

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Government.

v.

Case No. 16-mj-30339

SEBASTIAN GREGERSON,

Defendant.

DETENTION HEARING

BEFORE THE HONORABLE MAGISTRATE-JUDGE
MONA K. MAJZOUB
United States District Judge
231 US Courthouse & Federal Building
635 Lafayette Boulevard West
Detroit, Michigan
Thursday, August 4, 2016

APPEARANCES:

FOR THE GOVERNMENT: KATHLEEN CORKEN

FOR THE DEFENDANT: DAVID M. THOLEN

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IDENTIFICATION

OFFERED

Government's Exhibits 1-30

Items seized during search warrant

5

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1 Detroit, Michigan

2 Tuesday, May 25, 2011

3 3:05 p.m.

4 (The transcriber was not
5 present at this hearing)

6 THE CLERK: Court calls case number 16-30339
7 United States of America versus Sebastian Gregerson.

8 MS. CORKEN: Good afternoon, Your Honor.
9 Kathleen Corken on behalf of the United States.

10 MR. THOLEN: Good afternoon, Your Honor. May
11 it please the Court, David Tholen on behalf of
12 Mr. Gregerson. He's present, Your Honor. We are ready
13 to proceed.

14 THE COURT: Thank you.

15 Will the defendant please state his name to the
16 court.

17 THE DEFENDANT: Sebastian Gregerson.

18 THE COURT: Thank you, Mr. Gregerson.

19 Ms. Corken.

20 MS. CORKEN: Your Honor, this is the date and
21 time set forth for the detention hearing.

22 The Government intends to proceed by proffer with
23 the Court's permission. It's my understanding the
24 defense has no objection.

25

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1 THE COURT: Very well, you may.

2 MS. CORKEN: Your Honor, as for our proffer --

3 THE COURT: One minute.

4 (A discussion was held at the bench
5 at side bar with all parties)

6 THE COURT: Ms. Corken, you may proceed.

7 MS. CORKEN: Thank you, Your Honor.

8 Your Honor, as part of our proffer, we'll be
9 relying upon the affidavits in support of the Complaint,
10 the Government's sealed filing, the Pretrial Services
11 Report which I would note recommends pretrial detention
12 of the defendant as well.

13 And in addition, Your Honor, the Government is
14 relying upon some exhibits, Government's Exhibit 1
15 through 30 that I have provided to defense counsel.

16 MR. THOLEN: That's right, Your Honor.

17 MS. CORKEN: And I would like to hand up to
18 the Court if I could.

19 THE COURT: Thank you.

20 MS. CORKEN: Your Honor, additionally, as far
21 as the Government's proffer goes, I would like to offer
22 the following facts related to a search warrant that was
23 executed on defendant's residence on July 31st.

24 Among the items recovered during that search were
25 seven rifles, two of which were AK-47's, one tactical

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1 shotgun, two handguns, neither of which were registered,
2 a hatchet, road spikes, full face ski masks, some 20
3 knives, including multiple fixed blade knives, some of
4 which were or are specifically marked for tactical or
5 combat use; included among these as well were two
6 machetes and, in addition, thousands of rounds of live
7 ammunition for the weapons, including hundreds of rounds
8 of AK-47 ammunition.

9 Your Honor, as far as Government's argument, the
10 information in the Government's proffer clearly
11 establishes that this defendant is a danger to the
12 community and that there's no condition or combination
13 of conditions that would assure the safety of the
14 community.

15 As the Court is well aware, the Bail Reform Act
16 sets forth a number of factors to be considered in
17 making the determination as to whether to be released
18 for trial. One of the factors is the nature and
19 circumstances of the offense.

20 In this case, the defendant is charged with
21 unregistered possession of a destructive device as well
22 as receipt of explosive materials. The items involved
23 in those offenses are inherently dangerous.

24 This defendant received and possessed five high
25 explosive grenades, these are bombs, bombs that can be

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1 thrown by hand.

2 The five grenades that the defendant obtained were
3 M67 grenades. Government's Exhibit 1 is a photograph of
4 one of those grenades.

5 The M67 grenade has a fatality rate of 16 feet and
6 the serious injury radius of 49 feet. Fragments from an
7 M67 grenade can disburse as far out as 820 feet.

8 The grenade by nature is indiscriminate, it is
9 designed to kill or injure everyone within the strike
10 range of it.

11 In addition, Your Honor, the only purpose for
12 having a grenade is to kill or injure individuals.
13 There's no non violent purpose for a grenade at -- which
14 is unlike firearms.

15 The grenade is -- its utility, its purpose and
16 function is to cause death and injury. That fact alone
17 the Government would submit is sufficient to establish
18 the defendant's dangerousness, but there is certainly
19 additional evidence to support the conclusion as to his
20 dangerousness.

21 Your Honor, the defendant indicated to the
22 undercover that five grenades was just a start, that he
23 was interested in purchasing additional grenades beyond
24 that.

25

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1 Now not only was he interested in purchasing
2 additional grenades, but he was also interested in
3 purchasing the Claymore mine.

4 And Government's Exhibit Number 2 is a photograph
5 of a Claymore mine that the defendant described as a
6 magical piece of equipment and said that he would pay
7 \$250 for it.

8 The Claymore mine, Your Honor, is a, a mine that is
9 detonated or fired by remote control and it shoots steel
10 balls like a shotgun in an arc around it. Inside the
11 mine is C4 explosive that is behind a matrix of hundreds
12 of steel balls and when it's detonated, the explosion
13 drives the balls forward at high velocity in this arc.

14 With a Claymore mine it fires these steel balls
15 that are fragmented upon detonation out to 110 yards.
16 Like grenades a mine is, obviously, indiscriminate.
17 When used it kills or injures anything within striking
18 range.

19 Just as with grenades, the sole purpose of a
20 Claymore mine is to kill and injure people. I think
21 that that fact that these are items that are inherently
22 dangerous and whose purpose is to injure and kill is
23 very significant because I think it sheds light on the
24 motive and reason that the defendant possesses this
25 arsenal that has been recovered from his home.

