed him continued internet access via two devices.

The dissent chalks up those internet-monitoring decisions to “generalized concerns” driven by a “statutory presumption in favor of detention” that does not apply here. Dissenting Op. 41. And it suggests that we are announcing a per se rule that internet-monitoring conditions are insufficient. We disagree on both fronts. To start, cases questioning the efficacy of internet monitoring have focused largely on the defendants’ conduct, not any detention presumption. *See, e.g., Watt*, 2024 U.S. App. LEXIS 13950, at *2-5. Consistent with that approach, courts

⁴*See, e.g., United States v. Foster*, 2020 WL 6791572, at *3 (6th Cir. July 20, 2020); *Carpenter*, 2023 U.S. App. LEXIS 2386, at *7-8; *United States v. Hoilman*, 2023 WL 4074630, at *2 (6th Cir. Apr. 24, 2023); *United States v. Watt*, 2024 U.S. App. LEXIS 13950, at *4-5 (6th Cir. June 7, 2024); *United States v. Gruber*, 2024 WL 1366693, at *1-2 (6th Cir. Apr. 1, 2024).

have deemed internet-monitoring conditions insufficient even without the statutory presumption, including in interstate-threats and cyberstalking prosecutions.⁵ In addition, it is Wagner’s own conduct, not “generalized concerns” about internet offenses, that undercut the efficacy of the district court’s conditions. Dissenting Op. 41. Concluding that those conditions are insufficient here does not mean they would fall short in different cases presenting different facts.

Wagner also fails to adequately address the fact that the conditions’ effectiveness depends upon his voluntary compliance. He points to his actions during the week-long period when the district court’s release order was in effect. But that minimal compliance, when Wagner was under a microscope, does not outweigh the other record evidence suggesting that Wagner “is very unlikely to abide by any conditions of his release for an extended period of time, notwithstanding” any “successful furlough.” *Moore*, 2024 WL 3294950, at *2.

Faced with those realities, Wagner’s “bald assertion that he is unlikely to engage in further” problematic behavior if released on the district court’s conditions “does not overcome the weight” of the countervailing factors. *United States v. Brock*, 2025 U.S. App. LEXIS 7320, at *6 (6th Cir. Mar. 28, 2025). After all, “nothing in the Bail Reform Act” requires “dangerous

⁵See, e.g., *United States v. Comberger*, 2021 WL 1725516, at *6 (E.D. Ky. Apr. 30, 2021); *United States v. Waldman*, 2018 U.S. Dist. LEXIS 98548, at *12-13 (S.D.N.Y. June 12, 2018); *United States v. Dai*, 2023 U.S. Dist. LEXIS 237124, at *26-27 (N.D.N.Y. Dec. 19, 2023).

defendants to be at large based upon their promise not to violate conditions of bail.” *Orena*, 986 F.2d at 633.

Ultimately, the Government has proven Wagner’s dangerousness by clear and convincing evidence. And on this record, we conclude that no condition or combination of conditions will mitigate the relevant risks. The Bail Reform Act therefore requires that Wagner remain detained pretrial. *See* 18 U.S.C. § 3142(e)(1).

* * *

We reverse the district court’s release order.

DISSENT

BLOOMEKATZ, Circuit Judge, dissenting. In December 2025, the Department of Homeland Security launched Operation Metro Surge, a mass immigration enforcement effort that deployed thousands of federal agents to Minnesota and triggered widespread protests. Kyle Wagner, a Minneapolis native, was a vocal opponent of Immigration and Customs Enforcement agents throughout the operation. He regularly posted on social media, sometimes multiple times a day, to denounce ICE agents and to call for his followers to resist ICE. Wagner also criticized ICE supporters, and, in one Instagram post, shared the purported personal information and address of a pro-ICE online influencer. Based on this single post, the government charged Wagner with cyberstalking and transmitting interstate threats, and then it moved for his pretrial detention. The district court found that it could reasonably protect against any risk of danger or nonappearance that Wagner posed by imposing numerous restrictive pretrial release conditions, so it ordered his release.

The government appeals the district court's order denying pretrial detention and releasing Wagner subject to these comprehensive conditions. The government seldom appeals pretrial release orders, so why is it insistent here? Wagner, who identifies as "antifa" (anti-fascist) and has large tattoos on his face, neck, and chest, looks aggressive in his social media

videos, so it is no surprise that the White House Press Secretary held up a photo from one of his videos while touting law enforcement efforts against “left-wing agitators.” See Steve Karnowski, *Minneapolis Man Accused of Cyberstalking, Threatening ICE Supporter amid Crackdown in Minnesota*, Associated Press (Feb. 10, 2026, at 16:33 ET), <https://perma.cc/3H3P-HUW8>. But Wagner has never committed a violent crime. He does not own a gun and has disavowed owning one. And there is no evidence in the record that he has ever assaulted or otherwise physically harmed anyone, save for spitting towards agents during his arrest.

Instead, as the government admits, Wagner’s purported dangerousness is based almost entirely on his online speech—namely, his anti-ICE posts. His commentary is no doubt fiery and aggressive, but it is also clearly full of bravado and rhetoric. And the government does not point to a single harmful action his speech has incited. Yet, because of his speech, the government says—and the majority agrees—Wagner poses a danger to the public that no conditions of release can address, so he must be incarcerated awaiting trial.

I disagree. On this record, the government has not provided “clear and convincing evidence” that Wagner is so dangerous, or proven by a preponderance of the evidence that he is at such a risk of absconding, that no set of release conditions “will reasonably assure” the community’s safety and his appearance. 18 U.S.C. § 3142(e), (f)(2). Not only does the government overstate the evidence of dangerousness, but in my view, the government has not provided a convincing

reason to overturn the district court's conclusion that the stringent conditions of Wagner's release—including no social media access, no communication with anti-ICE organizers, GPS monitoring, home confinement in the presence of a custodian, and electronic surveillance on all his devices—are sufficient to protect the public and assure his appearance.

Because I would defer to the district court's judgment that the pretrial release conditions will reasonably assure Wagner's appearance and protect community safety, I would affirm the district court's pretrial release order. Accordingly, I respectfully dissent.

BACKGROUND

I. Factual Background

The charges in this case stem from one Instagram post Wagner made in late January 2026, but many of his other social media posts and messages are relevant to the question of pretrial detention. Therefore, I begin with the context for Wagner's social media posts and survey their content, then detail the single Instagram post that is the basis of his charges in this case.

A. Wagner's Social Media History

Wagner's charged conduct took place during a particularly fraught political moment in Minnesota. In December 2025, DHS launched Operation Metro Surge and deployed thousands of federal agents to Minneapolis and St. Paul for an immigration enforcement effort.

By February 2026, DHS reported over 3,000 arrests of noncitizens from the operation. State and local governments in Minnesota sued the federal government, seeking the end of the operation on the grounds that it was both unconstitutional and unlawful. *Minnesota ex rel. Ellison v. Noem*, 818 F. Supp. 3d 1030, 1035 (D. Minn. 2026). At the same time, many Minnesotans engaged in “large-scale protests” against the operation as well as “ad hoc” interference with immigration enforcement attempts. *Id.* at 1036, 1038. Also during the surge, federal law enforcement officers shot and killed two American citizens, Renée Good and Alex Pretti, sparking additional protests.

During Operation Metro Surge, law enforcement officers began reviewing Wagner’s posts on Facebook and Instagram. Wagner is a Minneapolis resident who was vocal in his opposition to ICE’s presence in the city and its actions during the surge. Officers cataloged Wagner’s social media posts from January 8, the day after the shooting of Renée Good, until his arrest on February 3. After his arrest, officers also reviewed some of Wagner’s Signal messages. Because the content of these posts and messages is relevant to the pretrial detention analysis, I survey it here. As this review illustrates, Wagner’s posts contained fiery anti-ICE rhetoric that was generally, though not uniformly, tempered by references to nonviolence or self-defense.

On January 9, Wagner posted a video referencing the “constant harassment” of ICE’s temporary residences in Minneapolis and said, “Anywhere we have an opportunity to get our hands on them, we

need to put our hands on them.” Compl., R. 1, PageID 6-7. In the same video, he stated that Minnesota would be the first state to “stand its f----- ground.” *Id.* at PageID 7. In another post that day, Wagner expanded on his proposed protest approach by writing, “Wherever ICE is Be there with them - make it known - do not attack them - do not let them attack You.” *Id.* at PageID 8. And Wagner called for a “national Investigation” of ICE, the “national guard [to] be deployed to detain and dissarm [sic] ice,” and the “[a]rrest” of ICE. *Id.* That same day, Wagner posted a video with a caption saying, “Our goal is to unmask and identify ice agents - stop their ability to arrest individuals through group resistance. We do not shoot first - if they pull the trigger - defend yourself.” *Id.* at PageID 10.

Wagner continued to call for direct nonviolent resistance to ICE and noted that he himself did not own any weapons. On January 10, Wagner posted a video stating that protesters should “[g]et out on the streets. Have some f----- fun. Keep your heads. We’re not the violent ones. Go take their f----- masks off and take their f----- guns.” *Id.* at PageID 11. On January 12, Wagner stated, “I am unarmed - my only weapon is my fists and my voice.” *Id.* at PageID 14-15. He explained in another post, “I disarmed myself in 2022 during the aftermath of George Floyd . . . I chose to surrender the few hunting rifles I had to my dad - and have since been unarmed.” *Id.* at PageID 19.

On January 13, Wagner posted a video, reiterating that Minneapolis was “under occupation” and was “fighting back with every tool we have at our disposal.” *Id.* at PageID 16. Referring to ICE agents,

he explained, “We want to know who they are. We will identify every single one of them and we will prosecute them to the fullest extent of the law. If that has to be done at the barrel of a gun, then let us have a little f----- fun.” *Id.* at PageID 17. He also said, “This is where ice has come to to die.” *Id.* at PageID 16. He later explained that statement meant “the organization - I mean the concept itself - the functional mechanism of ‘Immigration [sic] Control and Enforcement’ I mean that the ideology of the institution came to these streets to bleed out and go away forever...” *Id.* at PageID 20.

On January 24, two Customs and Border Protection officers shot and killed Alex Pretti, a longtime acquaintance of Wagner’s, in Minneapolis. Wagner posted a video encouraging “every armed American that’s within a reasonable distance of [the location of the shooting] to come and stand” and said that he had “gas masks on the ground there.” *Id.* at PageID 24. Wagner stated, “If you’re seeing this video, we’re done with peaceful protests now. The gloves come off and ICE needs to get out. Run for the hills, boys.” *Id.* at PageID 24. Later that day, Wagner lamented that the killing was “exactly what [he] said was going to f----- come when we didn’t f----- go and march on f----- Whipple with guns.” *Id.* at PageID 26. He also reiterated his previous message and said, “Sorry but welcome to America 2026 where the Second Amendment is the only thing that’s going to keep you f----- protected from literal f----- Nazi gun men that are killing innocent people in the street with impunity. This is not a f----- joke. There’s nothing fun

to chant about it. Get your f----- guns and stop these f----- people.” *Id.*

After Instagram banned Wagner’s account, he posted from a new account to celebrate the withdrawal of ICE agents and leaders from the Twin Cities. He said, “The fight is well and alive. We have pushed ICE to leave this city in droves. We have made our voices heard. Viva la resistance.” *Id.* at PageID 27. That same day, he posted a video distributing gas masks and shields with the caption “power to the people.” *Id.* at PageID 28. The next day, Wagner celebrated, “Got rid of Bovino yesterday. Also sent a lot of ICE agents packing. It’s working people. The pressure is getting results.” *Id.* at PageID 29. (Two days later, Wagner made the post about J.S. that is the basis for this prosecution and is detailed below.)

Shortly before his arrest, Wagner exchanged Signal messages with an unnamed person about J.P., a former government official on the Epstein “list.” Mar. 25 Hr’g Tr., R. 24, PageID 131. The person said he had the “address, phone and E-mail” for J.P. and wanted to “kill” him. *Id.* He asked Wagner for “help” and if he knew “anyone who would want this info to bring to justice.” *Id.* Wagner responded, “Okay. Well, we do stuff, me and my family of friends. We like to know about people who deserve consequences. So if you send me credible verifiable information it will go to people who can.” *Id.* After the person identified J.P., Wagner said, “For now I just need a name and the contact info and verification you are a credible source for this info so I can put it in the hands of my team and assess the situation for your security, ours, and understand what we have to work with, okay.” *Id.* at PageID 132. The

person then sent Wagner J.P.'s driver's license, phone number, address, and e-mail. Wagner's attorney later stated that Wagner was "attempting to forward information about people who were in the Epstein files to the international criminal court" and that he entertained the messages to "help turn [J.P.] over to the authorities." *Id.* at PageID 139. In a separate Signal exchange with a different individual, Wagner sent the result from an online search for a journalist, showing a current address and phone numbers, to the individual with the message, "I may have found where he's hiding." *Id.* at 135. There is no additional context about these Signal exchanges, so other than the vague messages themselves, there is no evidence in the record about what, if anything, Wagner did with the information.

B. January 29 Instagram Post

In this case, Wagner is not facing charges for any of the posts or messages described above. His January 29 Instagram post is the only one the government has indicted him for here. In that post, Wagner allegedly doxxed J.S., a pro-ICE online influencer, by posting his full name, phone number, birth month and year, and address on Instagram. In the same post, Wagner wrote, "Awe bb nazi boy" and "we can all knock on strangers doors . . . See you soon kiddo - stay safe out here." Compl., R. 1, PageID 30.

Some context is helpful for understanding Wagner's post. The government describes J.S. as "a pro-ICE individual," *Id.* at PageID 5, and Wagner elaborates on this description by explaining that J.S. is a vocal right-wing influencer. During Operation Metro Surge, J.S. posted a video of himself knocking on the door of

a Minnesota journalist covering anti-ICE protests. Wagner contends that his statement “we can all knock on strangers doors” was a response to J.S.’s own post. Wagner further proffers that he reposted publicly available information from someone else’s previous post about J.S. and that none of the information he posted was accurate. In response to Wagner’s post, J.S. challenged him to a boxing match. Wagner accepted, and the two influencers posted about their plans to box each other.

Five days after the alleged doxxing, the government filed a criminal complaint in the Eastern District of Michigan, charging Wagner with one count of cyberstalking and one count of transmitting interstate threats based on the January 29 post. *See* 18 U.S.C. §§ 2261A(2) (cyberstalking), 875(c) (interstate threats).

II. Procedural History

After filing the complaint, the government arrested Wagner at his residence in Minnesota. Wagner allegedly resisted arrest and spit in the officers’ direction. In his booking photo, Wagner held up two middle fingers and said, “This is for the judge.” Gov. Resp. to Mot., R. 21, PageID 91.

Wagner appeared before a magistrate judge in the District of Minnesota for removal proceedings to the Eastern District of Michigan. Against his appointed counsel’s advice, Wagner chose to proceed with the detention hearing at the same time as the removal proceedings, rather than ask for a continuance. Because of Wagner’s choice, his counsel had only briefly interviewed him to prepare for the hearing and had not reviewed his social media posts or the footage

of his arrest before the government presented them. Likewise, Pretrial Services did not have time to conduct a thorough investigation, interview potential third-party custodians, or draft a report. It orally recommended detention. After hearing from the parties, the magistrate judge ordered Wagner detained. The magistrate judge stated that detention would be “perhaps, a closer question” if Wagner was facing charges in the District of Minnesota, but he did not think he could impose conditions that would reasonably assure Wagner’s appearance and community safety. Feb. 5 Hr’g Tr., R. 13, at Page 51-52. The magistrate judge later clarified that he ordered Wagner detained “for one reason and one reason only,” his “concern that Mr. Wagner may not have the ability, candidly, to get to Michigan to make the court appearance.” *United States v. Isaac Sant*, No. 26-cr-115, Arraignment Tr., R. 184, 23.

After his removal to the Eastern District of Michigan, a grand jury indicted Wagner for cyberstalking and transmitting interstate threats. Wagner then appealed his detention order to the district court. In advance of the detention hearing, Pretrial Services for the Eastern District of Michigan interviewed Wagner, spoke to his mother, and ultimately issued a report recommending his release under suitable conditions. The district court reviewed the Pretrial Services Report from the District of Minnesota (drafted after the first detention hearing) as well as the “more extensive” Pretrial Services Report from the Eastern District of Michigan. Mar. 24 Hr’g Tr., R. 27, PageID 171. Over the course of two days, the district court also heard proffers from the

parties and argument on the pretrial detention factors.

Reviewing the evidence de novo, the district court ordered Wagner released with both standard and special conditions of release. The district court adopted the conditions recommended by Pretrial Services, including home detention, GPS monitoring, and restricted and monitored access to the internet through one approved computer and one phone. The district court also adopted conditions that Wagner had proposed—appointment of his mother as third-party custodian and prohibitions on posting to social media, participating in anti-ICE protests, or entering Minneapolis or St. Paul. And it imposed additional conditions sua sponte, including a prohibition on engaging in any assaultive, threatening, or harassing behavior or statements. At the end of the hearing, the district court warned Wagner that both the court and Pretrial Services took their jobs “very seriously” and would carefully monitor and enforce his compliance with the conditions. Mar. 25 Hr’g Tr., R. 24, PageID 156.

The government appealed the district court’s release order and moved for an emergency stay pending appeal. This court granted the emergency motion for a stay pending appeal. Wagner, who had been on pretrial release at the home of his third-party custodian for one week, received permission to turn himself in and did so the next morning.¹

¹After Wagner was detained, he was indicted in the District of Minnesota, along with fourteen others, for conspiracy to impede or injure a federal officer, solicitation to commit a crime of violence, and transmitting interstate threats. Our review is

ANALYSIS

The Bail Reform Act of 1984 reflects the constitutional principle that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). In recognition of the defendant’s “presumption of innocence,” 18 U.S.C. § 3142(j), the statute’s “default position” is that “a defendant should be released pending trial.” *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010). Accordingly, the statute permits pretrial detention only if “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.” 18 U.S.C. § 3142(e)(1). To determine whether there are conditions of release that can reasonably protect against risk of flight and dangerousness, the court must consider (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the defendant, (3) the history and characteristics of the defendant, and (4) the nature and seriousness of the danger posed by the defendant’s release. *Id.* § 3142(g). To justify pretrial detention, the government must prove by “clear and convincing evidence” that no conditions “will reasonably assure the safety of any other person and the community.” *Id.* § 3142(f)(2). Alternatively, the government must prove by a preponderance of the evidence that no conditions will reasonably assure the

limited to this case, so I do not consider the second indictment. But I note that none of Wagner’s codefendants in that case have been detained pretrial.

defendant's appearance in court as required. *United States v. Hinton*, 113 F. App'x 76, 77 (6th Cir. 2004).

Here, the government challenges the district court's determination that the conditions of release it imposed would reasonably assure the safety of the community and Wagner's appearance in court. The government contends that it has met its burden to prove Wagner's dangerousness and risk of nonappearance, and it argues that no conditions of release could avoid these risks. Because I disagree with the government's assessment of dangerousness, the risk of nonappearance, and the efficacy of the pretrial release conditions, I would affirm the district court's release order and conditions of release.

I. Standard of Review

Before turning to the merits, I address our standard for reviewing pretrial detention orders and highlight an unresolved question in our precedents. Our court has never clearly resolved the question of the appropriate standard of review. And our sister circuits have split on the issue. *See* Jefri Wood, *The Bail Reform Act of 1984* § VII (Fed. Jud. Ctr. 4th ed. 2022).

In reviewing district court determinations about pretrial detention, we must review factual findings, legal questions, and so-called mixed questions of law and fact that ask whether the factual findings meet the legal standard to justify detention. The district court's factual findings are reviewable only for clear error. *See U.S. Bank Nat'l Ass'n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). And its legal conclusions are reviewed de novo. *Id.* at 393. The appropriate standard of

review for the mixed questions, however, is a more complicated question.

Not all mixed questions receive de novo review. *Id.* at 395-96. Instead, the Supreme Court has explained that the proper standard for a mixed question may turn on a determination that “one judicial actor is better positioned than another to decide the issue in question.” *Miller v. Fenton*, 474 U.S. 104, 114 (1985); *see also U.S. Bank*, 583 U.S. at 395-56. Here, the district court is better positioned than our court to resolve the question of whether any condition or combination of conditions will reasonably assure the defendant’s appearance and the safety of the community. District courts handle pretrial detention issues routinely, but we seldom see them. So, in my view, we should apply a deferential review to the district court’s judgment.

Appellate courts apply deferential review to mixed questions in other analogous areas. In the context of criminal sentencing, for example, the Supreme Court has applied a deferential standard of review to the district court’s application of a Sentencing Guidelines term because of “the relative institutional advantages enjoyed by the district court in making the type of determination at issue.” *Buford v. United States*, 532 U.S. 59, 64 (2001). We are similarly deferential when the application of a sentencing enhancement involves a fact-intensive question that the district court is better positioned to answer. *See, e.g., United States v. Washington*, 715 F.3d 975, 983 (6th Cir. 2013). The district court’s same institutional advantages are involved in a pretrial detention decision. A “district judge sees many more [pretrial detention orders] than

does an appellate judge,” and this “[e]xperience” helps the district court make its decisions. *Buford*, 532 U.S. at 64. Further, in reaching its decision, “factual nuance may closely guide the legal decision, with legal results depending heavily upon an understanding of the significance of case-specific details.” *Id.* at 65. And the fact-bound nature of any pretrial detention decision may “limit[] the value of appellate court precedent.” *Id.* at 66.

Outside of sentencing, the Supreme Court has likewise reiterated that not all mixed questions of law and fact warrant de novo review. *See U.S. Bank*, 583 U.S. at 396. The Court explained that “appellate courts should usually review a decision with deference” when it “immerse[s] courts in case-specific factual issues.” *Id.* After all, appellate courts are not in the best position to “marshal and weigh evidence, make credibility judgments” and address “multifarious, fleeting, special, narrow facts that utterly resist generalization.” *Id.* (citation omitted). Determining whether a defendant should be detained pretrial requires the district court to “take[] a raft of case-specific historical facts, consider[] them as a whole, balance[] them one against another—all to make a determination” whether conditions of release can reasonably assure the defendant’s appearance and the safety of the community. *Id.* at 397. Under the Court’s reasoning, pretrial detention appears to be the type of fact-intensive mixed question that warrants deferential review. *See id.* at 399. Therefore, in my view, both the institutional advantages of the district court and the fact-intensive nature of the question call

for the application of deferential review to mixed questions in district court pretrial detention decisions.

True, our decision in *United States v. Hazime* stated that de novo review applies to these mixed questions in the pretrial context. 762 F.2d 34, 37 (6th Cir. 1985). But this standard-of-review question was not at issue in *Hazime*, nor was it part of the reasoning leading to the court's holding or decision to remand. See *Wright v. Spaulding*, 939 F.3d 695, 701-02 (6th Cir. 2019). In *Hazime*, the parties disputed the scope of our review for factual questions in pretrial detention appeals. Our court rejected the position that it had a “non-delegable responsibility to make an independent determination of the merits of the bail application” and held that it would review the factual findings of the district court for clear error. *Hazime*, 762 F.2d at 36. The court then stated, without elaboration or citation to any precedent, that its “standard in reviewing mixed questions of law and fact and the legal conclusions of the District Court, however, remains that of *de novo* consideration.” *Id.* at 37. And the court did not review the district court's detention order under either standard because it remanded for the district court to “clarify” a threshold question about whether it treated the statutory presumption of flight “as burden shifting or evidentiary” and whether the presumption was constitutional. *Id.* Thus, the standard of review for mixed questions did not “contribute to the judgment.” *Wright*, 939 F.3d at 701. And the fact that later decisions have cited *Hazime* for the standard of review, see, e.g., *Stone*, 608 F.3d at 945, does not transform it into a reasoned judgment

addressing the issue, *see United States v. Dixon*, 509 U.S. 688, 706 (1993).

