

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
UNITED STATES OF AMERICA, : Docket # 1:21-mj-03982-  
: UA All Defendants

- against - :  
SANCHEZ, MALIK, : New York, New York  
: April 14, 2021  
Defendant. :

----- : REMOTE PRESENTMENT

PROCEEDINGS BEFORE  
THE HONORABLE JUDGE ONA T. WANG,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
BY: KAYLAN ELIZABETH LASKY, ESQ.  
One St. Andrew's Plaza  
New York, New York 10007  
212- 637-2315

For Defendant: FEDERAL DEFENDERS OF NEW YORK INC.  
BY: CLAY HUBBARD KAMINSKY, ESQ.  
52 Duane Street - 10th Floor  
New York, New York 10007  
212- 417-8749

Also Present: Pretrial Services  
By: Officer Courtney DeFeo

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: Okay, we are ready to proceed. This  
3 is the United States versus Malik Sanchez, 21-mag-3982,  
4 before the Honorable Ona T. Wang.

5 Please state your appearances for the record.

6 MS. KAYLAN E. LASKY: Good afternoon, your Honor.  
7 Kaylan Lasky for the government.

8 MR. CLAY H. KAMINSKY: Good afternoon, Clay  
9 Kaminsky, Federal Defenders, for

10 HONORABLE ONA T. WANG (THE COURT): All right.  
11 Good afternoon. And I understand we have Pretrial Services  
12 on the line, as well?

13 OFFICER COURTNEY DEFEO: Yes. Good afternoon, your  
14 Honor. This is Courtney DeFeo on behalf of Pretrial.

15 THE COURT: All right, and Mr. Sanchez, do we have  
16 you on the line, as well?

17 MR. MALIK SANCHEZ (THE DEFENDANT): Yes.

18 THE COURT: All right. Mr. Sanchez, are you able  
19 to speak and understand English?

20 THE DEFENDANT: Yes.

21 THE COURT: All right, we are here for an initial  
22 appearance. We are in the midst of the COVID-19 pandemic.  
23 I am conducting this proceeding pursuant to the authority  
24 provided by Section 15002 of the CARES Act and the standing  
25 orders issued by our chief judge pursuant to that Act.

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Counsel are appearing by telephone, and the defendant is also participating by telephone. I also note that this telephone line is open to the public and the press on a listen-only basis. The Court is making an audio recording of this proceeding, and any other recording or rebroadcasting by anyone else on this line is strictly prohibited.

In order to aid the Court in making a clear audio recording, all members of the public and the press are directed to stay on mute and remain on mute for the duration of the conference. For participants who expect to be speaking, please stay on mute until it is your turn to speak. And please say your name when you start speaking, and please don't interrupt each other. Any failure to follow these ground rules may result in muting or expulsion from the conference; and, in egregious cases, sanctions.

All right, I'm going to go down the line right now for the participants, and I'm going to ask the same two questions. Number one is can you clearly hear everyone; and, two, will you let me know promptly if you cannot? And I'm going to start with the government, AUSA Lasky, can you clearly hear everyone, and will you let me know promptly if you cannot?

MS. LASKY: Yes, your Honor, on both questions.

1  
2 THE COURT: All right, next question is for  
3 Mr. Kaminsky. Mr. Kaminsky, can you clearly hear everyone,  
4 and will you let me know promptly if you cannot?

5 MR. KAMINSKY: Yes and yes, your Honor.

6 THE COURT: All right, Officer DeFeo, can you  
7 clearly hear everyone, and will you let me know promptly if  
8 you cannot?

9 PRETRIAL OFFICER DEFEO: Yes, your Honor.

10 THE COURT: And then, Mr. Sanchez, can you clearly  
11 hear everyone, and will you let me know promptly if you  
12 cannot?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. I understand that  
15 Mr. Sanchez is currently with the marshals in the  
16 cellblock, is that correct?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right, Mr. Kaminsky, have you and  
19 Mr. Sanchez had an opportunity to consult in advance of  
20 this proceeding; and if so, when and how did those  
21 confrontations take place?

22 MR. KAMINSKY: Yes, we have, your Honor. Pretrial  
23 Services was able to give me the direct phone number to the  
24 room that he was in, and I spoke with him several times.

25 THE COURT: All right, Mr. Sanchez, you have a

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right to an attorney for all court proceedings, including this one, and during all questioning by the authorities. You have a right to hire your own attorney, but if you cannot afford one, I will appoint one to represent you at the government's expense.