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1 As you know, Your Honor, the Complaint Affidavit
2 lays out that the defendant in the past 16 months
3 purchased a number of weapons, ammunition, tactical gear
4 and tactical training materials.

5 In the past six weeks he's purchased three guns.

6 And in the search warrant executed after the
7 defendant's arrest, the -- the agents are still
8 reviewing the items. Even now we can tell that the vast
9 majority of what we know he purchased was recovered in
10 the search warrant plus a whole lot more.

11 I'm not going to go through every photograph that I
12 have provided to the Court, but I do want to point out a
13 few of the photographs. And I can also give the Court
14 an opportunity to look through those photographs if
15 you'd like.

16 THE COURT: All right. Why don't you point
17 out what you'd like to point out.

18 MS. CORKEN: Okay.

19 Government's Exhibit 5, Your Honor, that is one of
20 the assault rifles the AK-47s that was recovered, that
21 is one of them.

22 Government's Exhibit 9 is a tactical shotgun that
23 was recovered.

24 Government's Exhibit 11 is a Caltrop sub 2000
25 9 millimeter gun. This is a gun that as it's depicted

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1 in the photograph folds in half and is so -- one of the
2 purposes is you can conceal the fact that it is a long
3 barreled gun.

4 Exhibit 12 is when it is unfolded.

5 Exhibit 13 are the road spikes.

6 Exhibit 16 depicts the AK-47 magazines that were
7 recovered within a bag that the defendant described at
8 one point the U.C. as his go-to-bag.

9 MR. THOLEN: Your Honor, I'll object. I
10 understand it's the Government's argument.

11 I believe that any information the Government
12 decided to proffer about the undercover, it was a
13 discussion and it's unclear if the undercover described
14 that item or not.

15 MS. CORKEN: It was the defendant.

16 MR. THOLEN: I'll revisit that, judge.

17 MS. CORKEN: Exhibit 22, Your Honor, is a
18 tactical vest, tactical vest and other items.

19 And Exhibit 30 is a number of items including body
20 armor with military grade plates and handcuffs.

21 Your Honor, I would just like to focus on some of
22 the statements that the defendant made to the undercover
23 that, again, I believe shed light on the purpose for
24 which he has this -- these items in his house, this
25 amassing of these weapons and ammunition as well as his

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1 purchase of the grenades.

2 On July 15th as the Complaint Affidavit indicates,
3 the defendant showed the undercover a bag with the 240
4 rounds of AK-47 ammunition, described it as a
5 grab-and-go-bag.

6 THE COURT: Hold on.

7 (After a short delay, the proceedings continued)

8 THE COURT: All right. If you'd start over
9 again with that statement.

10 MS. CORKEN: Sure.

11 Your Honor, I was pointing out some statements that
12 indicate I believe or shed light on the purpose for
13 which the defendant acquired this enormous amount of
14 weapons and ammunition as well as the grenades; one such
15 statement he made on July 15th to the undercover
16 officer.

17 THE COURT: Okay.

18 MS. CORKEN: And he showed him a bag that was
19 the Government's Exhibit 16 that I just mentioned showed
20 him that bag. It has -- that has a number of rounds of
21 a AK-47 ammunition, I believe it was 240 and described
22 it as that bag as a grab-and-go bag. To me that means
23 grab and go and use.

24 He also told the U.C. that he purchased pouches for
25 tactical vests to insert the M67 grenades that he

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1 ultimately acquired. And, again, the plan there,
2 obviously, is to carry those grenades within a tactical
3 vest.

4 One other point; he expressed his desire to the
5 U.C. to purchase a 40 millimeter grenade launcher and 40
6 millimeter grenades for it which is illegal.

7 In the context of this conversation, he also said
8 he was interested in obtaining a particular type of 40
9 millimeter grenade launcher that can be mounted on a
10 rifle and said it was made for combat.

11 He also made reference to the use of the grenades
12 against law enforcement if they were to come for him.

13 So, Your Honor, we would submit that the fact that
14 the grenades themselves -- there's no purpose other than
15 to harm people, the arsenal that the defendant has
16 amassed that contains combat related items, those are
17 the knives that are designed or marketed for tactical
18 use and other items, the statements that he made to the
19 undercover that I've pointed out and others, the sealed
20 filing in particular, the mind set the -- and
21 information contained therein, I think all goes to show
22 that the defendant -- the defendant's actions in
23 possessing the grenades and other items that have been
24 found are not innocuous, that these are preparations for
25 some violent act; I think that's clear from the

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1 evidence.

2 Even if the Court would disagree I would go back to
3 my initial point. Who, who isn't dangerous who
4 possesses grenades? That alone would be sufficient.

5 Lastly, Your Honor, the weight of the evidence is
6 another factor I would just point out that in this case,
7 the evidence is overwhelming. The -- all the
8 interactions with the undercover were reported, the
9 transaction which the defendant possessed the grenades
10 was also reported.

11 And so for all of those reasons, Your Honor, we
12 would ask the Court detain the defendant pre-trial.

13 THE COURT: Thank you. Mr. Tholen?

14 MR. THOLEN: Thank you, Judge.

15 As I'm sure Your Honor can imagine, I take a
16 different view. And I'm aware of the Pretrial Services
17 Report, I recognize that they are ultimately
18 recommending detention in this matter. I'm going to
19 address both.

20 Issues pertaining to flight or lack thereof in my
21 estimate and I recognize I think the Government has put
22 most of its arguments behind the issue of danger. So
23 this record is clear, I do want to address both.

24 Before I get to argument, I, too, wish to proffer
25 certain information for the Court's consideration in

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1 this matter.

2 It's duplicative, but I would also proffer the
3 Pretrial Services Report and a lot of the biographical
4 and family information that's in there. In addition to
5 that, I'd guess I'd proffer the following.

6 Mr. Gregerson is 29 years old, born, raised and
7 lived most of his life in Michigan, specifically in the
8 Eastern District of Michigan.

9 His mother, father, sister and uncle, a grandmother
10 all live-in the same town outside of Ann Arbor. I'm
11 using that generally, but the Pretrial Services Report
12 has the specific town that's involved.