Adherence to this nonbinding language in *Hazime* is even more concerning given that its unsupported and blanket assertion that de novo review applies to mixed questions is inconsistent with Supreme Court precedents, explained above, declaring that mixed questions are not all alike. It is also inconsistent with our court's practice of re-examining standards of review on mixed questions based on those Supreme Court precedents. For example, we long reviewed de novo all mixed questions implicated in sentencing, but we "pivoted from de novo" to deferential review in some circumstances and held that the appropriate standard of review must be decided on a "guideline-by-guideline" basis. *United States v. Merritt*, 102 F.4th 375, 379-80 (6th Cir. 2024). Outside of the sentencing context too, we now take a "case-by-case approach" to the standard of review for all mixed questions of law and fact rather than applying a blanket rule of de novo review. *New London Tobacco Mkt., Inc. v. Ky. Fuel Corp.*, 44 F.4th 393, 407 (6th Cir. 2022) (quotation omitted). Accordingly, I disagree with the majority that *Hazime* controls the standard of review for mixed questions in these appeals.

With humility to the district court's superior expertise in these cases, I would review the district court's application of the facts to the pretrial detention standard with "due deference." *United States v. Shanklin*, 924 F.3d 905, 919 (6th Cir. 2019).

II. Dangerousness and Flight Risk

Turning to the merits with this deferential approach, I would hold that the government has not

met its burden to show by clear and convincing evidence that no set of pretrial release conditions can protect public safety or by a preponderance of the evidence that no set of conditions can assure his appearance in court. Before considering the specific pretrial release conditions the district court imposed—and whether they can mitigate the government’s concerns—I review the government’s claims about Wagner’s dangerousness and risk of nonappearance.

A. Nature and Circumstances of Charged Offenses

Under the first statutory factor, we must look at both the “nature” and “circumstances” of Wagner’s charged offenses. “The distinction between ‘nature’ and ‘circumstances’ clarifies that the former refers to the generic offense while the latter encompasses the manner in which the defendant committed it.” *United States v. Singleton*, 182 F.3d 7, 12 (D.C. Cir. 1999). Therefore, the Bail Reform Act directs the court to look at both the labels and the specific facts underlying Wagner’s indictment. At the same time, the Act cautions that “[n]othing in this section shall be construed as modifying or limiting the presumption of innocence.” 18 U.S.C. § 3142(j).

Beginning with the nature of the charged offenses, Wagner was indicted for cyberstalking and interstate threats. *Id.* §§ 2261A(2), 875(c). The district court described the offenses as “serious” but recognized that the seriousness of such acts could vary from “bullying” among young students to “serious crimes, including up to physically harming people in Federal Court.” Mar. 25 Hr’g Tr., R. 24, PageID 149-50. Like the

district court, I affirm that both charged offenses are serious and that transmitting interstate threats is a crime of violence because it involves violent threats. 18 U.S.C. § 3142(g)(1); *see United States v. Pietila*, No. 1:23-cr-78, 2023 U.S. Dist. LEXIS 114354, at *3-4 (W.D. Mich. July 3, 2023). But I further agree with the district court that the seriousness of the offenses varies significantly and requires looking at the specific allegations of how the charged offense was committed.

Turning to the circumstances of the charged offenses, the government explains that Wagner made an Instagram post sharing “what he believed was J.S.’s birth month and year, phone number, and parents’ home address” along with the message “Awe bb nazi boy . . . we can all knock on strangers doors . . . See you soon kiddo - stay safe out here.” Gov’t Br. at 9. Wagner expands on this allegation by proffering that (1) he reposted information that was already publicly available from an earlier attempted doxxing of J.S., (2) none of the personal information he posted was accurate, and (3) J.S. responded to the post by challenging Wagner to a boxing match, which Wagner accepted, showing that Wagner’s post did not create any new or real danger to J.S. Wagner also explains that the message about “knock[ing] on strangers doors” was a reference to J.S.’s own post from outside the apartment of a Minnesota journalist. Therefore, the circumstances of Wagner’s offense, a back and forth between online personalities, do not indicate that he was likely to endanger J.S.

Our other cases regarding pretrial defendants facing these charges confirm that the circumstances of

Wagner's conduct do not militate strongly in favor of detention. In *United States v. Lidderdale*, for example, the defendant's severe, repeated, and graphic threats much more clearly supported a finding of dangerousness. No. 25-3663, 2025 U.S. App. LEXIS 33235, at *1-2 (6th Cir. Dec. 18, 2025). The government alleged that the defendant "sent dozens of threats, in letters and emails" containing "graphic threats, suggesting that the recipients (and sometimes their family members) would be killed 'from a bullet fired by my gun penetrating your skull with little warning' or that [e]ach [victim] will receive the gift of their names etched onto a single bullet. Their skull is the target the bullet is the gift." *Id.* Along with the written threats, he allegedly sent an "inscribed bullet to one recipient and a white powder" to others, and the recipients were "traumatized" by the messages. *Id.* at *2-3. Wagner's single post of publicly available and inaccurate personal information is not comparable to that threatening course of conduct.

Accordingly, I recognize that the nature of Wagner's charged offenses is serious, but I believe that the circumstances of Wagner's post, which appear to be a war of words between online personalities, weigh only slightly in favor of a finding of dangerousness. I also do not think the nature and circumstances of the charged offenses establish a risk of nonappearance.

B. Weight of the Evidence

Next, I look to the "weight of the evidence against" Wagner. 18 U.S.C. § 3142(g)(2). In our circuit, this factor looks at the weight of the evidence of dangerousness or risk of nonappearance, "not the

weight of the evidence of the defendant's guilt." *Stone*, 608 F.3d at 948.²

As to Wagner's dangerousness, the government relies on Wagner's social media posts and Signal messages. The government does not argue that Wagner himself engaged in violence or even that his posts incited actual violence. Instead, the government contends that Wagner's posts constitute calls for his followers to engage in violence against ICE and ICE supporters.

Although I do not condone Wagner's rhetoric, I would defer to the district court's assessment of Wagner's dangerousness and judgment that any concerns about public safety can be ameliorated through conditions of release. As to the dangerousness of Wagner's posts, the record does not contain the full posts, so there is limited context for many of his statements. But even this limited context paints a more nuanced picture than the government's position that Wagner "promoted physically assaulting and using weapons against federal agents." Gov't Br. at 22.

²Many of our sister circuits treat this factor as looking to the weight of the evidence of the defendant's guilt. *See, e.g., United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991); *United States v. Traitz*, 807 F.2d 322, 324 (3d Cir. 1986); *United States v. Jackson*, 845 F.2d 1262, 1265 (5th Cir. 1988); *United States v. Apker*, 964 F.2d 742, 744 (8th Cir. 1992) (per curiam); *United States v. Cisneros*, 328 F.3d 610, 618 (10th Cir. 2003). Because we instead look to the weight of evidence of dangerousness or nonappearance risk, there is a great deal of overlap between our analysis under this factor and the subsequent ones.

Read in context rather than as isolated snippets, Wagner's posts do not reflect the dangerousness that the government argues they do. For example, the government points to Wagner's statement "fight ice. This is kill or be killed." But earlier in that post, which Wagner made two days after the shooting of Renée Good, he called for the National Guard to disarm ICE and for ICE to be arrested. Compl., R. 1, PageID 8-9. He also said in the same post that "Wherever ICE is Be there with them - make it known - do not attack them - do not let them attack You" and "if they aggress - we meet them where they move - let them exhaust themselves." *Id.* at PageID 8. The government also isolates Wagner's statement from earlier that same day, "Anywhere we have an opportunity to get our hands on them, we need to put our hands on them," but Wagner went on to say that Minnesota would "stand its f----- ground" against ICE—a defensive position. *Id.* at PageID 6-7. And Wagner's other post that day said "stand your ground - if you're armed - declare it" and "We do not shoot first - if they pull the trigger - defend yourself" *Id.* at PageID 10.

Many of the other statements the government cites also read differently when placed in context. The government quotes Wagner as stating, "This is where ICE has come to die," but he clarified that the statement referred to "the ideology of the institution" which "came to these streets to bleed out and go away forever," not to the death of any ICE agent. *Id.* at PageID 16, 20. The government also quotes Wagner's words, "hunt ice," but immediately after that statement, he said, "vehicles can be sacrificed - disable their vehicles." *Id.* at PageID 8. Read in context,

Wagner's reference to "hunt[ing] ice" was not advocating for violence against ICE agents but was instead focused on immobilizing their vehicles. In another post, Wagner acknowledged that ICE had "increased the severity of their tactics in an attempt to scare [protesters] into submission," but he said that despite those tactics, "We will identify every single one of them and we will prosecute them to the fullest extent of the law." *Id.* at PageID 16-17. Wagner then stated, "If that has to be done at the barrel of a gun, then let us have a little f----- fun," showing that he continued to advocate for the public to identify ICE agents and prosecute them in court, even if they were threatened at the "barrel of a gun." *Id.* at PageID 16-17. But, again, that does not mean he is advocating for protesters to use violence offensively. By taking snippets of his posts out of context, they appear more violent than they are. And some of Wagner's other statements, which the government does not cite, emphasized nonviolence or self-defense tactics: "Keep your heads. We're not the violent ones." and "We do not shoot first - if they pull the trigger - defend yourself." *Id.* at PageID 10-11.

Arguably, Wagner's most threatening statements came on January 24, the day that government officers shot and killed Pretti, one of his longtime acquaintances. Wagner railed against the shooting, which he viewed as the inevitable consequence of ICE's presence and tactics in the city, saying, "This is exactly what I said was going to happen. This is exactly what I said was going to f----- come when we didn't f----- go and march on f----- Whipple with guns." *Id.* at PageID 26. He repeatedly said that he

was “done with peaceful protests” and “not talking about peaceful protests anymore,” reflecting a shift from his earlier posts. *Id.* at PageID 23-26. After the shooting, Wagner said that protesters’ options were “Go and f----- fight them. Or shut the f----- up and die for them,” complained that some people “want to f----- talk about their f----- feelings instead of putting hands on these murderers,” and told his followers, “Get your f----- guns and stop these f----- people.” *Id.* at 23-24, 26. While the January 24 posts reflect a change in tone, I agree with the district court that even these words “could be viewed in more than one way”—they could be read as “actual threats” or, alternatively, as not “as specific a threat” but instead a reflection of Wagner’s belief that ICE agents would continue to kill protesters unless they defended themselves, if necessary with force. Mar. 25 Hr’g Tr., R. 24, PageID 145.

It is notable that, even on January 24, Wagner never expressed any threat or intent to engage in any violence himself. During the protests after Pretti’s death, Wagner delivered gas masks to protesters and wore a bulletproof vest, but both gas masks and bulletproof vests are defensive and a reflection of his view that protesters would need to protect themselves from officers’ use of force. Wagner also repeatedly stated in his earlier posts that he did not own a gun. Further, the government does not argue that Wagner’s posts incited any violence on January 24 or otherwise. And while the government contends that Wagner’s posts escalated over time, his posts in the days after Pretti’s death celebrated the withdrawal of ICE agents from Minneapolis. If his January 24 posts

are read as escalating rhetoric, his January 26 and 27 posts can be read as de-escalating.

Outside of Wagner's social media posts, the government cites to his Signal messages with another user who expressed a desire to kill J.P., a former government official mentioned in the Epstein "list." It is true that Wagner responded to the messages by requesting "credible verifiable information" that he could send to his team, but nowhere in the exchange did Wagner agree to assist in any criminal activity. Mar. 25 Hr'g Tr., R. 24, PageID 131. Wagner proffered that he was "attempting to forward information about people who were in the Epstein files to the international criminal court" and that he entertained the messages to "help turn [J.P.] over to the authorities." *Id.* at PageID 139. Neither the government nor Wagner present any evidence about what he did with J.P.'s information, although the answer may be nothing, since Wagner was arrested shortly after the exchange. Regardless, I think that Wagner's vague response to messages from a user who sought to kill J.P. can, at most, weigh slightly in favor of a finding of dangerousness.

Wagner's other Signal exchange is even less substantial. Wagner conducted an online search for a journalist named N.S. He then sent the result showing a current address and phone number to another person with the message "I may have found where he's hiding." *Id.* at PageID 135. There is no additional information about the exchange. It is possible to make any number of assumptions about the message and Wagner's intent, but the government

has presented no evidence that justifies reading it as threatening.

In sum, the government construes Wagner's social media posts and private messages as "voluminous" evidence of his dangerousness, Gov't Br. at 29 (quotation omitted), but I read the evidence as presenting a more nuanced picture of his political beliefs and intentions, cast with plenty of bravado and rhetoric. Relevant to my analysis, the government does not allege that Wagner engaged in any violence or threatened to engage in any violence himself. The government instead argues that it has proven Wagner's dangerousness through his calls to violence. Even setting aside the fact that having thousands of "followers" on a social media platform is not equivalent to having a "large, receptive, and responsive audience," *id.* at 23, 25, none of Wagner's supposed calls to violence are alleged to have come to fruition. That others made isolated comments on Wagner's posts that refer to weapons does not prove his dangerousness either. Of course, the district court need not wait for violence to occur to justify pretrial detention, but the government fails to show that Wagner's rhetoric was likely to cause any. Accordingly, I agree with the district court that the government's evidence of social media posts and Signal messages is insufficient to meet its burden to establish by "clear and convincing evidence" that Wagner is so dangerous that no conditions of release could protect the community.

Turning to Wagner's risk of nonappearance, I am similarly unpersuaded by the government's limited evidence. The government points to Wagner's

outstanding warrant from Iowa, where he was listed as an absconder, and his previous failures to appear. On a misdemeanor marijuana possession case from Iowa a decade ago, Wagner was listed as an absconder only after the court entered a deferred judgment in the case. Wagner proffered that he had previously appeared in Iowa court to resolve the case, resulting in the dismissal of one charge and a deferred judgment on the other. Wagner learned about the outstanding warrant at his initial detention hearing and was working to resolve it during his brief period of pretrial release. His other failures to appear stem from misdemeanor traffic cases in Minnesota. Although not admirable, I do not weigh these transgressions as highly predictive of Wagner's behavior in this federal felony case under stringent conditions of supervised release.

Beyond these misdemeanors, the government attempts to prove that Wagner is a flight risk by pointing again to his social media posts and then to his booking photo. Neither are persuasive, in my view. On January 12, Wagner posted a video on social media asking viewers to "[s]upport my safety - help me evade and continue to organize." Compl., R. 1, PageID 13. This post, made weeks before he was charged with any crime, again is bravado and social media posturing. There is no evidence in the record that Wagner attempted to evade law enforcement. Officers arrested him at the residence where he had lived for the past year. That Wagner spit at the officers reflects his anger and poor judgment, but not a risk of absconding. Likewise, while Wagner's raising of two middle fingers in his booking photo with the message "This is

for the judge” is distasteful, it hardly establishes a likelihood of nonappearance. Gov. Resp. to Mot., R. 21, PageID 91. Even the magistrate who initially ordered Wagner detained did not find the spitting or booking photo “terribly weighty.” Feb. 5 Hr’g Tr., R. 13, PageID 52. And I would defer to the district court’s judgment that they are outweighed by Wagner’s comments praising the courts and repeated statements committing to fight this case, which he considers a political prosecution. Further, Wagner’s brief period of pretrial release and prompt return to custody provides at least some evidence that he is not a flight risk. Therefore, I do not agree that the government has met its burden of proving that, absent detention, Wagner will not appear in court.

C. History and Characteristics

I next consider Wagner’s history and characteristics, including his “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.” 18 U.S.C. § 3142(g)(3)(A). The record does not contain extensive information about Wagner’s history and characteristics, but it is sufficient to weigh against a finding of dangerousness or risk of nonappearance.

Wagner is thirty-eight years old and was born and raised in Minnesota. Outside of a four-year period where he lived with his father in Colorado, he has been a lifelong resident of Minnesota. He maintains ties with several family members in Minnesota, including his mother. Wagner has worked as a self-

employed carpenter since 2020, with variable hours and income that averages \$10,000 a month. He did not report any physical or mental health conditions to Pretrial Services. He was addicted to prescription opioids in 2006 but completed an inpatient treatment program and has not used them in 20 years.

Most importantly, Wagner has no violent criminal history. His criminal record includes traffic citations and misdemeanor drug offenses. As discussed above, he was listed as an absconder in a misdemeanor marijuana possession case from Iowa after he appeared in court and obtained a deferred judgment in the case. Wagner also failed to appear on traffic charges in Minnesota. But he has no record of violent conduct. While our court has held that a violent criminal history is not “essential” to a finding of dangerousness, we have simultaneously noted that such a history “eases the government’s burden of showing dangerousness.” *Stone*, 608 F.3d at 950 (quoting *United States v. Rodriguez*, 950 F.2d 85, 89 (2d Cir. 1991)). After all, “[p]revious instances of violent behavior are an important indicator of future violent tendencies.” *Heller v. Doe by Doe*, 509 U.S. 312, 323 (1993). Although the absence of a violent criminal history does not categorically preclude a finding of dangerousness, I think it is the most relevant predictive evidence here of Wagner’s lack of dangerousness, particularly when the evidence on the other side is excerpts of his social media posts.

Overall, then, I would hold that Wagner’s history and characteristics weigh against a finding of dangerousness or risk of nonappearance. Wagner has never been charged with any violent criminal offenses

and has no history of violence. While he failed to appear for misdemeanor state court proceedings, I am unconvinced that it establishes a risk of nonappearance for this federal felony case, especially under the stringent conditions imposed on him. Otherwise, Wagner has strong ties to Minnesota where he would reside and be supervised on pretrial release. Therefore, I would recognize that Wagner's history and characteristics weigh against incarcerating him before he is convicted of any crime.

D. Nature and Seriousness of Danger

Finally, I turn to the “nature and seriousness of the danger” posed by Wagner's release. 18 U.S.C. § 3142(g)(4). The Bail Reform Act authorizes Wagner's detention only if he poses an “identified and articulable threat to an individual or the community.” *Salerno*, 481 U.S. at 751.

Here again the government does not argue that Wagner will commit any violence if released but instead focuses on the potential danger instigated by his social media posts and Signal messages. The nature of the danger posed by Wagner's release is that he will make public social media posts inciting violence or privately communicate with others about possible violence. The seriousness of such danger is difficult to measure. In the abstract, online posts and messages can pose a risk of inciting violence. But as discussed above, none of Wagner's posts or messages are alleged to have caused any violence. And, to the extent there are concerns about future violence, that is the exact kind of danger that can be mitigated by conditions of pretrial release like the ones the district court imposed—a point that I further address shortly.

On this factor regarding the nature and seriousness of the danger Wagner poses to the public, I would again defer to the district court.

In assessing Wagner's dangerousness, the government claims that the district court "excused death threats against federal law enforcement and private citizens because of its disagreements with certain executive branch policy." Gov't Br. at 30. That's quite an accusation. And read in context, the district court was merely recognizing (and lamenting) the "sad state of affairs" of public polarization. Mar. 25 Hr'g Tr., R. 24, PageID 147. The district court stated: "[U]nfortunately, in our nation at this time, I think people are viewing the protection of the public kind of like a two-way street. It depends on what side of the street you're on whether or not an individual might feel they are protected or in need of protection. And that's, of course, a sad state of affairs." *Id.* The district court expressed no opinion about any federal policy but merely noted that there was some public opposition to such policies. It was not improper for the district court to acknowledge, given the background of this case, that Wagner and others viewed themselves not as the aggressors but as those resisting aggression and thus needing protection. That observation does not mean that the district court discounted evidence of dangerousness. Quite the opposite; as the majority opinion emphasizes, the district court recognized the seriousness of Wagner's conduct. Maj. Op. at 9. The district court "looked at the entire case" to determine whether it could impose conditions to protect the public. Mar. 25 Hr'g Tr., R. 24, PageID 147. It determined that it could.

On this record, the government has not met its burden to show Wagner's dangerousness by clear and convincing evidence or his risk of nonappearance by a preponderance of the evidence. Accordingly, I would affirm the district court's order releasing Wagner under a battery of standard and special conditions.

III. Conditions of Pretrial Release

Even if I agreed that the government had met its burden to prove Wagner's dangerousness or risk of nonappearance, I would still affirm the district court's decision not to detain Wagner. The Bail Reform Act directs the court to incarcerate Wagner pretrial only if "no condition or combination of conditions" could secure his appearance and the safety of others. 18 U.S.C. § 3412(e)(1). In my view, the government has not met its burden to show that the district court's conditions were insufficient to reasonably assure Wagner's appearance and community safety.

Consider first the district court's stringent pretrial release conditions. The district court appointed Wagner's mother as his third-party custodian, with Pretrial Services' approval, and confined Wagner to home detention at her house. The court order restricted him to his mother's home at all times, excluding only employment, education, medical treatment, attorney visits, court obligations, or essential activities with prior approval. Even with Pretrial Services' approval, the order limited his movement to Minnesota and the Eastern District of Michigan and required him to obtain special permission to enter the Twin Cities. On top of the home detention, the district court placed Wagner under GPS monitoring, meaning law enforcement

constantly tracked his whereabouts, and required him to check in with Pretrial Services. As to technology, the district court limited Wagner to one computer and one phone with Pretrial Services' monitoring software installed, so all his activity on both devices was visible and constantly tracked as well. Wagner was forbidden from posting on social media, participating in protests or demonstrations, or encouraging others to do so. He was also prohibited from contacting his alleged victim or anyone else who may be a victim or witness in his prosecution, and from encouraging others to do so. And the district court prohibited him from possessing any dangerous weapon or engaging in "assaultive, threatening, or harassing behavior or statement[s]." Order, R. 23, PageID 118. Wagner himself proposed many of these conditions, and he readily agreed to others imposed by the district court at his detention hearing. During the brief period of his release on these conditions, he appears to have complied with all the requirements.

These conditions "reasonably assure[d]" the district court that Wagner would appear in court as required and would not harm anyone, and I would defer to that determination. 18 U.S.C. § 3142(e)(1). The conditions targeted Wagner's dangerousness as the government describes it. Recall that the government argues that pretrial detention is necessary not because Wagner will directly harm anyone, but to protect the public from Wagner's "call[s] for his thousands of followers" to engage in violence and to protect J.S. from Wagner's doxxing. Reply Br. at 5. By the government's account, then, Wagner's danger to J.S. and the broader community stems entirely from his online

activity. Consequently, the release conditions monitor and severely restrict Wagner's online activity, addressing that concern. The district court limited Wagner's access to approved devices with monitoring software and forbade him from posting on social media, asking anyone to post on his behalf, or making any threatening statements. So, Wagner is prohibited from accessing any of the social media platforms where he could make dangerous posts, and Pretrial Services is monitoring his device activity to ensure compliance.

The government argues these conditions are not enough because there is a risk that Wagner will not comply with them. It raises two specific concerns: *first*, that the internet-based nature of Wagner's activity makes it impossible to ensure compliance; and *second*, that Wagner's personal history and attitude towards the government throughout these proceedings show that he "despises and will skirt federal authority at the first opportunity." Gov't Br. at 38. I find neither argument convincing.

The government first argues that the pretrial release conditions are insufficient because Wagner's dangerous conduct takes place online. The government stresses that Wagner can access the internet regardless of his location, but the pretrial release conditions are not about preventing internet access entirely; they focus on monitoring and restricting his access to enhance safety. The conditions mandate that Pretrial Services will monitor Wagner's internet access on approved devices and his compliance with the prohibition on social media use. These conditions are targeted at the

danger that Wagner is alleged to pose: the incitement of violence through social media posts. Even if Wagner managed to create a new social media account without getting caught by the company or the two Pretrial Services departments supervising him, it is difficult to imagine that he could build a following and successfully incite violence before getting caught. Wagner's posts would be public, and if history is any predictor, many of them would include his face, which would make his noncompliance easy to detect. Furthermore, the acute ICE activity in Minneapolis that was the primary subject of Wagner's posts has abated, meaning public interest in any posts about Minneapolis has likely declined as well. So it is far less likely that any new posts from a brand-new account would gain the attention of his prior ones made at the height of Operation Metro Surge or pose the same alleged risk of danger.