Mr. Kaminsky has provided the Court with a Financial Affidavit for the purposes of the Court appointing you as counsel. Mr. Kaminsky, was this form prepared in consultation with Mr. Sanchez in advance of this proceeding?

MR. KAMINSKY: That's correct, your Honor. He gave me the information, we went over it, and then he authorized me to sign on his behalf.

THE COURT: All right, Mr. Sanchez, I'm going to just briefly summarize the information on the Financial Affidavit, after which I'm going to ask you if he information is complete, whether you have any -- and accurate; and then if you say that it is, I'm going to place you under oath to swear to the truth of the information. Okay?

THE DEFENDANT: Yes.

THE COURT: All right, so now I'm going to summarize it. Under employment, it says that you earn around \$200 a month, self-employed for DoorDash; you're not

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married; and you have just received on the order of \$50 to \$100 in internet donations. And that is your only other income. You have less than \$1,000 on hand in any savings or checking accounts and no other property of value. In terms of obligations and debts, you are single with no dependents; have monthly costs of around \$250, with your family supporting you for the balance of anything else.

Mr. Sanchez, before I ask you to swear to it, is the information I have just recited and summarized about your financial condition accurate?

THE DEFENDANT: Yes.

THE COURT: And do you have any additional sources of income that I did not summarize?

THE DEFENDANT: No.

THE COURT: All right, I'm now going to place you under oath to affirm the truth of the information set forth on your Financial Affidavit. Do you swear or affirm that the information contained in your Financial Affidavit as I have just summarized is true and correct?

THE DEFENDANT: Yes.

THE COURT: All right, I find that the defendant qualifies for the appointment of counsel and appoint Mr. Kaminsky to represent him. Just a moment while I sign the form, as well.

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2 All right, we're next going to go to the consent  
3 to proceed by phone. Under normal circumstances, everyone  
4 participating in this proceeding would be physically  
5 present with me in my courtroom. But, to ensure the safety  
6 of everyone and avoid the spread of COVID-19, we are  
7 conducting this proceeding by telephone. And I want to  
8 make sure that the defendant agrees to proceed in this way.

9 Mr. Sanchez, have you had an opportunity to  
10 discuss with your attorney the issue of participating today  
11 by telephone?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you agree to participate in  
14 this proceeding by telephone?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. I have a form that reads,  
17 "Defendant Malik Sanchez hereby voluntarily consents to  
18 participate in the following proceeding via  
19 teleconferencing." It has written in "prefer video," and  
20 the boxes Initial Appearance before A Judicial Officer and  
21 Bail and Detention Hearing are checked. In light of the  
22 current circumstances, I find that it is impracticable and  
23 imprudent to obtain physical signatures that are required  
24 for certain documents related to this proceeding.  
25 Accordingly, and pursuant to the CARES Act and the standing

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order of this Court and 10468, any such signatures may be obtained and executed electronically. You may consent to have the forum or your counsel sign the form on your behalf. It appears that Mr. Kaminsky has signed on your behalf. Did you consent to having your counsel sign the document on your behalf?

THE DEFENDANT: Elaboration, please?

THE COURT: Do you agree, Mr. Sanchez, that Mr. Kaminsky can sign the consent to proceed by telephone for you?

THE DEFENDANT: Yes.

THE COURT: Mr. Kaminsky, do you also consent to this proceeding going forward by teleconference?

MR. KAMINSKY: Yes, your Honor.

THE COURT: All right, based on the information provided to the Court and the Court's own knowledge about the Court's current technical capabilities, I find that video conferencing is not reasonably available for this proceeding and that telephonic conferencing is an acceptable way to proceed and has been authorized by the CARES Act. I also find that the defendant has knowingly and voluntarily agreed to participate in this conference by telephone.

All right, and now I am signing the consent form

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on behalf of the Court. Just a moment. All right,  
Ms. Lasky, can I have the date and time of arrest, please?

MS. LASKY: Yes, your Honor. This morning around  
six a.m.

THE COURT: All right, I am Judge Wang.  
Mr. Sanchez, you are here because you are charged with  
certain crimes by a Complaint supported by an affidavit.  
Do you have a copy of the Complaint, or was it read to you  
earlier today?

THE DEFENDANT: Yes.

THE COURT: Yes, you have a copy of the Complaint;  
or, yes, it was read to you earlier today?

THE DEFENDANT: No, I have a copy of the  
Complaint.