13 Mr. Gregerson grew up as an avid outdoorsman as a
14 fisherman, as a hunter. He spent time with his family
15 going fishing, going up to Houghton Lake to a family
16 member's cabin; that is part of the lifestyle of Mr.
17 Gregerson.

18 He attended Washtenaw Tech High School and it was a
19 joint program with Washtenaw Community College. He got
20 both his high school degree and he got an associate's
21 degree.

22 Beyond that, he studied for at a time at Berea
23 College in Kentucky for about a year. And more recently
24 within the last year or so, he took courses at Henry
25 Ford Community College in criminal justice.

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1 Mr. Gregerson is, as indicates in the Pretrial
2 Services Report, has what I believe to be substantial
3 family ties to this area.

4 He is married, his wife's in court today. They've
5 been married for about five years. They live together
6 in the City of Detroit. I think the Court's aware of
7 the address, I know the federal Government is. They
8 have two sons, twins that are four years old.

9 Obviously, Mr. Gregerson has great care and concern
10 for being there for his family, his wife and, also
11 taking care of his children I though the Court will take
12 this into consideration.

13 As indicated in the Pretrial Services Report,
14 unlike many of the cases the Court heard today, Mr.
15 Gregerson has no prior arrests, no prior criminal
16 convictions. None.

17 Mr. Gregerson has a steady employment history over
18 the last 10 years; most recently he's worked at Wal-Mart
19 and Target.

20 Mr. Gregerson is -- his interests are of a prepper.
21 I don't know if the Court's familiar with that term
22 survivalist-type mentality.

23 He's an outdoorsman and he is, as evidenced by the
24 number of guns that he had at his residence, all legal
25 mind you, he is a gun enthusiast.

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1 He's also interested in military history, taken
2 classes in that.

3 In terms of survivalist, that goes kind of with his
4 camping and hunting, outdoors stuff. He watches Bear
5 Grill, he watches Dual Survivor, shows of that nature,
6 even, you know, more fringe shows, if you will. That's
7 all part of his interest and his lifestyle.

8 Mr. Gregerson has Red Cross certifications in CPR
9 and AED and he also has a certification from Red Cross
10 as an emergency medical responder.

11 The Court's heard a lot about firearms. He does
12 collect firearms. He's collected firearms a lot longer
13 than the last 16 months. His father can document that.

14 Actually, quite frankly, the Federal Government can
15 because they pulled all the records of these purchases;
16 incidentally, were all done Mr. Gregerson's name, with
17 his credit card giving his address. Zero attempt to
18 allude anyone and the Government knows that.

19 He collects firearms, takes firearm safety. He's
20 an NRA member and has been so for five years.

21 In addition to that he is CPL holder and,
22 obviously, as this Court knows, you have to pass a
23 background check; he did all of that, that's all
24 verified.

25

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1 He has properly applied for all of the firearms
2 that were purchased that were taken out of his residence
3 and the Federal Government has the documentation, is
4 well aware of that.

5 And he had to pass -- basically they indicate even
6 in the Criminal Complaint when he was under surveillance
7 either through GPS technology or being physically
8 surveyed by FBI agents or other local police officers
9 when they watched him go to three unnamed stores, one of
10 them happened to be Dunham's, the other happened to be a
11 Dearborn outdoor store, watched him go in.

12 They talked to the store or the clerk or whatever
13 and they found out that lo and behold Mr. Gregerson had
14 applied as he's supposed to for purchase of a firearm
15 and that he'd been clear for the purchase. In fact, he
16 was able to purchase a firearm. That's all documented
17 in the Complaint. There's absolutely nothing not legal
18 about that.

19 Mr. Gregerson by -- really corroborated by the
20 government's own investigation did exactly everything a
21 citizen gun purchaser is supposed to go do.

22 In fact, judge, the Government has provided the
23 Court with exhibits and it's 1 through 30 and I know
24 that the Government kind of call the Court's attention
25 to certain of those exhibits.

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1 But for Exhibits 1 and 2 everything else is legal,
2 everything else is absolutely 100 percent legal for
3 anyone that doesn't have a prior felony to exist.

4 In addition, I would proffer that Mr. Gregerson is
5 a Muslim, practicing Muslim, wasn't born a Muslim. He
6 converted to Muslim. It was somewhat of a gradual
7 change.

8 But when he was in high school outside of Ann
9 Arbor, he came into contact with a number of individuals
10 that were Muslim, he became friends with them. His eyes
11 were open to that religion. He decided it was the way
12 he wanted to lead his life.

13 Shortly after he left high school, he converted to
14 becoming a practicing Muslim. He is a Muslim. But he
15 was an outdoorsman, gun enthusiast, a hunter, fisherman
16 long before he became a Muslim. He's both those things
17 but they're very self sufficient things.

18 I would also proffer that the Government has
19 suggested and used in one of its arguments they detailed
20 an arsenal that's a reason to detain Mr. Gregerson at
21 this point.

22 I would proffer that, well, the arsenal's been
23 removed from the residence. In fact, the Court has
24 photograph pictures to demonstrate that.

25

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1 So to the extent that the Government believes that
2 arsenal and Mr. Gregerson's access to it makes him a
3 danger to the community, I suggest to Your Honor that we
4 can just cross that one off because that's been removed.

5 I did say, Your Honor, that all but two of the
6 Government's Exhibits and that was Exhibit 1 and 2 were
7 legal items, and all those exhibits from 3 to 30, those
8 are the things that have been removed from the home.

9 Government's Exhibit Number 1 is the illegal
10 grenade and that is illegal. I don't dispute that that
11 was taken from Mr. Gregerson at the time of his arrest
12 when he met with the undercover agent on Sunday. So he
13 doesn't have access to those grenades, the Federal
14 Government has those. All right.

15 At the same time as part of that transaction there
16 were smoke grenades or smokers or something. While I
17 have no interest, it's something that can legally be
18 possessed.

19 Well, the smoker grenades, those were also seized
20 by the federal Government at the same time. Those are
21 out of his possession.