Despite these stringent limitations, the government and the majority contend that internet-access limitations are often ineffective, citing examples from some of our cases. Distilled, their argument is that because some people break conditions limiting online access, they are essentially never sufficient to protect the public from online crime or danger. But if that's so, then every defendant accused of dangerous online activity must be incarcerated pretrial. And that is not the rule. Indeed, there is a possibility of non-compliance in every case, no matter the conditions; for example, detainees sometimes remove their GPS ankle monitors or escape from their third-party custodians. Searching our cases, the government could identify examples of various pretrial conditions

that are violated, just like the case examples provided by the majority here. Yet, the possibility that any condition can be violated does not mean we can presume noncompliance in any individual case.

None of the cases cited by the government and the majority demonstrate that pretrial detention is necessary to protect against the online danger alleged here. In each of the cited cases from our court, there was—unlike here—a statutory presumption in favor of detention because the defendant was indicted for a particularly grave offense. *See United States v. Foster*, No. 20-5548, 2020 WL 6791572, at *1 (6th Cir. July 20, 2020); *United States v. Carpenter*, No. 22-5933, 2023 U.S. App. LEXIS 2386, at *2 (6th Cir. Jan. 30, 2023); *United States v. Hoilman*, No. 22-6108, 2023 WL 4074630, at *1 (6th Cir. Apr. 24, 2023); *United States v. Moore*, No. 24-3017, 2024 WL 3294950, at *1 (6th Cir. Apr. 17, 2024). *United States v. Watt*, No. 24-5322, 2024 U.S. App. LEXIS 13950, at *2 (6th Cir. June 7, 2024); *see also United States v. Hir*, 517 F.3d 1081, 1093 (9th Cir. 2008). In these cases, even when the defendant rebutted the statutory presumption of detention, the gravity of their charged crime still weighed heavily in our analysis. *See Watt*, 2024 U.S. App. LEXIS 13950, at *2-3. But judicial skepticism of internet-access limitations in grave cases where there was a statutory presumption of detention does not mandate distrust of internet-access limitations writ large. And it does not justify the same skepticism in cases, like *Wagner's*, where there is no such presumption. On the contrary, there is a presumption that *Wagner* is entitled to pretrial release. *Stone*, 608 F.3d at 945. Nor are the few district court cases the

majority cites, which reject internet-access limitations where the statutory presumption of detention was not present, analogous to this one. The courts expressed skepticism about the efficacy of conditions where a defendant had already violated court-ordered internet-access limitations, *United States v. Waldman*, No. 18-4701, 2018 U.S. Dist. LEXIS 98548, at *12-13 (S.D.N.Y. June 12, 2018), or exhibited other dissimilarities that weighed against efficacy. So none of these cases, individually or together, convince me that generalized concerns over the efficacy of online restrictions are enough to disturb the district court's judgment.

Moving beyond generalized concerns, the government next argues that Wagner is unlikely to comply with any of the pretrial conditions because he has an antagonistic attitude toward the federal government. As evidence, the government points to Wagner's expression of animosity to the legal system. In one social media post, Wagner asked viewers to "[s]upport my safety — help me evade and continue to organize." Compl., R. 1, PageID 13. And in his booking photo, he flipped the bird while saying, "This is for the judge." Gov. Resp. to Mot., R. 21, PageID 91. While these messages may suggest noncompliance with judicial orders, there are countervailing facts in the record too. Though boasting online that he wanted to evade law enforcement, he never tried to; officers arrested him at home. He also posted on social media several times indicating his faith in the judicial system as the answer to what he viewed as government misconduct. Wagner has also repeatedly expressed his desire to publicly fight this case—which

he considers a political prosecution—in court, further undermining the government’s claim that Wagner disrespects the court and will not comply with his pretrial release conditions. For these reasons, while Wagner obviously disagrees with ICE policies and perhaps with federal law enforcement more broadly, I would not assume that his political beliefs mean he will not comply with pretrial release conditions.

Of course, neither Wagner’s track record nor the stringency of the conditions can guarantee Wagner’s compliance. But that is not the test under the Bail Reform Act. The law requires “reasonable assurance,” but it “does not demand absolute certainty that a defendant will comply with release conditions.” *United States v. Munchel*, 991 F.3d 1273, 1283 (D.C. Cir. 2021) (citation modified). A “stricter regime would be only a disguised way of compelling commitment in advance of judgment.” *Id.*; see also *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985). We may want a guarantee of safety and compliance, especially in the face of social media posts that Wagner doubtlessly designed to be shocking. But we cannot detain presumably innocent defendants pretrial unless the risk of danger and absconding are so high that no conditions of release could reasonably abate them. Affording due deference to the district court, I do not believe the government satisfied that high standard here. So I would affirm the release order.

CONCLUSION

In my view, the district court’s conditions of release reasonably assure Wagner’s appearance in court and the safety of the community. Accordingly, I respectfully dissent.

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APPENDIX B

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE EDWARD WAGNER,

Defendant.

Case No. 26-CR-20059

Filed: March 25, 2026

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 42 U.S.C. § 14135a.
- (3) The defendant must advise the court or the pretrial services office or supervising officer in

writing before making any change of residence or telephone number.

- (4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear at (*if blank, to be notified*):

Place

on _____

Date and Time

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered.

ADDITIONAL CONDITIONS OF RELEASE

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- ☒ (6) The defendant is placed in the custody of:
Elizabeth Plamondon
(See separate Agreement to Assume
Custody of the Defendant)
- ☒ (7) The defendant must:
- ☒ (a) report, as directed, to:
- ☒ Pretrial Services Agency.
☐ Probation Department.

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- ☐ (b) continue or actively seek employment. Provide verification to the supervising officer, as requested.
- ☐ (c) continue or start an education program and provide monthly verification to the supervising officer.
- ☐ (d) not apply for or enter into any loan or other credit transaction without the previous written permission of the pretrial services office or supervising officer.
- ☐ (e) surrender any passport, enhanced identification, or international travel documents immediately to the supervising officer as directed.
- ☐ (f) not obtain a passport, enhanced identification, or any international travel documents.
- ☒ (g) abide by the following travel restrictions on personal association, place of abode, or travel:
 - ☐ Travel restricted to the Eastern District of Michigan;
 - ☐ Travel restricted to the State of Michigan;
 - ☐ Travel restricted to the Continental United States;
 - ☒ Travel restricted to: ED/MI and state of MN

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- ☒ Unless you have the previous consent of the pretrial services office, supervising officer or the court
- ☒ (h) avoid all contact, directly or indirectly, including but not limited to:
 - ☐ co-defendant;
 - ☒ any person who is or may become a victim;
 - ☒ other: any alleged victim(s)
 - ☐ list to be provided by U.S. Attorney.
- ☐ (i) obtain medical or mental health treatment as directed by the supervising officer.
 - ☐ i) provide a co-payment for treatment costs as directed by the supervising officer.
- ☐ (j) for all probation and/or supervised release violations, abide by all conditions in the Judgment Order under docket#
- ☐ (k) maintain residence at a residential reentry center as directed by the supervising officer.
- ☒ (l) reside at the bond address, and any changes in residence must be pre-approved by the supervising officer.
- ☒ (m) not possess a firearm, destructive device, or other dangerous weapons.

- ☐ (n) remove all firearms, destructive devices or other dangerous weapons from bond address and provide verification to the supervising officer within 48 hours of release.
- ☐ (o) surrender any Concealed Pistol License (CPL) to the supervising officer within 48 hours of release.
- ☐ (p) not use alcohol:
 - ☐ at all
 - ☐ excessively.
- ☒ (q) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner. Provide documentation of any prescribed medications to the supervising officer and any new medications prescribed by a licensed medical practitioner throughout supervision. Refrain from the use of marijuana which is prohibited by federal law.
- ☒ (r) submit to any testing for a prohibited substance, if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, wearing of a sweat patch, submitting to a breathalyzer, and/or any other form of prohibited substance screening or testing. The

defendant/offender must not obstruct or attempt to obstruct or tamper with the efficiency and accuracy of substance screening or testing of prohibited substances.

- ☒ (s) participate in a program of inpatient or outpatient substance use treatment if directed by the pretrial services office or supervising officer.
- ☐ (t) participate in the remote alcohol testing program using continuous electronic alcohol testing and comply with its requirements as directed, including not consuming alcohol.
 - ☐ i) pay all or part of the cost of alcohol testing, including equipment loss or damage, based on your ability to pay, as determined by pretrial services or supervising officer.
- ☒ (u) participate in the location monitoring programs and comply with its requirements as directed in subsections i, ii and iii.
 - (i) Following the location restriction component (Check one)
 - ☐ (1) **Curfew.** You are restricted to your residence every day:
 - ☐ From to or

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- ☐ as directed by the pretrial services or supervising officer
- ☒ (2) **Home Detention.** You are restricted to your residence at all times, except for employment; education; religious services; medical, substance use or mental health treatment; attorney visits; court appearances; court-ordered obligations; or essential activities approved in advance by the court or pretrial services office or supervising officer.
 - ☐ (i) **Discretionary Leave** may be granted to participant as deemed appropriate by the supervising officer.
- ☐ (3) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down except for medical necessities and court appearances or activities approved by the court;

☐ (4) **Stand Alone**

Monitoring. You have no residential component (curfew, home detention, or home incarceration) restrictions. However, you must comply with the location or travel restrictions as imposed by the court.

Note: Stand alone monitoring should be used in conjunction with global positioning system (GPS) or virtual mobile application technologies.

- ☒ (ii) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.
- ☒ (iii) you must pay all or part of the cost of the program, including equipment loss or damage, based upon your ability to pay as the pretrial services office or supervising officer determines:

- ☐ (1) Location monitoring technology as

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directed by the
pretrial services
office or supervising
officer;

- ☐ (2) Radio Frequency
(RF) monitoring;
- ☒ (3) Global Positioning
System (GPS)
monitoring;
- ☐ (4) Voice Recognition
monitoring;
- ☐ (5) Virtual Mobile
Application: You
must allow the
pretrial services or
supervising officer to
conduct initial and
periodic inspections
of the mobile device
and mobile
application to verify
that 1) the
monitoring software
is functional, 2) the
required
configurations (e.g.
locational services)
are unaltered; and 3)
no efforts have been
made to alter the
mobile application

- ☐ (v) report within 24 hours to the pretrial services office, or supervising officer, every contact with law enforcement personnel, including arrests, questioning or traffic stops.
- ☐ (w) resolve all outstanding warrants as directed by the supervising officer.
- ☐ (x) comply with all Sex Offender Registration and Notification Act (SORNA) requirements.
- ☐ (y) you are restricted from any use of computers and/or internet connected devices, or any device that can connect and exchange data with other devices and systems of internet. You are prohibited from accessing a computer and the internet including but not limited to (a) desktop or laptop computers; (b) smartphones, smart watches, and tablets; (c) smart appliances, smart devices, including hub or personal assistant devices; and (d) all network accessing devices, including internet connectable gaming systems.
 - ☐ (i) Remove all internet capable devices from the bond address and provide verification to the supervising officer within 48 hours of release.
- ☒ (z) the defendant is permitted the use of a computer and/or internet connected device. The defendant agrees to

participate in the computer and/or internet restriction/monitoring program and will abide by all rules and requirements of the program. The defendant will permit Pretrial Services or supervising officer to configure, manage, and install monitoring software on all approved computers and/or internet connected devices, which will require the search of computer software and hardware. The defendant's use and access to computers and/or internet connected device(s) is limited to those that can be configured, managed, and monitored by Pretrial Services or supervising officer. The defendant will be responsible for the cost of the computer and/or internet monitoring software, based on their ability to pay, as determined by the Pretrial Services Agency or supervising officer.

- (aa) you are permitted the use of a computer and/or internet for employment purposes only. Any computer or internet connected device must be monitored by either the defendant's employer, or by Pretrial Services or supervising officer as noted in condition (z). The defendant is required to notify their employer of the allegations contained in the charging document and the requirement that

their computer and/or internet usage be monitored. The defendant must provide verification to Pretrial Services or supervising officer that any computer and/or internet connected device is monitored as noted above.

☒ (bb)

- Resolve all warrants within 45 days.
- Do not encourage others to have contact with alleged victim(s).
- Refrain from posting on social media, or directing others to post on his behalf.
- Not participate or encourage participation in protests/demonstrations.
- Permission of PTS to enter city limits of Minneapolis or St. Paul.
- Not engage in assaultive, threatening, or harassing behavior or statement.

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution

for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (i.e., in addition) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000

or imprisoned for not more than five years, or both;

- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

/s/ Kyle Wagner

Defendant's Signature

Detroit, MI

City and State

Directions to the United States Marshal

- ☒ The defendant is ORDERED released after processing.
- ☐ The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or

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complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: March 25, 2026 /s/ Denise Page Hood

Judicial Officer's Signature

Denise Page Hood, U.S.

District Judge

Printed Name and

Title

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APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE WAGNER,

Defendant.

Case No. 26-20059

**APPEAL OF DETENTION ORDER
BEFORE THE HONORABLE DENISE PAGE
HOOD
UNITED STATES DISTRICT JUDGE**

Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Tuesday, March 24, 2026

APPEARANCES:

For the Plaintiff: Frank Dame
Mark Bilkovic

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UNITED STATES
ATTORNEY'S OFFICE
211 W. Ford Street, Suite
2001
Detroit, Michigan 48226
(313) 226-9526
(313) 226-9623

For the Defendant: Jean Pierre Nogues, III
FEDERAL COMMUNITY
DEFENDER OFFICE
613 Abbott Street, Suite 500
Detroit, Michigan 48226
(313) 967-5542

Also present: Brian Watts, Investigator
Andrea Peschke, Pretrial
Services

*To obtain a copy of this official transcript, contact:
Sheila D. Rice Official Court Reporter
(313) 324-2610 • sheila_rice@mied.uscourts.gov*

Detroit, Michigan
Tuesday, March 24, 2026
11:39 a.m.

LAW CLERK: Now calling Case Number 26-20059.
Appearances for the record, please.

MR. DAME: Good morning, your Honor. Frankie
Dame and Mark Bilkovic for the United States.

MR. NOGUES: And good morning, your Honor. Jean Pierre Nogues from the Federal Community Defender Office on behalf of Mr. Kyle Wagner who stands to my left. Also at my table is Brian Watts who is the FDO investigator on this case.

THE COURT: All right. Very good. Good afternoon, and you all may be seated.

This is a motion appealing the denial of bond; is that correct?

MR. NOGUES: Yes, your Honor.

THE COURT: Okay. Let's proceed.

MR. NOGUES: So, your Honor --

THE COURT: So come to the podium. Thank you. Your client is with you at counsel table right now?

MR. NOGUES: Yes, your Honor. Is the Court okay with him staying there?

THE COURT: I'm sorry?

MR. NOGUES: Is the Court okay with him staying there?

THE COURT: Yes, that's fine. I just wanted to make sure that we made a record of him being here.

MR. NOGUES: Yes.

So, your Honor, this is an appeal of a bond determination that was made in Minneapolis, Minnesota on February 5, 2026. And our circuit handles appeals of bond hearings de novo. So the Government's statement of the procedure that they wrote in their response to our motion is correct. So I assume that both parties are going to proceed by a proffer and then arguments of law.

Normally at a initial detention hearing the Government goes first. I am happy to go first if that's what the Court wants since it's my appeal.

THE COURT: Does the Government want to go first?

MR. DAME: No, your Honor. Thank you.

THE COURT: Then the defense should go first.

MR. NOGUES: So, your Honor, I want to first provide some context for the difference between the hearing that we're having now and the hearing that happened in Minneapolis.

Mr. Wagner was arrested on February 5th. He only met his defense counsel a half hour before the Rule 40 removal proceedings where he appeared in court, and the detention hearing was held right away. And so his attorney only had 30 minutes to prep for the hearing. And Pretrial Services did manage to write a report, but it was based on a very short period of time that they had to work with everything. They didn't have complete information.

THE COURT: And so that report, I think I have that; right?

MR. NOGUES: Yes, your Honor. Well, your Honor, I believe that Pretrial Services provided two reports, the original one from Minnesota and then the --

THE COURT: One from Detroit?

MR. NOGUES: Yes.

THE COURT: Okay. Yes, I have them both.

MR. NOGUES: And I just want to point out the difference that time to prepare can make.

THE COURT: The difference what?

MR. NOGUES: That time to prepare can make.

THE COURT: Okay.

MR. NOGUES: From both the defense perspective and the pretrial perspective.

THE COURT: Well, I can see the Detroit report is more extensive.

MR. NOGUES: And notably it is now reversing the conclusion of the original report and recommending bond under suitable conditions. And so we're starting with that. And, you know, they had the time to actually do the background research, to do a home visit.

I do want to point out to the Court that my client's mother, Beth, is in the audience. She drove here from Minnesota to be here for the hearing and to establish to the Court that she is ready to take her son back to her residence if the Court approves his release. She's also available to be a third-party custodian if the Court were to want that on the condition.

THE COURT: And has she been interviewed by Pretrial relative to that?

MR. NOGUES: That I don't know.

PRETRIAL SERVICES: Your Honor, Andrea Peschke on behalf of Pretrial Services.

I did verify Mr. Wagner's information with his mother. I have not yet vetted her for her part as custodian, which would entail a criminal records check, which has not yet been done.

THE COURT: Okay.

MR. NOGUES: So, your Honor, there's a simple way to do this hearing and there's a more complicated one. The simple way would be to look at what my client is charged with, his history and characteristics, the strength of the evidence against him, the seriousness of the danger that would be posed by his release. And then the Court can see if the Government can meet their burden of establishing clear and convincing that no set of conditions would reliably assure safety of others and his appearance in Court.

The complicated way is to turn this hearing into a circus.

THE COURT: Why would we want to do that?

MR. NOGUES: Well, your Honor, that's the direction that the Government has taken this so far. This is how they handled the hearing in Minnesota and to a certain extent --

THE COURT: These gentlemen were not handling that hearing; right?

MR. NOGUES: Not them. However, it was handled by attorneys from the Eastern District of Michigan.

THE COURT: Okay. And who were they?

MR. NOGUES: Ms. Brown was there. Who else? Eaton Brown was one of them, and I don't know if there was two or not.

MR. DAME: I was in the gallery for that.

THE COURT: I'm sorry?

MR. DAME: I was in the gallery, your Honor, but I did not appear on the record.

THE COURT: Who was at counsel table? Just Ms. Brown?

MR. DAME: Just Ms. Brown. That's right.

THE COURT: All right.

MR. NOGUES: And this presentation that the Government made at that hearing and that the Government has echoed in its response to our motion, and I anticipate a lot of what they're going to focus on when they speak in front of you, it has a lot to do with politics. It has to do with an administration that is looking to punish its perceived enemies. And so I want to talk a bit about this prosecution as a performance.

As I reference articles or documents or videos, I want the Court to be clear that I have copies for both the parties and the Court of any articles I'm referencing. I will make reference to certain videos. There's a complication that some of those videos show the alleged victim in this case, and so I don't know about the propriety of showing them in Court. However, I can speak to what's in those videos and confirm that I have personally observed it. I believe the Government has seen them as well.

THE COURT: Has the Government already seen all the materials that you're going to be talking about?

MR. NOGUES: No, your Honor. So I'm going to provide it to them. For the Court to understand the context, we only received the first batch of discovery last night in this case. So we --

THE COURT: But is this stuff that's in the discovery?

MR. NOGUES: No. This is articles and things that we researched after reviewing the discovery in the case.

THE COURT: Okay.

MR. NOGUES: So the first thing I want to note is a New York Times article published four days ago entitled “Go big and go loud: Inside the Justice Department’s push to prosecute protestors.” And I’m going to quote from that article. Again, I can provide copies of the entire article to the Government and to the Court if the Court would like a copy.

THE COURT: I think if you’re going to reference it you should provide it to both the Government and to the Court. Don’t you, gentlemen, at the table?

MR. DAME: I’m sorry, your Honor. Did you say something? I missed that.

THE COURT: Don’t you want it provided to you?

MR. DAME: Yes, please.

THE COURT: Do you want it provided to you?

MR. DAME: Yes, please, your Honor.

MR. NOGUES: I’ll be happy to do so, your Honor.

THE COURT: Okay. Go ahead, Counsel.

MR. NOGUES: The article starts by saying, “Just days after Minneapolis erupted into protests over the second killing of a resident demonstrating against immigration agents, a top justice department official delivered a hardball message to federal prosecutors, go after the protesters with everything you have.

“In a conference call late January, the official laid out the department’s basis for prosecuting demonstrators. National Security Presidential Memo 7, a sweeping directive issued by President Trump last September, that expanded the definition of domestic terrorism to include not only violent crimes

like assault, but also relatively minor ones like revealing the personal details of agents,” which is commonly known as doxxing. We’re going to be using that word a lot during this hearing, “or getting in the way of immigration enforcement.”

And that official “said that coordinators in the U.S. Attorneys’ Offices responsible for charging the protestors should be ‘hounding’ federal agents to make cases. He also suggested that the department wanted headlines along with the indictment promising that officials in Washington would be blasting out prosecutors’ work.” And he is quoted as saying, “Go big and go loud.”

Well, they certainly went big and loud in this case, your Honor. The complaint that was filed in the District of Minnesota -- well, that it was filed here, and that was the start of this case, it’s 30 pages long. It has one paragraph relating to the actual charge in this case. The actual allegations in this case don’t appear until page 28 of the 30-page document -- I’m sorry. There’s two paragraphs. We really have two paragraphs about it. And that section starts with the word “additionally,” which is very interesting, because they spend the previous 28 pages clearly indicating that their main focus is the anti-ICE rhetoric and protesting that my client made both online and in-person, for which he has not been charged with a crime.

And that’s important to note, your Honor. Your Honor has the indictment in this case. There are two charges. One is for cyberstalking. One is for online threats. Both allege that the victim is an individual with the initials JS.

THE COURT: And there's a forfeiture allegation; right?

MR. NOGUES: Yes, your Honor. There is no indicted charge suggesting that he doxxed or threatened government officials or ICE agents or anything like that. They spend a lot of time talking about it in the complaint, but they don't actually charge him with it.

After this complaint was filed and after his arrest, the U.S. Attorney's Office in this district put out a press release. The headline of that press release -- and I'm sorry, I'll provide a copy of the press release to everyone. The headline of the press release states, "Anti-ICE Antifa member arrested on federal charges of cyberstalking and threatening communications," all correct so far, "after allegedly calling for the murder and assault of federal immigration officers in Minnesota."

That's not what he's charged with, but that's what the headline of the press release wants the public to believe.

Clearly, and we know this from looking at the limited discovery that we have found so far, the Homeland Security investigations was scouring through my client's social media posts to try to find evidence that he had posed threats against ICE agents. They didn't charge him with that. They didn't indict him with that. Apparently, even though that was the focus of their investigation, they weren't able to get an indictment on that. It's even easier to -- sorry. It's easier to indict a ham sandwich apparently than to get indictments on that charge.

In that press release, there's a quote from the United States Attorney General, Pam Bondi. This man allegedly doxxed and called for the murder of law enforcement officers, encouraged bloodshed in the streets, et cetera. Again, he hasn't been charged with that, and there's nothing in -- we're going to have a bit of a disagreement about that, about some of the statements that my client said and whether or not they were direct threats to ICE agents, but certainly not enough to charge him with that. But that's the focus of what the Attorney General is talking about in the press release.