THE COURT: All right, thank you. The purpose of  
today's proceeding is to advise you of certain rights that  
you have, inform you of the charges against you, consider  
whether counsel should be appointed for you, or appoint  
counsel for you, which I've already done, and decide under  
what conditions, if any, you shall be released pending  
trial.

I am now going to explain certain constitutional  
rights that you have. You have the right to remain silent.  
You're not required to make any statements. Even if you

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have already made statements to the authorities, you do not need to make any further statements. Any statements that you do make can be used against you.

All right, you have the right to be released, Mr. Sanchez, either conditionally or unconditionally, unless -- pending trial, unless I find that there are no conditions that would reasonably assure your presence at future court appearances and the safety of the community.

If you are not a United States citizen, you have the right to request that a government attorney or a law enforcement official notify a consular officer from your country of origin that you've been arrested. In some cases, a treaty or other agreement may require the United States government to give that notice whether you request it or not.

You have the right to be represented by an attorney during all court proceedings, including this one, and during all questioning by the authorities. You have a right to hire your own attorney; and if you cannot afford an attorney, I will appoint -- as I have found -- I have appointed Mr. Kaminsky to represent you.

All right, Mr. Sanchez, do you understand your rights as I've just explained them?

THE DEFENDANT: Yes.

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2 THE COURT: All right, I have before me a  
3 Complaint containing the charges against you in this case.  
4 And they are Count One, false information and hoaxes --  
5 just one count of false information and hoaxes.

6 Counsel, have you received a copy of the  
7 Complaint, and have you reviewed it with your client?

8 MR. KAMINSKY: Yes, your Honor.

9 THE COURT: Mr. Sanchez, do you understand the  
10 charges against you?

11 THE DEFENDANT: Yes.

12 THE COURT: And, Mr. Kaminsky, does your client  
13 waive a public reading of the Complaint?

14 MR. KAMINSKY: Yes, we do.

15 THE COURT: All right, Mr. Sanchez, you have the  
16 right to a Preliminary Hearing where the government will  
17 have the burden of showing that there is probable cause to  
18 believe that the crime for which you are being charged has  
19 been committed and that you are the person who committed  
20 it. At the hearing you or your counsel would be entitled  
21 to cross-examine any witnesses and introduce evidence.  
22 However, a Preliminary Hearing will not be held if you are  
23 indicted by a grand jury before the date of the Preliminary  
24 Hearing. I will set the Preliminary Hearing date at the  
25 conclusion of these proceedings.

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I'll hear next from the government as to bail, detention or release. Is there any agreement, or will there be an argument?

MS. LASKY: No, your Honor -- this is Kaylan Lasky for the government -- there will be an argument.

THE COURT: All right, and this is not a presumption case, is that right?

MS. LASKY: Correct, your Honor, it is not.

THE COURT: All right, so government, you bear the burden. Why don't you talk to me a little bit about satisfying the burden?

MS. LASKY: Thank you, your Honor. The government's position is that the defendant is too dangerous to release into the community and also poses a risk of nonappearance. The bomb hoax threat charge against the defendant is, of course, very serious in and of itself. And defendant's actions, as evidenced by his own videos which he has posted to social media accounts, show he's truly a menace to the community. The government is aware of videos of the defendant Macing approximately five people in the last six months; and despite repeated law enforcement intervention, he has remained entirely undeterred.

The danger here is compounded by the fact that the

1  
2 defendant self-identifies as an Incel. I won't belabor  
3 this, which appears in the Complaint, but Incels are  
4 connected with violent attacks in the last few years. And  
5 in the defendant's videos he makes repeated chilling  
6 statements in line with this ideology, including glorifying  
7 Elliot Rodger, the unofficial founder of Incel, who  
8 murdered six individuals and injured 14 others in 2014 in  
9 California. Additionally, law enforcement today conducted a  
10 search of the defendant's premises and found several items  
11 that were of concern, including five magazines that fit a  
12 Glock firearm in the defendant's apartment.

13           So a little bit on the facts here. The defendant  
14 is charged with making a bomb hoax threat on February 13th  
15 in Manhattan in an outdoor seating area of a restaurant in  
16 the Flat Iron neighborhood. The defendant is an IRL or In  
17 Real Life streamer is how he identifies, and he appears to  
18 have videotaped this conduct and posted it onto social  
19 media. To summarize, the defendant can be seen in the  
20 video in the middle of the afternoon walking up to people  
21 who were sitting down inside a seating area. He then  
22 conveyed the bomb hoax threat, which this is just an  
23 excerpt, but he stated in part, "Bomb detonation in two and  
24 two minutes. I take you with me, and I'll kill all you.  
25 I'll kill all you right now, and I kill all you for Allah.