22 The Government has provided a picture in Government
23 Exhibit 2 of an item that's called a Claymore mine and
24 the Government offered some background information
25 regarding a Claymore mine.

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1 And what is interesting is that Government's
2 Exhibit Number 2 was never transacted, was never
3 arranged for any kind of sale between the undercover
4 agent and Mr. Gregerson.

5 And so this is a nice picture off The Internet but
6 the Government doesn't have this because they never
7 tried to sell it to Mr. Gregerson, so this is talk, all
8 right. It was an idea, but this never was taken from a
9 home. Mr. Gregerson never had possession of this.

10 I would also as part of my proffer before I get to
11 argument, I would indicate that I mentioned earlier two
12 of Mr. Gregerson's family members are present. His wife
13 is present sitting next to his wife is his father.

14 His father lives with his wife and his family
15 members and daughter outside of Ann Arbor. Mr.
16 Gregerson's wife lives at the residence in Detroit.

17 But both individuals -- it's my -- it's my request
18 that Your Honor consider granting Mr. Gregerson bond
19 I'll get to that, but both Mr. Gregerson's wife is
20 willing to take third-party custodianship of Mr.
21 Gregerson should this Court feel that's necessary.

22 And, as an alternative, Mr. Gregerson's father, he
23 has agreed to make his home available as a potential
24 bond address for consideration.

25

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1 In the event that happened, Mr. Gregerson, Senior,
2 would also take third-party custodianship of his son if
3 the Court thought that was necessary.

4 Your Honor, that concludes my proffer. I'm
5 prepared to proceed to argument.

6 THE COURT: Thank you.

7 MR. THOLEN: Shall I?

8 THE COURT: Please.

9 MR. THOLEN: Thank you, Your Honor.

10 Your Honor, if I had not alluded to it, I believe
11 that the situation here, the Government is overstating
12 its case.

13 There's a charge in the Criminal Complaint -- it's
14 two charges and both deals with -- both charges, rather,
15 deal with the possession or the receipt of explosives.
16 For the purposes of our arguments, I'm not disputing
17 that.

18 I'm not disputing their explosives and I'm not
19 disputing it would be illegal for any of us to possess
20 those, but that's what the charge is, judge.

21 The Government's filed a document under seal that
22 goes way beyond that, but they haven't brought a charge
23 to support any of that information in that seal pleading
24 before Your Honor. So first and foremost it would seem
25 to me we focus on the charged offense.

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1 Now this happened Sunday and the transaction
2 happened Sunday and the transfer of the smoker grenades
3 and then the other grenades that all happened Sunday
4 night and there was a take down.

5 The Government's had since Sunday, since they've
6 been investigating Mr. Gregerson for some 16 months now
7 that if they felt there was legitimate support to
8 supplement the Criminal Complaint with the charges that
9 I believe they allude to in the sealed pleadings,
10 they've had ample opportunity to do it.

11 It's Thursday, judge. Mr. Gregerson first came to
12 court in this building on Monday. They haven't done it.
13 So I take it that it's a concession on the Government's
14 part and that they believe that information as the Court
15 stated today really goes to danger with respect to the
16 instant offense rather than some other nebulous offense
17 out there that they haven't brought.

18 I think the Government overstates its case and what
19 is of grave concern to me in the information and the
20 sealed pleading as well as the information in the
21 Criminal Complaint is what the Government refuses to
22 give either you or me is the full context.

23 What we do know is an undercover agent. What we
24 don't know, we know nothing about the undercover agent,
25 we don't the sex of the undercover agent, we don't know

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1 how they're employed.

2 We don't know the benefit that that agent was
3 getting from the FBI. Were they being given money? Was
4 their family relocated? Were they being given
5 citizenship status or trying to get a sentence
6 reduction? We don't know because the Government hasn't
7 deemed it important to tell us.

8 They didn't do it in the sealed proceeding and if
9 they had concerns about things, they could certainly
10 turn it over in a sealed proceeding, that's how we do
11 things. They chose not to do that, they certainly
12 didn't do it in their Criminal Complaint.

13 What I suggest, Your Honor, it's a big question
14 mark and the Court should take that into consideration
15 in the balance of considering these statements that the
16 Government says, well, the undercover officer told us
17 that Mr. Gregerson said A, B, C.

18 Big question mark there because we don't know the
19 context, we don't have the full transcripts, we don't
20 have the full conversations. They haven't brought the
21 undercover here so you could see, you could evaluate the
22 credibility of the undercover officer.

23 They could certainly set up a situation where the
24 undercover officer testifies behind a screen or
25 testifies *in camera*, but yet none of that's been done in

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1 this case.

2 I suggest that this Court should perhaps give that
3 some consideration in any weight or lack thereof that it
4 warrants to give to the undercover statements about what
5 Mr. Gregerson allegedly had said or what he allegedly
6 did.

7 By way of example, Judge, my point is I think if
8 the Court had the full picture, things wouldn't look as
9 concerning as the Government's kind of suggesting or not
10 kind of, they are suggesting it's very concerned.
11 Here's my example.

12 I was appointed to represent Mr. Gregerson on
13 Monday. And Tuesday I found out from the Marshal's
14 Service that he was being held at the Dickerson
15 Facility. I was able to go visit him at Dickerson
16 Facility.

17 Apparently while I was there, someone at my office
18 contacted the Marshals in an attempt to help me out not
19 knowing I was at Dickerson meeting with Mr. Gregerson
20 and was informed by someone at the Marshal's Service
21 that Mr. Gregerson's not at Dickerson, he's, in fact, en
22 route to Midland. I know that not to be the case
23 because I was there for half a day with him.

24 Knowing that information, I went to meet with him
25 later a second time that same night Tuesday night. I

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1 logged onto the computer, I checked Dickerson's files,
2 it showed him as still being there.

3 I got there at 6:30. You check in with the guards
4 and whatnot. They pulled him up on the computer and
5 then they looked at me and said is he a marshal's
6 prisoner. I said of course he is. They said they just
7 got him five minutes ago. You just missed him. Okay.