Two things of note here about what Attorney General Bondi said. One, again, not one shred of evidence that the Government has provided that my client either doxxed or called for the murder of law enforcement.

And secondly, it's notable that Attorney General Bondi said, "Today's arrest illustrates that you cannot run, you cannot hide, you cannot evade our federal agents. If you come for law enforcement, the Trump administration will come for you."

And that's interesting because of the political posturing. She refers to the Trump administration, not the Department of Justice.

The high level Department of Justice wasn't done, because they provided information to the White House press secretary. And on February 11th during a press conference Karoline Leavitt, the White House press secretary, actually held up a picture of Mr. Wagner as an example of what the government was doing. This - - there is a video of this. It's available online. However, it was also covered by local Minneapolis news,

Channel 5 News. I don't know if I have a printout of that, but I -- she was quoted as saying, "If people are illegally obstructing our federal law enforcement operations, if they are targeting, doxxing, harassing and vilifying ICE agents, they're going to be held accountable like this individual here who's a self-proclaimed member of Antifa. He is a domestic terrorist and will be held accountable in the United States."

Again, she is referencing allegations that are not charged against my client, way more serious allegations than what the Government has actually charged my client with.

Now, all of this is performative. Who are they performing for? I don't know. Is it an audience of one like so many other decisions and statements that have been made by the administration recently? We know that they are. Is it some sort of appeal to right-wing voters, or maybe it's a campaign of intimidation to chill protestors and the First Amendment rights of protestors in Minnesota? It's probably a bit of all three of those things, but it's impacted the way that the media is even reporting on this case.

So I have a local article from Click On Detroit, which is the online print version of Channel 4 News here in Detroit -- I'll provide copies to the parties on that -- where following Mr. Wagner's initial appearance in the Eastern District of Michigan they correctly reported that he was charged with the cyberstalking and online threat against the individual, but then they say he's also facing charges for allegedly calling for the murder and assault of ICE agents, which is not true. He's not facing such charges. But, if you believed

what the DOJ is saying in its press statements, if you believed what the White House is saying in its press statements, that's what they're trying to make this case sound like.

Now, again, I don't think that your Honor is the audience for that. I think that they have other motivations for saying these kind of things to the general public.

One thing that's consistent in all the Government's releases, their statements and their filings, when dealing with the count of the online threat, they're always careful to say that my client's statements regarding the alleged victim quote/unquote would have caused that individual reasonable fear. They never say did cause fear. Well, why not?

Well, for one thing, we know through our investigation in this case what JS, the alleged victim in this case, what his response was to the act in this case that is charged as an online threat.

My client is alleged to have posted the name, date of birth, phone number and address of JS online and called him a Nazi and then said, "We can all knock on doors," which I'll get to why he's saying "we can all knock on doors in a second."

The person that he's talking to, JS, then responded to my client by directly messaging him in the same social media platform and challenged him to a boxing match, which my client accepted a consensual organized, promoted boxing match. They then both subsequently posted about that on social media that they had agreed to fight in a consensual match.

Does that sound like the context of a true threat, either intended or received? Of course not. Why wouldn't JS take this supposed threat more seriously?

Well, first of all, because he himself peddles in violent online rhetoric. We have uncovered numerous examples of him committing actual acts of cyberstalking or online threats to individuals or groups of people. He has posted numerous times "death to Islam." He has posted that "people should find their local pedophiles and curb stalk them." He posted a video of himself knocking on the door of a journalist covering the Minnesota protest, and posted it to her account and said something to the effect of "we know where you live." So he himself does this kind of thing.

Now, are his threats credible? Is he actually credibly looking to hurt these people? I don't know. It's probably hot air, because he's an online provocateur. That's what he does. He lives for this kind of thing, and he lives for the kind of response that he gets from people who disagree with him.

The other reason why he didn't take this more seriously is that there was no actual threat to him. The post that my client made that allegedly had this - well, that had a name and birth date and address, as I mentioned in my motion, it was a repost, meaning someone else had already put it online. My client simply copied it and repasted it. Whatever damage had been done by it would have already been done arguably. The Government argues against that, but there's a more important point, which is that there wouldn't have been any damage anyway.

The birth date in that post was off by years. The address in that post, our investigation has shown my client never even lived at an address in Oak Park, Michigan. The address is not his parents' address. Our investigation shows no evidence that either of his parents ever lived in Oak Park. They were divorced, by the way, and lived separately for years. And then our investigation indicated they've also both been dead since 2022.

So JS knew there was nothing credible to this posting, even if it was supposed to be a threat, because there was simply nothing accurate about it. But, instead of ignoring it, he engaged my client and suggested a consensual fistfight.

Now, it might have been helpful for the Government to actually talk to JS about this. I put forward that they haven't. They can tell me that I'm wrong on this, I don't know, but as far as I know they've never talked to him. If they have, they haven't disclosed it, which I think says something.

And the point of all this is not, as the Government says in their response, to victim blame. The defense is pointing out that the Government has no victim, there is no victim. And after getting a directive from the White House to "go big and go loud against ICE protestors," after scouring my client's social media posts to find something to discredit him, this was the best that they could find and the only thing that they could actually charge and indict him with.

The first sentence of the Government's response was "Know thyself." It's good if it's piffy, but it works both ways, because I think we all know very well what the

Department of Justice and the White House are trying to accomplish with these kind of charges.

So let's come back to the simpler way of doing this hearing. Let's look at what my client is charged with. He's charged with cyberstalking JS and threatening JS online.

Cyberstalking requires a pattern of activity or repeated behavior. It seems that in this case they're only alleging one particular instance. So there's not even good weight on the cyberstalking charge, even if everything that they are alleging in it was otherwise true, because there was one instance.

And then I've already discussed on why on the threat count the alleged victim this case would not and apparently did not view it as a serious threat. So the strength of the evidence in this case is not strong.

Going towards the history and characteristics of the defendant, he has a very minor criminal history. He has a number of traffic-related tickets. He has a youthful adjudication under a program called the MAP program in Colorado for drug possession and underage alcohol, that he successfully completed that program, was terminated from it. The charge was dismissed. It still shows up for federal purposes, but it was dismissed for Colorado purposes.

It appears he has one outstanding warrant from an Iowa possession of marijuana in a vehicle case for failure to appear. Now, what's interesting about that, your Honor, is that that case was from well over ten years ago, 2011, in fact. And there was some sort of warrant issued after 2011, and my client actually went and took care of it in 2016. And when he went to

court they dropped one of the charges. They changed one of the charges to a deferred sentence, gave him probation for a year.

Something happened after that. We believe it was a miscommunication, because my client thought he had taken care of that case. They reissued a warrant a month later for some sort of failure to appear at a hearing or a meeting or something like that. He only found out about that new warrant in Minnesota when he was -- when he had his first detention hearing.

The Court is aware that Iowa borders Minnesota. My client has no problem and is very happy to take care of that warrant, and that's the only outstanding warrant that he has.

The next factor for the Court to consider is the seriousness and the danger that would be posed by my client's release, and there is no danger. He poses no danger to the alleged victim in this case, JS.

As we've said in our motion, my client will comply with any conditions the Court imposes on him, including a condition that he stays off social media. He'll have no way to contact JS. And he clearly doesn't know where JS or his actual family live, because all the information that he posted was wrong.

So there's no threat to JS. For what it's worth, JS has his own outstanding arrest warrant in Michigan. He's supposed to be serving a jail sentence. I don't know if -- I think he's still in the wind. But that's another reason why my client would pose no safety concern to him, because he's at some point going to get locked up by the authorities himself.

There's no indication of a desire by my client to do anything other than protest and stand up to ICE. Yes, he, as you can see in the pictures that are posted of him online and the video that the Government is going to show you, he gets very angry. He bears his teeth. He yells at the screen. He's covered in tattoos. He kind of looks like a skinhead, but he's not. He's actually pretty much the opposite of that. He got involved in the activism of what he calls Antifa after the -- what's his name, Floyd -- George Floyd shooting in Minnesota. In fact, after that he went and he got two tattoos on his chest. One is an anti-fascist tattoo. The other is the skyline of Minnesota to show his solidarity with the city of Minnesota.

So his continuing actions, which I think we can refer to as direct action, nonviolent direct action, are consistent with somebody who has a problem with the way that law enforcement is handling its interactions with citizens in the state of Minnesota.

I'd also like to note a similarity in this case. And this is going back a bit, but I forgot to point it out because I mentioned nonviolent direct action. The Government has a ignoble history of keeping investigative dossiers on activists, nonviolent activists.

So, as I'm sure the Court is aware, in 1967, FBI Director Hoover instructed his agents to neutralize quote/unquote Black nationalist hate groups, which apparently included the Southern Christian Leadership Conference. And they tapped MLK's phones and they tracked United Farm Workers and the Black Panthers, Students for a Democratic Society. These were all activist groups, nonviolent

activist groups. But Hoover is quoted as saying that he wanted to expose, disrupt, misdirect, discredit or otherwise neutralize the activities of these movements. And he wanted his men to be unshackled to look for evidence in any area of say Dr. King's life that they deemed worthy.

They're doing the same thing now with Antifa and with other anti-immigration groups that exist in this country, because they are expressing views which are quite popular against the government's actions, particularly in Minnesota. They are looking to silence them.

Having said all that, and as angry as my client is about all this, as vocal as he has been, as online as he has been leading up to now, Pretrial Services appears to agree with the defense that there are conditions that can reasonably assure that no further issues arise from that kind of activity.

We have proposed to the Court even more stringent conditions of release than Pretrial Services said was necessary for this, including a condition that he completely stay off of social media. If the Court requires a condition that he stay off the internet altogether, although I do think that Pretrial Services has a good proposal about how that can be managed with the appropriate tracking software, and despite my client's strong and genuinely held and frankly legitimate political views he has agreed that he will not attend any demonstrations, he will not encourage people to attend demonstrations, he will stay away from ICE activities for the entire pendency of this case as the Court requires in order to show the Court that he is serious with complying with the conditions,

because he wants to fight this case and he wants to do it the right way.

And, just to note, I know Pretrial Services already did, my client has no weapons history. He has no history of violence. And the fact of the matter is that there is any set of conditions that can reasonably assure his appearance and more importantly the safety of the community.

And so we've appealed this because we believe that the District Court in -- actually, I don't know if it was a district judge or a magistrate, but the court in Minnesota got this wrong in part because they didn't have all the information, in part because the defense didn't have the ability to give the Court complete -- more complete context and that Pretrial Services did. Well, this Court has not now, and so we're very glad that the Court can make this decision de novo.

THE COURT: Okay. Thank you.

MR. DAME: Good morning, your Honor.

I'm sorry, your Honor?

THE COURT: Are you ready to proceed?

MR. DAME: Yes, I am, your Honor.

THE COURT: Okay.

MR. DAME: Good morning, your Honor. May it please the Court, Frankie Dame for the United States.

I agree with your Honor and defense counsel out of the gate. We do not want to make this a circus. That's not our intention. We would like to stick to the 3142(g) factors. We want to present that evidence to the Court as we did in our brief, fully and completely, without any histrionics or without any sort of embellishment.

I think my brother counsel did a fabulous job defending his client. I think the biggest issue for his argument unfortunately is his own client and his own client's words.

We provided page after page after page for your Honor and for the magistrate judge in Minnesota, not of post complaint briefing by very able defense counsel, but of defendant himself online, serially online.

And I think it's important to note, your Honor, that in everything we just heard there's not one word said attempting to contextualize any particular post that the Government cited. There wasn't one word of explanation for phrases like "hunt ICE, put your hands on them, it's kill or be killed, let's do this at the barrel of a gun," et cetera, et cetera. There's not one word of disagreement from defense that he posted this.

There was, I think, unfortunately quite a bit of distraction, your Honor, referencing things well outside the purview and context of this particular discrete question before the Court, which is whether the Government can show by clear and convincing evidence that defendant is dangerous, or by a preponderance of the evidence that there's a risk that he will not appear.

And I'm not going to speak to a lot of either the history or the broader Department of Justice decisions here, first of all, because much of that candidly is above my pay grade, or our pay grade, how the Attorney General or the White House press secretary want to talk, but also far more importantly because

it's simply not relevant to the question before your Honor.

In defendant's brief, and you heard the same thing today, defendant complains that the Government talks about -- I believe in his brief he says "harps on" his history of posting, what he calls protected First Amendment activity.

And here today, your Honor, there's quite a bit of talk, many questions raised, about why this sort of conduct hasn't been charged, the implication being if it's that big a deal the Government should be doing something about it.

I can represent to your Honor that the Government's investigation into Mr. Wagner is ongoing. I can also represent to your Honor that the only charges at this stage that have been presented to the Grand Jury have been returned as an indictment by the Grand Jury.

THE COURT: I don't know what you mean by that. Do you mean that these were the only charges that were presented and that the Grand Jury came forward with an indictment on all the charges that the Government presented? Is that what you mean?

MR. DAME: Exactly, your Honor. I think there's an intimation at least by defense counsel during his argument that perhaps the Government had presented some other charge that didn't -- and that's just not true. The Government has presented two charges to the Grand Jury, and the Grand Jury returned an indictment on those two charges.

THE COURT: Okay.

MR. DAME: The two charges here.

I want to say a couple words, your Honor, about the defendant's dangerousness. I want to say a word about his nonappearance, and then I want to briefly discuss the bond conditions and the Pretrial Services report that you received.

Regarding his dangerousness, I'm not going to regurgitate what we've already said in our brief. You have that. I know you have the pleadings. I know you've been able to read them. Besides pointing out, your Honor, that nothing in that is substantively disputed by defendant.

What I do want to point out is I think the facial falsity of claiming the defendant was merely calling for peaceful protest. And I want to highlight a couple things for your Honor.

The first one is when in defendant's own words he says, quote, we're done with peaceful protests, end quote. I think your Honor should take him at his word. He wasn't calling his thousands of followers to peacefully protest with language like "hunt federal law enforcement, fight them, put your hands on them, kill or be killed," et cetera. This is not peaceful protest language. This is extremist language, and he himself said so.

I think even in defendant's briefing he gives away perhaps a little more than he meant to when he says this wasn't a call to assault federal officers, even though it plainly was for months, for multiple months. That's what the defendant was doing. He says this was mainly a call perhaps to impede or obstruct them. Impeding and obstructing forcibly as defendant asks is like just assaulting, a federal felony. I think it's an important admission for the Court to understand that

in his briefing the defendant is admitting functionally that he was calling for federal felonies to take place in Minnesota.

And not only was this a consistent drumbeat, your Honor, but as the Government's briefing pointed out, and I think this is a key and crucial point that the Court can't lose track of, the defendant's behavior was escalating at somewhat of a fever pitch just before he was arrested. He hadn't toned down. His trajectory was consistent, and it was in a dangerous and extremist direction.

And, your Honor, I want to point out something. I want to step back and kind of address what I think is perhaps the largest flaw in defendant's argument that you just heard. And that is what I will call an inordinate focus strictly on JS at this stage of the proceeding.

What you just heard was in many respects a very fine closing argument after a trial. But it wasn't focused on the factors of a detention hearing, which asks about dangers, not dangerous -- not just to any potential victim, but to the community as a whole and to others.

And I don't want to lose that point, your Honor. I think perhaps we've gotten a little caught up in the merits of the case, and the Government's going to litigate those merits at the proper time, but at this stage the question is of dangerousness more broadly to the community.

And I would put everything you just heard about this inordinate focus on JS into that bucket. The Government is not JS's counsel. We are not

responsible for his interactions with Mr. Wagner. I'm not standing up here to defend anything he has said or not.

What I'm up here arguing, what the Government is arguing, is that Mr. Wagner poses a threat not just to JS, but as we make very explicit in our briefing to the broader law enforcement community. That's precisely what the magistrate judge in Minnesota found.

The finding of dangerousness was not confined and it ought not to be confined under 3142(g) to simply the victim. This is a holistic, all-encompassing analysis, and your Honor knows that better than I do.

Turning briefly to his nonappearance, the nonappearance concerns here, I think the -- not even the elephant in the room. The obvious issue here is defendant lives hundreds and hundreds and hundreds of miles away from this district. And I understand that it's possible to supervise somebody that far away, that it's possible that somebody that far away could be trusted to appear, but I think for the various reasons given before there's serious concern that defendant will appear and if he will abide by those conditions. He simply does not have a stable residence in this district.

Defense counsel tried to explain away his criminal history. The Government agrees. His criminal history is not vast and it's not nefarious, certainly not as nefarious as we see in many of our cases. But what it does show, your Honor, is it does show a willingness to disobey the law. And I think, your Honor, that is -- that pales in comparison to his recent statements --

THE COURT: Pales in comparison to his what?

MR. DAME: To his recent statements online about evading federal law enforcement and about pushing back against federal law enforcement.

As I noted earlier, your Honor, I had the opportunity to be there in the gallery during Mr. Wagner's initial detention hearing in Minnesota. And as part of my proffer I would like to offer to the Court that in Minnesota what AUSA Brown did, and I want this to be clear, AUSA Brown really read into the record what you see in the facts section of our brief. She read into the record all of his posts.

I completely disagree with any connotation from defendant that it was a circus of any kind. It was a very measured hearing. And I just -- I don't want the Court -- I want the Court to understand that the hearing proceeded totally just like this one is, calmly, no histrionics. Defendant's own words were put up on screen. And to the extent that that feels like a circus, your Honor, I think it is because that comment is very jarring and ought to be, because it is extremist and it's dangerous.

But during that hearing in Minnesota, I think it's important to note for your Honor, defendant was not chastened, and I want this to be --

THE COURT: Defendant was not what?

MR. DAME: He was not chastened. He was not humbled at all for being there. During Ms. Brown's recitation of his words, defendant repeatedly and vigorously nodded his head very aggressively, looking at the Court, looking at AUSA Brown, looking at his defense counsel. He is not ashamed of his conduct. Nothing in the record indicates that he regrets for one

moment urging his supporters to inflict violence on federal law enforcement. Nothing in the record indicates that his philosophical outlook on the world has changed, that he has softened, that he's different.

The person sitting here in the courtroom is the exact same person with the exact same beliefs and the exact same convictions and willingness to urge violence that we saw in Minnesota and that made those posts in our briefing.

And one more note, your Honor. This has come up several times in the briefing, and it came up here today. And, for the record, the Government was completely willing in Minnesota to postpone the hearing, and we were very clear about that. Defendant made the choice to proceed. We offered a continuance. We were in no rush to rush the PE and the detention hearing, which were held simultaneously. Defendant made that call with his counsel.

THE COURT: And I'm not sure what point you're making by that.

MR. DAME: Simply, your Honor, that the Government -- we weren't trying to pressure the defendant into immediately going into a detention hearing unprepared. We were fine to wait. We would have waited as long as he needed or pretrial wanted to get the correct information. There was no pressure to immediately go into some sort of gamesmanship. There was no gamesmanship at all there.

Your Honor, I want to finish by saying a few words about the bond conditions in the Pretrial Services report.

I understand the recommendation in the Pretrial Services report, and I think it's flawed in a couple ways. The first and most significant way is as far as I can tell, your Honor, there was no meaningful grappling by Pretrial Services with the extent of Mr. Wagner's dangerousness. I think there are a few lines in the report. I think just at the end there's a token like or two about his potential dangerousness to the community and his extremism. It's a few words in the report.

There's a great body of evidence pointing to defendant's dangerousness with all the language that we talked about, and I won't keep on reiterating that. Your Honor has seen that in our briefing and I've said it here already. But there was not a substantive grappling in that report. And I think if we substantively really dig in and grapple with the sorts of things the defendant is saying, I think the calculus on dangerousness is very different.

And I want to -- and if I can just emphasize, defendant is not making these comments into a vacuum, and I should have said this before. Defendant has thousands of followers. And, as we note in our briefing, his followers interact with him online. He's not just somebody in a basement somewhere getting two "likes" every post he makes. He has hundreds or thousands of "likes," interactions, many of them people saying affirmative things, saying they're going to take part in this. We offered your Honor just one example of that where someone says in response to posts from defendant understanding the violent nature of them.

And I would point your Honor to our briefing to the exact wording that “it’s time for federal law enforcement to meet our friends AR-15 and nine millimeter.” This is a sort of reaction that defendant wants. This is the sort of reaction that he’s getting.

Ultimately, your Honor, the substantive merits of the bond conditions are the ones proposed by the defendant or the ones proposed by Pretrial Services. They simply don’t matter, whatever the substantive merit of that is, and that’s because defendant has a philosophical commitment and a presupposition to not obey law enforcement, especially federal law enforcement. He has made this clear time and again.

There’s no reason to believe that whatever the Court tells him, whatever the Court commands him to do, that he will obey it. A perusal --

THE COURT: Are you saying that because he has not obeyed other federal officials or because he has not obeyed other federal judges or other judges?

MR. DAME: I think it’s actually a third option, your Honor. I’m saying that because of his philosophical commitments based on his membership in Antifa, and I’m saying that based on his conduct post arrest in this case.

He physically resisted law enforcement. He spit on them. He repeatedly harassed them verbally afterwards. Before the magistrate judge in Minnesota, he showed no remorse or concern. There was a lot of joking and smiling going on. Nothing about his conduct after his arrest shows that.

And I will also point, as we did in our brief, to his criminal history, his failure to clean up his warrants.

I know defense counsel has spoken to that, and I don't have any other information on that than what we've already said and what you've heard.

But, your Honor, a key tenet of the defendant's world view, of this Antifa world view, is to resist law enforcement, specifically federal law enforcement. This is not a hobby for him. It's his identity. It's been his identity for quite some time. This isn't a passing fad. It's not something he's just come across. He's believed this for many years.

I understand that -- and I want to talk substantively about one pretrial bond condition and suggested bond condition in a moment, but before that, just to put a bow on the general idea that defendant is bondable at all given who he is and what he's said, bond is fundamentally a question of trust, and your Honor knows this. If the Court let's the defendant out, it's trusting that he's not going to be dangerous. It's trusting he's going to abide by the bond conditions, that the bond conditions can work. It's trusting that he's going to appear.

And here there is no reason to trust. There's no reason to trust that the defendant who has been constantly serially online, is the single most important core part of his identity, is suddenly going to be able to quit cold turkey, go 180 and say nothing. That's not realistic.

THE COURT: You don't see that any in any other cases?

I'm just asking if you see that in other cases, people who abide by their bond conditions even though there's nothing to indicate that they would so do?

MR. DAME: I think, your Honor, in the run-of-the-mill cases. I'm in the violent crimes unit, so a lot of our work is FIPs and gun possession and that sort of thing.

THE COURT: Is what now?

MR. DAME: Is felon in possessions or gun possession. I would say in those cases occasionally, yes, people can. I'll be honest, I've never seen somebody with the philosophical precommitments that defendant has at all in any case. So I have no data point for you.

This isn't the -- and that's an important thing maybe to emphasize, your Honor. The Government doesn't look at this as a run-of-the-mill case, because this isn't the run-of-the-mill defendant. I know that in cases where we have sovereign citizens there is every reason to believe that they're not going to abide by bond conditions. And the sovereign citizens that I have are detained, in part because they refuse to accept the jurisdiction of the Court.

Defendant here has repeatedly said -- has repeatedly asked his followers for help in evading federal law enforcement. He doesn't recognize the jurisdiction of this federal government to really bind him to things in a meaningful way.

I don't think the Court can trust that somebody who has said the sorts of things that Mr. Wagner has said online with the sort of vehemence that he has said them will suddenly stop. I especially don't think that's true for somebody who when police arrested him told them not to let him out and then expressed an intention to kill. No, your Honor. That's not the sort of

person that Pretrial Services can supervise. That's not the sort of person who is bondable. Somebody who says to the arresting officers "you better keep me locked up," and then explicitly says, invokes an intention to kill generally. This is a dangerous person.

