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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
)
v.) Docket No. 5:19-CR-106(1)-DAE
)
BENJAMIN BOGARD,) San Antonio, Texas
) February 21, 2019
Defendant.) 2:13 p.m. to 5:09 p.m.
_____)

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE HENRY J. BEMPORAD
UNITED STATES MAGISTRATE JUDGE

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1 (Open court at 2:13 p.m.)

2 THE COURT: Good afternoon. Please be seated.
3 Kriston.

4 (At the bench off the record)

5 THE COURT: Calling the case of SA:19-M-131. That's
6 United States of America versus Benjamin Bogard. If I could
7 have announcement of counsel, please.

8 MS. THOMPSON: Good afternoon, Your Honor. Tracy
9 Thompson appearing on behalf of the United States.

10 THE COURT: Good afternoon.

11 MR. MORRIS: Good afternoon, Your Honor. Mike Morris
12 on behalf of Mr. Bogard.

13 THE COURT: All right. Good afternoon to you as well.

14 We had previously held the beginnings of a detention
15 hearing in this case, at which time the parties reached an
16 agreement to have -- as I remember, Mr. Bogard transferred to
17 Laurel Ridge Treatment Center where he could receive an
18 evaluation as to his psychological condition to see, in light
19 of that condition, if conditions of release could be set in the
20 case and what those conditions might be.

21 As I recall, I released Mr. Bogard to the custody of FBI
22 Agent Miller who was going to transfer him to Laurel Ridge
23 where he'd get the evaluation, and then transfer him back to
24 GEO until we could have the hearing.

25 It appears that all that has occurred, and I actually have

1 submitted to me by Mr. Morris a discharge summary and some
2 additional documents from Laurel Ridge. Let me hear from
3 Mr. Morris first, and then I'll hear from the government.

4 Am I capturing what -- where we are correctly, Mr. Morris?

5 MR. MORRIS: That's correct, Your Honor. It was --
6 the primary concern that I heard from the Court was having a
7 diagnosis or at least some information regarding a diagnosis.
8 I think we have that now.

9 THE COURT: All right.

10 MR. MORRIS: I think that is the information the Court
11 was needing to be able to proceed.

12 THE COURT: All right. As I mentioned, I received
13 this -- from you a discharge summary. It's a three- --
14 four-page document. Have you provided this document to the
15 government or any portions of it?

16 MR. MORRIS: I have. That whole four pages you have
17 to the government.

18 THE COURT: Okay. Because that was one of the issues
19 that we had before about how confidential the information would
20 be. It could come to me or to the pretrial services office,
21 but only some things would be able to come to the government.

22 So this is a document I'm going from, but the whole
23 document's with the government?

24 MR. MORRIS: That's correct.

25 THE COURT: Excellent. Okay.

1 MS. THOMPSON: I received it right before the hearing,
2 Your Honor.

3 THE COURT: Me too. Okay. So -- Okay. So we're all
4 on the same page.

5 Now, I had, as I mentioned, a pretrial services report
6 already in the case. I don't remember where exactly we had
7 gotten vis-a-vis the detention hearing, whether we needed to
8 hear testimony from the agent as to the circumstances of the
9 case, proffers or testimony regarding any of the material in
10 the pretrial services report and so forth. With regard to
11 that, let me reach out to start with the government to see
12 where they are with regard to detention in the case.

13 MS. THOMPSON: We had not actually started the
14 detention hearing.

15 THE COURT: All right. I don't remember any
16 testimony, so that's kind of what I assumed. Go ahead.

17 MS. THOMPSON: We wanted to address his mental health
18 issues first.

19 THE COURT: Got you.

20 MS. THOMPSON: And it was at least assumed by me that
21 depending on whatever mental health issues he may have that
22 were then undiagnosed, that Laurel Ridge may be a treatment
23 center that could provide long-term or intensive treatment.

24 THE COURT: Yes. Treatment. Uh-huh.

25 MS. THOMPSON: And now I have learned from speaking

1 with the individuals at Laurel Ridge that they don't do that.
2 It is strictly an acute care facility for immediate --
3 individuals in immediate need of mental health treatment.

4 THE COURT: Got you. Okay.

5 MS. THOMPSON: So the option of having him reside at
6 Laurel Ridge and receive mental health treatment is not an
7 option.

8 THE COURT: All right. Well, and that -- as I
9 understand this discharge summary, they in fact -- their
10 referral would be to outpatient treatment, is what they
11 recommended. At least that's what I saw on the third page of
12 the document but --

13 MS. THOMPSON: I didn't see that. What I saw --

14 THE COURT: Okay. Go ahead.

15 MS. THOMPSON: -- is that they are -- and they
16 informed the FBI -- when the FBI went to go talk to them and
17 review some of the material, they told them they are not able
18 to provide a forensic psychiatric evaluation and/or long-term
19 psychiatric treatment. They are not able to assess the
20 defendants' future dangerousness. That's not what they do, and
21 they wouldn't be able to do that for us. And so they
22 discharged him back to the custody of the FBI, knowing he was
23 going to be back in a jail facility.

24 THE COURT: All right. Got you. Okay.

25 MS. THOMPSON: So I want to be careful. I don't

1 think -- based on my discussions with Laurel Ridge, I don't
2 think their recommendation was, all he needs is outpatient
3 treatment and that would be fine. I think what they -- the
4 conclusion they came to, as expressed to me, is, We can't do a
5 dangerousness assessment for you, the type that you want. And
6 so he doesn't need -- he's not suicidal now. He claims not to
7 be suicidal or homicidal, and, therefore, we're discharging
8 him. There's nothing we can do to help him because we're an
9 acute care facility.

10 THE COURT: All right. I see the argument.

11 So, I mean, it sounds to me like I need to go forward then
12 with the hearing because there's not some agreement on what
13 conditions of release the government would agree to that would
14 address this issue of dangerousness, is what it's sounding like
15 to me.

16 MS. THOMPSON: Correct. Because at this point we
17 still don't have a true dangerousness exam. The government's
18 position is he needs to be -- he needs to remain in custody
19 through the pendency of this case.

20 THE COURT: Okay.

21 MS. THOMPSON: If the Court is inclined to release him
22 at any point, I would ask that he be given a dangerousness
23 assessment through the Bureau of Prisons prior to that
24 happening. But at this point I don't know -- based on
25 everything I know, I don't think -- I would not be agreeable or

1 amenable to any conditions of release.

2 THE COURT: I see. All right. Very well. Well, then
3 that -- I think that means then we're going forward with the
4 hearing. So let me hear from the government as to what
5 evidence you'd like to present.

6 Mr. Morris, yes, you had something you wanted to add.

7 MR. MORRIS: I'm sorry. If I could just briefly
8 interject, Your Honor.

9 THE COURT: Yeah. Sure.

10 MR. MORRIS: You were asking about the prospects of
11 the guidelines around this detention hearing, and I wonder if I
12 could just bring up a couple of quick points.

13 THE COURT: All right.

14 MR. MORRIS: We can narrow down the issues
15 significantly.

16 THE COURT: Sure.

17 MR. MORRIS: If we'll look at the criminal complaint
18 filed in this case, Your Honor, the charge in this case is a
19 single charge under 18 2252(a)(5)(B). That is specifically not
20 an Adam Walsh charge. This is not an Adam Walsh case. This is
21 not a case that was triggered under Adam Walsh, even though the
22 pretrial services report reports otherwise.

23 THE COURT: All right.

24 MR. MORRIS: Because it's not an Adam Walsh case and
25 hasn't been charged as such, there's two limitations on this

1 detention hearing. And if I may briefly bring a case to the
2 Court's attention. This is a case with Roger -- *United States*
3 *v. Roger Ploof*, 851 F.2d 7, First Circuit 1988. I'll provide a
4 copy to opposing counsel.

5 In this case, Your Honor, it makes it abundantly clear the
6 issue of dangerousness can only be to the charges currently
7 before the Court, not some uncharged conduct.

8 There is no charged conduct of terroristic threat. There's
9 no charged conduct of violence against anyone. All there is,
10 is the charged conduct of receipt of child pornography. That
11 is the relevance and the boundaries of relevance. And if I
12 could provide this case to Your Honor.

13 A brief review of it makes very clear, Your Honor, that
14 this is -- the limits of this case and the testimony regarding
15 this case need to be within those narrow confines, not an
16 examination of everything anybody's ever done because the
17 government wants to detain you.

18 The second issue --

19 THE COURT: Let me just stop you there.

20 MR. MORRIS: Yes, Your Honor.

21 THE COURT: Hasn't the statute been amended since this
22 1888 case?

23 MR. MORRIS: It has.

24 THE COURT: I mean, as I understand it, I have to hold
25 a detention hearing in any case involving any felony, whether

1 or not it's a crime of violence, it involves a minor victim.
2 Once I have to hold a detention hearing, then I have to make
3 two determinations. One is whether there are conditions will
4 set that will assure the safety of the community. One is
5 whether conditions will set that will assure the appearance of
6 the defendant. That's what I think I'm doing. And I thought I
7 have to look at all the factors in G. Are you saying that
8 those factors don't apply?

9 MR. MORRIS: I'm saying --

10 THE COURT: Because one of them is the circumstance of
11 the offense.

12 MR. MORRIS: And the circumstances, of course, are
13 there.

14 THE COURT: Okay. All right.

15 MR. MORRIS: But it's circumstances of the offense
16 charged.

17 THE COURT: Okay.

18 MR. MORRIS: And that's what we're here to talk about,
19 is the offense charged, not some other offense that's
20 uncharged, unrelated, alleged -- just currently want to be
21 thrown out for the purposes of prejudicial information. I
22 think the Court needs to be able to limit it to the specific
23 offense charged, that that's the relevant --

24 THE COURT: Aren't I also -- assume I agree with you
25 about that part, aren't I also required to consider the

1 person's character, physical, mental condition and so forth?

2 MR. MORRIS: Oh, absolutely.

3 THE COURT: And wouldn't this go -- I mean, I thought
4 that's one of the things we're talking about.

5 MR. MORRIS: The mental condition, absolutely --

6 THE COURT: All right.

7 MR. MORRIS: And -- the medical records from Laurel
8 Ridge, all that. But what I think you're going to hear is an
9 FBI agent getting up and wanting to tell you about all these
10 terrible videos on someone's phone and threats against other
11 people and threats against persons and people.

12 THE COURT: Well, I'll make a relevancy determination
13 at the time --

14 MR. MORRIS: The second --

15 THE COURT: -- if necessary.

16 MR. MORRIS: -- quick question for you, Your Honor.

17 THE COURT: Yes. Uh-huh.

18 MR. MORRIS: There's a second case I wanted to point
19 out to the Court, *United States v. Martin-Trigona*. This case
20 makes it abundantly clear that under the Bail Reform Act the
21 conditional requirement of psychiatric evaluation to determine
22 dangerousness is not within the scope of the federal
23 [inaudible].

24 The dangerousness scope that Ms. Thompson has mentioned is
25 part of a competency hearing, which there's been no allegation

1 of lack of competency. There is no question, quite frankly,
2 about competency. It is a question only -- they would like to
3 have a BOP evaluation for dangerousness. And this case makes
4 it abundantly clear that's inappropriate. That can't be
5 ordered by the magistrate court or the district court.

6 THE COURT: Okay. I think I've addressed the first
7 issue, Ms. Thompson, with regard to what evidence I can
8 consider. I'll just -- I'll just entertain relevancy
9 objections at the appropriate time.

10 On this question of dangerousness, is there particular
11 language that you wanted to point me to in the statute?

12 MS. THOMPSON: Well, first, I want to correct the
13 record.

14 THE COURT: Go ahead.

15 MS. THOMPSON: This case does fall under the Adam
16 Walsh Act. He was charged by complaint with receiving child
17 pornography. And that is, under 3142(f), not only a crime of
18 violence but also a crime involving a minor child. It also
19 invokes a presumption of detention that will exist in this
20 case. The detention factors that the Court has to consider
21 involve the nature of the offense --

22 THE COURT: Okay. I got to stop you, too. I'm sorry.
23 It's 2252(a)(5), right? That's the crime?

24 MS. THOMPSON: No. (a)(2). Oh, actually, it's both.
25 It's (a) --

1 THE COURT: It says (a) (5) on the complaint. And so
2 I'm just going with what's on the complaint. And (a) (5) isn't
3 listed for the presumption. So that's why I'm asking. I
4 don't -- I don't know that it really matters. I'm going to
5 make the determination based on the facts that are in front of
6 me. I just -- y'all are making me concerned that there's some
7 different rules apply that I'm getting wrong. But that's my
8 concern.

9 MS. THOMPSON: There aren't, Your Honor.

10 THE COURT: That's my concern.

11 MS. THOMPSON: There aren't any different rules.

12 THE COURT: Okay.

13 MS. THOMPSON: The very last paragraph of the
14 complaint affidavit includes the statute for receipt. I
15 think --

16 THE COURT: Oh, I see.

17 MS. THOMPSON: -- a legal secretary in my office only
18 included one statute --

19 THE COURT: On the front.

20 MS. THOMPSON: -- at the beginning.

21 THE COURT: All right.

22 MS. THOMPSON: So that is the possession statute.

23 THE COURT: I see.

24 MS. THOMPSON: But the offense description is listed
25 as receipt of child pornography. And those are the appropriate

1 penalties for receipt of child pornography.

2 The complaint affidavit clearly sets out that he knowingly
3 received and possessed child pornography. They do fall under
4 the Adam Walsh Act. There is a presumption of detention. And
5 some of the factors that the Court is to consider is the nature
6 of the offense charged, which do not relate to any terrorism
7 offenses but child exploitation offenses, the weight of the
8 evidence.

9 But you also have to consider the history and
10 characteristics of the defendant in which his online persona
11 would come into place. And also, you have to consider, most
12 importantly, the nature and seriousness of the danger to any
13 person or the community that would be posed if he were to be
14 released. And that's really where the government is focusing,
15 because that is -- I don't know what other word to say other
16 than there is great danger that could be posed based on what we
17 know about this defendant if he were to be released.