8 So next day I called, I find out where he was.
9 He's at Midland. I went to Midland.

10 My point with this is this. Some people, not me,
11 because I thought the Government had nothing to do with
12 that, I know the Marshals had no devious point moving
13 him like that. But I'll tell you, judge, people that
14 don't know the system might think something's funny
15 about that.

16 Why are they moving this guy around? Are they
17 trying to keep him away from his attorney? Are they
18 trying to obstruct my ability to defend Mr. Gregerson.

19 I know better because I though the context -- in
20 fact, there was an article that came out this week my
21 boss was quoted in talking about how our clients get
22 transferred all around because I know the whole picture.
23 I know certainly it was nothing nefarious about that.

24 But, judge, you don't know and the Government's not
25 letting us know the whole picture of what went on beyond

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1 this undercover officer and allegedly what Mr. Gregerson
2 said. I think if we knew the full picture, it would not
3 appear in the manner the Government's suggesting.

4 I've already indicated that of course the uncover's
5 not here, he's being hidden or protected or concealed by
6 the federal Government.

7 What I suggest is in 16 months of investigation
8 against Mr. Gregerson, these are the things the
9 Government did. Okay? One thing they did was GPS track
10 him for that whole time period. Okay.

11 Another thing they did was have people monitoring
12 the GPS tracking. And sometimes we know from the
13 criminal complaint actually following Mr. Gregerson to a
14 sporting goods store and back to his home. So we know
15 that was agents actually doing that as opposed to just
16 tracking a machine. They did that.

17 They also -- it appears recorded telephone
18 conversations that Mr. McGregor (sic) had at least with
19 respect to the undercover officer. It's possible, it's
20 possible, but I don't know that they tapped his phone.
21 I'm not entitled to know that.

22 Beyond that, too, judge, that they did a search
23 warrant and I think this is referenced in some sealed
24 materials but they got access to email communications
25 and, you know, Internet practices if you will.

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1 They have done all of that and the kicker, judge,
2 is they introduced the confidential informant on top of
3 everything else.

4 So what I would suggest to Your Honor is in 16
5 months what the Government succeeded in making a case on
6 was that last Sunday night Mr. Gregerson allegedly met
7 up with a confidential informant or whatever U.C.E.
8 whatever that stands for they want to use that for, for
9 a transaction involving half legal smoke grenades and
10 half illegal grenades, that's what we got.

11 And there is nothing in my experience the
12 Government put its best case -- best case forward, it
13 puts it's best case forward in the Complaint; they
14 bolstered that in a sealed information. So bring it.
15 If they have more, bring it.

16 I've requested transcripts, I've requested
17 summaries of discussions, I've requested any emails. So
18 because none of it's been provided and yet the
19 Government has had the time to go over all of that and
20 hand pick out statements that they either put in quotes
21 when they want to attribute it to Mr. Gregerson or they
22 just say the undercover said this or said that. All
23 right.

24 It gives me reason and I do believe reason I think
25 it's reasonable for me to come to this conclusion that

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1 they've gone through all of that and that's the best
2 they could do.

3 And my point is during all that time in 16 months
4 there's been no violent act on behalf of Mr. Gregerson
5 or at his behest against any individual and he's been
6 closely watched, closely watched by the Federal
7 Government through all those mechanisms I just listed.
8 Nothing.

9 In fact, at the time of his arrest, the Court might
10 look to that at the time of his arrest he didn't attempt
11 to flee or allude arresting officers.

12 He had -- as a CPL holder, he had his firearm with
13 him. He didn't attempt to use that against the
14 officers. No struggle, no resistance, didn't try to
15 drive away, not at all.

16 Specifically, judge, I'll take flight first. I
17 think there's absolutely no flight risk in this case.
18 Mr. Gregerson is a U.S. citizen, Pretrial verified that
19 Mr. Gregerson doesn't have a passport. Never had a
20 passport.

21 Mr. Gregerson doesn't travel internationally.
22 There's some reference five years ago he might have gone
23 to Canada. Judge, we've got to correct the record on
24 this.

25

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1 Mr. Thomas from Pretrial in talking to Mr.
2 Gregerson we need Pretrial to be aware and I want Your
3 Honor to in case this factors in.

4 When he was in third grade, he took a class trip to
5 England that's not reflected in a Pretrial Services
6 Report. So that would be some international travel but
7 that's what we got right there. But, of course, the
8 Government's been watching him so I suspect they know
9 that.

10 He has a local bond address with his wife and two
11 sons in Detroit, I've talked about that. Quite frankly,
12 that's been verified because the undercover officer went
13 there. In fact that's an interesting point.

14 The Government argues how dangerous Mr. Gregerson
15 is in this arsenal of weapons and everything. But as
16 they indicate in their pleadings, their superman
17 undercover agent was there mid-July, didn't do a damn
18 thing.

19 Didn't -- they could have got a search warrant
20 based on that alone, they didn't do it. They obviously
21 in my mind didn't think Mr. Gregerson posed that kind of
22 threat despite what the Government's calling the arsenal
23 of weaponry he had.

24 In the pleadings the Court has the sealed and
25 unsealed pleadings the information the Government's

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1 relying on to kind of tie this all up in a bow they had
2 their statements before mid-July but they chose not to
3 act.

4 With respect to flight in addition to what I'm
5 calling the local bond address with his wife, I
6 indicated he had a secondary address outside of Ann
7 Arbor with his parents that can be verified by Pretrial.
8 He's got a employment in this area.

9 What I think's so important, Your Honor, is he has
10 lived as Sebastian Gregerson. He's got his Michigan
11 I.D. driver's license in that name, that's what the
12 agents knew him as. When he was arrested he had that
13 I.D. with him.

14 His concealed pistol license is in that name, all
15 his firearms applications for the, quote, arsenal are in
16 that name.

17 All the items that are purchased on the Complaint
18 pages and I believe it's page three and four, but it's
19 the -- it's the -- I applaud the Government's effort in
20 listing out all these transactions. It is. It's on
21 page three and four.

22 And I applaud this because I'm sure the Court will
23 pick up on this all these transactions were made before.

24 These are not the transactions where the undercover
25 or someone's following Mr. Gregerson around to the

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1 sporting goods store watching him buy a long gun, these
2 are all computer purchases or online purchases on Amazon
3 or eBay.