1  
2 I'm going to do it." After people leave the area, some of  
3 them frantically, the defendant can be heard kind of  
4 laughing and exclaiming, "Yo, all them scattered," and in  
5 addition, saying it was, quote, "five star."

6           The charged conduct, this February 13 bomb hoax  
7 that I just described in part is, of course, incredibly  
8 serious. It's clear in the video that the victims were  
9 terrified and that the defendant's actions created chaos  
10 for them. In recounting the incident, one of the victims  
11 said she was, quote, "paralyzed with fear." Significantly,  
12 the bomb hoax threat is part of a larger pattern with  
13 Sanchez of dangerous and escalating conduct. In the last  
14 six months the defendant has been arrested and charged with  
15 approximately three different -- or Macing approximately  
16 three different individuals during livestream. When he was  
17 arrested in connection with one of those incidents, he had  
18 both Mace and a Taser on him. He's also been arrested,  
19 again within the last approximately six months, of climbing  
20 and livestreaming the Queensboro Bridge. This was in  
21 October 2020. The criminal Complaint in that case  
22 describes that he allegedly sprayed Mace down at  
23 approximately five people down below. That case has been  
24 resolved; he pled to disorderly conduct.

25           As described in the Pretrial Report, as well,

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2 there's a 2018 grand larceny conviction. The government's  
3 also aware of videos of approximately two additional Macing  
4 incidents of two different males that appear to be  
5 uncharged. And, again, the defendant has appeared to  
6 remain undeterred and continues to menace the community.  
7 The government understands that he was streaming as  
8 recently as yesterday with what appeared to be a canister  
9 of pepper spray on him.

10 All of this is particularly concerning given the  
11 Incel rhetoric that the defendant can be heard spouting in  
12 the videos, repeatedly glorifying violence and speaking  
13 about how victims deserve to be slaughtered, in the case of  
14 Elliot Rodger, for example.

15 And again, today law enforcement found items of  
16 concern in his house. This included five magazines that  
17 fit to a Glock. And just to be clear, the government did  
18 not identify any Glocks in his house, but we did find five  
19 magazines, as well as an airsoft gun, a paintball gun, and  
20 multiple canisters of Mace, as well as notes describing  
21 what appeared to be ideas for, quote, "content," which  
22 included, for example, diving and screaming to stop traffic  
23 and faking a hit-and-run.

24 Additionally, your Honor, the government contends  
25 that, supported by a preponderance of the evidence, there

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is a risk of nonappearance. This is in large part because the defendant appears to have flouted the law time and time again; and, accordingly, there is a risk of nonappearance for future court dates in this case. The government also understands that the defendant did not appear in state court last week for two pending state court cases involving two of these Macing incidents.

The government's evidence is strong here, as described previously, and much of this conduct is captured on video, including the charged conduct relating to the bomb hoax incident. The defendant's voice can clearly be heard, and he can be seen earlier in the video, not during the part relating to the bomb threat itself. The defendant is facing serious charges, finally, and these appear to be the most serious that he has ever faced, which, again, provides a strong incentive to flee. For these reasons, the government seeks detention.

THE COURT: All right, Mr. Kaminsky, do you have anything to say to that?

MR. KAMINSKY: Yes, your Honor.

THE COURT: Go ahead.

MR. KAMINSKY: Thank you very much. Conditions can be set. Let me first address the risk of nonappearance, which the government bears the burden there

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2 by a preponderance. But they can't bear that, your Honor,  
3 and that's because Mr. Sanchez is a lifelong New Yorker.  
4 He lives with his mother, his uncle and his grandmother in  
5 the same apartment that he's lived for as long as he can  
6 remember, maybe the apartment that he came home to when he  
7 was born. He's a lifelong member of the community. And  
8 one of the conditions that Pretrial's recommending and that  
9 the mother has agreed to is that she be a third-party  
10 custodian. We have spoken with the mother, we have spoken  
11 with the grandmother, we have spoken with the uncle.  
12 They're all willing to sign. And he's just going to show  
13 up for court.