There are, of course, practical problems, too. This is my last point, your Honor, and then I'm done. The Pretrial Services report indicates that one condition of bond ought to be that any electronic device is monitored by Pretrial Services. That sounds very nice in theory, but I think there are a couple holes in that.

First, and most importantly, defendant's mother has indicated that she's going to give him a phone. That phone is an iPhone. Pretrial Services' software does not work -- functionally does not work with iPhones. My understanding is it does not work well. I would defer to the Pretrial Services officer to explain that more.

Pretrial Services has not said that defendant's mother is a suitable third-party custodian for him. And I think that's important as well, because the Pretrial Services report and defendant's argument is really asking this Court to trust that defendant's mother functionally is going to monitor him fully. And the reason why is because Pretrial Services' electronic device monitoring, which everyone I think understands collectively, is the huge question mark with potential bond here, his access to the internet, his access to communication devices. And that's why I think, your Honor, you see a list of proposed bond conditions from defense largely on that point is because we all kind of agree that that's the thing that

has to be addressed if the Court is even going to allow bond.

And yet, what's not addressed is how simple and quickly and easily anybody can acquire another electronic device. And Pretrial Services has no idea if he has another device. They only get to put the software on the device that he gives them or he let's them. If he got another device, he could be talking again in a moment.

I think another important point to note is the number of followers and friends he has. As the Pretrial Services report notes, he got 10- to \$15,000 in cash donations from his followers because of his activity. This is not a person who will struggle to get a phone if he wants. He can get a phone any time he chooses, he can get a computer any time he chooses. He has devoted followers. They're giving him tens of thousands of dollars, 10- to \$15,000. This is a person who could text, make a phone call. He would have a phone in a heartbeat.

And, your Honor, I don't want to come across at all like I'm questioning the honesty or good faith of his mother, but ultimately just saying that his mother is going to monitor him and she has an IT background, that's just nonsufficient here for the Court to be confident that a person with this character is going to abide by bond conditions.

I guess the only other note, your Honor, is just to correct one statement of law that the defense made. The weight of the evidence does not go towards the merits of the case. I know the Court knows this. The weight of the evidence goes to his dangerousness.

So the weight of the evidence as far as the allegations in the complaint were perhaps something that defense counsel is thinking through, and rightly so. It just doesn't matter for this Court's analysis. The weight of the evidence here is relative to his dangerousness, and his dangerousness and his risk of nonappearance is clear.

Thank you, your Honor.

THE COURT: You can have a short rebuttal.

MR. NOGUES: I was going to say, I know your Honor has another hearing.

THE COURT: Yes, I do, that I do want to finish, but I don't want to not have you have a chance to argue.

MR. NOGUES: Let's be clear that Antifa, anti-fascist, does not mean anti-government. The Government says in its own brief that they believe that my client became radicalized after observing the January 6 insurrection and that upset him that fascists were trying to overthrow the government. So I'm not sure where they get that he's anti-government from that.

And there's no parallel between people who have anti-fascist ideologies and people who are sovereign citizens and don't recognize the jurisdiction of this Court. Mr. Wagner very much recognizes the jurisdiction of this Court. So I just want to clarify that.

The Government talked a lot about my client escalating, but I want to point out what was going on there. My client started his activism, like I said, as his online activism after January 6, after there was an escalation of violence at the U.S. Capitol, and he was opposed to that.

He escalated his rhetoric in Minneapolis after two U.S. citizens were murdered by ICE officials. He was very angry about that, rightly so. Of course he got angry. Of course he made an angry post about it.

But what has never happened, because the Government also notes and they've provided videos to us in discovery of my client being present at anti-ICE demonstrations in Minneapolis, he's never actually done anything that escalated into physical violence. So for all his words, whatever they want to say about what's saying online, he actually hasn't done anything violent in person, nor do I believe there's been any proffer or, as far as I know, any evidence that there have been situations where protestors have gotten violent against ICE with weapons, which is what they're saying is going to happen because of the things that my client is saying, but that just hasn't happened.

Again, contrast that with January 6. Contrast that with someone else who had a lot of followers and said some stuff online and suddenly people are storming the Capitol with weapons. That's not what has happened.

What we've had is -- and I didn't say he supports -- it might sound like a fine distinction, but I said nonviolent protests, because sometimes nonviolent resistance ends up resulting in violence by the government. And my client has noted that in his postings that he believes that that will happen. He's not advocating violence himself. He's saying that if the government becomes violent against citizens they should have some ability to defend themselves if that violence is unlawful.

And that gets to the -- and I'm glad the Government brought it up. They noted that I didn't say anything to address these various statements that my client made. They've done a pretty good job at taking little quotes from my client saying things like -- and actually I want to grab the document that I have here.

"ICE, we're F'ing coming for you, we need to put our hands on them, hunt ICE, fight ICE, this is kill or be killed," all of these things. Of course, they're listing these in bullet points as if it was one screed, but these are picked from multiple different videos in which my client says in the same video "I'm not advocating that you take violent action against the government. I'm talking about defending yourselves or defending others if the government is violent against you." And the Government says that that's plainly false. It's literally the words that he said.

If the Court has a problem with the phone that his mother offered him, he'll take whatever phone is appropriate for Pretrial Services to give to him.

And the whole reason that we have supervision in other districts is to enable this sort of thing. So for the Government to say that it's not workable simply because he lives in the district of Minnesota is silly. He's going to be supervised primarily by Detroit, but they're going to deputize Minnesota to do the supervision there. So he will have in-state supervision of him. They can check on him when they need to. So that's not going to be a problem.

I have nothing else.

THE COURT: Okay. Thank you.

I'm going to ask Pretrial Services to see whether or not his mother is an acceptable third-party custodian, and I'm going to have you all come back.

Can you come back tomorrow afternoon?

That's a "yes" out there; right?

MR. DAME: Yes, your Honor.

MR. NOGUES: Any particular time, your Honor?

THE COURT: Are you available the whole afternoon?

MR. NOGUES: Oh, yeah. Actually, I am. So that's good.

THE COURT: Okay. I think 3:00.

Can we do that, Mr. Shepherd?

LAW CLERK: No, ma'am. We have a hearing at 3:00 to 3:30. Anything between --

THE COURT: Well, let's bring them back at 3:30.

LAW CLERK: All right.

THE COURT: Can you come back at 3:30?

MR. NOGUES: I can, your Honor.

MR. DAME: Yes, your Honor.

THE COURT: Okay. And I'm having you come back tomorrow so that we can make sure that his mother - - she's come from Minneapolis; is that correct?

MR. NOGUES: Yes, your Honor.

THE COURT: So that she won't have to stay here for an extended period of time. If she doesn't, she's to -- but Pretrial Services is going to want to talk to her today, okay.

MR. NOGUES: Thank you, your Honor.

THE COURT: Anything else from either side?

Is there a transcript of the hearing in Minneapolis?

MR. NOGUES: No, your Honor. It wasn't audio recorded. So the transcript has to be ordered. We're looking into that, but it hasn't happened.

THE COURT: Okay. So it's just an audio recording?

MR. NOGUES: It's just -- no, there is no audio recording. It was a stenographer that took it apparently.

THE COURT: Oh, okay. All right. But there isn't a transcript prepared?

MR. NOGUES: There's no transcript.

THE COURT: Just the decision of the --

MR. NOGUES: Just the decision, your Honor, yes.

THE COURT: Okay. All right. Anything else today?

MR. DAME: Nothing for the Government, your Honor.

THE COURT: I'm going to mark his submissions to the Court, I think there were four of them, 1 through 4, okay.

MR. NOGUES: Thank you, your Honor.

THE COURT: Okay. All right. Very good. Come back tomorrow at 3:30, all right.

MR. DAME: Thank you.

THE COURT: Okay. Thank you.

(The proceedings were adjourned at 12:40 p.m.)

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CERTIFICATE OF COURT REPORTER

I, Sheila D. Rice, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages is a correct transcript from the record of proceedings in the above-entitled matter.

s/ Sheila D. Rice

Sheila D. Rice, CSR-4163, RPR, RMR, FCRR
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 03/27/2026
Detroit, Michigan.

119a

APPENDIX D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE WAGNER,

Defendant.

Case No. 26-20059

**APPEAL OF DETENTION ORDER
(CONTINUED)
BEFORE THE HONORABLE DENISE PAGE
HOOD
UNITED STATES DISTRICT JUDGE**

Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, March 25, 2026

APPEARANCES:

For the Plaintiff: Danielle Asher
Frank Dame

120a

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Also present: Andrea Peschke, Pretrial
Services
Brian Watts, Investigator

To obtain a copy of this official transcript, contact:
Sheila D. Rice Official Court Reporter
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Detroit, Michigan
Wednesday, March 25, 2026
3:55 p.m.

— — —

LAW CLERK: All rise.

The United States District Court for the Eastern
District of Michigan is now in session, the Honorable
Denise Page Hood presiding.

Calling Case Number 26-20059. Appearances for the record, please.

MS. ASHER: Good afternoon, your Honor. Danielle Asher and Frankie Dame on behalf of the United States.

MR. NOGUES: And good afternoon, your Honor. Jean Pierre Nogues from the Federal Community Defender Office on behalf of Kyle Wagner who stands to my left. And I am joined by the investigator for our office on this case, Brian Watts.

THE COURT: Okay. Good afternoon to all of you, and thank you for coming and coming back today. You may be seated.

This is an appeal of a detention set in Minnesota by a magistrate judge and having come here. And so you'll know everything that I have kind of looked at, I have talked to the probation department and I have gone over their report in some detail. And I have also looked at the prior Pretrial Services report, the magistrate judge's opinion and then an E-mail frankly that I had talked about with the Pretrial Services department about the ability -- probably "ability" is not the right word -- the interfacing of the Pretrial Services department here with the Pretrial Services department in Minnesota, and noted that they did a little bit more than what we thought, which was they did at least look at the home environment.

Our department also interviewed his mother relative to whether or not she was able to be a third-party custodian, if so ordered by the Court. And also the probation department is looking into his sister; is that correct? What is her name again, if you recall?

PRETRIAL SERVICES: Andrea Peschke on behalf of Pretrial Services.

I'm sorry. Who were we referencing?

THE COURT: His sister as a possible third-party custodian.

PRETRIAL SERVICES: I would have to double-check.

THE COURT: Yeah, I'll double-check that, too. And I have gone also through the report, the other documents given to me by the Government. And also this is, I believe, the possible conditions that Mr. Wagner was amenable to. They're paragraphs 1 through 7 on the -- in your brief, which is ECF number 17 on page ID 68.

And it's my understanding, Counsel, that your client would agree to all those conditions, which even appears to me to be a little more stringent than the ones that are offered on the Eastern District of Michigan's pretrial report indicating the conditions that they would recommend upon release.

Is it your understanding that your client is amenable to that?

MR. NOGUES: Yes, your Honor. If that's what the Court believes is suitable, then yes.

THE COURT: Okay. All right.

MS. ASHER: Your Honor, just before you continue, the Government does have a -- two things that we would like to supplement the record for that I think is helpful for the Court as you make this decision. If I would have the opportunity to do that now --

THE COURT: Is there a reason you didn't give them to me earlier today?

MS. ASHER: I do apologize, your Honor. I have a copy. There's one small chat that I would like to share with the Court. And then I would also like to move, just for clarity of the record under seal, to admit the Pretrial Services report from Minneapolis as Government's Exhibit 3.

THE COURT: From the what?

MS. ASHER: The Pretrial Services report from Minneapolis.

THE COURT: I already said that I reviewed that as well, didn't I?

MS. ASHER: Right. Just to make it clear for the record, I just wanted to admit those under seal, both Government Exhibit --

THE COURT: Why do you need to have them admitted under seal?

MS. ASHER: Your Honor, just to make sure that --

THE COURT: Aren't they admitted under seal? Wouldn't you agree that the Pretrial Services department tag onto them if you need them?

MS. ASHER: That is correct, your Honor. There are multiple cases that we have found where this has been admitted as an exhibit. And I think, just for the fulsome of the record, we would move to admit the Minneapolis report as Exhibit 3 and the Eastern District of Michigan report as Exhibit 4 under seal.

MR. NOGUES: Your Honor?

THE COURT: Yes.

MR. NOGUES: Although in principle I don't have any problem with those documents if they're already in front of the Court. However, the Government is also trying to introduce another exhibit. And it seems to me that the parties completed their proffers yesterday, and it appears that the Government is trying to throw a hail mary after the game clock has already expired here. The Court was starting to give its decision, and the Government has asked to supplement with more exhibits. And so we object to that at this point.

THE COURT: Okay. But you don't object to 3 and 4 since I've already looked at them; right?

MR. NOGUES: No. The Court has already seen those, yes.

THE COURT: And have you seen -- what is the other one marked? 2?

MS. ASHER: Exhibit 5.

THE COURT: 5. What are your 1 and 2? Are they those documents you gave me yesterday?

MS. ASHER: Yes. Those were attached to our brief. There is a video and then -- which is Exhibit 1. And then Exhibit 2 is the order from the magistrate judge in Minneapolis.

And, your Honor, just to explain, Mr. Wagner has a very expensive electronic device as well as social media as part of this investigation --

THE COURT: He has a very expensive electronic device?

MS. ASHER: Yes, his phone.

THE COURT: Okay.

MS. ASHER: Was seized and has been searched as part of this investigation as well as his social media. There is one small message that I think is very helpful information for the Court to have before it before it makes its final decision.

THE COURT: And did you have this yesterday?

MS. ASHER: No, I did not, your Honor. I have it today. I was not here yesterday.

THE COURT: I should rephrase it. Did the Government have it yesterday?

MS. ASHER: Your Honor, I believe it was in our possession, but I don't think that we had it physically with us or presented any information about it. But I do think it is helpful for the Court. It's a conversation just before -- days before his arrest where he's talking about --

MR. NOGUES: Your Honor, I'm going to object to her telling the Court at this point what is in it.

THE COURT: Your objection is noted and preserved for the record.

But, if you had it, it would have been nice to give it to us as soon as you had it so that the other side would have a chance to prepare a response.

MS. ASHER: I apologize, your Honor. We did provide a copy to Mr. Nogues before the hearing.

MR. NOGUES: Your Honor, to be clear, today.

THE COURT: No. But when today?

MS. ASHER: It was right before the hearing, your Honor.

MR. NOGUES: And I just --

MS. ASHER: And it's a -- you know, several pages of messages.

THE COURT: Wait a minute. This document you want is several pages of messages that I now will need to look at; right?

MS. ASHER: I'm prepared to --

THE COURT: Why wouldn't you give them to me earlier today? I've been here all today.

MS. ASHER: Your Honor, I do apologize for that. I should have done that, and I do apologize.

MR. NOGUES: Your Honor, we made a request for discovery in advance of the hearing. The Government didn't provide us with discovery until Monday evening. The documents that they are now trying to produce to the Court was not included in that.

The Government then gave us 500 pages of discovery at 12:30 today. I have no idea if this is in it or not. And then they have brought copies of it into this room and said we want to supplement the record. And I think it is inappropriate. The Government had this. If the Government was serious about presenting their case to the Court, then they have plenty of time to prepare for this.

The original hearing in this case was on February 5th. We moved for this appeal going on three weeks ago now. It's two and a half weeks ago. The Government had lots of time to file a reply. I think it is inappropriate to ambush us with this now.

MS. ASHER: Your Honor, just respectfully, it's not an ambush. This is a huge amount of data --

THE COURT: I don't know what else it could be if you've had it since at least the time you gave it to counsel that I don't have it.

MS. ASHER: Your Honor, you were on --

THE COURT: This is, quite frankly, not being meaning or anything.

MS. ASHER: No, I understand.

THE COURT: I actually have been here like all day. I would have given it some priority to look at it beforehand.

Even though I've had several matters on the bench and meetings with other judges, I would have taken the opportunity.

So what do you want to do? You want to read it into the record?

MS. ASHER: Just a few of the messages, your Honor.

THE COURT: Okay. Well then I'm not submitting the whole document; right?

MS. ASHER: I am happy to read every single message if you would like, but for expediency --

THE COURT: I'm not -- I am not going to tell you what messages to read, but if you're going to read some of the messages that will be what is in the record. And I will not permit the entire document to be produced and made an exhibit unless we have the opportunity to read several pages of documentation at the time set for my decision.

MS. ASHER: I'm happy to just read several of the messages and have that be part of the record, your Honor.

THE COURT: That can be part of the record and then will be part of the record, not a document introduced into evidence.

And, you know, on second thought I'm not going to enter as exhibits even under seal the confidential reports of the Pretrial Services offices either of Minnesota or the Eastern District of Michigan. They hold these reports in their file. They're commonly considered to be confidential. And, if you want them, then you can get them if you need them at some other point in time. They're not going to dispose of them, but they won't be admitted as exhibits, even under seal.

MS. ASHER: Understood, your Honor.

May I proceed with the --

THE COURT: Okay. You may read these items, identify them appropriately.

Counsel, I understand you have not had an appropriate time to respond. If you want more time, I'll be happy to give you more time to do that, but otherwise I am going to allow it, okay. Your objection, however, is noted and preserved for the record.

MR. NOGUES: Thank you, your Honor.

MS. ASHER: Thank you, your Honor.

THE COURT: Go to the podium, please.

MS. ASHER: Your Honor, these are Signal messages from February 2, 2026 at 11:59 p.m. until February 3, 2026, at 12:08 p.m. between the Signal user, Kaos, which is Mr. Wagner, and the Signal user Xo, X-O, Y-A-G-A.

The Signal user asks Mr. Wagner, "Is this Mr. Antifa?"

And he says, “Yes, it is. You got me.”

The Signal user identifies himself as “My dad got locked up a few years ago for attempted murda,” M-U-R-D-A, “of a politician he attacked in an embassy in D.C. Now some information has fallen into my lap and I want to give it to the right person.”

Mr. Wagner says, “Okay, I am not a fed. You are talking to that actual Kyle Wagner. And if you want to pass along verifiable information I am all ears.”

The Signal user says, “One of the people on the ‘list’ I have all his info, including his address, phone and E-mail, and I wanna kill,” which is K with three exclamation points, “his ass,” A with two dollar signs, “can you help me? Do you know anyone who would want this info to bring to justice?”

Mr. Wagner responds, “Okay. Well, we do stuff, me and my family of friends. We like to know about people who deserve consequences. So if you send me credible verifiable information it will go to people who can.”

Then the Signal user gives the name of the person, which I will just identify as a last name of P, and he says, “He’s probably guarded by Secret Service. I can assist in setting things up.”

Mr. Wagner responds, “Let’s start with who, and once I can get the info we can talk about what under after circumstances. For now I just need a name and the contact info and verification you are a credible source for this info so I can put it in the hands of my team and assess the situation for your security, ours, and understand what we have to work with, okay.”

The Signal user then asks, “How can I trust you?”

Mr. Wagner says, "That's very real. I'm just a guy in MPLS," which is Minneapolis. "I'm not affiliated with any government organization. I know people all over, but I am just me. And I am safe as far as keeping this information between just you and me, then we're tied together, right."

Then he asks if they would like to verify by doing a FaceTime of seeing each other's face. There is an incoming call that's connected. And then the Signal user sends the driver's license of this individual who's identified as JP by his initials, and then there's also information about his phone number, address, E-mail as well as his wife's name and other E-mail.

And then at the end Mr. Wagner says, "We have to walk through fire."

And the Signal user says, "I'm ready to overthrow this shit Nepal style."

And this was two days before Mr. Wagner was arrested in this case, your Honor.

THE COURT: That goes to which factor relative to bond?

MS. ASHER: I'm sorry?

THE COURT: That goes to which factor relative to bond?

MS. ASHER: I think it goes to his dangerousness, your Honor, because it's showing that he can have --

THE COURT: Goes to his . . .

MS. ASHER: Dangerousness.

THE COURT: Okay.

MS. ASHER: Because it shows that he has this access to an individual just days before. He says that he's all ears, he's connected with a team, he has people who can help facilitate killing someone who is a high profile target. He's asking for information about active ICE and other people.

And so all this goes to the dangerousness that he would pose, your Honor, because my understanding is that yesterday there's a lot made up by the defense about the threat to JS. And so I think this shows additional threatening behavior that he's taking steps to do, and it's also behavior that would circumvent --

THE COURT: This is behavior in this chat about JS; right?

MS. ASHER: No, this is a separate individual.

THE COURT: A different individual?

MS. ASHER: Yes. The initials are JP.

THE COURT: Okay. I'm sorry for interrupting you. You may continue if you'd like.

MS. ASHER: No, your Honor. And this isn't the only chat that Mr. Wagner has. Also on January 8th of 2026, he is also looking for another individual who's identified as NS, and he is someone who did investigative work --

MR. NOGUES: Sorry, your Honor. It's not in what I've been given.

MS. ASHER: Your Honor, this is another chat in Mr. Wagner's phone. It's all to rebut the information --

THE COURT: Did you show the other side?

MS. ASHER: Your Honor, we proceed by proffer all the time without giving all of the detailed information to defense counsel.

MR. NOGUES: They did that yesterday, your Honor.

MS. ASHER: And this is to rebut some of the claims that they raised in the hearing yesterday, your Honor.

And I think it's important for your Honor to consider that this threat to JS is not an ICE-related isolated thing. There's a context of all these threats to ICE and other law enforcement and ICE supporters. There's this message that I just read about connecting someone who -- getting information where someone who wants to kill and he has a team that can help do that. And then now we also have him looking up another individual, NS, where he's saying "I may have found where he's hiding," and send a True People Search that lists a current address and phone numbers.

So all that rebuts their claim that this was just one kind of isolated, not serious implied threat as they said. So I think that's important for your Honor to consider when we're really looking at what is the danger that he poses.

THE COURT: Okay.

MS. ASHER: And additionally, your Honor, I just wanted to point out a few inconsistencies between what Mr. Wagner told Pretrial Services, because I don't think that was illustrated to the Court. And I think that is also important as your Honor is considering whether he can be trusted for bond.

THE COURT: Would he told Pretrial Services in Michigan?

MS. ASHER: What he told Minnesota and what he told Michigan.

THE COURT: Okay.

MS. ASHER: So he --

MR. NOGUES: Your Honor, I object again. I don't --

THE COURT: Your objection is noted and preserved for the record. And, Counsel, you can be seated, please.

MS. ASHER: I think it's important, especially as your Honor is considering whether his mother is an appropriate third-party custodian as well. Mr. Wagner was telling Minnesota that his income was \$5,000. He told Michigan that his income was \$10,000, plus he had 10- to \$15,000 that he had received from fund-raising.

He also did not report to Minnesota a prior addiction or a prior drug treatment, but he did report to Michigan that he had a prior addiction to prescription opioid and treatment.

THE COURT: I did note both of those things.

MS. ASHER: And I think what's important, your Honor, is that Mr. Wagner's mother verified both pieces of information. She verified the Minnesota information and she verified the Michigan information. So she verified also inconsistencies. So Mr. Wagner is giving inconsistent information, it's to two different Pretrial Services officers over two months, and then his mother is confirming those

inconsistencies, which I think is important for your Honor to note.

And just candidly, your Honor, I do not understand the Eastern District of Michigan's recommendation. The report is almost identical in substance to the Minnesota report, which is the district that would be actually supervising Mr. Wagner. They have the best understanding of what their resources are, their ability to supervise, and they were recommending detention. There's almost nothing in the Michigan report that rebuts or changes that, but yet Pretrial is now flipping and saying they are recommending release. And so I think that that is something that your Honor should also consider and should give weight to the actual district that would be responsible for supervising Mr. Wagner.