4 What I think is significant is they were done in
5 the name Sebastian Gregerson. They all used his charge
6 card to pay for it. It all goes back to his local
7 address in Detroit.

8 There is no attempt to conceal those purchases or
9 to put them in another name or send them to another
10 address, none of it.

11 And the Government -- you know the way this is all
12 listed, I suggest, Your Honor, if we held this up to the
13 search warrant return which, unfortunately I don't have
14 yet, you know would be almost a mirror image, you know.

15 There's no surprise that the items that Mr.
16 Gregerson bought in his name, had sent to his house,
17 were found in his house when the Federal Government came
18 to search. He's not trying to conceal anything.

19 With respect to danger, judge, I have a few
20 arguments about this. I think it's crucial that Mr.
21 Gregerson does not have a prior record; I think that's
22 very significant. I think it's important that, you
23 know, a number of governmental agencies have continued
24 to check that.

25

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1 What I mean by that is certainly 16 months ago when
2 the Federal Government started investigating Mr.
3 Gregerson, they were trying to lean him -- lean on him.
4 Nothing.

5 Throughout 16 months I'm sure they checked to see
6 if anything popped up that missed their radar as they
7 were tracking him on GPS following him around from the
8 sporting goods store to his house or work; nothing came
9 up.

10 Pretrial Services did the same thing. They ran of
11 course they're independent, they ran a LIEN, nothing
12 comes up. Every firearm purchase here at any of the
13 stores mentioned he had to submit his information and it
14 came back clean. His CPL license; he had to pass the
15 LIEN to be able to do that.

16 So there's been, you know, multiple times criminal
17 history has been run on Mr. Gregerson and it always
18 comes back the same way, nothing.

19 So I think that's very significant. I think it's
20 incredibly significant, as I've said, that everything
21 they took out of his house was perfectly legal.

22 It may not be your cup of tee, you may not be into
23 Rambo knives, stuff like that, but that doesn't make it
24 illegal.

25

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1 All right. God forbid music CD's were illegal. If
2 someone went into my house, I have thousands of them.
3 All right. That's my thing, whatever.

4 Mr. Gregerson's thing in any American that doesn't
5 have a prior felony can have an interest in legal
6 firearms. That's what we have.

7 As I've said earlier to the extent the Government
8 says that, quote, arsenal is an instrument of danger or
9 something like that, they've taken care of that, they've
10 removed it. Gone.

11 Last thing, judge, is I think I've -- I hope I've
12 impressed the Court my skepticism with the validity of
13 statements that this undercover this mystery man or
14 women undercover agent statements that that person
15 attributes to Mr. Gregerson, but for purposes of our
16 arguments here, because I'm sure the Government was
17 accurate in putting that part of a full transcript in,
18 in their pleadings. I'm not suggesting that the
19 Government, for instance, made up statements. I'm not
20 at all. I want to be very clear about that but I think
21 context is highly relevant and we lack all context.

22 We don't know when these conversations wasn't
23 perhaps the undercover person that initially brought the
24 subject up and Mr. Gregerson was responding to something
25 that perhaps was even more offensive that was said by

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1 the undercover person. We don't know at this point. I
2 don't know that, assuming that the Court has some
3 concern just about the fragments of statements that have
4 been put in the pleading, I'll address that.

5 I will, I will concede that there are statements
6 that are attributed to Mr. Gregerson that are
7 politically incorrect, that may be deemed by many people
8 to be offensive, may be highly inappropriate.

9 But, judge I'll tell you, Donald Trump does all
10 those things yet he's running for President all right.

11 So this point unpopular or politically incorrect
12 statements are not crimes, they're frowned upon there's
13 no question but we're here what crime happened and I
14 think the Government can make a case that the grenade
15 deal happened certainly for purposes of this hearing.
16 But I do not agree one iota that they made anything
17 beyond that.

18 And what concerns me is that they have
19 cherry-picked perhaps the most sensational of things
20 they can after a 16-month investigation with God knows
21 how many agents and staff working on it and they've
22 offered up to Your Honor to say look and, yet, hidden
23 everything else behind a curtain. Context is
24 everything, judge.

25

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1 So for those reasons Your Honor, I would ask -- I
2 don't think -- I clearly don't think flight is an issue
3 in this case.

4 The Government has not argued strongly that
5 flight's an issue. I understand the Government's
6 arguments with respect to danger but I think that you
7 know, I think, I think I wrote down they have four
8 arguments.

9 The first one that this case involves grenades or
10 destructive devices which can harm people. I will
11 concede that. The Government removed those.

12 They indicate that the number of guns in the,
13 quote, arsenal that Mr. Gregerson had is an element of
14 danger or should cause concern. Well, they removed
15 that, too.

16 The third thing they focused on was the alleged
17 statements that they make Mr. Gregerson said to the
18 undercover, you know, whoever the hidden undercover
19 agent. We don't know who that person is today. And I
20 think I've made my arguments with respect to that last.

21 And finally they said, well, the weight of the
22 evidence. I gave them that one at the start of this.

23 For purposes of this hearing a grenade deal went
24 down, okay. Again, that goes back to the point they
25 took those away. That alleviates the issue of danger.

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1 So, Your Honor, for all those reasons even with
2 respect to considerations of danger I think that under
3 the bail statute Your Honor can add conditions to bond
4 such as house arrest, home confinement if need be,
5 tethering if need be, tether with GPS.

6 But I think the Government's already got that
7 covered or at least they had it for a while during this
8 investigation. They already had GPS. I don't know that
9 they stopped.

10 So this Court has tools to monitor Mr. Gregerson
11 the things that the Government points to and focuses on
12 is being instruments of danger, those have all been
13 removed from Mr. Gregerson. The Court should consider
14 that.

15 So with those out of the picture with what I
16 believe to be the holes in the, quote, context of the
17 statements they've provided, I don't think this is the
18 case the Government's suggesting to this Court that it
19 is.