18 THE COURT: All right.

19 MS. THOMPSON: And that was the case at the time of
20 his arrest. I would submit to the Court that now knowing he's
21 charged with a child exploitation offense and is looking at a
22 maximum of 20 years imprisonment, that also provides a lot of
23 incentive to carry out the plans that he's posted online and
24 puts him back in that, I want to not be on this planet anymore.

25 THE COURT: I was thinking more of the Adam Walsh

1 having to do with what conditions would be required more than
2 this factor as to the factors to be considered. What is your
3 view on this question of -- you were saying you wanted to have
4 a BOP forensic analysis of this gentleman for dangerousness.
5 And Mr. Morris, as I understand it, said, Look, that's a
6 competency issue. Usually that's determined under statutes 41
7 something -- 41. Yeah. But not so much a dangerousness issue,
8 unless there's some specific language in the -- in the Bail
9 Reform Act that I haven't -- that I certainly might have
10 missed.

11 MS. THOMPSON: I don't know. And I'm not familiar
12 with his case, and it's out of the Second Circuit, so it
13 doesn't really mean anything to this Court anyway. I think
14 that he misspoke when he said it's not within the scope of this
15 Court. My understanding is that you don't have to order a
16 dangerousness assessment. You can determine the level of
17 dangerousness --

18 THE COURT: All right.

19 MS. THOMPSON: -- with regard to the testimony at the
20 bail hearing, or at the detention hearing. But there is that
21 option within the Bureau of Prisons. They do two different
22 assessments. One is competency. The other is dangerousness.
23 They don't always go hand in hand. I'm not asking for -- that
24 we do a dangerousness assessment now. I'm asking that the
25 defendant be detained.

1 THE COURT: All right.

2 MS. THOMPSON: But if the Court gets to the point
3 where it believes that release is appropriate, I wanted to let
4 the Court know that that dangerousness assessment by the
5 doctors at the Bureau of Prisons, which are not paid by the
6 defendant or his family, would be available to the Court. And
7 they actually do a forensic psychiatric evaluation that
8 addresses future dangerousness, as best they can, unlike Laurel
9 Ridge.

10 THE COURT: All right.

11 MS. THOMPSON: I thought Laurel Ridge was capable of
12 doing that based on the little I knew at the time of the last
13 detention hearing, but it turns out, they're not.

14 THE COURT: All right. Very well.

15 Well, I'll keep those things in matter -- in mind.
16 Mr. Morris, if you have objections as to the relevancy of any
17 particular testimony, same with you, Ms. Thompson, just make an
18 objection. I'll figure it out then.

19 So let me hear from the government as to the question of
20 detention or release.

21 MS. THOMPSON: Your Honor, I have three witnesses.
22 The first will be Special Agent Kristina Spindel.

23 THE COURT: All right. Agent, come forward. My
24 courtroom deputy will swear you in.

25 (The oath was administered)

1 KRISTINA SPINDEL, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. THOMPSON:

4 Q. Please state your name for the record.

5 A. Kristina Michelle Spindel.

6 Q. Where are you employed?

7 A. FBI San Antonio.

8 Q. How long have you had that employment?

9 A. Since 2014, November.

10 Q. What is your assignment within the FBI?

11 A. I'm currently assigned to the Domestic Terrorism Squad on
12 the Joint Terrorism Task Force in San Antonio headquarters.

13 Q. Are you familiar with the defendant, Benjamin Bogard?

14 A. I am.

15 Q. How did he come to your attention?

16 A. So we received a lead from FBI Albany out of upstate
17 New York regarding an open investigation concerning potential
18 terroristic threats.

19 Q. Was an anonymous tip provided to the Albany FBI Crime
20 Stoppers?

21 MR. MORRIS: Objection, leading.

22 THE COURT: Overruled.

23 THE WITNESS: So FBI Albany originally got the case as
24 it was forwarded from Albany Crime Stoppers. They received an
25 anonymous tip in early November of 2018 regarding an Instagram

1 account and possible terroristic posts from that account.

2 MS. THOMPSON: May I approach, Your Honor?

3 THE COURT: Yeah, you may.

4 BY MS. THOMPSON:

5 Q. Special Agent Spindel, I'm showing you what I'll mark as
6 Government Exhibit 1, and ask that you take a look at that. Do
7 you recognize that?

8 A. I do.

9 Q. Is that the information regarding the tip and the
10 investigation that the Albany Division conducted that you were
11 provided in this case?

12 A. It is.

13 Q. What was the original information that was provided to
14 Crime Stoppers?

15 A. So through the database an anonymous caller reported on
16 November 5th, 2018, provided some concerning posts. Would you
17 like me to read the narrative?

18 Q. Yes, please.

19 A. Okay. So the anonymous caller posted the following: I
20 found an account on Instagram. He seems to be a member or
21 sympathizer of the terrorist group Atomwaffen Division. We
22 know --

23 THE COURT: Of what? I'm sorry. What was --

24 THE WITNESS: Atomwaffen Division, A-T-O-M-W-A-F-F-E-N
25 Division.

1 THE COURT: Okay.

2 THE WITNESS: -- a white supremacy group.

3 THE COURT: Stop right there because someone is
4 standing up.

5 Yes, sir.

6 MR. MORRIS: Sorry. This is a point where I would
7 object. I think this has nothing to do with what's been
8 charged against Mr. Bogard. I believe this has absolutely no
9 relevance to the charges that are currently pending in front of
10 him. And without any kind of ability to look at what's being
11 read from, I am -- it appears that this is the agent's
12 testimony or this is something that she is testifying to.

13 THE COURT: I will. If she's reading from the
14 document, I was going to say, you have a right under Rule 26.2
15 to review that document. I get the feeling that Ms. Thompson
16 may have handed you a copy of the document at this time to
17 allow you to cross-examine upon it.

18 With regard to your relevance objection, it's -- I'm going
19 to carry that objection until I hear how this is tied in.

20 MR. MORRIS: Very good, Your Honor.

21 THE COURT: All right. You may proceed, Ms. Thompson.
22 I'm sorry. Agent, you were reading from it.

23 But, Ms. Thompson, it may be better if you asked particular
24 questions, if there are some questions, from that document so
25 we can get to the key parts in case -- unless maybe all of it's

1 important. I'll --

2 MS. THOMPSON: I believe all of it's important, Your
3 Honor.

4 THE COURT: I'm happy to hear it.

5 MS. THOMPSON: It's short.

6 THE COURT: That's fine. Go ahead.

7 MS. THOMPSON: But it provides --

8 THE COURT: All right. Very well.

9 MS. THOMPSON: -- all information that goes to the
10 issue of dangerousness.

11 THE COURT: All right. Very well.

12 So you were saying an anonymous caller had said Atomwaffen
13 Division, is that was the information.

14 THE WITNESS: That's correct.

15 THE COURT: And that's as far as you had gotten. Go
16 ahead.

17 THE WITNESS: That is correct.

18 BY MS. THOMPSON:

19 Q. What is the Atomwaffen Division roughly?

20 A. So it's a white supremacy group.

21 Q. What did the caller state next about the reason why they
22 called?

23 A. So the anonymous caller was concerned that this individual
24 may be planning a bombing or other terrorist attack.

25 Q. What did they notice a few days ago that caused them alarm?

1 A. So back in November they reported that an Instagram account
2 had -- an individual on Instagram account HelterSkelter333.exe
3 posted a video. The individual was shooting a shotgun in the
4 woods and screaming an anti-Semitic phrase, race war now and
5 praise Allah.

6 Shortly thereafter, the individual stated that he or she
7 felt bad about dropping out of college to live in a van. The
8 anonymous reporter went on to say that this
9 HelterSkelter333.exe never communicates with anyone that he or
10 she used to know, and has nothing to live for. That same
11 anonymous reporter was concerned that it would only be a matter
12 of time before he or she snaps, and knows that it's going to
13 happen.

14 Q. Now, in the -- I'm going to take you back to the tip that
15 was provided. It said that, in the video that was posted, that
16 the anonymous caller saw, to the Instagram story, he was
17 shooting a shotgun in the woods while screaming different
18 things that you testified about. Correct?

19 A. That is correct.

20 Q. And that the individual, the defendant on the Instagram
21 account, is the one that said, It's only a matter of time
22 before I snap, and that the defendant knows it's going to
23 happen. Is that correct?

24 A. That is correct.

25 Q. Why don't you read the rest of the tip, starting right

1 there.

2 A. Okay.

3 MR. MORRIS: And if I may briefly, Your Honor, just we
4 can lodge our objection. I understand hearsay is not
5 necessarily an objection during a detention hearing. I would
6 just point out that this is the fourth level of hearsay just
7 added onto this anonymous tip.

8 THE COURT: All right. Very well. I'll consider
9 that -- I'll consider that as -- I still haven't heard as to
10 how it's tied in. So I understand.

11 MR. MORRIS: Thank you, Your Honor.

12 THE COURT: You were going to read the next part.

13 THE WITNESS: Thank you, Your Honor.

14 HelterSkelter333.exe said that, We'll all see him one day
15 and see what he did. The anonymous reporter then went on to
16 say that, today, that being November 5th of 2018, he posted a
17 story inquiring about where he could purchase ten kilograms of
18 potassium perchlorate. This, combined with his previous posts,
19 leads me to believe that he is planning a terrorist attack. I
20 have included all relevant information. I have him in the
21 files, so essentially screenshots of those posts on Instagram.

22 The anonymous reporter said -- believed that
23 HelterSkelter333.exe lived in New York state, went on to say
24 that he or she was not 100 percent sure but thought that this
25 individual lived in New York state.

1 Went on to say, even if he did -- he lives in a van and may
2 be nomadic. And that was the end of the narrative.

3 BY MS. THOMPSON:

4 Q. What did the Albany Division of the FBI do with that
5 information?

6 A. So the Albany Crime Stoppers reported that and this
7 particular narrative and report to Albany JTTF with the FBI.

8 Q. Was an investigation done into the Instagram account of
9 HelterSkelter333?

10 A. So based on the posts and the screenshots provided, an
11 investigation ensued from this --

12 THE COURT: Oh, can I -- I'm sorry. Can I interrupt
13 for one second? I didn't -- I may have missed the screenshot
14 part. So the report -- the anonymous report was like an email
15 report that included like pictures from the Instagram?

16 THE WITNESS: That is correct.

17 THE COURT: And so that's where some of that -- when
18 you said the 333 said these things --

19 THE WITNESS: Yes.

20 THE COURT: -- it's from those -- those screenshots?

21 THE WITNESS: That is correct, Your Honor.

22 THE COURT: All right. I didn't get exactly that. I
23 understand now.

24 Go ahead, Ms. Thompson. I'm sorry.

25 MS. THOMPSON: That's okay.

1 BY MS. THOMPSON:

2 Q. Are a copy of the screenshots that were provided to the FBI
3 included in the packet that you have, that will be Government
4 Exhibit 1?

5 A. They appear to be.

6 Q. What else was discovered with regard to the tip that caught
7 the attention of the FBI?

8 A. Well, certainly, the threat of possible mass violence, the
9 threat of potential terroristic acts and the concern over the
10 acquisition of explosive precursors.

11 Q. Was there -- did the FBI find information in the
12 defendants' accounts about the defendant posting about shooting
13 up a school?

14 MR. MORRIS: I'm sorry, Your Honor. I have to object.
15 I've heard nothing so far that ties any of what she said --

16 THE COURT: It's all subject to that relevancy
17 objection. I'm waiting to hear the same thing, too.

18 THE WITNESS: So I don't -- I don't have that post in
19 front of me.

20 MS. THOMPSON: May I approach?

21 THE COURT: You may.

22 BY MS. THOMPSON:

23 Q. What information did you learn that the defendant had
24 posted about committing acts of mass violence?

25 A. So outside of the HelterSkelter333.exe profile name on

1 Instagram, there were additional profiles throughout online
2 social media, that being Instagram, that being Twitter, as well
3 as Steam, which is a online gaming website, the account on
4 Steam subscribed to by HelterSkelter333.exe also had a post
5 that was very concerning.

6 HelterSkelter333.exe on Steam posted, "Proud to say I have
7 the most hours in this game in the world. This is one of my
8 favorite games. It's going to be a cult classic like Bad Rats.
9 There are many subtle details in this game that you'll only
10 start to understand once you reach 100 plus hours of pure bliss
11 enjoyment.

12 "My life was quite depressing before I discovered this
13 game. Now I no longer want to shoot up a school and kill
14 myself. CNN was wrong about games training you to become
15 killers. Instead, I became a lover of art. I see countless
16 hundreds of hours of enjoyment coming ahead for everyone."

17 Q. Did you find posts of the defendant where he talks about
18 his relationship with his parents?

19 THE COURT: Okay. Now, I got stop -- I got confused
20 here. I thought we were still on this -- have we tied things
21 to the defendant?

22 MS. THOMPSON: Oh.

23 THE COURT: You see what I'm saying? I thought we
24 had -- these were associated with 333. I don't remember the
25 whole name. I'm terrible with those sorts of names. I don't

1 do that stuff. But have we tied it in to -- I'm just trying to
2 connect the dots, so I could rule on Mr. Morris' objection.

3 MS. THOMPSON: Some of these -- yes, I'll get to that.

4 THE COURT: Okay.

5 MS. THOMPSON: All of these were part of the original
6 tip.

7 THE COURT: All right. But I'm going to -- I will
8 carry -- then I'm going to carry the objection until I hear --
9 get the whole thing. You see why I raised the concern?

10 MS. THOMPSON: I do.

11 THE COURT: Okay. Go ahead.

12 BY MS. THOMPSON:

13 Q. What did the FBI determine as far as the identity of the
14 person using HelterSkelter333.exe?

15 A. So part of the investigative process would involve
16 determining a potential IP address from that particular user
17 account, profile name. Generally people use profile names that
18 aren't indicative of their true identity.

19 So FBI Albany proceeded with a subpoena to Instagram for
20 the account HelterSkelter333.exe. The subscriber email to that
21 was an email registered to a DoD Education Activity or
22 DoDEA.edu email, as well as an IP address that resolved back to
23 New Braunfels, Texas.