THE COURT: Two things relative to that. One, I would not characterize it as "flipping." I would characterize it that the Pretrial Services department in Detroit had more time to make an investigation. I think they've been a little bit more thorough. I think that the investigation in Minnesota was not as comprehensive, and it may have had to do with the amount of time they had to collect and evaluate information. But I don't think it means that the department has, quote, flipped.

MS. ASHER: I think when you look at the substance of the reports, they're pretty similar. There's not any real substantive change. There's some additional details and a little more thoroughness. And certainly there was the additional interview with the mother about the third-party custodian. So all of that was not in the Minnesota report.

But when you really compare the actual substance of the two reports, there's really not anything significant of difference to note for the difference in the recommendation. So I think that's something that your Honor should consider. And so, your Honor, we do think that both he is a flight risk and he is a danger to the community and he should remain detained.

So that's all I have for you, your Honor. Thank you.

THE COURT: Thank you.

MR. NOGUES: So a couple notes on this Signal chat, your Honor. This smacks of a sloppy confidential informant or an undercover officer attempting to put a sting on my client, and I want to point out a couple things.

THE COURT: Counsel, I kind of got on opposing counsel's case about using the word "flip," and it's because I think they're certain kinds of words which when used in court tend to kind of incite the other side. "Smacked" is one of them, okay.

MR. NOGUES: Pardon, your Honor. Thank you. The other person that the Government has identified as X-O Y-A-G-A starts the communications with the user that they say is my client, which I don't have any reason to think isn't, by using colloquial slang terms like "is dis Mr. Antifa." And then, as they pointed out, talks about his dad being "locked up for attempted murda."

But, as the conversation goes and they continue to talk, that person drops that kind of attempted casual slang and by the end of it they are not doing that. They're actually quoting from the Bible, "We are in hell, but even after our flesh is burnt to ashes we shall

rise again.” It’s not consistent with somebody who types using colloquial speech. It looks like somebody who’s trying to pose as a character.

The second thing is that it seems to start with them talking about wanting to kill a person, and the Government’s identified by the initials JP. I think the Court can see that it’s not actually very well disguised what person this is being talked about. That person was a high ranking official, former official, in the Clinton and Obama administration. It was a Democrat.

And this person at the end then switches to, “I’m trying to overthrow this shit Nepal style.” It’s completely inconsistent, and it seems like a person who’s trying to throw everything at the wall to see what Mr. Wagner bites at.

Again, I had very little time to talk to my client about it. I just had 30 seconds or so here. But one of the things that my client was doing in his activism was attempting to forward information about people who were in the Epstein files to the international criminal court. And the person identified as JP appears frequently in the Epstein files. That’s publicly available knowledge. And his entertaining this person was not with any intention to help them carry out an assassination, but rather to help turn them over to the authorities.

So there’s nothing in this chat that suggests that my client was planning on doing anything illegal with any of this information. And again, given the timing, given the directive from the White House that I told the Court about yesterday, for this to suddenly happen three days before he’s arrested I think is troubling, not

because of my client's participation, but because it's very clear that the Government wants to silence my client.

MS. ASHER: Objection, your Honor. That is, I think, going far beyond proper argument at this point.

THE COURT: Okay. Your objection is noted and preserved for the record and overruled.

MR. NOGUES: Then, as to the income, it doesn't surprise me at all that my client might have said 5,000 -- I think those are numbers per month -- 5,000 a month in one context and 10,000 in another. My client is intermittently employed. He's project based, and he qualifies for indigent defense. I frequently get ranges like that from my clients, especially when they're not salaried. And when they have to estimate an average monthly salary based on project work that can be seasonal, that can be off and on. So there's nothing strange about that at all.

And I think they also said something about the mom signing off on the one instant -- I don't know if it was just talking about the drug addiction or it was talking about other stuff, too, but it was not disputed that my client had been charged with cocaine possession when he was 18 and had entered a rehabilitation program. That's all true. His mother was aware of that. His mother was aware that he successfully completed that. She doesn't know everything that her son does. So she doesn't have any reason to think that he might have continuing addictions to anything.

And so to the extent that my client might have disclosed that, that does not reflect anything untoward about the mom other than saying that she

knows what is information that was provided to her before.

Mr. Wagner, on the other hand, again there was not a lot of time for the interview and stuff back in Minnesota, and Mr. Wagner was very angry. As the Government made a big deal about, he was flipping off the cameras. He was very upset. And so he wasn't in the mindframe to give a full interview at the time like he was when he was in Michigan, after he's had the chance to talk to lawyers about how this process works and what's in his best interest in terms of answering all the questions for Pretrial.

So I don't think that any of those things are concerning. I frankly find it concerning as -- I'm not going to go over it again. I preserve my objection about the Signal chat.

And I don't really have anything to say about this other thing that they're bringing up, because I have nothing in front of me. It's just more throwing stuff at the wall to see what sticks.

THE COURT: Okay. Thank you, Counsel.

I indicated that the Pretrial Services department had provided me some additional information that had been provided to them. And it had to do with the home of his mother, the number of years it was owned, what it looked like, her employment, the number of -- the status of the internet there at the home, an inventory of their computers and phones and their work related to the use of the internet at their home.

And, looking at it again, I can see that it was sent out on Monday, although I just saw it today, in the afternoon. And that the recipients are also the FDO

and the Department of Justice, including Ms. Asher and Ms. Brown and another individual, Mr. Dame.

MS. ASHER: Dame, your Honor.

THE COURT: Yes. And my case manager. So you already have this document. So I don't think I need to read it in the record. I just want you to know what I have looked at.

Okay. I'm ready to rule. And I'm going to issue a verbal ruling and enter an order. And then I reserve the right to supplement it with an opinion supporting it with further facts by the end of the week.

And I would first note that a court may review a magistrate judge's order detaining a defendant under 18, USC, Section 3145(b). And a review of a magistrate's detention order is a de novo hearing, under United States versus Koubritti, K-O-U-B-R-I -- I think it's B-R-I-T-T-I, at 2001 Westlaw 1525270 at *5. It's a Eastern District of Michigan case from October 16, 2001. And United States versus Jones at 804 F. Supp. 1081, a Southern District of Indiana case. And United States versus Delker at 757 F.2d 1399, a Third Circuit case.

And the District Court must order detention if after a hearing it concludes that no condition or combination of conditions will reasonably ensure the appearance of the person as required and the safety of any other person in the community. And that's at 18, USC 3142(e) in part.

And I would note that the Government made an especially fervent argument about not only the person who was the object of the alleged cyberstalking, that that was not only the person whose safety should be

considered, but also the safety of other persons in the community in their argument yesterday.

The Government has the ultimate burden of proof by clear and convincing evidence that the defendant presents a danger to the community and that no condition or combination of conditions could reasonably assure the safety of the defendant or of other persons in the community, under *United States versus Hazime, H-A-Z-I-M-E*, at 762 F.2d, page 34 and 37. It's a Sixth Circuit case from 1985.

And the District Court must make findings based on the following factors: The nature and circumstances of the offense charged, the weight of the evidence against the person, the history and characteristics of the person, and the nature and seriousness of the danger posed by the person's release.

And based on that, I've made a number of conclusions. One, as to the nature and circumstances of the offense charged, I would note that it is now an indictment with two counts. Count 1 is a cyberstalking indictment, which particularly refers to some statements and activities on behalf of the defendant relative to an individual with the initials SJ, and some of which yesterday we heard were inaccurate in and of themselves.

And then also a Count 2, which is interstate communication threats, under 18, USC, Section 875(e), which alleges that he knowingly transmitted interstate commerce communications containing a threat to injure another person, for the purpose of making a threat with knowledge that the communications would be viewed as a threat, and with reckless disregard that the communications

would be viewed as such, and specifically notes the language to JS as, in part, "Nazi boy, we can all knock on strangers' doors, see you soon, kiddos, stay safe out there, J," all of that in violation -- as well as a forfeiture allegation.

And since it's now an indictment, the indictment establishes some probable cause for the offense charged under Hazime at page 37. And so those could be factors that could be presumed to be evidence against the defendant. And some of that evidence is strong and some of it is still just allegations.

And in some of the instances that were read in the wordage used yesterday, they could be things that were actual threats, or the use of words that could be viewed in more than one way when used against persons in a way that might not be as specific a threat with an intention to carry out some bad outcome.

I'm also to consider the history and characteristics of the person. And I do note that he's self-employed, that he is a long-time resident of Minnesota. I know that he has had some contacts with law enforcement.

And, if I'm not incorrect, I think he has a couple of outstanding warrants, Counsel, doesn't he?

MR. NOGUES: I believe one, your Honor.

THE COURT: And there's some failure to appears. Although, they do not seem to be related to especially serious crime, but I think that's also something that can be addressed with the conditions that I may set.

I'm also satisfied that he is 49 years old and that I think he has been married and I believe had one child that, if I'm not mistaken, he has joint custody with.

MR. NOGUES: Just a correction, your Honor. He's thirty -- how old?

DEFENDANT: 38.

MR. NOGUES: 38-year-old.

THE COURT: Oh, okay. I'm sorry. But that he has not seen often since it seems to be the winter of last year.

And he does have a parent who has come here and sat through the proceedings yesterday and returned, I believe, today and who Pretrial Services indicates, although she doesn't apparently know everything about her adult child. I would presume that that's probably true of most of adults' parents. But has agreed to be and understands being a third-party custodian, and that he could stay at her home. And under investigation is whether or not he could also stay at his sister's home and she would be a third-party custodian. And our Pretrial Services will continue to investigate that.

It is noted that he's also agreed to some other requirements that would limit his activities in a very stringent way, even more so than our own Eastern District of Michigan requirements for conditions of release.

I'm also to consider the nature and the seriousness of the danger posed by his release. And there are a lot of things that point to at least some active and not active in the sense of physically active concerns relative to danger posed by the defendant. However, I am to consider whether or not there are conditions that can constrain those such that I am allowing a person to be released against whom allegations are

made, pending their trial or other resolution of a case, that protects the public, a person who might be a victim of any of that person's actions, and also the person themselves from any harm while they're on pretrial release.

I would note for that that it's my understanding that the alleged victim of the cyberstalking and the threats was a person in the state of Michigan, and that the defendant has been in Minnesota, and that part of one of the things that I might do is to keep them pretty far apart.

I do think the Government made a very strong argument that there was some protection of the public involved. And unfortunately, in our nation at this time, I think people are viewing the protection of the public kind of like a two-way street. It depends on what side of the street you're on whether or not an individual might feel they are protected or in need of protection. And that's, of course, a sad state of affairs. But I have looked at the entire case in regard to whether or not I could address that with conditions that might protect everyone.

I want to get to risk of flight, and in this particular instance I don't think there's a strong risk of flight. I know there's always a risk of flight when you have someone indicted in one district and you have them supervised in another district. And I would say that in the number of years I've been on the bench I can probably count on two or three hands the number of times someone's been supervised somewhere else that maybe was involved in allegations like this. I have had people that have been supervised other places and have come from those other places, not only to report

and attend motions and the like, but they've come from those other places for trial and have reported when directed at the close of their trial having received an outcome that was not favorable to them. So I don't think that necessarily means that supervision is not adequate.

I'm also satisfied based upon the information that you all received via that E-mail that was sent to our Pretrial Services department that it appears that while the -- I think their initial report was a little bit lean -- that it appears that they have taken the initiative to work with our Pretrial Services department to provide them information. And it seems like supervision in that area would be amenable to this Court and to that Pretrial Services department.

Other than that, I don't -- except for the fact that he'll be in another state, and in light of things I think probably watch very carefully to determine whether or not he's going to do anything that would result in flight, I don't think that the normal indicators of flight are present. He doesn't have -- I think that he doesn't have a passport; is that right?

DEFENDANT: That's correct.

THE COURT: Although, I suppose Minnesota is pretty close to Canada. I don't see that he has particular means to flee and the like.

Some of the things that were said to be contradictory, like the amount of money he made, I do think there's some contradiction there. There might be also some contradiction in the amount of money he actually has received from other people relative to his

social media connections. But none of the amount that he receives on a monthly basis from his employment, and we do still allow people to have self-employment, seem to be monies that could get him to someplace where the United States would not have access to him.

And having said all of that, I think my role is to fashion a series of conditions that protects the public and assures that he won't flee. And that's why I ask even though, you know, it's purported some negative things were even said about judges, that whether or not your client agreed that he would abide by these seven factors that you have suggested and any conditions that I would set for bond.

And, therefore, having considered the factors that I think I'm required to consider, including that it is a serious offense. Cyberstalking and threats on the internet are very serious. We see it every day in a small way from bullying, you know, among little and high school students all the way up to people actually using it to be involved with serious crimes, including up to physically harming people in Federal Court. I think that my decision will be fashioned to ensure that the defendant will appear and that he will not be a danger to the public during the period of time he's held on pretrial release.

I think I've addressed them all. And to the extent I have not, I will address them in my opinion supporting my order. I am going to enter an order today, though.

And I am going to release Mr. Wagner with a number of conditions.

And, Mr. Wagner, you should know that you'll be supervised in Minnesota, and that you'll be required to appear for court in Detroit. And you can probably be sure that any violations of my conditions are going to be really carefully looked at and monitored by probably two probation offices and as well as likely the Government. And so you should take my conditions very, very seriously.

And, therefore, I am going to place you on \$10,000 nonsecured bond. And I'm allowing the other conditions --

Did I give that paper back to you or not? May I have that paper?

PRETRIAL SERVICES: What paper, your Honor?

THE COURT: The bond paper. I definitely will give it back to you, okay.

And here are the beginning conditions of your release, and that is that you will reside in the state of Minnesota at an address that the Pretrial Services department approves. And right now that is the address of your mother. That you cannot commit any federal, state or local crime while on pretrial release, and that any outstanding warrants must be cleared up in the next 45 days.

And that you have to cooperate with the collection of a DNA sample as authorized under federal statute. And that you must advise the Pretrial Services department in writing before making any change in residence or telephone number. And that you must appear in court as required. And that you must surrender if you're convicted relative to any -- to serving any sentence that the Court may impose.

And I'm also requiring the following conditions. And I think I already said that you report as directed. And that your travel is restricted to the state of Minnesota and the Eastern District of Michigan.

And, Counsel, you should advise him of where that is. It's essentially the lower eastern part of Michigan, not including the upper peninsula. And, if you want to go somewhere other than that, you have to have the pre-approval of the Pretrial Services officer and this Court.

And you're to avoid any contact, directly or indirectly, that means directly person to person or over the internet or by any other electronic device or public statement or in any way people communicate, with any person who is or may become a victim, and any witness in the investigation or the prosecution and any, as I indicated, alleged victims, including anybody that's particularly noted in the discovery that you received. And you may not encourage anyone else to have any contact with them.

And you may not possess a firearm or any destructive device or any other dangerous weapon, or anything to be used to make into a dangerous weapon.

And you may not use or unlawfully possess any narcotic drug or other controlled substances. And in Federal Court marijuana is still a controlled substance. And you must submit to any drug testing required by Pretrial Services. And, if you test positive, you have to attend a treatment program or a counseling program as they direct.

And you must participate in a location monitoring program and abide by the conditions of that. And it is

going to be home detention, which is that you're restricted to your residence at all times, except for employment, which because you're self-employed has to be pre-approved by the Pretrial Services department. So, if you get a call for your services, you have to tell them where and when your services are required and get their approval.

Any religious services, they have to be pre-approved. Medical or substance abuse treatment, attorney's visits, court appearances or other court obligations or anything that the Court would approve in advance.

I've already indicated where your residence will be. I'm also going to require that you submit to location monitoring, as directed by Pretrial Services, and comply with all the conditions and requirements of that. And that you pay -- oh. It's going to be by Global Positioning System. And the Pretrial Services department will make an evaluation to see if you're able to pay the cost of that.

You're also -- you're going to be permitted to use the use of a computer or an internet-connected device, but by doing so you must agree to participate in the computer internet restriction monitoring program and abide by its rules and requirements of the program. And permit Pretrial Services or any supervising officer to configure, manage and install the monitoring software on any computer or electronic device that you're going to use.

So, if you're going to have a computer and cell phone, you may have one of each. They have to be amenable to the program. And they are the only two that you can use. You may not use any of the devices belonging to your mother or your stepfather or any of the other

devices that are in the home where you're going to just stay or there. You can only use the devices that Pretrial has approved and are subject to this monitoring program. And they have to be devices that can be configured, managed and monitored by the Pretrial Services officer.

And you have some other conditions to which I think you have stated you will agree. And they are that during the pendency of this case you may not -- you must refrain from posting on social media. And you're also prohibited from having I said direct, indirect or third-party contact with JS or any member of his or her family.

You cannot participate in or organize or encourage anyone to participate in or organize a protest or other activist activities related to ICE or any other federal agency.

And you have to have the permission of Pretrial Services to enter into the city limits of Minneapolis or St. Paul. And, if you have jobs there, you just have to get their permission to do that and a timeframe in which to do it.

And you may not obviously possess any firearms, as I said, or anything that could be construed to be made into a firearm.

And you will abide by the designation of your mother as the third-party custodian and follow the requirements that are put on her for your supervision.

And I have a few more. I know this is sounding onerous, but it's not as onerous as it sounds and it's not as onerous as being detained.

You're also to avoid any contact, either directly or indirectly, or not to encourage anyone else to contact, directly or indirectly, anyone who's seeking to have you act on their behalf relative to threatening any other person.

And, of course, do not possess any narcotics. And anything that you are prescribed has to be prescribed by a licensed medical practitioner, and Pretrial needs to know about it in advance.

I think that's it.

Oh. And there's no -- you may not engage in any assaultive, threatening or harassing behavior or statements to anyone.

Are there any others, Pretrial, that I've missed?

PRETRIAL SERVICES: No, your Honor.

THE COURT: And my understanding is that the home doesn't have any firearms and none can be held there or obtained by anybody to hold there in the home?

MR. NOGUES: That's correct, your Honor.

THE COURT: You should know also, Mr. Wagner, it means don't get in a car with anybody that has a firearm or that you have any reason to be suspicious that they might have one, all right.

Okay. Does the Government want any other conditions?

MS. ASHER: Your Honor, just for the social media condition, I would just ask that -- I believe you said prohibited from posting on social media. I would just ask that you add or directing others to post on his behalf.

THE COURT: I'll add that.

MR. NOGUES: No objection.

THE COURT: Anything else on behalf of the Government?

MS. ASHER: No, your Honor.

THE COURT: Okay. Then I just want to, Mr. Wagner, tell you that I'm required to fashion these conditions to protect you, the public, and to make sure that you return to court. And I take that very seriously, as does our Pretrial Services department. And they have a pretty good reputation for fashioning conditions of release so that people can comply with them and be free while they're -- the allegations against them, which the indictment is, are evaluated in a court setting, in a judicial setting.

And they have a very good track record of getting people to abide by those conditions and also monitoring people so that they know that they take seriously the conditions that the Court has imposed, and reporting to the Court when they think there are violations. And I also take seriously my job to make sure that you abide by those conditions, especially in a serious case like this.

And so whatever your feelings are about the judiciary, or even certain members of the judiciary, remember that that is what I think that my responsibility is, and I think I'm responsible for carrying it out.

Okay. Do you have any questions?

DEFENDANT: No, your Honor.

THE COURT: Okay. I continue to note that I reserve my right to support my reasons for fashioning these conditions in this release with a subsequent opinion, which if I'm going to have one I'll have it out by the end of the day on Friday.

Do we have anything else to take up at this time?

MS. ASHER: Your Honor, we do understand your Honor's ruling. Certainly the Government does disagree and would object to it. But we would ask for a 14-day stay of the order from your Honor. And, if we do file a notice of appearance within 14 days, we would ask that your Honor further direct that its order be automatically stayed through the completion of the appeal proceeding.

THE COURT: Do you want to respond to that?

MR. NOGUES: I object to that, your Honor, based on the fact that he had his original hearing over a month ago. It's taken this long to have this. This is now the second review of this. I don't think it's appropriate at this time for there to be a stay of the order if the Government is still free to appeal, but I don't think it's appropriate to stay it under --

THE COURT: I don't think it's appropriate at this time, with all due respect, Counsel, either. And, you know, that if there is some failure of Mr. Wagner to comply with the conditions -- I mean, we will be monitoring him, and constantly. And, if he fails to comply with the conditions, I'll immediately take action, as I'm sure Pretrial Services will be prepared to do that. And, if any violation of it comes to your attention, you should act by contacting Pretrial

Services to bring it to the attention of the Court and his counsel.

MS. ASHER: Certainly, your Honor. Thank you.

THE COURT: Okay. But it's noted and preserved for the record.

MS. ASHER: Thank you.

THE COURT: Anything else?

MR. NOGUES: Yes. Very quickly, your Honor. The Court indicated that any travel outside the district of Minnesota or the Eastern District of Michigan needs to be both by permission of Pretrial and the Court. So I just wanted to clarify --

THE COURT: Yes. And, you know, right now we're not inclined to have that occur, but --

MR. NOGUES: I'm just asking about him traveling back.

THE COURT: Oh. Well, I'm going to let him go back to Minnesota. It's my understanding -- I'm sure the United States Attorney's Office understands that --

MS. ASHER: Certainly, your Honor.

THE COURT: -- his mother stayed in order to transport him back.

MS. ASHER: I understand, your Honor.

THE COURT: And I assume that means you have to go through at least the rest of Michigan, Illinois, and where else? Two more states; right?

MR. NOGUES: Yes.

THE COURT: What are they?

MR. NOGUES: Wisconsin and then Minnesota.

THE COURT: Wisconsin and --

MR. NOGUES: Probably a little bit of Indiana as you're going into Chicago there.

DEFENDANT: Illinois.

THE COURT: You don't have any problem with that, do you?

MS. ASHER: No, your Honor, not for him to get back to Minnesota. Once he's in Minnesota then I think the conditions are clear.

THE COURT: Okay. So he may have permission to take a direct route back to Minnesota, okay.

MR. NOGUES: Thank you.

THE COURT: Where is his mother? Do you know if she's going to go there tonight?

MR. NOGUES: Are you planning on going back tonight?

FEMALE SPEAKER: We are leaving as soon as you let him go.

THE COURT: All right. Hold on one second.

(Briefly off the record.)

THE COURT: Counsel, you guys have pretrial scheduled for yesterday? Yesterday? And you have a trial date of April what?

THE CLERK: 7th.

THE COURT: 7th.

MS. ASHER: Your Honor, we can submit a Speedy Trial stipulation and order promptly.

MR. NOGUES: That's right, your Honor.

THE COURT: Let's do that. Do you want your client to sign it or you want to pose questions to him in open court now?

MR. NOGUES: Will you --

THE COURT: No. I want him to raise his right hand.

MR. NOGUES: Your Honor, can I confer with him first?

THE COURT: Yes, you can.

(Briefly off the record.)

MR. NOGUES: We're ready to proceed, your Honor.

THE COURT: Raise your right hand, sir.

(Oath administered.)

THE COURT: Okay. And what's your name for the record?

DEFENDANT: Kyle Wagner.

THE COURT: And your counsel has explained to you your Speedy Trial rights?

DEFENDANT: Yes, your Honor.

THE COURT: He's going to ask you some questions about them for the record; okay?

DEFENDANT: Yes.

THE COURT: Go ahead, Counsel.

MR. NOGUES: So you do have the right to a speedy trial. You understand that?

DEFENDANT: I do.

MR. NOGUES: And the Court has currently set a trial date for April -- did the Court say the 1st?

THE CLERK: 7th.

MR. NOGUES: The 2nd. April 2nd --

THE CLERK: 7th.

MR. NOGUES: 7th. April 7, 2026. You understand that?

DEFENDANT: I do.

MR. NOGUES: And the Government has just suggested that the parties may want to stipulate to the Court to push back the date of your trial. You've heard that?

DEFENDANT: I did.