14           Now, the government says that he's flouted court  
15 orders and that he didn't show up in state court last week.  
16 I don't know where they're getting that information. What  
17 I have is the Pretrial Services Report, which says that his  
18 next appearance in the state is on April 19th. It shows no  
19 bench warrants ever. It shows -- the government referenced  
20 that he had a 2018 grand larceny conviction; what the  
21 government failed to reference is that he was 16 at the  
22 time and was not actually convicted. He was adjudicated  
23 juvenile delinquent, and he was placed on probation for six  
24 months, and he successfully completed probation. So we  
25 have a history of complying with court orders.

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2 Now, with respect to dangerousness to the  
3 community, the government bears the burden on dangerousness  
4 by clear and convincing evidence, and there's not clear and  
5 convincing evidence in this case that conditions can't be  
6 set. The question is not whether he has misbehaved in the  
7 past; the question is whether the Court can set conditions  
8 which will adequately safeguard the community or whether  
9 the government has proven by clear and convincing evidence  
10 that no such conditions can be set.

11 Now, here -- let me start with the fact that  
12 Mr. Sanchez is 19 years old. I wanted to do this  
13 proceeding by video so that you could see him, your Honor.  
14 He's young. He's extremely young. He is 19, and he lives  
15 in his mother's home with his grandmother and his uncle,  
16 and they have suasion over him. He has also, not since he  
17 successfully completed probation, he has not been under  
18 court supervision. And he will be under court supervision  
19 with Pretrial Services.

20 I've watched these videos. I spent some time  
21 today watching not all of them but watching the video in  
22 question for this charge and also some of the other videos.  
23 And, you know, they're more obnoxious than anything. They  
24 read as a young person, an immature young person thinking  
25 that this is funny, and he's being egged on -- you can see

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2 the comments scrolling -- and he's being egged on by these  
3 people across the internet who are trying to get him to do  
4 things and donating money so that he does them. And, you  
5 know, they're offensive, but they are -- he thinks they're  
6 playing. And he's 19. And, you know, in some of these  
7 instances where the government is alleging that he's Maced  
8 people, you know, if you watch the video, you know, what's  
9 happening in a lot of the instances is that people are  
10 coming up and actually starting an altercation with him, a  
11 physical altercation. Now, he might have said something  
12 obnoxious before that, but the physical altercation is  
13 started by someone else.

14           So, look, Pretrial Services recommends that he be  
15 released on a bond -- I recommend \$10,000 -- to be cosigned  
16 by two financially responsible people; and the defendant's  
17 mother as a third-party custodian, which I think makes  
18 sense; and they recommend a lot of other conditions,  
19 including the surrender of travel documents. His mother  
20 has his passport and can get it there today, I think.  
21 Travel restricted to the Southern and Eastern Districts of  
22 New York, obtain and maintain employment, mental health  
23 evaluation and treatment as directed, not to possess a  
24 firearm, weapon or destructive device -- and let's include  
25 Mace and pepper spray in that. We can also include a

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2 paintball gun and an airsoft gun. I don't think any of  
3 these are actually weapons, but to the extent the  
4 government is concerned about them, let's include them.  
5 Abide by temporary Orders of Protection. And the other  
6 thing is, you know, I don't think this is necessary, but if  
7 your Honor wanted to order that he not engage in any  
8 livestreaming while he's on bail, you know, that is  
9 something we'd consent to, if your Honor thinks it's  
10 necessary. And it would certainly keep him from being  
11 egged on by these people on the internet.

12           So what I would say, your Honor, is it's not a  
13 presumption case; the government bears the burden; we have  
14 a 19-year-old young person living his mother's home; and  
15 conditions can be set that will adequately assure the  
16 safety of the community and his appearance in court.

17           THE COURT: All right, I had a couple of questions  
18 for the government, and then I'll also let the government  
19 respond to what defense counsel has stated.

20           I guess I wanted -- if the government has any  
21 information about the Orders of Protection that were  
22 mentioned by Mr. Kaminsky; and then also, you know, whether  
23 airsoft guns and paintball guns are -- you know, your  
24 position on how they can be used and dangerousness in the  
25 community. And then I know that there is quite a bit on

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2 the Incel movement in the Complaint, but if any of the  
3 thoughts or the approaches of the Incel movement are  
4 considered or have been treated as domestic terrorism acts,  
5 and also whether those acts specifically target, as I  
6 understand it, women or anything like that. I mean, is --  
7 and whether the -- and after Ms. Lasky has had a chance to  
8 speak, Mr. Kaminsky, one question for me is -- for you is  
9 whether you think or how a prohibition on livestreaming,  
10 even if it were complied with, is effective to stop the  
11 defendant from Macing people and spraying them with pepper  
12 spray and otherwise threatening them. All right? I will  
13 put myself on mute at this point.