24 Q. And the DoDEA.edu email address came back to who?

25 A. So I'm going to look for the exact email address. My --

1 Q. The exact email address was
2 BBOG966JRJDJ2@student.DoDEA.edu. And who was that email
3 address assigned to?

4 A. That is correct. Through multiple other database queries
5 and consultation with our DoD counterparts, that email address
6 resolved back to Benjamin Bogard when he attended high school
7 at Ramstein High School at Ramstein Air Force Base in Germany.

8 Q. Was that email address also used to create the Instagram
9 account HelterSkelter333.exe?

10 A. It was.

11 Q. In the -- through the investigation of the Instagram
12 account were you able to find -- or was the FBI able to find
13 images depicting the defendant using that Instagram account?

14 A. The FBI office out of Albany was.

15 Q. Did they also investigate the Instagram account called
16 BasedSea -- S-E-A -- Remover?

17 A. That is correct.

18 Q. And did they find images depicting the defendant as the
19 user of that Instagram account?

20 A. That is correct. But for the record, BasedSeaRemover was a
21 Twitter account.

22 Q. Thank you.

23 Was that account also used to profess white supremacy?

24 A. It appears that there was material consistent with white
25 supremacy ideology.

1 Q. Did the FBI find information related to and contained
2 within the HelterSkelter.exe account regarding the defendant's
3 relationship with his parents?

4 A. I will reference that post.

5 So in regards to comments about a relationship with what we
6 believe to be Benjamin Bogard's parents, that was placed on the
7 Steam account. There was a post that was made -- it's not
8 dated, but it was by HelterSkelter.exe. And it stated, My
9 parents -- there was several hearts in there, with an I-N-G,
10 hate me. Another post on HelterSkelter.exe, which was the
11 Instagram account, stated that, My parents beat me daily and
12 tell me I'm a failure. I want to die. And that was in quotes.

13 Q. You testified the FBI also investigated the Twitter account
14 that's named BasedSeaRemover. Was there -- did you find
15 evidence in that account that was troubling to the FBI as far
16 as dangerousness of the defendant?

17 A. On July 7th of 2018 someone by the Twitter handle ACR,
18 Alpha Charlie Romeo, posted a picture of a trigger guard and
19 stated, "What are your favorite parts of guns? I like trigger
20 groups and bolt carriers," to which BasedSeaRemover that same
21 day replied, "The part that kills 30 babies per trigger pull."

22 Q. After the FBI received the tip information from Albany and
23 did an investigation of their own, did you speak with the
24 defendant at any time?

25 A. We did. Certainly, we vetted the information that was

1 forwarded from FBI Albany and kind of worked through the
2 investigative process to locate the Instagram owner of
3 HelterSkelter333.exe as well as the Twitter accounts.

4 It was determined that, through open source checks, that
5 perhaps Benjamin Bogard was residing either in San Marcos as a
6 student at Texas State University or in New Braunfels with his
7 parents.

8 Q. Where did you find him residing when you met with him?

9 A. We initially -- we initially arranged to interview his
10 father, Robbie Bogard, on January 23rd. His father, Robbie
11 Bogard, is employed by the U.S. Air Force at Randolph Air Force
12 Base. So our initial step was to go meet with Mr. Bogard, that
13 being Robbie Bogard, to ask a few basic questions and hopefully
14 determine the location of his son, Benjamin.

15 Q. And did you do that?

16 A. We did.

17 Q. What information did Mr. Bogard tell you about his son?

18 A. Mr. Bogard was very welcoming. We spoke with Mr. Bogard
19 with just some very basic details regarding our open
20 investigation. Mr. Bogard confirmed that Benjamin was, in
21 fact, living with them at their -- at their residence in
22 New Braunfels; that Benjamin had dropped out of school at Texas
23 State. He was a double major in computer engineering and I
24 think mechanical engineering; that Benjamin had been living
25 with them unemployed for the past couple of months.

1 Q. Had been living with them and unemployed?

2 A. -- and unemployed for the past couple of months.

3 Q. Did he indicate to you or did your investigation discover
4 when he had dropped out of Texas State?

5 A. According to Robbie Bogard, Benjamin's father, Benjamin
6 dropped out of school in the fall of 2018 semester.

7 Q. In fact, Agent Spindel, are you aware of a missing persons
8 report being filed with regard to Benjamin Bogard?

9 A. Certainly, doing our due diligence to vet all the
10 information possible, we often reach out to our state and local
11 partners to identify whether any police reports are filed.
12 Sometimes, you know -- significant as it relates to possible
13 family violence or criminal arrests.

14 In doing so, we queried our liaison partners at Comal
15 County sheriff's office, to which we identified two reports
16 being made from back in October of 2018. The first was a
17 missing persons report filed by Benjamin's father, Robbie
18 Bogard. Their son did not return home from work, and they were
19 concerned about his safety.

20 Q. Were you able to learn how long he was gone from his home
21 in New Braunfels before he was found?

22 A. I don't have the report in front of me, but I believe it
23 was just a few days.

24 Q. Do you recall from your investigation what he did during
25 those three days that he was gone?

1 A. Robbie had indicated to us that his son had left the house
2 with their vehicle, a shared vehicle that they allowed Benjamin
3 to use, which was a Volvo station wagon; that his son
4 additionally took several passports with him and also took a
5 blank firearm, an inert firearm, that resembled a .357 handgun.

6 Q. Are you aware now of where Benjamin Bogard went during
7 those three days that he was missing?

8 A. We were able to determine that Benjamin, through the
9 interview with Robbie Bogard and later Benjamin, that Benjamin
10 traveled to Dallas, Texas. Benjamin had found a large van
11 online, had been looking for vehicles consistent with that
12 particular model, and traveled to Dallas to purchase that van
13 for a thousand dollars. Additionally, Benjamin traveled to
14 Dallas and purchased a shotgun online that he found on Armslist
15 for a hundred dollars.

16 Q. Are you aware of anything else that he bought while on this
17 trip to Dallas?

18 MR. MORRIS: Your Honor, I just feel the need to lodge
19 my objection regarding relevance. We're here to talk about the
20 charge that is specifically before the Court. This has
21 absolutely nothing to do therewith, nor does a blank opening of
22 what he bought and where and --

23 THE COURT: All right. Thank you. The objection's
24 overruled in light of the evidence tying these websites and
25 Instagram accounts to Mr. Bogard, which I think has been

1 sufficiently done at this point for this -- purposes of this
2 hearing and in light of the factor that I have to consider of
3 the nature and seriousness of the danger to any person in the
4 community that would be posed by the person's release, which is
5 a factor under 3142(g) (4). I have to consider it. So I'm
6 going to consider this evidence. But I note your objection,
7 Mr. Morris.

8 You may continue.

9 MS. THOMPSON: Thank you.

10 BY MS. THOMPSON:

11 Q. Did Mr. Bogard also buy a skull mask as far as you could
12 tell during your investigation?

13 A. I can't speak to when he purchased the skull mask.

14 Q. How did those three items become of significant importance
15 to the FBI during this investigation?

16 A. Well, certainly, the images that were posted on multiple
17 Instagram accounts, so we already talked about the Steam
18 account, in addition to the Twitter accounts. Those images are
19 very relevant. They portray an image of violence, and in
20 addition to the ideology that was espoused with a weapon, you
21 know, that is always very concerning to us about public safety
22 and also the safety of the individual involved.

23 Q. When you met with Benjamin Bogard, where did that interview
24 take place?

25 A. So the follow-on interview with Benjamin Bogard happened

1 two days after we spoke with his father, Robbie Bogard, at
2 Randolph Air Force Base. Robbie had confirmed that his son,
3 Benjamin, was residing in New Braunfels with he and his wife,
4 Caroline. We admonished Robbie several times that it would be
5 in the best interest of the ongoing investigation that Benjamin
6 would not be made aware of our inquiries and our interest in
7 speaking with him, just due to the gravity of the situation and
8 the potential for mass violence.

9 However, we did -- my partner and I did discuss with Robbie
10 that we would be back to him, we would get back with him in the
11 next 48 hours, two days, to give any sort of follow-on guidance
12 on how we would set up an approach and interview with Benjamin.

13 When Robbie was recontacted on Friday, February 25th,
14 Robbie acknowledged to my partner, another investigator
15 involved in this, that Robbie had confronted Benjamin with our
16 concerns and with the FBI interest in mind, which really sped
17 up the process to sit down and speak with Benjamin assuming
18 that there was digital evidence possibly that could have been
19 destroyed with the notification to his son that the FBI was
20 interested in some of the online postings.

21 Q. So did you talk to Benjamin Bogard on January 25th?

22 A. We did.

23 Q. What did he tell you?

24 A. Benjamin agreed to sit down with myself and another
25 investigator working domestic terrorism matters. After we

1 spoke with both Robbie -- his father, Benjamin's father,
2 Robbie, and his mother, it was agreed to -- by all parties that
3 Benjamin would speak to us alone. And so when we presented the
4 online posts, the Twitter handles, the Instagram accounts,
5 Benjamin was very open with us and acknowledged that those
6 accounts were, in fact, his accounts.

7 Q. Did he tell you he dropped out of school in early fall,
8 like September of 2018?

9 A. I can't recall the specific date that he mentioned that he
10 had dropped out of school, but he did state that school was
11 boring to him and he was not challenged, and that he thought it
12 best to drop out and pursue a career with the United States
13 Air Force.

14 Q. What information did he provide about the postings that
15 caught the FBI's attention about committing acts of mass
16 violence?

17 A. Benjamin explained these particular posts. And Benjamin
18 was provided photos of all of those posts. And Benjamin
19 explained to us that this was all an online persona, and that
20 he had no intent to plot, plan or effect any mass violence;
21 that people were gravitated to his posts. He received a lot of
22 likes because of these posts. And he continued with multiple
23 accounts and multiple graphic images because it drew attention.

24 Q. Did you talk about -- or can you describe for the Court the
25 video that Mr. Bogard admitted making and posting that involved

1 the van, the shotgun and a mask?

2 A. So Benjamin acknowledged that he, in fact, made that
3 particular video. And Benjamin stated that he dressed in his
4 militant attire and the half -- skeleton half mask and
5 proceeded to go deep into the woods behind his house to shoot
6 that video so that no one saw him and that no one would be
7 alarmed by, obviously, a weapon and a militant costume, if you
8 will.

9 Q. Is it illegal to discharge a firearm within the city limits
10 of New Braunfels?

11 A. I can't speak to that.

12 Q. The Court hasn't seen the video. Can you describe what the
13 video portrays?

14 A. Essentially, violent rhetoric, the racking of a shotgun.
15 The imagery related to the mask, the skeleton mask as we know
16 best, that multiple violent white supremacists, extremists use
17 in their posts and their online forums as well.

18 Q. Did he provide consent for the FBI to view his phone at
19 that time?

20 A. So at the conclusion of the interview, you know, Benjamin
21 explained the posts, acknowledged that the accounts were his,
22 stated, again, that this was just an all -- an online persona;
23 that he had no intent to plot or plan any act of mass violence.

24 So when we talked to Benjamin, we talked to him about that
25 concern. Our concern is terrorism. And so Benjamin did

1 consent for us to search his phone for any sort of plots and
2 plans of mass violence.

3 Q. And what did you find on the phone?

4 A. We had -- Benjamin initially wanted the phone to be
5 searched and extracted in his presence. We had a digital
6 forensic examiner come out to the house, and attempted to
7 extract Benjamin's phone with his consent in front of Benjamin.

8 However, multiple glitches in the programming and the
9 particular model of Benjamin's phone warranted us to ask
10 Benjamin if he would be amenable to us physically taking the
11 phone and bringing it back to FBI headquarters for further
12 analysis. And Benjamin was amenable to that.

13 Q. Did you find other evidence of his -- related to mass
14 violence on his phone?

15 A. That's correct, yes.

16 Q. The search -- is it fair to say the search of his phone did
17 not mitigate the FBI's fear that he would commit acts of mass
18 violence?

19 A. That is correct.

20 MS. THOMPSON: I have nothing further for this
21 witness, Your Honor.

22 THE COURT: All right. I had one question before
23 Mr. Morris. But you can go ahead and come up.

24 Did the FBI find the gun, the shotgun?

25 THE WITNESS: Your Honor, when we interviewed Benjamin

1 at his house on January 25th, both his father, Robbie, and
2 Benjamin were able to retrieve the shotgun that had been stowed
3 in their attic --

4 THE COURT: Oh, all right.

5 THE WITNESS: -- secured in their attic, so that we
6 could look at it, possibly get a serial number off of it. And
7 so they were able to bring it out for our review.

8 THE COURT: And did y'all get a serial number?

9 THE WITNESS: It's an older model, sir, before serial
10 numbers were --

11 THE COURT: Ah, I see. All right. That was my
12 question. Thank you.

13 You may inquire, Mr. Morris.

14 MR. MORRIS: Thank you very much, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MORRIS:

17 Q. Agent Spindel, the Exhibit 1 you have sitting there in
18 front of you is a number of sheets that were turned over to you
19 from Albany; is that right? Is that what this is supposed to
20 be?

21 A. So essentially, sir, it's the documentation that was
22 embedded in that particular reporting from FBI Albany.

23 Q. Can you find a page that's -- in my stack it is the last
24 page.

25 THE COURT: Do you want to approach, Mr. Morris? You

1 can make sure that you're looking at the same page.

2 MR. MORRIS: It looks like this.

3 THE COURT: Sure.

4 (Discussion off the record)

5 BY MR. MORRIS:

6 Q. Can you tell me where on this page it references
7 HelterSkelter333?

8 A. So I -- there is no reference to HelterSkelter on here,
9 sir. Respect was an account that was registered to the phone
10 number that Benjamin used. Benjamin told us that this was not
11 his account.

12 Q. But still, you're using this as something that is supposed
13 to be an indicator of what?

14 A. Well, certainly, it's the broader scope, sir. With all of
15 the other accounts, this was registered with the phone number
16 that Benjamin used.

17 Q. Okay. Any -- other than a phone number, anything else that
18 would tie that to Mr. Bogard?

19 A. No.

20 Q. The finding by this Albany packet occurred back in
21 November, correct? November 5th?

22 A. That is correct.

23 Q. Okay. Between November 5th and January 23rd, did this rise
24 to the level of what you considered an immediate need to find
25 out who this was and to find out if it was a threat?