20 For that reason, Your Honor, I'd ask the Court to
21 grant bond.

22 THE COURT: Thank you, Mr. Tholen. Ms.
23 Corken.

24 MS. CORKEN: Yes, Your Honor.

25

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1 Your Honor, the Government is not arguing flight
2 risk in this case, the Government is arguing that the
3 defendant is dangerous and should be held pending trial.

4 Your Honor, Mr. Tholen repeatedly stated how in the
5 dark he is about the conversations that occurred with
6 the undercover and how we need to know the context and
7 we don't have full transcripts.

8 Well, sitting right next to Mr. Tholen is the other
9 part of the conversation, so it's not a complete mystery
10 as to what occurred during this conversation. He could
11 certainly learn from his client.

12 He uses this argument to cast doubt on the
13 statements that were relayed by the undercover which are
14 contained in the Complaint Affidavit and the sealed
15 filing but, yet, there's no there's no specific
16 challenge to any of those statements and, yet, Mr.
17 Tholen does have the source of any challenge right with
18 him.

19 I'm suggesting that there isn't a basis to doubt
20 those statements, Your Honor, and that the context even
21 if the Court were to be given the full transcript would
22 not undermine what is stated in those documents.

23 Mr. Tholen also takes a shot at the undercover
24 officer. He is identified as an FBI employee working in
25 an undercover capacity. It is a federal agent.

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1 There is no *quid pro quo* for his involvement in
2 this case. He is a professional federal agent.

3 MR. THOLEN: Your Honor, I know the
4 Government's responding. I object to this because now
5 it sounds like the Government's proffering information
6 during their argument or something like that. That's
7 the problem.

8 The opportunity for the Government to put this
9 information about an undercover officer they could have
10 done it in the Complaint, they could have done it in the
11 sealed thing, they could have done it during proffer
12 here now, they didn't want to or think about it.

13 Now they're trying to back in this proffer I think
14 that's inappropriate. She's inserting new information
15 to Your Honor.

16 THE COURT: In the interest of having a
17 complete -- having a complete record, I'm going to allow
18 Ms. Corken to rebut the arguments that you made or the
19 suggestions that you made on the record and you may have
20 the chance to respond to what she's saying as well.

21 MR. THOLEN: I appreciate that, Your Honor, if
22 I might, just because I'm standing in, I would continue
23 my objection.

24 It sounds as if the Government's if you will
25 vouching for the authenticity of the complete

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1 transcripts which we haven't been provided and I object.

2 In no way am I accepting as factual or valid the
3 statements that the Government has attributed to Mr.
4 Gregerson, just so the record's clear.

5 THE COURT: All right.

6 So the record's clear, I am going to overrule your
7 objection and allow Ms. Corken to proceed and allow you
8 to respond.

9 MR. THOLEN: Understood, Your Honor. Thank
10 you.

11 MS. CORKEN: Thank you, Your Honor.

12 Your Honor, Mr. Tholen also has indicated that all
13 this is explained by the fact the defendant is a
14 collector, he's a gun enthusiast he likes this stuff.

15 Well who collects grenades? Who collects mines?
16 That's -- that is not -- those types of items aren't
17 consistent with a hobbyist.

18 In addition, Your Honor, the defendant never said
19 anything to the undercover officer about, oh, I'm
20 just -- I just wanted grenades for my collection or
21 because I, I'm, you know, a gun enthusiast, grenade
22 enthusiast.

23 In fact, he at least had some thought in his mind
24 using them against law enforcement if they ever came for
25 him, so it wasn't a purely hobby-like interest at all.

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1 In addition, there's an assault vest that was found
2 in which he made reference to with the undercover
3 employee that he bought pouches to contain those M67
4 grenades.

5 How many grenades do you need if you're just
6 collecting them as a collector? Five he acquired in the
7 transaction that we know about; he had indicated he
8 wanted more.

9 In addition, he -- I think it's pretty clear from
10 the amount, the extensive amount of materials of this
11 kind that he has that this is a tremendous investment.
12 This is a lot of money.

13 This is an individual who works at Target yet
14 spends a tremendous amount of money on these items that
15 I don't believe is consistent with a hobbyist either,
16 Your Honor.

17 Mr. Tholen also, also mentions the defendant's
18 lifestyle, how he hunts. I would just note he's -- we
19 he's never had a hunting license. We checked with the
20 State of Michigan.

21 The items in the -- in the -- that were recovered
22 in the search warrant, the tactical vest, handcuffs,
23 spikes amassed, that's hardly consistent without outdoor
24 activities like hunting and like the explanation that
25 Mr. Tholen seems to be offering.

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1 Your Honor, in terms of Mr. Tholen's argument,
2 well, he did nothing to conceal these purchases, he used
3 the credit card in his own name.

4 I'm sure at the time he had no idea that down the
5 line anyone would be looking at those purchases.
6 There's something in the sealed filing that indicates he
7 did conceal certain activities.

8 Your Honor, Mr. Tholen seems to suggest that, well,
9 everything's removed from the residence, therefore, he's
10 no longer a danger. But we all know how easy it is to
11 get a gun. We know the defendant met somebody in a
12 parking lot, got a firearm. It's not a difficult thing
13 to do.

14 And I would suggest that given all the evidence
15 that that's certainly not the solution having just
16 removed these items from him. Obviously doesn't have
17 the grenades now, but, again, there's no -- there's no
18 indication or promise or guarantee that he couldn't go
19 out buy something dangerous tomorrow.

20 With respect to the defendant's dangerousness, Your
21 Honor, I would conclude by saying that the fact that he
22 was buying grenades, the facts that are contained in
23 that sealed filing combined certainly go to establish
24 this defendant's dangerousness and we would request that
25 he be held pretrial.

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1 THE COURT: Thank you. Mr. Tholen?

2 MR. THOLEN: You know what, I really don't
3 have anything that was the Government responding. I
4 can't restate my arguments any clearer.

5 THE COURT: I'm not saying you should restate
6 your arguments, but I wanted to give you an opportunity
7 to respond --

8 MR. THOLEN: I appreciate that very much.

9 THE COURT: -- in any way you'd like to.

10 MR. THOLEN: Appreciate that, Your Honor. I
11 would just restate I think on two points with respect to
12 the undercover.