14 MS. LASKY: Thank you, your Honor. This is Kaylan  
15 Lasky for the government. So a couple of points to respond  
16 to here, your Honor. So, first of all, with respect to the  
17 Orders of Protection, if I'm understanding the question  
18 correctly, the government is aware of several Orders of  
19 Protection that have been issued in state court as relates  
20 to Macing victims from prior incidents that Mr. Sanchez has  
21 been involved in.

22 With respect, your Honor, to airsoft guns and  
23 paintball guns, I would not contend that they are in fact  
24 firearms; however, there's always a risk of, especially in  
25 close proximity, of weapons such as those causing injury,

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including eye injury; and also, you know, escalating a situation where it shouldn't be escalated, for example, which could lead to harm to others and lead, as well, to harm to the individual who carries those items.

I would also note for the Court again that on the defendant's premises were found approximately five Glock magazines, and those were for actual guns, not for airsoft or for paintball guns.

Additionally, your Honor, I would respond to a couple of the points that Mr. Kaminsky raised. With respect to his proposal regarding the defendant being returned essentially to the home in which he's been staying, it's the government's position that that would be essentially returning him to where he was when he committed crimes repeatedly in the last six months.

With respect to -- oh, I realize I neglected to respond to the Court's question with respect to the domestic terrorism act. In general, I would say that this is one of the -- Incels are one of the domestic extremist groups that, you know, law enforcement is currently focused on. And it is, you know, as part of public reports, it is something that is a current focus of law enforcement.

With respect to the question about bench warrants raised by Mr. Kaminsky, I in no way meant to imply that a

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bench warrant had been issued. My understanding in the status of state courts is that, particularly with virtual appearances, bench warrants aren't being issued unless there have been repeated failures to appear. And so, you know -- but this, I understand, was a virtual appearance scheduled for last week at which the defendant did not appear.

And the point is taken with respect to the defendant's age; however, the government strongly feels that the defendant still poses a danger and particularly in light of what appears to be an escalating pattern of criminal conduct. The defendant, it's true he is not under parole supervision at the moment, but the defendant with respect to one of the Macing incidents received an adjournment in contemplation of dismissal which contemplates the defendant staying arrest free for approximately six months, which certainly has not been the case for this defendant.

And, lastly, the government would point out for the Court that although it certainly may be the case that some of this conduct appeared funny or outrageous to the defendant, it certainly did not seem, for all intents and purposes, as funny to the people who he has hurt and who he has scared in the last approximately six months, your

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Honor.

THE COURT: Thank you, Ms. Lasky.

Mr. Kaminsky, anything else to add?

MR. KAMINSKY: Yes, your Honor, thank you. And that last point that Ms. Lasky made just goes to his immaturity. Right? I mean, his brain isn't even fully formed and won't be for another seven years.

So with respect to the ACD point, you know, the stayed adjournment in contemplation of a dismissal, what I would say about that is no supervision comes with that. And Pretrial Services actually supervises. And, you know, Pretrial Services has recommended bail. They think they can supervise in this case, and they're very capable supervisors.

With respect to the Incel movement, it's not really a movement. It's not really a -- well, maybe it's as movement. It's not a group. You know, it can't be a terrorist group because it's not a group with any structure. What it is it's an internet subculture with certain memes and references and ways of sort of talking and communicating and ideas. But it's not like a terrorist group that's trying to, you know, advance a cause through sort of a chain of command. And that's exactly why -- to get to your Honor's question -- that's exactly why a

1 prohibition on livestreaming might be extremely effective.  
2 From my view of these videos, Mr. Sanchez is seeking  
3 attention. You have to understand these videos can be hours  
4 in length. And they're sort of set up -- you know, it's  
5 like -- and people are watching them and commenting on them  
6 and egging him on. And so, you know, to the extent one can  
7 get in his 19-year-old head and wonder why he's doing some  
8 of the things he's doing, I think it's because he's finding  
9 approval for it on the internet. And so if we can cut that  
10 feedback loop, I think that that would go a long way to  
11 getting this behavior under control. So I think we should  
12 see him for what he is; he's an attention-seeking 19-year-  
13 old, and he can be helped by Pretrial.