1 A. I can't speak to the immediacy of this per Albany. But I
2 will say, again, with the multiple online profiles, online
3 accounts, again, that information as far as subpoenas go to vet
4 the IP addresses and any sort of other data that is used to
5 register those accounts, that takes time. So Albany
6 immediately served those subpoenas. And it wasn't until the
7 subpoena return came back that, again, the owner, if you will,
8 of the particular HelterSkelter333.exe was determined to be in
9 Texas or San Antonio's AOR.

10 Q. Okay.

11 A. And that case was then routed.

12 Q. What date was that? When did you get the case in
13 San Antonio AOR?

14 A. I can't speak to a specific day, sir, but it was early
15 January.

16 Q. Okay. And then you spoke to the father, Rob Bogard,
17 January 23rd, right?

18 A. That is correct.

19 Q. And you had all this information about what you believed
20 were credible threats when you spoke to him, right?

21 A. We did.

22 Q. And then you waited two more days and spoke to Benjamin,
23 correct?

24 A. That is correct.

25 Q. And then when was Benjamin eventually arrested?

1 A. Again, I can't speak to that. I was not in the area at the
2 time.

3 Q. Would you doubt me if I said it was eight days later?

4 A. It was approximately a week later.

5 Q. Okay. So if you were concerned for the immediate threat
6 and danger of this, but you left him as a free man from
7 November 5th, at least for Albany, all the way until February
8 2nd, 3rd, right --

9 A. Again, sir, those subpoenas took time to determine that
10 Benjamin was actually here. We received the case in early
11 January. Based on --

12 Q. Fair enough. But you went and saw him February 25th -- I
13 mean, January 25th, right?

14 A. That is correct. But we --

15 Q. And based on what you knew here, didn't arrest him?

16 A. No. Based on -- the arrest was predicated by our Violent
17 Crimes Against Children Squad after the consent for the phone
18 was received and, of course, the forensic imaging of that phone
19 thereafter.

20 Q. Has your department recommended that criminal charges be
21 pressed against Mr. Bogard for what you've seen from the Albany
22 information?

23 A. I can't speak to that right now.

24 Q. Well, who can?

25 A. The charges that Benjamin is facing is as a result of the

1 imaging of the phone.

2 Q. And have nothing to do with domestic terrorism charges.

3 You'll agree with me, right?

4 A. That is correct.

5 Q. Okay. This online persona that he says -- have you heard
6 the term before -- have you heard in the dictionary "edgelord"?

7 A. I have not.

8 THE COURT: I'm sorry. You have to say that again,
9 Mr. --

10 MR. MORRIS: Edgelord; E-D-G-E-L-O-R-D.

11 THE COURT: Okay. Thank you.

12 MR. MORRIS: May I approach very briefly?

13 THE COURT: You may approach.

14 MS. THOMPSON: I'm going to object, Your Honor, as to
15 relevance.

16 THE COURT: All right.

17 MS. THOMPSON: She hasn't even heard the term.

18 THE COURT: Let me -- let me get the question and the
19 answer, and then I'll consider the objection, Ms. Thompson.

20 So you have -- your question was whether she'd ever heard
21 of the term?

22 MR. MORRIS: Correct.

23 BY MR. MORRIS:

24 Q. And now, after having read the definition there -- could
25 you read that definition for us, please?

1 MS. THOMPSON: Objection, irrelevant.

2 THE COURT: I'm going to wait to see if she can -- he
3 can tie it together.

4 MR. MORRIS: Thank you.

5 THE COURT: But I'll consider that objection at the --
6 once we're done with the line of questioning.

7 THE WITNESS: So this is "edgelord" from the
8 urbandictionary.com.

9 MR. MORRIS: Yes, ma'am.

10 THE WITNESS: And you would like me to read the
11 definition of it?

12 MR. MORRIS: Yeah. Just give the Court an idea of
13 what that definition is. You don't have to read it verbatim.

14 THE WITNESS: Okay. Top definition: "Edgelord, a
15 poster on an internet forum (particularly 4chan)" -- and that's
16 a 4, the number 4, C-H-A-N -- "who expresses opinions which are
17 either strongly nihilistic, (life has no meaning, or
18 referencing Tyler Durden's special snowflake speech from the
19 film *Fight Club* being probably the two main examples)
20 containing references to Hitler, Nazism, fascism or other taboo
21 topics which are deliberately intended to shock or offend
22 readers."

23 BY MR. MORRIS:

24 Q. Okay. And did Mr. Bogard -- may I have that back, Your
25 Honor?

1 THE COURT: You can.

2 BY MR. MORRIS:

3 Q. Did Mr. Bogard indicate to you that he was posting things
4 intending to shock readers to obtain approval, I think is what
5 your testimony was?

6 A. That is correct.

7 Q. Okay. So this kind of --

8 THE COURT: All right. So I'll just say for the
9 limited purpose it was suggested -- it was offered,
10 Ms. Thompson, I'll overrule the objection. I don't know if
11 "edgelord," the particular term, has anything to do with it,
12 but the idea of trying to shock people. I got it.

13 Go ahead. You may proceed, Mr. Morris.

14 BY MR. MORRIS:

15 Q. Do you play online video games, Ms. Spindel?

16 A. I do not.

17 Q. Okay. So of the quotes that you see that were attributed
18 to Mr. Bogard, do you know how many of those are quotes from
19 video games?

20 A. I do not.

21 Q. And he indicated that on Steam he had hundreds of hours on
22 a game online, and you thought that was a mass -- an interest
23 or a concern, correct?

24 A. Not the hundreds of hours on the video game. It was the
25 post thereof.

1 Q. Okay. Which, again, you don't know how many of those are
2 quotes, right, or memes?

3 A. Can't speak to that. No, sir.

4 Q. Okay. Ms. Spindel, when you spoke to Mr. Bogard, Rob
5 Bogard, and his wife Caroline, did you tell them -- did you ask
6 them whether or not they beat their son daily?

7 A. We did. We asked Benjamin as well.

8 Q. And what was the report all the way around?

9 A. His parents both said no, and Benjamin said no.

10 Q. Did you see any evidence anywhere that that actually
11 occurred?

12 A. No.

13 Q. Okay. Is it illegal to own a shotgun?

14 A. As we best know, Benjamin is not a prohibited possessor of
15 a firearm.

16 Q. Is it illegal to have a white van?

17 A. It is not.

18 Q. Is it illegal to go to Ohio and not tell your parents where
19 you're going for a couple of days?

20 A. I believe his parents, in our interview with father,
21 referenced that Benjamin went to spend time with his
22 grandmother in Ohio. It was his trip to Dallas that they were
23 unaware of.

24 Q. Okay. Is it illegal to go someplace and not tell your mom
25 and dad where you go?

1 A. No.

2 Q. Okay. Even if you're living with them?

3 A. No.

4 Q. When you met with Mr. Bogard, Rob Bogard, on 25 January --
5 23 January, did you advise him he needed -- that he should get
6 an attorney or that he could get an attorney?

7 A. We did not advise him to get an attorney.

8 Q. Did you tell him that he could get an attorney for his son?

9 A. We spoke nothing about attorneys. We talked to him about
10 our interest in identifying the location of Benjamin. And
11 Mr. Bogard, that being Robbie Bogard, advised us that he has
12 taught his son over the years to lawyer up. If law enforcement
13 comes to speak with you, that chances are -- because of the
14 training that Benjamin received from his father, Robbie, that
15 chances were that Benjamin was going to lawyer up. That was
16 the extent of lawyer talk in regards to his father's interview.

17 Q. But because you had mom and dad's cooperation on 25
18 January, he didn't lawyer up, right? And actually surrendered
19 the phone to you to examine?

20 A. He did. He gave consent to search his phone.

21 Q. In the video is there anyone getting hurt with the video
22 you're talking about, where he's got a gun and a skull mask and
23 a van?

24 A. There is not.

25 Q. Do you know if that video was ever sent out to anyone?

1 A. I can't speak to that. I do not know.

2 Q. On the phone, where the videos are, do you know which of
3 those videos were actually ever sent out or were just made for
4 his own entertainment?

5 A. We do know that the video that was taken in the woods was
6 obviously posted and the anonymous reporter from, you know,
7 Albany Crime Stoppers had purview over that. So that
8 particular video was posted.

9 Q. And that's the one where he's got the shotgun, racks the
10 shotgun in the woods --

11 A. Correct.

12 Q. -- and was wearing the skull mask on the bottom, right?

13 A. Correct.

14 MR. MORRIS: I'll pass the witness, Your Honor.

15 THE COURT: All right. Ms. Thompson, anything further
16 for Agent Spindel?

17 MS. THOMPSON: Yes, Your Honor.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION

20 BY MS. THOMPSON:

21 Q. Just two points of clarification. Agent Spindel, you
22 testified that the Helter -- the Instagram account
23 HelterSkelter333.exe was able to be tied to Benjamin Bogard
24 specifically, correct?

25 A. Through the DoDEA.edu email as well as the IP address

1 resolving back to New Braunfels, Texas.

2 Q. And the email address was specifically assigned only to
3 Benjamin Bogard?

4 A. That is correct.

5 Q. Are you familiar with the screen name
6 ProphetOfExtinction333?

7 A. I am not.

8 Q. The video that you testified about most recently, that was
9 part of the tip to Crime Stoppers in Albany, was when --
10 involved Benjamin Bogard out behind his house firing a shotgun,
11 correct?

12 A. That is correct.

13 Q. Is there wording associated with that video that he posted
14 online?

15 A. I can't recall the specific wording.

16 Q. Does "Gas the kikes," "race war now," "praise Allah" sound
17 familiar?

18 A. It does.

19 MS. THOMPSON: Thank you. Nothing further.

20 THE COURT: Anything, Mr. Morris?

21 MR. MORRIS: Nothing further.

22 THE COURT: Thank you, ma'am, for your testimony. You
23 may be excused from the witness stand.

24 Ms. Thompson, you indicated you had additional [inaudible].

25 MS. THOMPSON: Yes. Government calls Special Agent

1 Russell Alex Doran.

2 THE COURT: All right. Special Agent, come forward.
3 My courtroom deputy will swear you in.

4 (The oath was administered)

5 RUSSELL DORAN, GOVERNMENT'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MS. THOMPSON:

8 Q. Please state your name for the record.

9 A. It's Russell Alexander Doran.

10 Q. Where are you employed?

11 A. San Antonio FBI.

12 Q. How long have you been employed there?

13 A. In San Antonio, for just over three years, three and a half
14 years. And within the FBI, nine and a half years.

15 Q. Where were you assigned prior to San Antonio?

16 A. Anchorage, Alaska.

17 Q. What's your assignment within the FBI San Antonio Division?

18 A. San Antonio, same as my entire FBI career, working
19 counterterrorism matters, both international and domestic
20 terrorism.

21 Q. Were you involved in the investigation of Benjamin Bogard?

22 A. I was.

23 Q. What was your role in the investigation?

24 A. I was aware of it initially when it came in, just as a
25 peripheral. But I became more specifically involved after the

1 phone was obtained through consent and it was imaged and we
2 began to review the contents of that phone specifically for
3 items that concerned us from a terrorism threat standpoint.

4 Q. Were you aware --

5 THE COURT: One second.

6 Did you say -- want to say something --

7 MR. MORRIS: Yeah. Can I have just -- for ten
8 seconds, can I take him quickly on voir dire and find out the
9 relevance of what he's going to testify so I can just make an
10 objection to his entire testimony?

11 THE COURT: Sure.

12 MR. MORRIS: Thank you. Just two quick questions.

13 THE COURT: Sure. No problem. Go ahead.

14 VOIR DIRE EXAMINATION

15 BY MR. MORRIS:

16 Q. Agent Doran, do you know anything about the -- were you the
17 investigator for the child pornography portion of this case?

18 A. No.

19 Q. Do you have any information about the child pornography
20 portion of this case?

21 A. Yes. I was one of the ones that initially saw the child
22 pornography as we were reviewing the phone for other items, in
23 which case we referred it to the squad that specifically
24 handles child pornography.

25 Q. And that's -- that's Agent Miller's squad, correct?

1 A. Correct.

2 Q. Okay. And so the ambit -- the ambit of your knowledge is
3 the terrorism and counterterrorism portion, correct?

4 A. Correct.

5 MR. MORRIS: Your Honor, we would object --

6 Thank you very much.

7 We would object, Your Honor, that this is duplicative,
8 number one, but, number two, has absolutely nothing to do with
9 this-- what you've already heard under the -- considered --

10 THE COURT: For the reasons previously stated, the
11 objection's overruled. However, Mr. Morris, if there's
12 something that goes particularly far afield and you have a
13 specific relevancy objection, I'll be happy to consider it at
14 the appropriate time.

15 MR. MORRIS: Thank you.

16 THE COURT: You may proceed, Ms. Thompson.

17 MS. THOMPSON: Thank you.

18 DIRECT EXAMINATION (CONTINUED)

19 BY MS. THOMPSON:

20 Q. Agent, are you aware that there were some issues in
21 processing the defendant's cellular phone?

22 A. I knew it was -- from what I was told, it was a different
23 phone than what they normally deal with. And so not all of it
24 could be easily extracted onto our -- through the software that
25 we -- I say "we" -- the FBI typically uses to download.

1 Q. Would you agree that the forensic analysis of the phone
2 took a lot longer than it normally would with a --

3 A. Yes.

4 Q. -- more common phone?

5 A. Yes. A lot of it had to be done by hand.

6 Q. You mentioned you were involved or aware that child
7 pornography had been found on the defendant's phone. How did
8 that come about?

9 A. Myself and another intelligence analyst on the [inaudible]
10 was reviewing the phone and the material from the phone and
11 came across a video that -- the intel analyst initially saw it.
12 She showed myself and then referred it to the VCAC squad. But
13 we reviewed the phone and, like I said, saw the video that
14 appeared to show a minor child. Again, we're not experts. So
15 we passed that video, as well as kind of the general
16 information of the case, down to them so they could also start
17 reviewing for any additional items of child pornography.