MR. NOGUES: That would involve an adjournment of the case by your consent, if you were to consent to that. You understand that?

DEFENDANT: I do.

MR. NOGUES: And that would mean that the period that the case is adjourned for would not count towards your Speedy Trial rights. Do you understand that?

DEFENDANT: Understood, yes.

MR. NOGUES: And having that understanding, is that something that you intend to do, to waive that Speedy Trial time?

DEFENDANT: Yes, I will waive my Speedy Trial to allow us additional time to --

MR. NOGUES: We don't have a date or a period set yet, but I will consult with you. And are you okay with giving me permission after I consult with the Government over the length of time that we will propose?

DEFENDANT: Yes, absolutely.

THE COURT: Okay. Do they need a date to come back now, though?

THE CLERK: They can call me tomorrow. I'll send out some dates.

THE COURT: Yeah. For pretrial at least, okay.

MR. NOGUES: Thank you, your Honor.

DEFENDANT: Thank you, your Honor.

THE COURT: Do you have any questions, sir?

DEFENDANT: No, not at this time. I'll ask him the Pretrial Services conditions, so . . .

THE COURT: All right. Very good.

Do you need to take him upstairs or do we need to take him downstairs and . . .

MARSHAL: Take him downstairs to be processed.

PRETRIAL SERVICES: And when he's done there he'll come back and Pretrial Services will . . .

THE COURT: Okay. Do you understand what we're doing, sir?

You've got to go down to the Marshals Service. Then you have to come up to the Pretrial Services department so that we can make some adjustments so that you can be monitored; okay?

DEFENDANT: Okay. Thank you, your Honor.

THE COURT: What about the Government?

MS. ASHER: Nothing further, your Honor.

THE COURT: I would still like a stipulation if you wouldn't mind.

MS. ASHER: We will.

THE COURT: But I just wanted to make sure that he understood his rights on the record.

MS. ASHER: Yes. Thank you, your Honor. And once we receive those dates we will include those in the stipulation.

THE COURT: Okay. And I thank both sides -- wait a minute. Pretrial Services, give me a minute. I want to thank both sides for their arguments and for coming back today so that I could issue my order today, okay.

MS. ASHER: Thank you, your Honor. Have a nice day.

THE COURT: Thank you all, and have a good evening.

Court's in recess.

(The proceedings were adjourned at 5:00 p.m.)

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CERTIFICATE OF COURT REPORTER

I, Sheila D. Rice, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages is a correct transcript from the record of proceedings in the above-entitled matter.

159a

s/Sheila D. Rice

Sheila D. Rice, CSR-4163, RPR, RMR, FCRR
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 03/26/2026
Detroit, Michigan.

160a

APPENDIX E

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE WAGNER,

Defendant.

Case No. 26-30053

Filed: February 3, 2026

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 29, 2026, in the county of Oakland in the Eastern District of Michigan, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 2261A(2)	Cyberstalking.
18 U.S.C. § 875(c)	Interstate Communications.

161a

The criminal complaint is based on these facts:
See attached affidavit.

☐ Continued on the attached sheet.

/s/ Rudy Lara
Complainant's Signature

Rudy S. Lara, Special Agent
Printed name and title

Sworn to before me and signed in my presence
and/or by reliable electronic means.

/s/ David R. Grand
Judge's signature

Hon. David R. Grand,
United States Magistrate Judge
Printed name and title

Date: February 3, 2026

City and state: Detroit, MI

**AFFIDAVIT IN SUPPORT OF A CRIMINAL
COMPLAINT**

I, Rudy S. Lara, being duly sworn, hereby declare and state as follows:

TRAINING AND EXPERIENCE

1. I am a Special Agent with Immigration and Customs Enforcement ("ICE") – Homeland Security Investigations ("HSI") and have been so employed since September 2008. I am currently assigned as a Special Agent ("SA") to the Special Agent in Charge in Dallas, Texas, and have personally investigated numerous cases involving narcotics (cocaine, methamphetamine, and heroin), bulk currency, and firearms. While assigned to the HSI Dallas Gang Unit, I conducted Title III and Racketeer Influenced and Corrupt Organizations Act (RICO) / Violent Crimes in Aid of Racketeering Activity (VICAR) investigations. I am currently on temporary assignment to the Special Agent in Charge, St. Paul, Minnesota. I am authorized and assigned to investigate violations of federal laws, including 18 U.S.C. § 2261A(2) (Cyberstalking) and 18 U.S.C. § 875(c) (Interstate Communications).

2. I am a law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510(7) and I am authorized by law to conduct investigations and to make arrests for felony offenses.

PURPOSE OF AFFIDAVIT

3. This affidavit is submitted for the purpose of establishing probable cause in support of the attached

criminal complaint and issuance of arrest warrant against KYLE WAGNER for a violations of 18 U.S.C. § 2261A(2) (Cyberstalking) and 18 U.S.C. § 875(c) (Interstate Communications). This affidavit is based on my personal knowledge, as well as information I have learned from other law enforcement officers and the review of reports, written materials, and multiple recordings. This affidavit is intended to show merely that there is sufficient probable cause for the requested complaint and arrest warrant and does not purport to set forth all my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and part only.

PROBABLE CAUSE

4. Kyle WAGNER is a Minneapolis resident and a self-identified Antifa member who has demonstrated a persistent and escalating opposition to ICE operations, including conspiring and threatening to assault federal law enforcement officers with the intent to impede, intimidate, or interfere with ICE operations in Minneapolis. Over the last few months, through social media, WAGNER has publicly denounced ICE agents, repeatedly referring to them as “aggressors,” the “gestapo,” and “murderers.” His social media posts actively encourage his followers to impede, intimidate, and interfere with ICE operations through direct action—urging others to forcibly confront, assault, impede, oppose, and resist federal officers.

5. In January 2026, HSI began reviewing WAGNER’s historical social media posts, including

content from his Facebook account (Kyle Wagner) and his Instagram accounts (@kaos.follows) and (@antifa.kaos). During this review, HSI identified multiple posts that show escalating threats directed against federal law enforcement, including ICE agents, and WAGNER's involvement in a conspiracy to assault, impede, resist, or injure federal law enforcement officers and injure their property to molest, interrupt, hinder, or impede their ability to discharge their official duties.

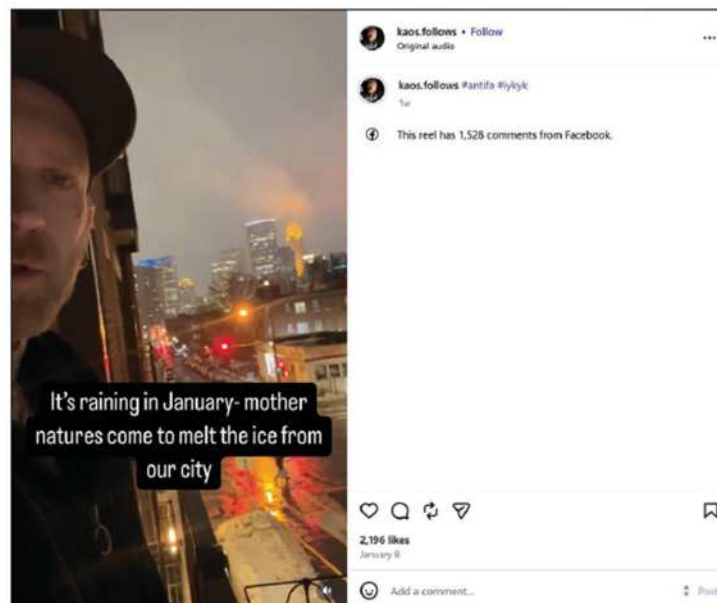
6. Additionally, on January 29, 2026, on WAGNER's Instagram account (@antifa.kaos), WAGNER doxxed a pro-ICE individual, J.S., by publishing a phone number, birth month and year, and address in Oak Park, Michigan. In the same post, WAGNER threatened J.S. WAGNER later admitted that he doxxed J.S.'s parents' house.

7. The following posts from January 2026 demonstrate WAGNER's intent to impede, intimidate, or interfere with ICE operations and federal officers in the performance of their official duties in Minneapolis and the surrounding area. WAGNER used social media to engage with conspirators to impede or injure federal officers. WAGNER also used social media to solicit others to engage in a crime of violence, namely, to assault a federal officer with a deadly or dangerous weapon. The review of WAGNER's social media activity revealed a series of posts that show his efforts to mobilize others to take direct action against federal officers. The following examples illustrate WAGNER's intent to forcibly impede, intimidate, injure, or

interfere with ICE agents while engaged in their official duties:

- **January 8, 2026 – Instagram(@kaos.follows):**

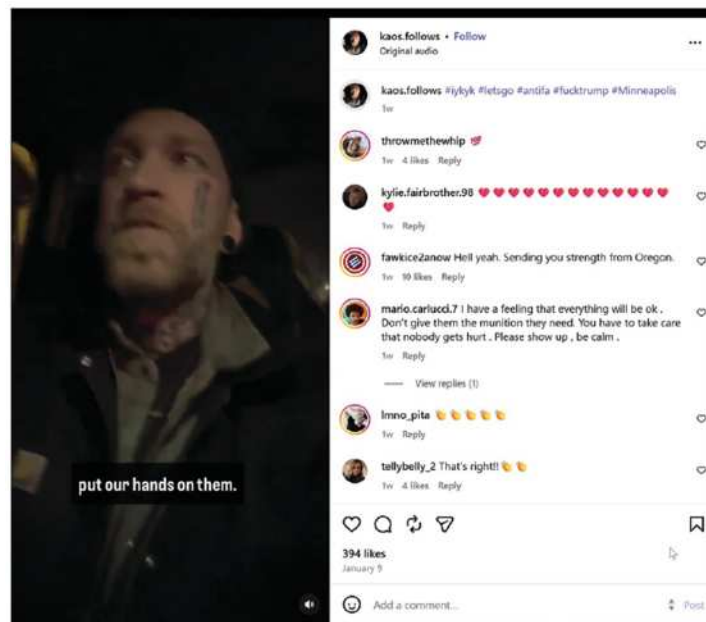
WAGNER posted a video directly threatening ICE agents by stating, *“I’ve already bled for this city, I’ve already fought for this city, this is nothing new, we’re ready this time, ICE we’re fucking coming for you.”*



- **January 9, 2026 – Instagram (@kaos.follows):**

WAGNER encouraged his followers to take direct action against ICE, posting, *“The ICE bunk houses in West End and around the Twin Cities are constant harassment of ICE and we need to continue that, but we also need to cripple them.”* WAGNER then advocated for physical confrontation, stating,

“Anywhere we have an opportunity to get our hands on them, we need to put our hands on them.”

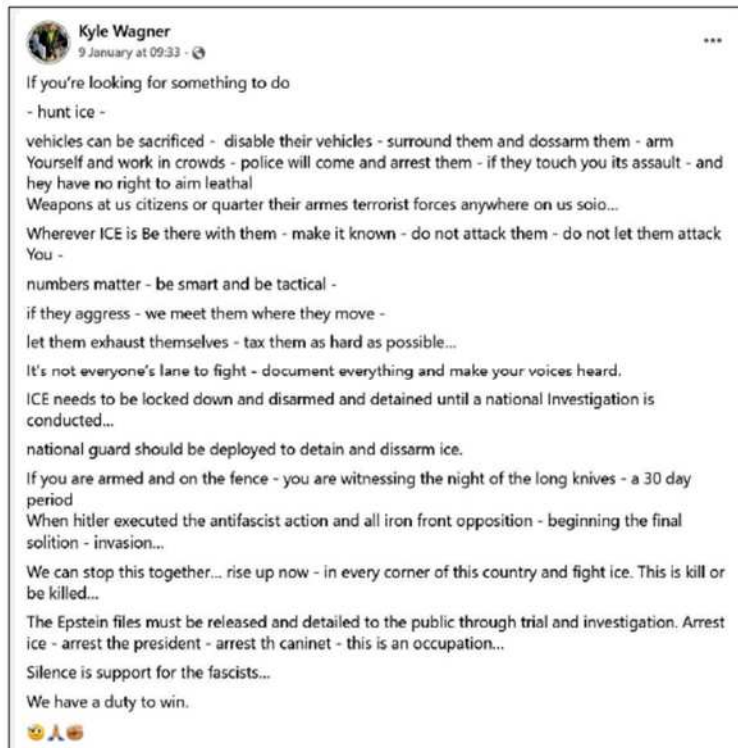


WAGNER explained that Minneapolis is going to be the first state to *“stand its f----- ground. We’re not about to be overrun by a bunch of want-to-be Nazis cosplaying like they’re f----- military.”*

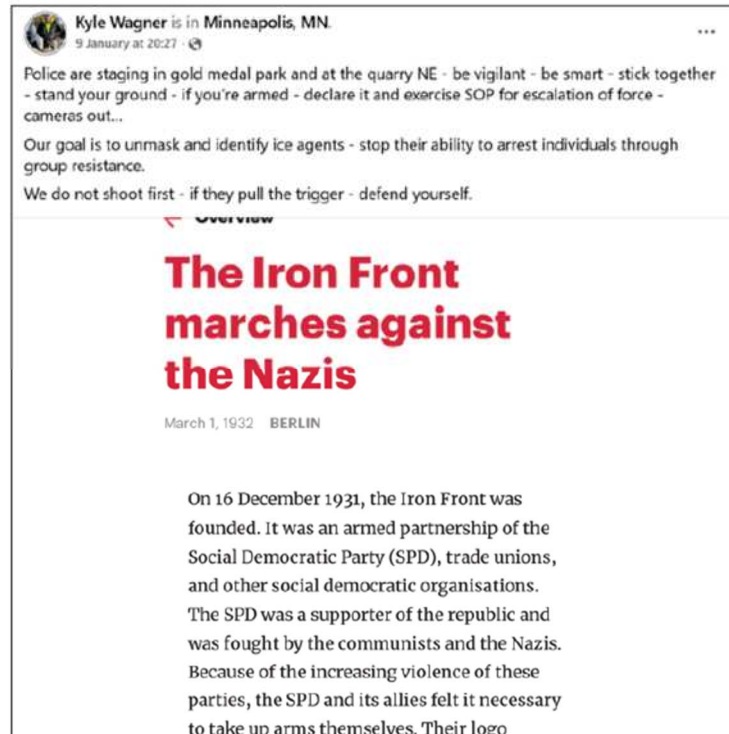
In another video that same day, WAGNER explained that things were at an *“inflection point, and it is very much up in the air how this all plays out.”* WAGNER described what the *“next 30 days are going to look like.”* He also provided instructions in the caption for targeting ICE and their property: *“If you’re looking for something to do - hunt ice - vehicles can be sacrificed - disable their vehicles-*

surround them and disarm them - arm yourself and work in crowds - police will come and arrest them-if they touch you its assault- and he have no right to aim lethal weapons at us citizens or quarter their armes terrorist forces anywhere on us soio...(sic) Wherever ICE is Be there with them - make it known - do not attack them You - numbers matter - be smart and tactical - if they aggress - we meet them where they move - let them exhaust themselves - tax them as hard as possible... national guard should be deployed to detain and dissarm (sic) ice. If you are armed and on the fence - you are witnessing the night of the long knives – a 30 day period when hitler executed the antifascist action and all iron front opposition - beginning the final solition (sic) - invasion... We can stop this together... rise up now - in every corner of this country and fight ice. This is killed or be killed... The Epstein files must be released and detailed to the public through trial and investigation. Arrest ice - arrest the president - arrest - this is an occupation... Silence is support for fascists... We have a duty to win.”

WAGNER posted the same message on his Facebook account (Kyle Wagner):



In another video, WAGNER posted a screenshot about the Iron Front march against the Nazis, and added the caption, “Police are staging in gold medal park and at the quarry NE - be vigilant - be smart - stick together - stand your ground - if you’re armed - declare it and exercise SOP for escalation of force - cameras out... Our goal is to unmask and identify ice agents - stop their ability to arrest individuals through group resistance. We do not shoot first - if they pull the trigger - defend yourself.”



• **January 10, 2026 – Instagram (@kaos.follows) and Facebook (Kyle Wagner)**

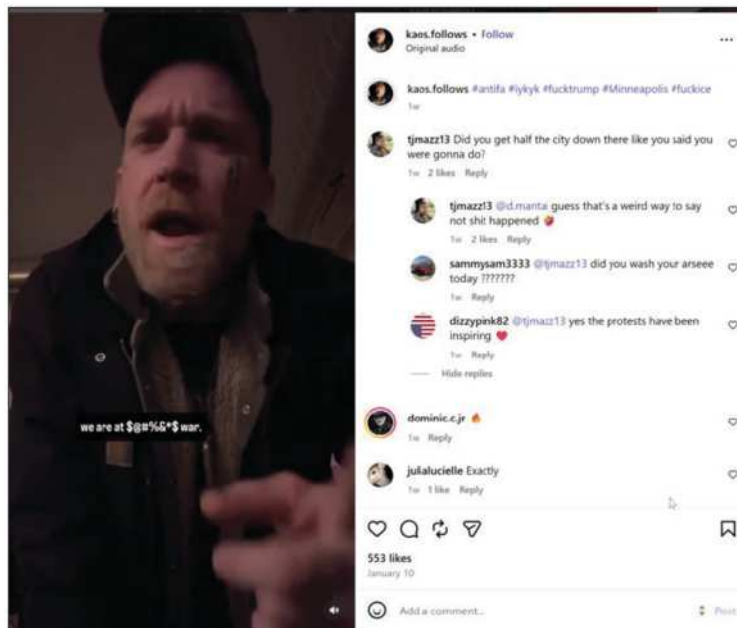
WAGNER posted a video, explaining that people are trying to “*portray it like this is just chaos. It’s not. It’s a lot of fun. It’s actually really well organized.*” WAGNER then directed his followers to different areas of Minneapolis, explaining, “*anywhere there’s ICE, you can go have some fun. And it’s actually working quite well because now they’re sending us more troops[.]*”

WAGNER urged, “*Get out of the streets. Have some f----- fun. Keep your heads. We’re not the violent ones.*”

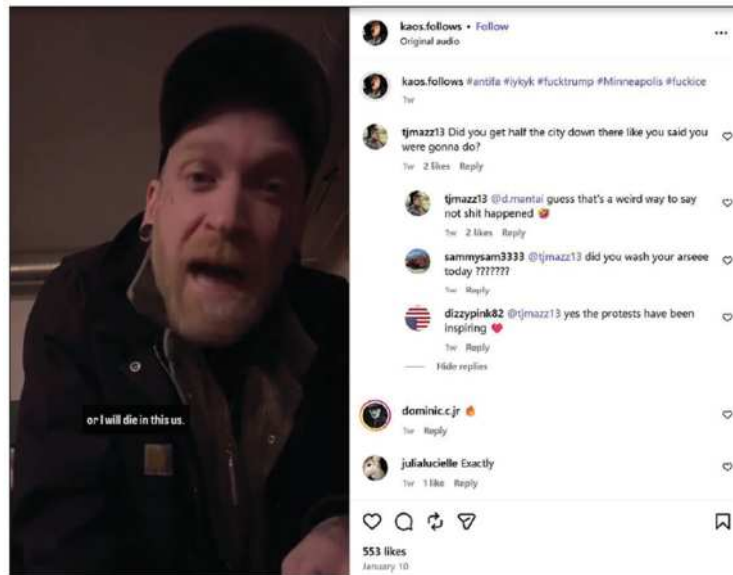
170a

Go take their f----- masks off and take their f----- guns.”

That same day, WAGNER posted another video, explaining that his earlier video was about “*survival*.” He continued, “*I posted that video because we are at f----- war. This is a war for our f----- souls right now.*” He explained, “*I am going to stay in this fight to the bitter end. So, either we’re going to win, or I will die in this process.*”



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That same day, on Facebook, WAGNER shared a video of the officer-involved shooting of Renee Good with the caption, “Watch it as many times as you need. If you side with the gunman. We’re coming for you too.”

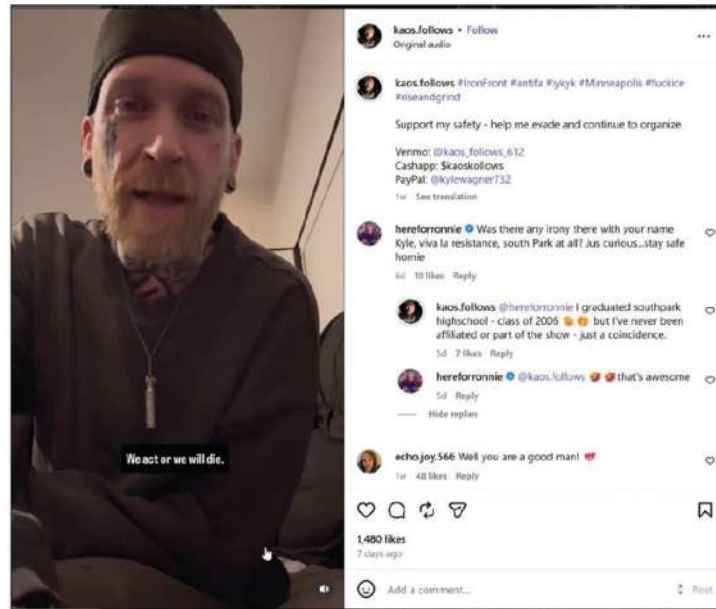
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- **January 12, 2026 – Instagram (@kaos.follows)**

WAGNER posted a video update. In the caption, he asked for his followers to “[s]upport my safety – help me evade and continue to organize.” WAGNER listed his Venmo, Cashapp, and Paypal accounts. He urged fellow “patriots” to “protect [our country] from fascism.” He compared the situation in Minneapolis to the Iron Front, who opposed the Nazi regime in Germany and was executed. He urged, “We act or we will die.”

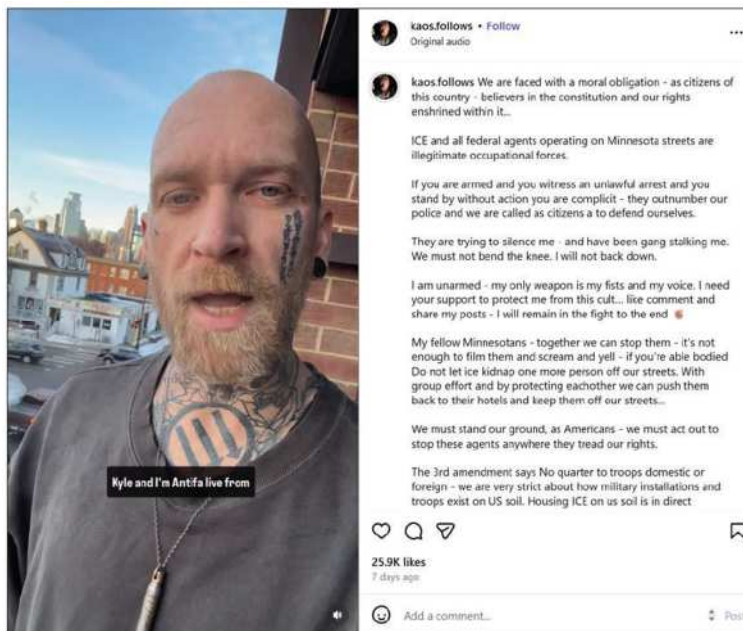
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WAGNER posted another video, with the caption that explained, “We are faced with a moral obligation” and described “ICE and all federal agents operating on Minnesota streets [as] illegitimate occupational forces.” WAGNER continued, “If you are armed and you witness an unlawful arrest and you stand by without action you are complicit - they outnumber our police and we are called as citizens a (sic) to defend ourselves. I am unarmed - my only weapon is my fists and my voice. I need your support to protect me from this cult... like comment and share my posts – I will remain in the fight to the end 🤝 My fellow Minnesotans - together we can stop them - it’s not enough to film them and scream and yell - if you’re able bodied Do not let ice kidnap one more person off our streets.