14  
15 MS. LASKY: Your Honor, if I may? This is Kaylan  
16 Lasky for the government. I just wanted to pull up one  
17 note with respect to previous comments made by the  
18 defendant in one of his videos. One moment, please. So  
19 this was from a video -- and I quote just in part and in  
20 rough form -- but from approximately -- posted, I believe  
21 around April -- that's not right -- this was shortly, I  
22 understand, after his most recent arrest on March 20th. He  
23 said, "I am an Incel. I'm an Incel, but I guess streaming  
24 kind of helps me therapeutically in a sense. It keeps me  
25 out of, like, my Incel mindset. So, you know, it allows me

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to have fun, nevertheless, in a way, I guess." I read this as someone who isn't just, you know, possibly doing it for the camera but is actually saying this is a strongly-held belief and that in fact the things that he streams allows him to think less about being an Incel, your Honor.

MR. KAMINSKY: Your Honor, this is Clay Kaminsky. That is cherry-picked. There are just all kinds of stunts for the camera. And I'm not going to say that, you know, every single part of every single video supports my thesis, but the general gestalt supports my thesis.

THE COURT: All right, anything else, Ms. Lasky or Mr. Kaminsky?

MS. LASKY: Not from the government. Thank you, your Honor.

MR. KAMINSKY: No, thank you, your Honor.

THE COURT: All right, I'm going to take a brief break. I ask everyone who wants to stay on the line, I direct you to stay on mute.

Mr. Kaminsky, would you, while I am taking a brief break, would you like to be placed in a private breakout session with your client?

MR. KAMINSKY: Sure, your Honor. Thank you.

THE COURT: Okay, and I am going to take a brief break. Anybody else who is on the line, including any

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press or public, members of the public, if you want to stay on, I'll be a few minutes. Keep yourself on mute. It is a public line, and this main room will still be recorded.

Okay?

The first -- and I'm going to next bring -- I'm going to speak with Officer DeFeo briefly also in a private room. All right? So everyone just stay on. We will resume when you hear the beeps in the main room, at which point I'm bringing everybody back into the main room.

(Brief pause - 39:36 to 1:10:35)

THE COURT: All right, we are back on the record. This is Judge Wang. I wanted to confirm that the participants are still on the line. AUSA Lasky, are you still here?

MS. LASKY: Yes, your Honor.

THE COURT: I need to move Mr. Kaminsky and Mr. Sanchez in. Hold on a minute.

All right. We are back on the record. This is Judge Wang. I wanted to confirm that the participants on this call are still present and can hear. AUSA Lasky, are you present?

MS. LASKY: Yes, your Honor.

THE COURT: All right, Mr. Kaminsky, I have successfully moved you back out of your breakout room and

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back into the main room?

MR. KAMINSKY: Yes, you did, your Honor.

THE COURT: All right, and Mr. Sanchez, you are still here, and you can hear me?

THE DEFENDANT: Yes.

THE COURT: All right, and Officer DeFeo, you're still here, as well?

PRETRIAL OFFICER DEFEO: Yes, your Honor.

THE COURT: All right, Mr. Sanchez, I am required under the law to release you, either with or without conditions imposed, unless I determine that there are no conditions that will reasonably assure your appearance in court as required and the safety of the community. In making a bail determination, I am required to consider the following factors. I will discuss each of them briefly as they relate to your case as I go through them.

The nature and circumstances of the offense charged. While this is not an enumerated crime under 18 U.S.C. 2332(b)(G)(5)(B), the acts, videos and statements taken together with the professed support for the Incel movement and particularly the acts alleged in paragraph 5(b) of the Complaint suggest a continued danger to the community. In paragraph 5(b) there is an allegation that the defendant harasses women who are walking down the

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2 street and then later says on the video -- and I'm  
3 excerpting a little bit -- "Elliot Rodgers should have  
4 blown their brains out a long time ago. They deserve to be  
5 slaughtered and hit by a f---ing truck." There are also  
6 repeated instances, as proffered by the government and as  
7 indicated in the Pretrial Report where he is spraying  
8 pepper spray on people and being arrested for such conduct  
9 doesn't seem to have stopped it. Indeed, as the government  
10 has proffered, such conduct may in fact be escalating.