18 Q. Did the video that you viewed depict the anal penetration
19 of a very young, prepubescent child?

20 A. Yes.

21 Q. Are you aware, through the investigation -- you've
22 continued to be involved in this investigation; is that
23 correct?

24 A. Yes.

25 Q. Are you aware that other images depicting child pornography

1 have been located on that phone?

2 A. I'm aware of that, yes.

3 Q. In fact, are you familiar with most of the material that
4 was located on the defendant's phone?

5 A. Yes.

6 Q. There is a video -- and I know we have copies of it here in
7 case the Court wants to view any of the information that's on
8 the phone. But there is a video in which -- are you familiar
9 with the video in which the defendant talks about buying a van
10 and a shotgun and a mask?

11 A. Yes.

12 Q. Can you describe that for the Court, the context and what
13 happens in the video, if you can?

14 A. There's a video we found. It was posted -- we found it
15 through the Snapchat app. It wasn't -- so it was -- we believe
16 in the cloud -- the Snapchat cloud, but it was in the app. And
17 it references -- again, it's the -- Mr. Benjamin Bogard wearing
18 a skull mask, standing in front of his van, holding a shotgun.

19 And he says, I'm paraphrasing, how to be homeless. First
20 thing you have to do, buy a van. Second thing you have to do,
21 buy a shotgun. Third thing you have to do, get a skull mask.
22 Hell yeah.

23 Next step, drive around looking for -- and then he rattles
24 off a list of minorities, derogatory terms, you know. And then
25 says, You drive around town looking for them, point the shotgun

1 at them, pull the trigger. The only right they deserve is the
2 right to lead, which is obviously a very concerning video from
3 our standpoint when we found it.

4 Q. And it depicts the defendant? You could identify the
5 defendant in the video?

6 A. It's clearly him. It's consistent with all the other
7 videos that we found on the phone that also were described
8 earlier by Agent Spindel.

9 Q. And he actually bought the van that's depicted in the
10 video?

11 A. He bought it in -- yes, in Dallas. He admitted to that.

12 Q. And the shotgun that he uses and discharges in the video?

13 A. In that video -- in that specific video he doesn't
14 discharge it. I believe he racks it or maybe points it, but he
15 doesn't discharge it. It looks like he's inside of a garage
16 somewhere, based on where the video was filmed.

17 Q. And was that shotgun located at the house where he was
18 living with his parents?

19 A. Yes. It was the same shotgun that was there when they --
20 when they interviewed him.

21 Q. Do you know if other weapons were located at that
22 residence?

23 A. The only other weapon that we know of that they, I believe,
24 saw when they were there was the -- what looked like a .357
25 magnum. We never saw or examined it. It was explained to us

1 that it was a German starter pistol. It was inert. It
2 couldn't fire rounds. But we never examined it, and we are not
3 aware -- we didn't search the house. We're unaware of any
4 other weapons.

5 Q. You went there and spoke with the individuals at the house,
6 but a search was not conducted?

7 A. When I was there, I was there to effect the arrest of
8 Mr. Benjamin Bogard.

9 Q. Are you aware of whether the FBI's ever searched that house
10 for weapons?

11 A. We have not.

12 Q. In the review of the defendant's phone did you find a
13 search history or any search terms that caught your attention?

14 A. We had a list of Google browser searches and the specific
15 search terms that he used, yes.

16 Q. Do you recall what any of them included?

17 A. Again, from our standpoint, looking for things that were
18 concerning or indicated potential act of violence, there were
19 searches that referenced buildings to bomb. There were
20 searches -- multiple searches for Dylann Roof, which --

21 Q. Who is Dylann Roof?

22 A. Dylann Roof was the individual with white supremacy
23 extremist ideology who shot up the church in Charleston,
24 South Carolina, killing eight, I believe.

25 Q. Were there also images that you believe depict Dylann Roof

1 on the defendant's phone?

2 A. We believe they were, yes.

3 Q. What other searches did you find that caught your
4 attention?

5 A. There were search -- multiple searches on how to build a
6 gun, like how to make -- or how to get a 3D printer to build a
7 gun, I would say upwards of 20 to 25 searches on buying guns.
8 I know there were some other search terms. I can't remember
9 off the top of my head. I have my notes for the Google browser
10 history.

11 Q. Are you familiar with the screen name
12 ProphetOfExtinction333?

13 A. Yes.

14 Q. What is that?

15 A. That was one of the screen names he used. I believe it was
16 specifically used for at least one of his Telegram accounts.

17 Q. Are you familiar with the chat, "I'm thinking about getting
18 a loan, buying a new rifle, ammo, gear and going HAM on the
19 state capitol building"?

20 A. Yes.

21 Q. When was that posted, if you recall?

22 A. December 29th of 2018.

23 Q. And that was posted by the defendant, using
24 ProphetOfExtinction?

25 A. It was inside of a chat with himself and another individual

1 which we haven't identified.

2 Q. In your investigation did you learn when Mr. Bogard dropped
3 out of Texas State University?

4 A. The night of the -- the only information I have on that is
5 the night of the arrest, when Mr. Miller and I interviewed
6 Benjamin, he indicated it was, I want to say, late September,
7 early October, early fall.

8 Q. And then are you familiar with the missing person report
9 that was filed October 8th?

10 A. Yes. I'm familiar with that. I've read it.

11 Q. In your review of the videos, a lot of the videos that were
12 found on his phone, did you find videos of the defendant
13 discharging the shotgun, that he purchased in Dallas, behind
14 his house the first week of November of 2018?

15 A. Yes. So in addition to the video we believe that was
16 referenced in the report, we found numerous videos that were
17 actually on his phone that he had made himself. The specific
18 one referenced "gas the kikes," "race war now."

19 There's another one where he's -- the very next video, he's
20 firing a shotgun in the woods. And I believe it's "glory to
21 Allah," again, firing the shotgun aggressively three or four
22 rounds at a time. Probably half a dozen of those videos that
23 he had made himself.

24 Q. What else did you find on the defendant's phone that caused
25 you concern during this investigation?

1 A. I would say it was the sheer volume of mass killings and
2 violence, in addition to the videos made by Benjamin himself,
3 other videos or images that he had obviously obtained or
4 downloaded, videos of beheadings, videos of hangings, videos of
5 people driving around what looked like the Middle East
6 somewhere, just killing people with an AK-47, videos that were
7 white supremacist ideology in nature, videos that were Islamic
8 extremist ideology in nature. From a violence standpoint, that
9 was concerning to us.

10 Q. Did you find a video in which he -- the defendant is
11 pictured burning the Constitution of the United States?

12 A. Yes.

13 Q. Could you tell where that video was taken?

14 A. We couldn't tell. Based on the background, it appeared to
15 be a house that was in the process of being constructed. When
16 we met with and -- or when we arrested and interviewed
17 Benjamin, it was -- he was in a neighborhood that is being
18 developed. So we surmised that it very well could have been
19 made in one of the houses in that neighborhood. But we'd be
20 guessing.

21 Q. Did you review a video in which he talks about driving
22 around or searching his neighborhood looking for specific
23 minorities?

24 A. There was a specific video that he racks a shotgun and
25 says -- quote it but -- I mean, do you want to quote it?

1 Q. Please. I'm sorry.

2 A. "Is that a nigger in my neighborhood?"

3 Q. Does he say what he would do?

4 A. He just racks his shotgun as he -- as he -- it's a video of
5 himself racking the shotgun and presumably pointing it at
6 somebody as he said that quote.

7 Q. In addition to the child pornography that was found, did
8 you find anime pornography?

9 A. There were all sorts of pornographic images, from
10 extreme -- yeah, just a lot of extreme pornographic images and
11 videos.

12 Q. Did you also find images on the defendant's phone of him
13 dressed as a female?

14 A. Yes.

15 Q. In some of them is he wearing a wig?

16 A. Yes.

17 Q. In some of them is he -- I don't know what it's called --
18 saluting to --

19 A. He has -- in some of those images he's wearing a gas mask.
20 He's pointing the gun. There are -- I don't know. I'd have to
21 guess -- 30, 40 images related to him dressed up in a woman's
22 outfit, different variations thereof, some like with
23 violent-type content to go along with it.

24 Q. Are there some where he is giving what is commonly known as
25 a white supremacy salute?

1 A. It's, yeah, the heil Hitler salute.

2 Q. Why were those disturbing during -- to you and other
3 investigators during the investigation?

4 A. I would say those were -- it goes -- it speak to -- it
5 was -- we were trying to get an idea of what his mental health
6 or mental capacity was. And the -- it showed that -- from our
7 standpoint, that -- with the violence and, you know, unstable
8 mindset that -- you know, that's typically the people we see
9 that mobilize to violence.

10 And so from our -- you know, the history of what we've
11 dealt with, we kind of took it all into account. And that's
12 when -- once we knew we had child pornography on the phone that
13 had a potential charge, we felt like we needed to arrest him as
14 soon as possible.

15 Q. Are you aware of the ages or approximate ages of the
16 individuals that have been involved or committed acts of mass
17 violence like at the Charleston church in South Carolina, in
18 Florida, Sandy Hook Elementary, those acts of mass violence?

19 MR. MORRIS: Objection, Your Honor. It has nothing to
20 do with this.

21 THE COURT: Yeah. I'll sustain. I have general
22 knowledge of that. That's a little far afield.

23 BY MS. THOMPSON:

24 Q. You mentioned that there were videos found on the
25 defendant's phone. I think they were referred to as depicting

1 graphic violence or having shock value. Do you know what I'm
2 talking about?

3 A. The videos he made or the videos that were just on his
4 phone?

5 Q. Other videos that were just on his phone.

6 A. Yeah. There were -- I don't remember what the exact number
7 was -- over 500 and some videos, some -- I would say a good
8 portion of those were related to violence and violent images.

9 Q. Are you aware of the studies that show that the more you
10 look at violent images, the more that normalizes that type of
11 behavior?

12 MR. MORRIS: Objection, Your Honor, again, not
13 relevant to the --

14 THE COURT: That's overruled. I'll allow him to
15 answer if he knows. And I will consider, for the limited
16 purposes of this hearing, FBI agents the experts in this field,
17 subject, of course, to any cross-examination, Mr. Morris, you
18 want to make.

19 But you can answer the question, sir.

20 THE WITNESS: Well, along those lines, I am not a
21 behavioral analysis expert, but my experience working terrorism
22 and matters of mass violence, yes, those -- we have -- we have
23 seen a history of that on the -- after they have committed
24 those acts of mass violence, that they did partake of that type
25 of stuff.

1 MS. THOMPSON: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MS. THOMPSON:

4 Q. Special Agent Doran, I'm showing you what I'll mark for
5 identification as Government Exhibit 2 and ask that you look at
6 those. Do you recognize those?

7 A. Yes. These were images that were found on Benjamin's
8 phone.

9 Q. I'm sorry. They're pictures of --

10 A. No. I'm sorry. They're pictures that were found on
11 Benjamin's phone. One is of the shotgun that we've seen him
12 shooting in the other videos and that he admitted to having.
13 The other images are of another what we call a long gun.

14 MS. THOMPSON: May I approach again, Your Honor?

15 THE COURT: You may.

16 BY MS. THOMPSON:

17 Q. I'm going to show you three more images and ask if you
18 recognize those.

19 A. Yes. These are -- these are images of the van that
20 Benjamin bought and retrofitted.

21 Q. Does the comforter located in the van that he bought and
22 retrofitted match the comforter that is portrayed under the
23 various firearms in Exhibit 2?

24 A. Yes. This gun is laying on top of a comforter that matches
25 Benjamin's, as well as the shotgun that looks like the gun that

1 we have. That's actually not the shotgun.

2 Q. That's yet a fourth firearm?

3 A. Yes. Yes. I'm sorry. Obviously that's not the shotgun.

4 Q. And the images --

5 A. But these are all -- these two images are on the same --
6 what appear to be the same comforter as what's inside
7 Benjamin's van.

8 Q. And what did -- when you say he retrofitted the van, what
9 does that mean? What did he do with it?

10 A. Well, based on the images and based on the interview with
11 Benjamin, he indicated that he was turning his van into a
12 camper so that he could live out of it. And so it's got a
13 stove. And he basically turned the back into his own little
14 living space, kind of like a small apartment or camper.

15 MS. THOMPSON: Thank you, Agent.

16 I have nothing further at this time.

17 THE COURT: All right. I have one question, Agent.
18 Then Mr. Morris can -- I always do. I'm sorry. I always have
19 one question.

20 When you say Mr. Bogard made these videos -- I think I've
21 maybe taken one selfie in my whole life -- does this mean he
22 did the video himself, or was there -- is it possible -- was
23 there someone else involved making these things?

24 THE WITNESS: It looks like the phone or --

25 THE COURT: Maybe it's on a stand or something?

1 THE WITNESS: -- whatever was set up. And so this is
2 leaned up against a tree or something else, maybe a chair that
3 he had taken out there. We can't -- it does not appear that
4 there's somebody else.

5 THE COURT: That's what I was wondering.

6 THE WITNESS: Obviously, our --

7 THE COURT: You didn't see anything that showed
8 somebody else was involved --

9 THE WITNESS: No.

10 THE COURT: All right.

11 THE WITNESS: Obviously, our concern, we have not seen
12 any indication of somebody else.

13 THE COURT: All right. Very well. Thank you. That
14 was my only question.

15 Go ahead, Mr. Morris.

16 MR. MORRIS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. MORRIS:

19 Q. Mr. Doran, of all the videos you were seeing on the phone,
20 let's just talk about the category of the ones that were --
21 looked like they were produced by Mr. Bogard.

22 A. Yes, sir.

23 Q. In any of those videos is there any actual violence that
24 occurs in those videos?

25 A. Actual -- does he actually kill anybody or shoot anybody?

1 No, sir.

2 Q. Does he shoot a rabbit? Did he shoot at anything that's
3 moving? Does he shoot --

4 A. No.

5 Q. Does he tear something apart?

6 A. Not that we can see.

7 Q. Okay. Other than this one video that may have been sent to
8 somebody in Albany showing him with the shotgun, the van and
9 the mask, do you have any indication from that phone that those
10 videos were ever shared with anybody?