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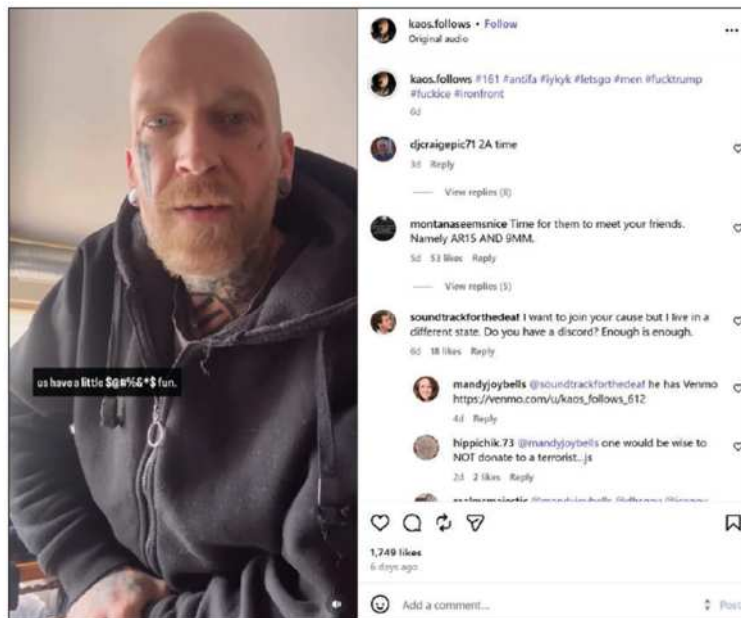
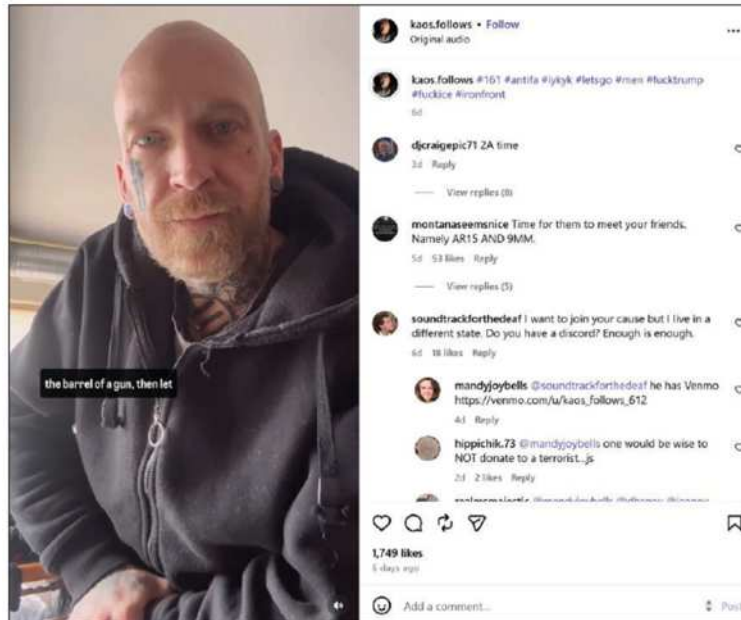
With group effort and by protecting eachother (sic) we can push them back to their hotels and keep them off our streets... We must stand our ground, as Americans - we must act out to stop these agents anywhere they treat our rights.” During the video, WAGNER explained, “*We are at an inflection point here. This week is important.*” He described 1,500 or more ICE agents coming to Minneapolis; “*we found them checking into hotels all over the city.*” He explained the “*castle doctrine,*” encouraging “*every armed citizen, you have a choice to make whether you allow this to stand in our community or not. We are the Iron Front. It is an ideology.*”



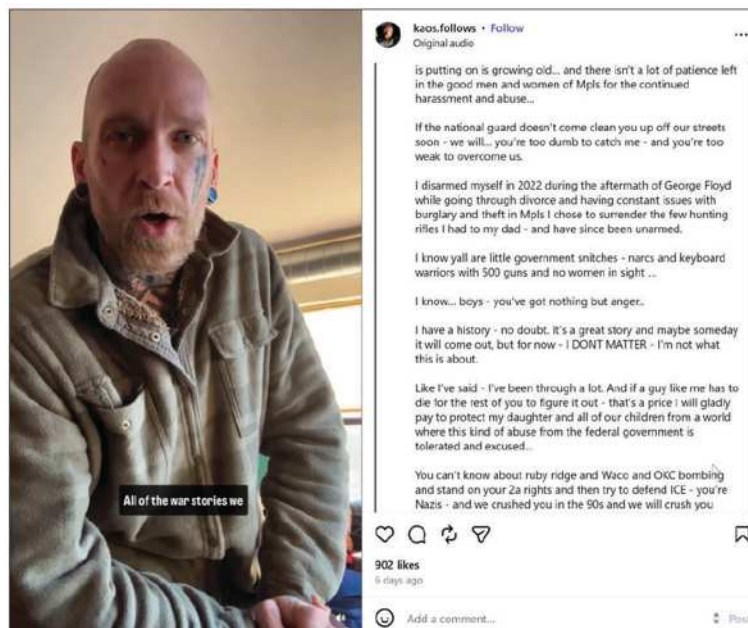
- **January 13, 2026 – Instagram (kaos.follows):**

WAGNER posted a video, explaining, *“We are under occupation, and we are fighting back with every tool we have at our disposal. That has been extremely effective, and we have pushed ICE so hard that they have doubled their size and they have increased the severity of their tactics in an attempt to scare us into submission.”* He stated, *“This is where ICE has come to die.”* WAGNER then threatened ICE agents, *“We want to know who they are. We will identify every single one of them and we will prosecute them to the fullest extent of the law. If that has to be done at the barrel of a gun, then let us have a little f----- fun.”* An Instagram user commented on the video, explaining that the user wanted to join WAGNER’s “cause[,]” and another Instagram user responded with WAGNER’s Venmo account. A different Instagram user commented, *“Time for them to meet your friends. Namely AR15 and 9MM.”*

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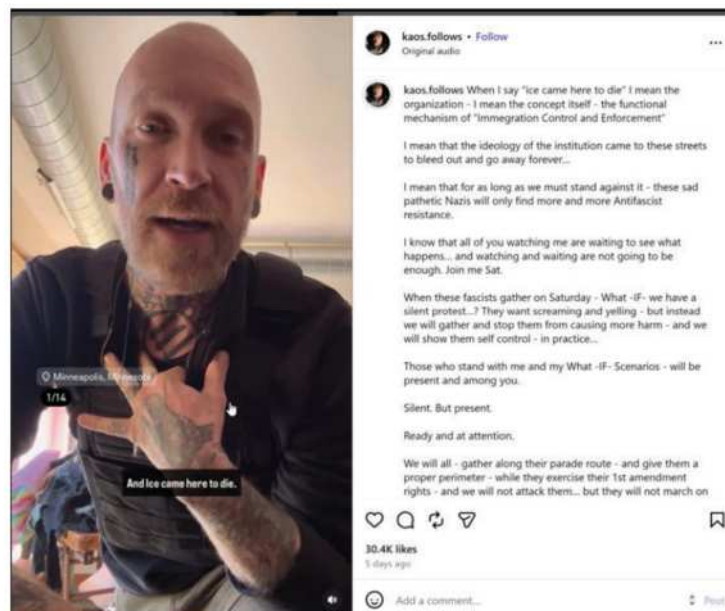


In another video, WAGNER referenced the “*doxxing that’s going on[,]*” and explained that he is “*keeping the peace out of respect for my community. Not out of respect for you. I have been asked politely not to escalate this situation. Lord knows I want to. And if you keep f----- around, I’m going to. But right now, I am politely holding the line as I have been asked to.*” In the caption, he wrote, “If the national guard doesn’t come clean you up off our streets soon - we will...” He later wrote, “Like I’ve said - I’ve been through a lot. And if a guy like me has to die for the rest of you to figure it out - that’s a price I will gladly pay[.]” He ended the caption, “You can’t know about ruby ridge and Waco and OKC bombing and stand on your 2a rights - you’re Nazis - and we crushed you in the 90s and we will crush you[.]”



• **January 14, 2026 – Instagram (@kaos.follows):**

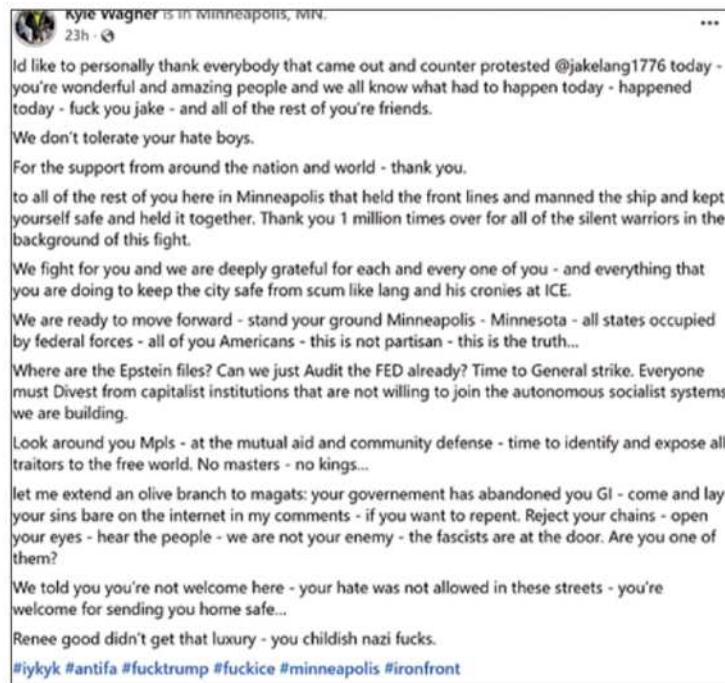
In a video, WAGNER, wearing a bullet-proof vest, encouraged his followers to join him on Saturday to oppose a pro-ICE rally, explaining that *“every armed Minnesotan is going to be there.”* WAGNER explained that his followers who stand with what he is *“preaching”* and *“stand with armed defense of this city. Saturday the 17th you need to be on the streets.”* He continued, *“this fascism will not be allowed on our streets.”* He finished the video stating, *“ICE came here to die.”*



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- **January 17, 2026 – Facebook (Kyle Wagner)**

After a pro-ICE rally in Minneapolis, WAGNER posted a Facebook video where he explained, *“I want to make one thing very clear and this is going to be directly to all of the rest of the Nazis that were around for this, okay? You’ll see in this video I was right there, and I let Jake Lang go.”* WAGNER also posted this caption:



- **January 18, 2026 – Instagram (@kaos.follows):**

WAGNER posted an Instagram story, describing a pro-ICE individual’s fundraising, and wrote, “I’m

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fundraising for others mutual Aid networks and spending my resources fighting back and organizing the direct action that's getting us results... If you can't be here and want to see us take the fight to them - give me your support and help us Stop Ice now. My link is in my bio - fund community protection and anti-ICE direct action.
#vivalaresistance.”

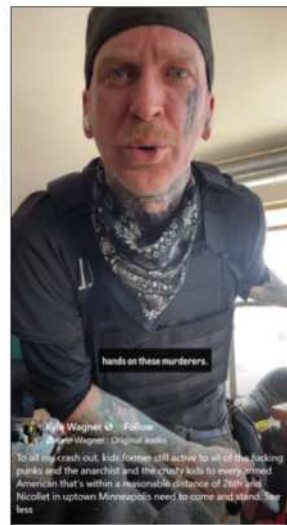


- **January 24, 2026 – Facebook (Kyle Wagner) and Instagram (@kaos.follows):**

After an officer-involved shooting on January 24, 2026, WAGNER posted several videos on social media. WAGNER shared an Instagram story showing the January 24, 2026 officer-involved shooting. In the video, WAGNER advocated for violent resistance against ICE. WAGNER stated, *“I am Kyle. I am Antifa. And they just shot another f--- peaceful observer literally five f--- blocks away from here. In my neighborhood, just like they shot Renee fourteen blocks away over there. And I’ve been saying this. And it’s not okay.”* WAGNER continued, screaming, *“But it needs to be said. You can’t march and bang drums and sing songs when they’re shooting people in the f----- head. Go and f----- fight them. Or shut the f--- up and die for them.”*



Later that day, WAGNER posted a video to Facebook while wearing a bullet-proof vest. WAGNER included the caption, "To all my crash out, kids former still active to all the f----- punks and the anarchist and the crusty kids to every armed American that's within reasonable distance of the 26th and Nicollet in uptown Minneapolis need to come and stand." During the video, WAGNER explained that the "*messages started flooding in to say that I was needed front lines right away.*" WAGNER stated, "*I have my truck on standby. I have gas masks on the ground there, as much as I could deliver. I have people en route. If you're seeing this video, we're done with peaceful protests now. The gloves come off and ICE needs to get out. Run for the hills, boys.*" WAGNER stated, "*I have repeated myself ad nauseum to a (sic) deaf ears of cowards and b----made little f--- boys that want to f..... talk about their f----- feelings instead of putting hands on these murderers.*"



The same day, WAGNER posted another video to Instagram showing WAGNER wearing a bullet-proof vest and directing his followers to bring guns to the location of the officer-involved shooting. WAGNER explained that he was “Antifa,” and *“there was so much rage in me that I’ve had to record this like fifteen times trying to get the message out. They f----- up, okay? Go watch my other videos. It doesn’t matter if you’re not here and you’re not caught up. You missed the f----- fight. But if you are, it’s time to suit up. Boots on the ground Nicolette and f----- 26th. My house is four blocks away. Anywhere between Franklin and Nicolette, and 26th and Nicolette, show up ready to go. Okay, no, not talking about peaceful protests anymore. We’re not talking about having polite conversations anymore. I am talking specifically to my f----- followers, this is everything I have f----- talked about. This is exactly what I said was going to happen. This is exactly what I said was going to f----- come when we didn’t f----- go and march on f----- Whipple with guns. Sorry but welcome to America 2026 where the Second Amendment is the only thing that’s going to keep you f----- protected from literal f----- Nazi gun men that are killing innocent people in the street with impunity. This is not a f----- joke. There’s nothing fun to chant about it. Get your f----- guns and stop these f----- people.”* WAGNER captioned the video, “Suns out guns out... stfu [shut the fuck up] and fight back[.]” Several Instagram users commented on the video. One Instagram user commented, “How can we help from out of state[?]” Another user commented, “Collab? I’m about to try and head your way. Working on child care now. Coming from Madison wisco[.]”

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- **January 26, 2026 – Instagram (@antifa.kaos)**

WAGNER posted from a new Instagram account, explaining, *“My name’s Kyle. I’m Antifa. And I’m back. They pulled everything I’ve ever f----- put on the Internet off the Internet today like I never f----- existed... The fight is well and alive. We have pushed ICE to leave this city in droves. We have made our voices heard. Viva la resistance.”*

The same day, WAGNER reposted a video that showed a pick-up truck pulling up to a crowd. WAGNER got out of the truck and asked, *“Who needs a gas mask?”* WAGNER then pulled out a box of gas masks and began to pass them out, explaining that he has *“like 30 of them.”* He also passed out shields, stating, *“the shields and shit in the truck is free to grab.”* The video is captioned, *“Power to the*

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people” with hashtags #minneapolis #antifa #iykyk #fuckice #fucktrump #ironfront.

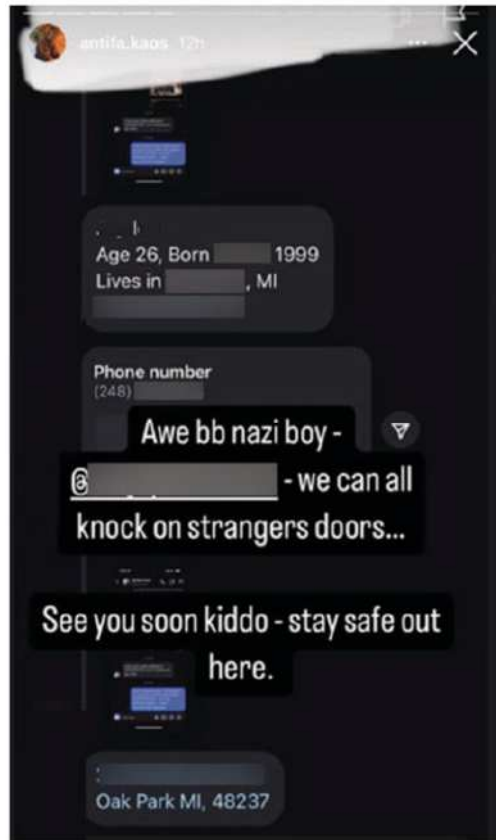


- **January 27, 2026 – Instagram**
(@antifa.kaos)

WAGNER posted a video applauding the success of the agitators' impeding of ICE and federal agents in Minneapolis. WAGNER stated, *"I'm Kyle. I'm Antifa. Welcome to Minneapolis. Got rid of Bovino yesterday. Also sent a lot of ICE agents packing. It's working people. The pressure is getting results."*

8. Additionally, WAGNER used his Instagram account (antifa.kaos), which is an electronic communication system of interstate commerce, to place J.S. in reasonable fear of death or serious bodily injury, or to cause, attempt to cause, or would reasonably expect to cause, J.S. substantial emotional distress. In the January 29, 2026 post, WAGNER listed J.S.'s full name, birth month and year, phone number, and address—doxxing J.S. while calling him a "bb nazi boy[.]" WAGNER also threatened, "we can all knock on strangers doors... See you soon kiddo – stay safe out here."

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9. In another video from January 29, 2026, WAGNER explained that he doxxed J.S.'s parents' address and J.S.'s phone number. WAGNER then discussed fighting J.S. in a cage fight.

10. Based on my training and experience, these posts, authored and controlled by WAGNER, show that WAGNER used Instagram with the intent to kill, injure, harass, intimidate, or place under surveillance with the intent to kill, injure, harass, or intimidate J.S., which caused, attempted to cause, or

would reasonably be expected to cause, substantial emotional distress to J.S. WAGNER also transmitted in interstate commerce a communication containing a threat to injure J.S.

CONCLUSION

11. Based on the foregoing, I have probable cause to believe, and I do believe, that WAGNER has committed the following crimes: 18 U.S.C. § 2261A(2) (Cyberstalking) and 18 U.S.C. § 875(c) (Interstate Communications).

/s/ Rudy Lara
Special Agent
Homeland Security Investigations

Sworn to before me and signed in my
presence and/or by reliable electronic means.

/s/ David R. Grand
HON. DAVID R. GRAND
UNITED STATES MAGISTRATE JUDGE

DATED: February 3, 2026

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APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE WAGNER,

Defendant.

Case: **2:26-cr-20059**
Assigned To: **Hood, Denise Page**
Referral Judge: **Patti, Anthony P.**
Assign. Date: **2/11/2026**
Description: **IND USA V WAGNER (TM)**

Violations: 18 U.S.C. § 2261A(2)
18 U.S.C. § 875(c)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE
18 U.S.C. § 2261A(2)
Cyberstalking

On or about January 29, 2026, in the District of Minnesota, and elsewhere, the defendant, KYLE WAGNER, with the intent to kill, injure, harass, and intimidate, and place under surveillance with the intent to kill, injure, harass, and intimidate, J.S., a person in another state, namely, the Eastern District of Michigan, used an electronic communication service, an electronic communication system of interstate commerce, and a facility of interstate and foreign commerce, including the internet and the social media application Instagram, to engage in a course of conduct that caused, attempted to cause, and would reasonably be expected to cause substantial emotional distress to J.S., in violation of Title 18, United States Code, Section 2261A(2).

COUNT 2

18 U.S.C. § 875(c)

Interstate Communications—Threats

On or about January 29, 2026, in the District of Minnesota, and elsewhere, the defendant, KYLE WAGNER, knowingly transmitted in interstate commerce to the Eastern District of Michigan a communication containing a threat to injure the person of another for the purpose of making a threat, with knowledge that the communications would be viewed as making a threat; that is, WAGNER used the internet to transmit the following message to J.S.: “[N]azi boy – [J.S.] - we can all knock on strangers (sic) doors... See you soon kiddo - stay safe out here[,]” in violation of Title 18, United States Code, Section 875(c).

FORFEITURE ALLEGATIONS

18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)

Criminal Forfeiture

The allegations contained in Count One and Two of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Federal Rule of Criminal Procedure 32.2.

Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), upon conviction of any count of this Indictment, in violation of 18 U.S.C. § 875(c), the defendant shall forfeit to the United States his interest in any property, real or personal, which constitutes or is derived from proceeds traceable to its offense.

Forfeiture includes, but is not limited to, a personal forfeiture money judgment against the defendant, in favor of the United States, in an amount representing the gross proceedings obtained by the defendant as a result of his violation of any count of this Indictment, a violation of 18 U.S.C. § 875(c).

If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or

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e. has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p).

THIS IS A TRUE BILL.

s/ *Grand Jury Foreperson*
Grand Jury Foreperson

JEROME F. GORGON JR.
United States Attorney

s/ *Danielle Asher*
DANIELLE ASHER
Deputy Chief, Criminal Division

s/ *Eaton P. Brown*
EATON P. BROWN
Assistant United States Attorney

Dated: February 11, 2026

United States District Court Eastern District of Michigan	Criminal Case Cover Sheet	Case: 2:26-cr-20059 Assigned To: Hood, Denise Page Referral Judge: Patti, Anthony P. Assign. Date: 2/11/2026 Description: IND USA V WAGNER (TM)
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NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accurately in all respects

Companion Case Information	Companion Case Number:
This may be a companion case based upon LCrR 57.10 (b)(4)¹	Judge Assigned:
☐ Yes ☒ No	AUSA's Initials: DAA

¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, or (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.

Case Title: USA v. Kyle Wagner
County where offense occurred: Oakland
Check One: ☒ **Felony** ☐ **Misdemeanor** ☐ **Petty**

 Indictment/ Information --- **no** prior complaint.
☒ Indictment/ Information --- based upon prior
complaint [**Case number:** 26-mj-30053
 Indictment/ Information --- based upon **LCrR**
57.10 (d) [Complete Superseding section below].

Superseding Case Information

Superseding to Case No: **Judge:**

- ☐ Corrects errors; no additional charges or defendants.
- ☐ Involves, for plea purposes, different charges or adds counts
- ☐ Embraces same subject matter but adds the additional defendants or charges below:

Defendant name Charges Prior Complaint
(if applicable)

Please take notice that the below listed United States Attorney is the attorney of record for the above captioned case.

February 11, 2026 s/ Danielle Asher
Date Danielle Asher
Assistant United States Attorney
211 W. Fort Street, Suite 2001

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Detroit, MI 48226-3277

Phone: (313) 226-9518

Attorney Bar #: P81362

APPENDIX G
Statutory Provisions Involved

18 U.S.C. § 3142

§ 3142. Release or detention of a defendant pending trial

(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 section 3 of the DNA Analysis Backlog

Elimination Act of 2000 (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 section 3 of the DNA Analysis Backlog Elimination Act of 2000 (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 section 102 of the Controlled Substances Act (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.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register

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offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(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.--If the judicial officer determines that--

(1) such person--

(A) is, and was at the time the offense was committed, on--

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(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.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that--

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed--

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a

maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

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

(1) upon motion of the attorney for the Government, in a case that involves--

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; 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 such 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 attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including

any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, 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. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing

and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(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 the available information concerning--

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(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 described 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--

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of

criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(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 to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
- (3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and
- (4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

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

18 U.S.C. § 3145

§ 3145. Review and appeal of a release or detention order

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

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) Review of a detention order.--If a person is ordered detained by a magistrate judge, 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, or from a decision denying revocation or amendment of such an order, is governed by the provisions of 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.