13 I think it's one issue the Government may have is
14 concealing the identity, they may want to do that for
15 protection of that individual or want to do it because
16 they want to utilize that individual in other
17 investigations, that's very common. I understand that.

18 They've done more than that. In fact, it wasn't
19 until the Government decided to respond to some of my
20 arguments that they start to pepper more information.
21 And I think that's telling, judge. I know Your Honor
22 allowed it, that's fine, it's out there, it's on the
23 record, but I think it just it should cause more pause.

24 There's no reason why that information wasn't put
25 in earlier and it looks like a last gasp effort by the

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1 Government to resuscitate their argument. That's my
2 comments with respect to undercover.

3 With respect to the statements I mean, good Lord 16
4 months of investigation surveillance, reportings,
5 conversations, I assume debriefings with the undercover
6 I know it's the Federal Government, I know sometimes we
7 have federal holidays.

8 I have a real hard time believing that stuff that
9 happened a month ago hasn't been put in a report
10 somewhere or transcribed. Certainly they had the
11 ability to do that in the Criminal Complaint, at least
12 the parts they wanted to. It's common sense.

13 So to the extent the Government stands here and
14 says, you know, the statements we put in the Complaint
15 or in the -- under seal, those are representative and
16 everything else backs that up. That not been my
17 experience. And, of course, I haven't seen it though
18 I've requested this information.

19 So I think you know the Court will do with that
20 what it will. I know Your Honor's obviously been
21 involved in many of these types of cases, these are not
22 new concepts to Your Honor. But I think it's
23 inappropriate because part of what I heard the
24 Government do is effectively vouch for, one, the
25 credibility of the undercover; and, two, vouch for the

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1 representation or the completeness of the cherry-picked
2 statements that they pulled out of a 16-month
3 investigation to say that, well, there's a lot more
4 where that it came from.

5 I just don't believe that as practicing for 26
6 years in this court that that's true, because I believe
7 if they had a lot more, the Complaint would be a hundred
8 pages long.

9 I've nothing further, Your Honor. I renew my
10 request for bond.

11 THE COURT: Thank you. Anything further from
12 the Government?

13 MS. CORKEN: No.

14 THE COURT: We're going to take a 10 minute
15 recess.

16 (Whereupon court was in recess 4:05 p.m.)

17 (Whereupon court was back in session at 4:31 p.m.)

18 THE CLERK: Court recalls case number 16-30339
19 United States versus Sebastian Gregerson.

20 MS. CORKEN: Good afternoon, again, Your Honor
21 Kathleen Corken on behalf of the Government.

22 MR. THOLEN: May it please the Court, David
23 Tholen on behalf of Mr. Gregerson. He's present, judge.

24 THE COURT: Again, would the defendant please
25 state his name again, please.

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1 THE DEFENDANT: Sebastian Gregerson.

2 THE COURT: Thank you. You may be seated.

3 The Court has taken some time to review the written
4 submissions that were offered as well as the exhibits,
5 my notes which are copious and run several pages and the
6 charging document.

7 Just for clarification purposes and for no other
8 purpose, I would like to point out that on page six of
9 the Criminal Complaint, paragraph 16 begins as follows:

10 In recent months, Gregerson has several
11 interactions with an FBI employee operating
12 in an undercover capacity.

13 So I don't think that that identification of
14 the.U.C. was hidden or buried in any sense or that there
15 was any attempt to hide that this was not somebody
16 trying to work a case or somebody operating for any of
17 the speculative motives that were talked about in -- on
18 this record.

19 Having reviewed everything in its totality,
20 including the Pretrial Services Report, I believe the
21 case comes down to whether or not this defendant poses a
22 danger to the community. I am not nearly as concerned
23 about risk of flight as I am the danger component.

24 In a nutshell, Mr. Tholen raises some very
25 excellent points and makes some very persuasive

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1 arguments. Most interestingly is that he concedes that
2 except for the Government's Exhibit -- Exhibits 1 and 2
3 all of the other purchases were made legally and openly
4 and above board, I'm talking about the purchases
5 captured in the Government's Exhibit 3 through 30.

6 The stumbling block, obviously, are Exhibits 1 and
7 2. Exhibit 1 was purchased, Exhibit 2 was talked about
8 in conversation allegedly as any Claymore mine that
9 defendant wished to purchase and hoped to purchase for
10 \$250.

11 What does one do with these items? What does one
12 do with a grenade which, as described by the Government,
13 has a purpose of causing injury and death and no other
14 purpose? And why would anybody want to purchase a
15 Claymore mine which, again, is only used to cause death
16 and destruction?

17 I concede that the defendant purchased legally
18 multiple items that are used in combat that are used --
19 that are destructive items that are AK-47s, ammo and
20 weapons in large numbers.

21 But when I look at this case in its totality and I
22 have looked at it in its totality, I cannot escape the
23 conclusion that the defendant poses a danger to the
24 community. When I reviewed the statutory factors again
25 I come to the same conclusion.

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1 And when I review Pretrial Services Report and
2 Recommendation for detention, I come to the same
3 conclusion and agree that this defendant does pose a
4 danger to the community; that there are pieces certainly
5 that we don't know yet about this case, but based upon
6 what we do know at this time, I am going to order
7 detention based on danger.

8 THE CLERK: Preliminary exam will be
9 August 15th at 1:00 p.m.

10 THE COURT: What was the date, again, Ms.
11 Bartlett?

12 THE CLERK: August 15th.

13 MS. CORKEN: Thank you. Court's in recess.

14 (Whereupon hearing concluded at 4:36 p.m.)
15

16 CERTIFICATE OF TRANSCRIBER
17

18 I do hereby certify that the foregoing is a correct
19 transcription from the digital sound recording of
20 proceedings in the above-entitled matter on the date
21 hereinbefore set forth and
22 has been prepared by me or under my direction
23 to the best of my ability.
24

25 s/Carol S. Sapala, FCRR, RMR August 8, 2016