11 A. Well, the one video was within Snapchat. So my
12 understanding is if it's -- and excuse me. I'm not a Snapchat
13 expert. But once it's there, he was -- he would have been
14 sending out or showing that to whoever had access to his
15 Snapchat account.

16 Q. Okay. But do you know the difference between the Snapchat
17 app and the Snapchat cloud?

18 A. Yes.

19 Q. Okay. It wasn't in the cloud, right? It was in the app?

20 A. Well, for it to be -- for it to be on the phone, for us to
21 have it, my understanding that means it would be in the cloud.
22 But, again, I'm not -- I'm not going to speak to that. I'm not
23 a computer person.

24 Q. Okay. But you're sitting here telling the Court that you
25 think it had to be in the cloud in order to be on the app,

1 right? But you have no idea?

2 A. It was -- we saw it. It was -- it was within the app on
3 the phone. I am not going to tell you whether or not it was in
4 the cloud or on the app. I don't know. I'm not a cyber --

5 Q. Or whether it was distributed to anybody?

6 A. I'm sorry?

7 Q. Or whether it was distributed to anybody?

8 A. I just know it was in Snapchat, yes.

9 Q. Okay. Do you know that Snapchat's also a place where you
10 can store your photos and store your videos and store things?

11 A. Again, I don't have any idea about what you can do inside
12 Snapchat.

13 Q. Okay. One of the weapons that we're talking about in this
14 is a starter pistol, right? Did you say a .357 you thought it
15 looked like?

16 A. It reveal -- or resembled a .357.

17 Q. Okay. It's a cap gun, right? It makes a loud noise,
18 right?

19 A. We have not -- we have not reviewed the gun. If that's
20 what they say it is, then we'll have to take them at their
21 word.

22 Q. In one of these videos Mr. Bogard says "praise to Allah."
23 Do you know if Mr. Bogard is Muslim?

24 A. He indicated he was not religious.

25 Q. Okay. So in another video you say there's things where

1 he's spouting white supremacy or using their symbols. Do you
2 know if he has any ties to any white supremacy groups?

3 A. Specifically -- the anonymous tipster referenced Atomwaffen
4 Division. That would be the only group that we have any
5 specific ties to.

6 Q. Okay. And do you have any ties between Mr. Bogard and the
7 Atomwaffen Division besides some anonymous person in New York
8 who thinks --

9 A. Not specifically that I have seen from my part of the
10 investigation. No, sir.

11 Q. So these videos that he makes are a small number, right?
12 But then there's, I think you said, lots and lots of videos of
13 violence or gore or pornography, right?

14 A. Yes.

15 Q. Okay. But this number of videos that Benjamin makes is a
16 dozen? Two dozen?

17 A. That sounds about right.

18 Q. Okay. Do you know where these gore videos are traded on
19 the internet?

20 A. Through these various chat rooms. He indicated to us he
21 was doing a lot of it through Instagram.

22 Q. And why? Why are they traded? Do you know?

23 A. I don't want to guess what somebody is trading videos for.

24 Q. Okay. So you have no idea what the motivation is among
25 people who trade videos of gore or any of these videos that you

1 consider violent videos?

2 A. I know from my experience working terrorism matters that
3 terrorist groups will use those as recruitment tools. He had
4 an ISIS recruitment video on his phone as well.

5 Q. Okay. Do you know if he ever indicated to you he was
6 interested in joining ISIS?

7 A. He did not.

8 Q. Okay. Do you have any evidence that he joined any white
9 supremacy groups, any hate groups, any domestic terrorist
10 groups?

11 A. Not specific groups other than the individuals that he was
12 associated with on his chats. I would say that was a group.
13 He indicated he was involved with group chats, upwards of 25 to
14 30 people in some groups that were sharing these various images
15 and videos.

16 Q. And you know who those other 25 to 30 people are, and you
17 know that they are white supremacists or --

18 A. No.

19 Q. When you drove to Benjamin's neighborhood, describe for the
20 Court what that neighborhood looks like. I think you said it
21 was under construction. Are the houses close together? Are
22 they far apart?

23 A. They're far apart. They're, if I had to guess, acrish
24 lots.

25 Q. Okay.

1 A. Fairly nice subdivision, gated subdivision in
2 New Braunfels.

3 Q. No schools in the neighborhood where he lives? No day
4 cares that you observed? Did you see any schools or daycares?

5 A. It was -- it was 8:00 at night. It was dark, no lighting.
6 I mean, I don't know what's in that neighborhood.

7 Q. Okay. You didn't see any, right?

8 A. I did not see any schools.

9 Q. Okay. Did you find any -- you also -- on the day when he
10 was at home on 25 January, you took his desktop computer and
11 his laptop computer and his phone, right?

12 A. I'm sorry. On the 25th?

13 Q. Yes.

14 A. No. We took -- on the 25th his phone was provided through
15 consent. On the 1st, when we arrested him, is when we obtained
16 the other computers.

17 Q. Got you.

18 Have you analyzed and looked through the computer and the
19 laptop?

20 A. We started that process.

21 Q. Found any violent videos there?

22 A. No additional -- nothing that is additionally concerning.

23 Q. Same videos that were in the phone are on the laptop,
24 you're telling the Court?

25 A. Well, I haven't seen those -- we have -- I have not had a

1 chance to fully review the computer -- either the computer or
2 the other system we took.

3 Q. So as you sit here testifying today, you don't know if
4 there's any violent videos on the laptop or on the desktop?

5 A. Not that -- not that I have personally seen.

6 MR. MORRIS: Pass the witness, Your Honor.

7 THE COURT: All right. Anything further,
8 Ms. Thompson?

9 REDIRECT EXAMINATION

10 BY MS. THOMPSON:

11 Q. Special Agent, the firearms that you testified about, the
12 German pistol that looks like a .357 revolver and the shotgun,
13 where are those weapons now as far as you know?

14 A. All the weapons are still at his residence, with his
15 parents, as far as we know.

16 Q. You were asked about what the other individuals
17 associated -- or chatting with the defendant in these group
18 chats. And you were asked if you know whether they are
19 associated with white supremacy. I think your answer was no.
20 Is that no, you don't know, or no, they're not connected to
21 white supremacy?

22 A. We don't -- we don't know. We actually have a search
23 warrant [inaudible] that we have not received results on yet.

24 Q. Is it fair to say you don't know who all those individuals
25 are?

1 A. We have not identified hardly any of the other individuals.

2 Q. You testified that you don't know what the defendant is
3 shooting at in the videos where he's shooting. You don't --

4 A. Correct. We only see him firing. We have no idea what's
5 on the other end.

6 Q. What -- do you see a theme as to what he -- what does he
7 talk about shooting in those videos?

8 A. Minorities, women, all sorts of minority groups,
9 religious -- I mean, Jews.

10 Q. When the defendant left his home on October 8th of 2018,
11 and his parents filed a missing person report, did they also
12 hire a private investigator?

13 A. Yes.

14 Q. Is that who was able to determine that the defendant
15 purchased the white van on October 8th?

16 A. I believe it was. I'd have to go back and read -- the
17 police reports is how I got most of that information.

18 Q. Are you aware of whether or not the defendant's father even
19 knew at that time that his son was no longer attending Texas
20 State University?

21 A. We're not aware when his -- no. I'm not specifically aware
22 when his father learned.

23 MS. THOMPSON: Thank you. Nothing further. Oh, I do
24 want to offer Exhibits 1 and 2.

25 THE COURT: Okay.

1 MR. MORRIS: I haven't seen them, Your Honor.

2 MS. THOMPSON: I gave you a copy of Exhibit 1.

3 MR. MORRIS: Yeah. But where's 2?

4 THE COURT: Okay. Why don't you show them to defense
5 counsel, see if there's any objection.

6 MR. MORRIS: For purposes of this hearing, Your Honor,
7 no objection.

8 THE COURT: All right. Very well. They'll be
9 admitted.

10 (Government's Exhibit Nos. 1 and 2 admitted)

11 THE COURT: Anything further from this witness?

12 MS. THOMPSON: No, Your Honor.

13 THE COURT: Anything further from this witness,
14 Mr. Morris?

15 MR. MORRIS: Nothing further, Your Honor.

16 THE COURT: Thank you, sir, for your testimony. You
17 may be excused from the witness stand. If you'll hand those
18 exhibits up to the courtroom deputy. Otherwise, they may get
19 lost. Thank you.

20 And you have another witness, Ms. Thompson?

21 MS. THOMPSON: Yes, Your Honor. Government calls
22 Special Agent Rex Miller.

23 THE COURT: All right. Very well. Agent Miller, come
24 forward. The courtroom deputy will swear you in.

25 (The oath was administered)

1 REX MILLER, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. THOMPSON:

4 Q. Please state your name for the record.

5 A. Yes. My name is Special Agent Rex Miller.

6 Q. Where are you employed?

7 A. I'm employed with the Federal Bureau of Investigation here
8 in San Antonio.

9 Q. How long have you had that employment?

10 A. For 15 years, little over.

11 Q. What's your assignment within the FBI?

12 A. For that time I've been assigned to the Violent Crimes
13 Against Children.

14 Q. What are your duties and responsibilities in that unit?

15 A. My primary responsibility is to investigate crimes related
16 to children via the internet.

17 Q. When were you contacted regarding the investigation of
18 Benjamin Bogard?

19 A. On, I believe, the 29th of January I was informed that they
20 had taken a phone from Mr. Bogard. And during that process,
21 they had found what they believed a video associated with child
22 pornography, and they asked if our squad could take a look at
23 that video to confirm that. And I did that.

24 Q. Did you also obtain a search warrant to search the contents
25 of that phone specifically for child pornography?

1 A. Yes, ma'am. At that point I contacted -- after looking at
2 the video, I did confirm it was a minor prepubescent child, an
3 18-second video, that was being anally raped. I contacted you
4 to obtain a search warrant for the phone at that point.

5 Q. During the forensic examination of the search of the phone,
6 did you also find additional images depicting child
7 pornography?

8 A. Yes, ma'am, I did.

9 Q. Were you able during the investigation to talk to the
10 defendant about child pornography?

11 A. Yes, ma'am. When he was arrested on the 1st of February,
12 we asked if he'd be willing to speak with the FBI, and that he
13 waived his Miranda rights and then agreed to speak with us.

14 Q. What did he tell you about the child pornography on his
15 phone?

16 A. During the -- I described one of the videos, the video that
17 we had found on the phone. Mr. Bogard did not recall that
18 video; that he had -- or that he had saved that video to his
19 phone, but did mention that he was part of a Instagram group
20 that would trade videos of that nature.

21 Q. The video you just said was saved on his phone?

22 A. Correct.

23 Q. Describe why that's significant in your investigation.

24 A. Well, to save a video, it's typically an active step. One
25 of the videos was found under the Instagram account on the

1 internal memory of the phone. Some of the other -- another
2 video -- or one of the videos was also found internally on the
3 phone, and then another image was found on the SD card that was
4 connected to the phone.

5 Q. Did you speak with Mr. Bogard about how long he has been
6 using Instagram to receive images of child pornography?

7 A. Yes, ma'am. Mr. Bogard estimated that he's been involved
8 in the -- with the Instagram account I think between three to
9 four months from the time we did the interview.

10 Q. Based on your training and experience, if he's sharing
11 files on Instagram, how did they get from Instagram to be saved
12 onto his phone? If you've used it on Instagram, is it
13 automatically saved on his phone?

14 A. No, not necessarily. Typically you would have to click on
15 that image. And then that will get saved into your account,
16 just like his other accounts -- other files and images that he
17 had that were saved under his Instagram folder on the phone.

18 Q. Did you speak with him at all about his sexual interest in
19 children and whether he had one?

20 A. Yes. At that point he did not -- we talked to him -- to
21 get into that, we talked to him about that we found images of
22 him dressed as a female, and wanted to get a little bit behind
23 that, not being at all judgmental. Just, what is -- what is
24 your sexual orientation? And then do you have a sexual
25 interest in children?

1 And with regard to the dressing up as a female, he said he
2 liked to do that, but he did not have a -- at that point a
3 sexual interest in children.

4 Q. Did you also find a large amount of anime pornography on
5 his phone?

6 A. Yes. It's a very unique anime. A lot of the anime that we
7 found specific to Bogard's phone depicted female-type anime
8 with male genitalia, to say it best.

9 Q. And are some of them what looks like a female that looks
10 like a male engaging in sexual acts, but both of them have male
11 genitalia?

12 A. Correct. Yes, ma'am.

13 Q. Did Mr. Bogard discuss with you why he was a part of these
14 groups that shared this material?

15 A. He described it, it brought him excitement; that it was
16 edgy; and that some of the members of the group would laugh and
17 get joy out of trading some of the files back and forth.

18 Q. Did he indicate that he knew what it was, that he knew it
19 was child pornography?

20 A. I don't specifically remember if he called -- well, yes, he
21 did in a way because at the end he said he could help law
22 enforcement specifically locate the Instagram group that he
23 believed was where he obtained child pornography from. He did
24 not remember the names or any type of chatting, but that he
25 could specifically help us find that group that may be trading

1 those images.

2 Q. He was a member of a variety of different Instagram groups?

3 A. Yes, ma'am.

4 Q. But he told you he could tell you which one was trading
5 child pornography?

6 A. Correct. He believed he could help us locate that group.

7 MS. THOMPSON: Thank you. I have nothing further.

8 THE COURT: All right. Mr. Morris?

9 MR. MORRIS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. MORRIS:

12 Q. Mr. Miller, have you spoken to any member of the media
13 about Mr. Bogard's case?

14 A. No, I have not.

15 Q. You haven't spoken to Mr. Hendrick?

16 A. No. The only media contact I've had is they asked on
17 Tuesday what was the delay, and, I said the detention hearing
18 has been moved to today at 2:00.

19 Q. Then you have spoken to a member of the media?

20 A. Not specifically with -- mentioning Bogard's name or any
21 specific detail of the investigation.

22 Q. Some other case that was moved to 2:00?

23 MS. THOMPSON: Your Honor, I'm going to object to this
24 whole line of questioning. It's irrelevant.

25 THE COURT: Yeah. Explain the relevance of the

1 question.