11           The weight of the evidence is strong in this case,  
12 and some of the physical evidence found in connection with  
13 the execution of the search warrant this morning weigh  
14 further toward a danger to the community and to himself.  
15 And those are the magazines that were found for a Glock  
16 pistol. Even though there was no Glock found, that is  
17 concerning. Also, although the airsoft gun and paintball  
18 gun are not firearms per se, we have all seen enough in the  
19 press of young men of color being shot while in possession  
20 of things that were perceived or thought to be weapons.  
21 Even the Mace and the pepper spray, as the government has  
22 indicated, are more likely to escalate rather than  
23 deescalate and likely to cause injury in any incidents or  
24 interactions with the public and with law enforcement.

25           Your youth, Mr. Sanchez, weights both ways. While

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the more serious larceny charge or grand larceny charge did occur when you were only 16, that appears to only have been three years ago. And in the three years since, there have been a number of arrests that seem to be relating more to Mr. Sanchez's professed support and creating of videos supporting the Incel movement.

And I also wanted to address the fact that the government has also satisfied its lighter burden of a risk of nonappearance. I see four existing Orders of Protection which arose out of recent incidents where members of the public were sprayed with pepper spray or Mace. They apparently did not help in encouraging Mr. Sanchez to refrain from further attacks or assaults on others. These repeated incidents are also, of course, probative as to continued danger.

Accordingly, and for the reasons I just stated, I find that the government has met its burdens of establishing that there are no conditions that I can impose that will reasonably assure Mr. Sanchez's appearance and the safety of the community. I make this decision based on all of the information that has been presented to me, including the Pretrial Services Report and the arguments and information provided by counsel, even if I have not specifically referred to it at this moment; and considering

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all of the factors set forth in 18 U.S.C. 3142(g).

Accordingly, Mr. Sanchez is remanded 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.

Mr. Sanchez must be afforded a reasonable opportunity for private consultation with defense counsel. 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 must deliver the defendant to a United States marshal for the purpose of an appearance in connection with a court proceeding.

Please let me know, Mr. Kaminsky, if you need a medical needs order. Please submit one with the particular needs filled out and sent to chambers, and I will make sure that that is entered.

And, finally, if you don't agree with my decision, you have a right to appeal it.

All right, what day shall I set for the Preliminary Hearing?

MR. KAMINSKY: Fourteen days, your Honor.

THE COURT: All right, that will be April 28th for the Preliminary Hearing.

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2           The government is ordered to comply with its  
3 disclosure obligations under *Brady v. Maryland* and its  
4 progeny. The possible consequences of this violation will  
5 be described in a later written order if a formal charge is  
6 brought and may include dismissal of the charges and  
7 sanctioning of any responsible lawyer for the government.

8           All right, anything else in this matter at this  
9 time from the government, and then I ask the same question  
10 from the defense?

11           MS. LASKY: Nothing further from the government.  
12 Thank you, your Honor.

13           MR. KAMINSKY: Your Honor, I think I would be  
14 remiss if I didn't tell you something that I learned from  
15 Mr. Sanchez during the breakout session. I don't know  
16 whether it will affect your decision. But in many of these  
17 instances of sort of seeming to harass people on the  
18 street, the people are actually known to Mr. Sanchez, and  
19 it's part of scripted content. I don't know whether that  
20 affects your decision, but since it might, I feel like I  
21 should bring it up because I do think conditions can be  
22 set. All of the items that were found, you know, he could  
23 be -- they were perfectly lawful. There's no allegation  
24 that he wasn't able to have them. And he could be  
25 prevented from having them while on pretrial release. And

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the Orders of Protection, there's no allegation that he's violated them. And it doesn't really speak to nonappearance at all. So I suppose I will take this opportunity to say that, your Honor.

THE COURT: All right. I mean, everything other than the potential that some of these videos are scripted is not -- sounds like re-argument to me; and if that's the case and you intend to appeal, then you should make that argument to the Part One judge.

As far as whether potentially some of the alleged victims are known to Mr. Sanchez and that this is scripted content, there are at least four Orders of Protection that indicate that there are at least four individuals who were not part of the scripted content. And so that ultimately doesn't change my decision. Okay?

All right, anything further?

MR. KAMINSKY: No, your Honor.

THE COURT: Anything further from the government?

MS. LASKY: No, your Honor.

THE COURT: All right. Thank you very much. We are adjourned.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of USA v. Sanchez, Docket #21-mj-03982-UA All Defendants, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature\_\_\_\_\_

Carole Ludwig

Date: April 19, 2021