2 MR. MORRIS: That's all right. We'll move on, Your
3 Honor.

4 THE COURT: All right.

5 BY MR. MORRIS:

6 Q. Do you know for a fact that Instagram requires you to click
7 on a video in order for that video to be saved to the phone?

8 A. Well, there's a couple of ways, Instagram, you can do it.
9 Many times you can download a screen saver -- I'm sorry -- a
10 screen recorder, which Mr. Bogard's phone did have the screen
11 recorder. So he could turn that screen recorder on. And then
12 if you watch the video on Instagram, you could then download --
13 then it would record that video that you just watched.

14 Q. Not really the question I asked you.

15 My question to you was, are you aware that Instagram has a
16 way where you can -- the videos that you can trade through
17 Instagram, you don't have to click on them or anything, and it
18 stays on your phone?

19 A. I'm not aware of that. No, sir.

20 Q. That it goes to a special folder that Instagram has on the
21 phone -- that it stores a download folder?

22 A. There is a folder on Instagram that we found on his phone,
23 but those appear to be files that he had specifically
24 downloaded from.

25 Q. Sure. Meaning that at some point he downloaded a file.

1 And do the names of these files indicate that they're child
2 pornography?

3 A. No, they do not.

4 Q. Okay. So whether somebody knows they're receiving child
5 pornography or not is not by the name of the file, correct?

6 A. Well, you have to be careful. With this -- in this
7 particular case we have a file that was downloaded through
8 Instagram, another file that appears to be downloaded through
9 the Google browser. And so the Google browser, those names are
10 not associated with child pornography names. Those are -- as
11 that file is either being looked at or clicked on, a file --
12 that file was then saved to the computer.

13 Q. Okay. And that's automatic, right?

14 A. That's -- the Snapchat -- I'm sorry. The Instagram is more
15 of an active step. And, again, we will know further about that
16 information. A search warrant is pending to numerous Instagram
17 accounts.

18 Q. Okay. You say these videos are edgy, right? I'm sorry.
19 You indicated that Mr. Bogard told you that he thought they
20 were edgy?

21 A. Well, besides the child porn, he described the other shock
22 and gore type files that he would download as either he,
23 himself, or the other people call as edgy, correct.

24 Q. I think we've heard testimony hundreds of videos on his
25 phone?

1 A. Correct.

2 Q. Of which three were child pornography?

3 A. We have one video file, and then we have one image which is
4 a collage that depicted four images. Two of those appear to be
5 child pornography or are consistent with child pornography.

6 And then we have another file that is associated with child
7 pornography.

8 Q. "Another file." Is it a video, or is it a picture?

9 A. Another image. I'm sorry.

10 Q. Another image?

11 A. Correct.

12 Q. So I have two pictures and one video?

13 A. Correct.

14 Q. Out of hundreds of videos?

15 A. Correct. Yes, sir.

16 Q. Okay. If Mr. Bogard attempted to delete all of that and to
17 get rid of all of that off of his phone, did you have him talk
18 to you about the fact that he tried to get his phone totally
19 reset and have all his old files gone?

20 A. I believe he made mention to prior investigators with
21 regard that he had reset his phone, but I do not have
22 information to that. He did not speak to me directly about
23 that.

24 Q. You went to go visit with the treatment providers at Laurel
25 Ridge, correct?

1 A. Correct. Yes, sir.

2 Q. And you showed them the videos. You showed them the
3 violent videos. You showed them child pornography videos,
4 showed them him dressed up videos, all those?

5 A. Correct.

6 Q. Including the ones that he made for himself, no idea
7 whether those have been distributed or not, but the ones he
8 made of him taking his own videos?

9 A. Correct. And anything that may have exposed any type of
10 nudity with regard to Mr. Bogard, those were covered up to --
11 just to show a little bit of modesty to the evaluators looking
12 at them.

13 Q. And they saw those videos before issuing a discharge order
14 to send him with you?

15 A. Well, we spoke -- I believe it was a Friday. I'd have to
16 go back -- which day -- whatever date we went to speak with
17 Laurel Ridge.

18 During that, investigators, myself and Mr. Doran, Agent
19 Doran, we spoke with them. I believe there was five of the
20 Laurel Ridge personnel. They indicated that they seemed to
21 have a continued evaluation they wanted to do. Once we showed
22 them all of our information, we had left the facility, didn't
23 even get back to our office before they called us to say,
24 Please come back and pick up Mr. Bogard.

25 Q. So they indicated when you got there that they had

1 continued work they wanted to do with him?

2 A. Correct. It appeared to be that.

3 Q. And then after seeing the videos and everything you showed
4 them, they said no. But do you know if that discharge summary
5 was prepared before or after?

6 A. I do not know when it was prepared. No, sir.

7 MR. MORRIS: Thank you. Pass the witness, Your Honor.

8 THE COURT: Anything, Ms. Thompson?

9 MS. THOMPSON: Yes, Your Honor, briefly.

10 REDIRECT EXAMINATION

11 BY MS. THOMPSON:

12 Q. When you spoke to the individuals at Laurel Ridge, did they
13 indicate to you anything that was concerning about the
14 defendant's behavior as he walked around the facility?

15 A. When I -- I had to get back to get the search warrant when
16 Mr. -- Agent Doran went back to pick them up -- to pick up
17 Mr. Bogard to bring him back into the U.S. Marshal's custody,
18 he advised that the personnel at Laurel Ridge did have a
19 concern with Mr. Bogard; that to them it appeared like he was
20 looking at the doors; that he was -- could be a potential risk
21 of danger to other personnel at Laurel Ridge. And they did --
22 I believe they did not want that risk.

23 MS. THOMPSON: Thank you. Nothing further.

24

25

1 RECCROSS-EXAMINATION

2 BY MR. MORRIS:

3 Q. He was looking outside, and that was considered risk?

4 A. They said he was looking at the doors as they were going
5 through locked doors at Laurel Ridge. There was many locked
6 doors just when we -- and I don't know what his treatment was
7 at that point. But in their expression they had concern to the
8 point that we didn't even get back to the office, to where they
9 called us back to come get him.10 Q. Okay. Every one of those doors has a window in it, that
11 you walked through?12 A. I would have to go back and check. I don't -- but we only
13 got to the part of the admissions and then to a back room. I
14 don't know what is beyond that.

15 Q. And they didn't tell you that?

16 A. No.

17 Q. You're saying they told Agent Doran, who was just on the
18 stand a minute ago?

19 A. Correct. Yes.

20 Q. Huh.

21 MR. MORRIS: Pass the witness.

22 MS. THOMPSON: Nothing further. I am happy to call
23 Agent Doran back to the stand to ask him those questions.24 THE COURT: Well, let's finish with Mr. -- Agent
25 Miller.

1 Agent Miller, thank you for your testimony. You may be
2 excused from the witnesses stand.

3 I'm not -- it does sound like there's some relevance here.
4 Let me -- you may want to proffer exactly where we're going
5 with this question because I have the discharge summary. I
6 don't see anything in the summary about concerns about violence
7 while Mr. Bogard was there. And I got a little confused
8 because it sounded like Agent Miller said that they wanted to
9 get rid of him as soon as he got there, but it sounds like he
10 was admitted on the 8th -- or looked like he was admitted on
11 the 8th and held to the 13th, which is five days. So that's
12 why I'm --

13 MS. THOMPSON: Right.

14 THE COURT: So maybe you would proffer exactly what
15 this is about, and then we'll see --

16 MS. THOMPSON: Actually, I think it's easier if I call
17 him to the stand --

18 THE COURT: Sure.

19 MS. THOMPSON: -- given the objections by defense
20 counsel that he get it firsthand instead of me proffering it
21 instead of Agent Miller proffering it.

22 THE COURT: Okay.

23 MS. THOMPSON: But I -- and I'll argue the
24 discharge -- the value of the discharge summary with regard to
25 the time he spent there, during my argument. But I think they

1 only had him for a five-day evaluation.

2 THE COURT: Right.

3 MS. THOMPSON: That's all they were asked to do.

4 THE COURT: Right. That's my understanding as well.

5 All right. So do you want to call him and ask him some
6 questions? Go ahead.

7 MS. THOMPSON: Yes. Special Agent Doran.

8 THE COURT: Agent, I'll remind you, you're still under
9 oath.

10 RUSSELL DORAN, GOVERNMENT'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MS. THOMPSON:

13 Q. Special Agent, did you accompany Special Agent Miller last
14 Wednesday, I believe, to Laurel Ridge treatment facility to
15 meet with the treatment providers about Benjamin Bogard?

16 A. I did.

17 Q. How long did that meeting take?

18 A. I think we were there an hour, hour and a half.

19 Q. When the appointment was set up, were you given information
20 from Laurel Ridge that Mr. Bogard would remain at the facility
21 for a few days after you met with them?

22 A. When we arrived at the facility and began the meeting, they
23 indicated that they didn't know how much longer he would be
24 there. They thought another day or two.

25 Q. And as you were traveling from Laurel Ridge back to the

1 FBI, did you and Special Agent Miller get a phonecall from
2 Laurel Ridge saying Mr. Bogard was ready to be released back to
3 the FBI?

4 A. When I got back -- actually, dropped Mr. -- Special Agent
5 Miller off at a lunch near the office. When I got back to the
6 office, I realized my phone had been off. I turned it off
7 during the meeting. Turned it back on. I had three missed
8 calls. And as I was checking my missed calls, I received
9 another call from the same number, and it was Laurel Ridge
10 asking us if we could -- that they were through with their
11 evaluation. There's nothing further they could do. If we
12 could come back and pick up Mr. Bogard.

13 Q. When you and Agent Miller met with the Laurel Ridge
14 providers, was there discussion about what type of evaluation
15 they could provide?

16 A. Yes. And it was essentially what you summed up earlier for
17 the Court in terms of, it wasn't -- they did not provide a
18 dangerous assessment, which is what they perceived that us,
19 being -- we were just kind of relating what our understanding
20 of what the Court was looking for. But that they would
21 recommend -- for that type of an evaluation, you would have to
22 meet with a forensic psychiatrist. They do not provide that --
23 so they did not provide that service there. They had people
24 they could recommend.

25 But, again, we didn't go into specifics of what Benjamin's

1 treatment was, assessment was. We didn't go into any of his --
2 we were just there to provide them the information that was on
3 the phone so that they could make a full evaluation and see the
4 concerns that we had.

5 Q. Were you also with Special Agent Miller when Mr. Bogard was
6 first dropped off at Laurel Ridge?

7 A. I was.

8 Q. Was there some confusion as to why he was there within the
9 facility?

10 A. There appeared to be nobody that really knew why we were
11 there to drop him off. We eventually found somebody that
12 seemed to have some knowledge, had spoken with the father,
13 Robbie Bogard, who was there as well. And we kind of cleared
14 up, and they seemed to have a general understanding when we
15 left that he was not to leave without being in FBI custody.

16 Q. When you went back to pick up Mr. Bogard after you were
17 told the evaluation was over, what happened?

18 A. I went back. Special Agent Miller had something else going
19 on. I believe he was preparing the search warrant or swearing
20 out a search warrant. So I grabbed another agent from the
21 squad. We went down to pick up Mr. Bogard, and we were met in
22 the front by one of the individuals. I can't remember her
23 name. She was one of the directors of one of the treatment
24 plans of the facility, and kind of explained to us the process
25 of how they wanted it to go. And we took her into our vehicle

1 and drove around to the back, waiting for them to do the
2 out-processing for Benjamin.

3 Q. What information were you provided about their concern
4 about Mr. Benjamin -- Mr. Bogard while he was there?

5 A. Again, I didn't want to get into what they specifically
6 assessed. I just asked what changed from the time that Rex and
7 I were there half an hour ago, to us needing to come back and
8 pick him up. And she said, based on our discussions and the
9 fact that they did not provide that type of care, that it
10 wasn't worth the risk. And that was the term she used, was it
11 wasn't worth the risk.

12 Q. Was there comments made about Mr. Bogard looking at doors,
13 trying to escape, anything like that?

14 A. So, again, as we sat there, we were talking. And from a
15 security standpoint, just for our knowledge, she wanted us to
16 know that she thought that -- and as it was relayed to her from
17 other either treating physicians or people he was working with,
18 that he appeared to be kind of assessing the doors as they were
19 open. And, again, just as it was relayed to me, appeared to be
20 inching closer when they were opened. Some of the orderlies,
21 or whatever they refer to themselves as, thought that he might
22 have been assessing whether or not he could get out.

23 Q. And she described that to you as a concern that the staff
24 had?

25 A. Yes.

1 Q. Thank you. Nothing further.

2 A. Yes.

3 Q. Oops. Go ahead.

4 A. Oh, no. And as it relates to us, because we were about to
5 pick him up, she wanted us to be aware that she thought -- they
6 thought he might be trying to escape.

7 MS. THOMPSON: Thank you. Nothing further.

8 THE COURT: All right. Mr. Morris?

9 MR. MORRIS: Quick question.

10 CROSS-EXAMINATION

11 BY MR. MORRIS:

12 Q. Agent Doran, do you know what the word "elopement" means,
13 E-L-O-P-E-M-E-N-T?

14 A. No.

15 Q. Okay. You've heard of people going to get married and they
16 elope?

17 A. Yes.

18 Q. Okay. In the medical field, in a lockdown facility, do you
19 know what elopement means?

20 A. No.

21 MR. MORRIS: Okay. May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. MORRIS:

24 Q. Let me show you the report from -- you picked him up
25 February 13th, right?

1 A. Yes. Last Wednesday.

2 Q. What time of day would that have been?

3 A. Let's see. I grabbed an agent. They said they needed to
4 process paperwork. I think we were there at 2:00, 2:30.

5 Q. Okay. So can you see on this report right here that this
6 is the report for 7:00 a.m. to 3:00 p.m. on February 13th?

7 A. Yes.

8 Q. And do you see the word "elopement" right there?

9 A. Yes.

10 Q. And what's the checkmark --

11 MS. THOMPSON: Your Honor, I'm going to object. I
12 don't have this report. I don't know what he's referring to.

13 MR. MORRIS: Let me show it to you.

14 MS. THOMPSON: I wasn't --

15 THE COURT: I don't -- I don't know either. Let him
16 show it to you. You can look at something that hasn't been
17 admitted to me, but I certainly will allow you to review it,
18 Ms. Thompson.

19 MR. MORRIS: And I'll represent to the Court that all
20 of the medical records from Laurel Ridge were filed under seal
21 for an in camera inspection. This is one of those.

22 THE COURT: Oh, all right.

23 MR. MORRIS: And I can point the Court to the specific
24 page if we need to.

25 MS. THOMPSON: I'll object. I'll object. The Court

1 has the record; and the witness has already testified, he's not
2 familiar with that term or how it's used and he didn't author
3 the report.

4 THE COURT: All right. Well, given -- I'll let you
5 finish your inquiry. But yeah, if he doesn't know, he doesn't
6 know, Mr. Morris.

7 MR. MORRIS: Sure.

8 BY MR. MORRIS:

9 Q. And what's the checkmark in the box say?

10 A. It's next to the word "none."

11 Q. Okay. And you're not familiar that they would do this
12 three times a day every day, check these boxes?

13 A. I have no idea what they do. No, sir.

14 Q. Okay. And that there was never a threat of escape, never
15 anyone noticing a marking in the record. You haven't seen any
16 of those records. You don't know that, right?

17 A. No, sir.

18 MR. MORRIS: Pass the witness, Your Honor.

19 THE COURT: All right.

20 MS. THOMPSON: Nothing further. I'll just state for
21 the record we don't have the record so we don't know what they
22 say.

23 THE COURT: Right. I don't know either. I have to
24 look at what they're talking about.

25 Thank you, sir. You may be excused from the witness stand.

1 I have some of these documents as -- that have been
2 submitted in camera, and I'm going to accept your proffer as
3 opposed to digging through them, that there was not an
4 elopement determination made on any of those reports. I am
5 familiar with that phrase myself.

6 MR. MORRIS: Yes. And it's -- that was a specific
7 page for that date.

8 THE COURT: Oh, I see.

9 MR. MORRIS: 7:00 a.m. to 3:00 p.m. That's why we --

10 THE COURT: Let me just ask you -- and I'm going to
11 ask you to proffer more. Is there any other place in those
12 reports where they seem to indicate that there's a risk of
13 elopement or that they have made a --

14 MR. MORRIS: Absolutely not.

15 THE COURT: All right. Very well.

16 MR. MORRIS: And I can forward you every one of
17 those --

18 THE COURT: No. And I'll accept your proffer on that.
19 That's fine.

20 Any additional witnesses you'd like to present,
21 Ms. Thompson?

22 MS. THOMPSON: No, Your Honor. The government rests.

23 THE COURT: Well, let me just ask, with regard to the
24 pretrial services report that was originally created, obviously
25 we've had additional information since then, plus the

1 information subject to that additional information. Any
2 objections or corrections to the pretrial services report?

3 MS. THOMPSON: Yes.

4 THE COURT: All right.

5 MS. THOMPSON: The last paragraph on Page 2 --

6 THE COURT: Yes.

7 MS. THOMPSON: -- says he -- Mr. Bogard noted he left
8 Texas State University after completing the fall 2018 semester.
9 That's incorrect. He left in September of -- he quit school in
10 September of 2018.

11 THE COURT: All right.

12 MS. THOMPSON: And also, he advised to be unemployed
13 since December of 2018. We show a last paycheck for him dated
14 September 8th of 2018.

15 THE COURT: All right.

16 MS. THOMPSON: At least the employment he had with the
17 university ended when he quit going to school. I'm not aware
18 of any other employment since then. So both of those pieces of
19 information provided by the defendant seem to be incorrect.

20 THE COURT: Well, he said he was working as a
21 lifeguard. Is that at Texas State? I thought that was in
22 New Braunfels.

23 MS. THOMPSON: No. That was in the summer. And I
24 believe he ended that in July.

25 THE COURT: Oh, I see. Oh, okay. Got you. All

1 right. Very well. Thank you.

2 Let me turn to you, Mr. Morris, start with the pretrial
3 services report. Any objections or corrections that you'd like
4 to make?

5 MR. MORRIS: Couple quick corrections, Your Honor.

6 THE COURT: Uh-huh.

7 MR. MORRIS: The bottom paragraph at the bottom of the
8 first page indicates that he's always resided with his parents.
9 Actually, he lived on his own at Texas State for a year.

10 THE COURT: Right. Right.

11 MR. MORRIS: And was independent during that
12 timeframe.

13 THE COURT: Okay.

14 MR. MORRIS: Last -- as far as his assets go, he has
15 nothing. And I think the report reflects that accurately.
16 There should be no indicators in the report that he has any
17 assets.

18 THE COURT: Just the vehicle. They indicate a
19 vehicle. I'm assuming -- I don't know if that's the van or
20 something else.

21 MR. MORRIS: I think it's the van, and I think it's a
22 \$1,500 van.

23 THE COURT: All right.

24 MR. MORRIS: That was what he paid for it.

25 THE COURT: All right.

1 MR. MORRIS: Anything in the report, of course, that's
2 attempting to indicate a mental diagnosis or a mental concern
3 is, of course, objectionable to us because they're not mental
4 health professionals, to be able to make those decisions. So
5 other than that --

6 THE COURT: All right. Well, we've heard -- I now
7 have a full -- or not a full. I have additional information
8 from Laurel Ridge on that. And I'm going to consider that
9 information.

10 MR. MORRIS: Correct. Other than that, nothing
11 significant, Your Honor.

12 THE COURT: All right. Very well.

13 MR. MORRIS: Other than we don't think [inaudible].

14 THE COURT: Other evidence that you would like to
15 present by way of proffer or testimony?

16 MR. MORRIS: I would present some evidence, but I
17 think it'd probably go quickly if I can do it with just
18 Mr. Bogard.

19 THE COURT: All right. Sir, if you'll come forward,
20 my courtroom deputy will swear you in.

21 (The oath was administered)

22 ROBBIE BOGARD, DEFENDANT'S WITNESS, SWORN

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q. Mr. Bogard, can you introduce yourself to the Court,

1 please. What's your name?

2 A. Robbie Bogard. I'm Benjamin's father.

3 Q. Thank you.

4 Can you tell us briefly what changes, what modifications,
5 what things you changed about your house and living situation
6 in light of the fact of trying to get ready for Benjamin to be
7 released on bond?

8 A. We have taken all the -- our iPads, iPhones, secured those
9 in our bedroom, taken all the charging cords, removed
10 anything -- other computer related from the house and stored
11 that securely.

12 Q. Okay. What else have you done? Are there any firearms in
13 your house?

14 A. There are no firearms in my house at all.

15 Q. Okay. Any fake firearms in your house at all?

16 A. There are no fake firearms.

17 Q. Anyplace there might be a firearm secreted or hidden that
18 you wouldn't know about?

19 A. No.

20 Q. All right. You are familiar with your son's bedroom and
21 his space where he primarily resides. How is that in regards
22 to the rest of the house? Is it upstairs? Downstairs? Can
23 you explain to the Court what that situation is?

24 A. We have a one-story house.

25 Q. Is --

1 A. As soon as you come in the house, you'd have to pull --
2 come in, basically pull a U-turn. He's by the front door.

3 Q. Okay. So is there a way for Rob -- for Benjamin to go in
4 or out of his bedroom without you knowing it?

5 A. No.

6 Q. Does he have a separate entrance?

7 A. No.

8 Q. Any way that he can go in and out of his bedroom door, if
9 you're in the living room, without you being able to see?

10 A. No.

11 Q. Okay. Tell me about Benjamin's ties to the community. Let
12 me just limit you a little bit real quick. We have a gentleman
13 here, Mr. Hoffmann, Tobin Hoffmann. Can you tell the Court why
14 Mr. Hoffmann's here?

15 A. Mr. Hoffmann was actually Benjamin's Boy Scout troop master
16 where Benjamin was actually an Eagle Scout.

17 Q. Okay. And when did he complete that?

18 A. I'm going to think June 2014. I may be a year off on that,
19 but I'm pretty sure it was June 2014.

20 Q. And is Mr. Hoffmann familiar with his -- with Benjamin's
21 character, with his physical condition, mental condition,
22 family ties, all those things?

23 A. Very much so, when he was in Scouts with him for several
24 years.

25 Q. Okay. One of the things the Court has to consider is

1 Benjamin's past conduct. Are you aware of any run-ins with law
2 enforcement previously with Benjamin?

3 A. Other than one single speeding ticket, there's been none.

4 Q. Okay. You and your wife were concerned when Benjamin took
5 off to Ohio for a while?

6 A. We were concerned when he took off to Dallas. He actually
7 went to Ohio to see my mother, his maternal grandmother.

8 Q. Oh, so he stayed with grandma for the trip to Ohio?

9 A. Yes.

10 Q. Went to Dallas. And while up there, traded in the car he
11 had, bought a van and purchased a shotgun?

12 A. Yes. He didn't trade in the car. He just bought the van
13 and the shotgun.

14 Q. Okay. And were you able to talk to him when he came back
15 and discuss with him why that happened and have a conversation
16 with him about what his motivations were?

17 A. Yes, we were.

18 Q. And what was that conversation like? What was the impetus
19 for that?

20 A. My wife and I have always told Benjamin when he graduated
21 from high school, he was willing to stay at -- or he was able
22 to stay at the house if he had a job or he was going to
23 college.

24 And then when he lost his job at Texas State, because that
25 was a student-hire job, and the day before classes started for

1 fall 2018 he decided not to go back to school. I think he
2 thought we were going to be very upset with him that he didn't
3 have a job, he wasn't going to school. So that seemed to be
4 the decision to move away.

5 Q. Okay. Embarrassment?

6 A. Pardon me?

7 Q. Embarrassment on his part, of being in that situation?

8 A. I think very much so.

9 Q. Okay. Can you tell us what your situation for employment
10 and your wife's situation for employment? Just give the Court
11 an idea of how often you're at home and who's at home when?

12 A. My wife, she stays at home. I work 6:00 to 3:00. So after
13 3:00, I'm home. But my wife is there all the time.

14 Q. Do you work weekends?

15 A. No. I do not work weekends.

16 Q. Okay. 6:00 to 3:00, just five days a week, right?

17 A. Monday through Friday.

18 Q. All right. Any previous knowledge of any history of drug
19 abuse or alcohol abuse on Benjamin's behalf?

20 A. No. He doesn't even like Coca-Cola, beer, wine, any of
21 that so --

22 Q. And y'all have lived in Europe and have been around that
23 where -- culture where that's allowed among people his age?

24 A. Yes.

25 Q. And he did not partake even at that point?

1 A. No, sir.

2 Q. Does he usually show up where he's supposed to when he's
3 supposed to? If he's got an appointment or if he's got a
4 meeting, if he's got something where he's supposed to be, is he
5 good at showing up on time?

6 A. Yes, he is.

7 Q. Okay. Give me an example of that.

8 A. Boy Scouts with Tobin Hoffmann behind you there, would
9 always be on time for his schoolwork, whether that was high
10 school, whether that was the University of Maryland that he did
11 over in Germany for his first year of school, or at Texas
12 State. We never had any knowledge of him not showing up on
13 time, and was always there.

14 Q. What is your understanding of other than you and -- I
15 believe you said there's a grandmother in Dallas?

16 A. No. Grandmother's in Ohio.

17 Q. In Ohio. I'm sorry. He was visiting a friend in Dallas.
18 Any other family here in the U.S. that he'd go visit --

19 A. Yes, my father and stepmother, they live in South Carolina.

20 Q. Okay. And has he been to visit them by himself previously?

21 A. Not by himself. I had a brother die earlier this year, and
22 Benjamin and I took a road trip to go to the funeral in
23 September.

24 Q. One of the things the Court is concerned about is whether
25 or not there's a propensity for violence. Have you observed

1 anything that indicates to you one way or another whether
2 Benjamin has any --

3 A. I'll just share a couple of quick examples that come to
4 mind. When the agents were out at the house the first time to
5 talk to Benjamin, they made it seem like this whole thing was
6 not a big deal. And Officer Reyes actually told Benjamin to
7 take the mask and burn it.

8 So we went out to do this. And when the fire was starting,
9 Benjamin noticed a scorpion crawling towards the fire, and
10 Benjamin went and got a stick and actually moved the scorpion
11 out away from the fire so the scorpion wouldn't get toasted by
12 the fire.

13 And Benjamin, when he decided to drop out of Texas State,
14 he wanted to join the Air Force.

15 Q. What was the problem with that, with him joining the
16 Air Force?

17 A. He was waiting for some medical clearance. He has a minor
18 case of scoliosis, so it has to get cleared through the
19 Air Force medics.

20 Q. Okay.

21 A. But I've been associated with the U.S. Air Force either
22 active duty or as a civil servant for the last 35 years. So
23 I'm pretty familiar with all the jobs that Benjamin could get.
24 So I sat down with him, with the Air Force enlisted
25 classification directory, and went over almost every job in the

1 Air Force.

2 And one job I asked him if he would be interested --
3 actually, two jobs were remotely piloted aircraft pilot or
4 remotely piloted aircraft sensor. And I asked Benjamin, Hey,
5 would you be -- would you be interested in either of these
6 jobs?

7 And his very quick response to me was, I don't want a job
8 where I have to kill people.

9 Q. Okay. Have you ever seen Benjamin have violent
10 propensities or indicators?

11 A. No.

12 Q. You were unaware of the videos that Benjamin was shooting
13 on his phone, correct?

14 A. Correct.

15 Q. But at the end of the day, you've now learned a good bit
16 about those. Are you aware of Benjamin's online persona, his
17 online character?

18 A. No.

19 Q. Okay. In real life tell me about Benjamin's character, as
20 best you've observed?

21 A. He's a good kid, a good son, has always done what we wanted
22 him to, has done well in school. So that's the Benjamin I
23 know.

24 Q. Okay.

25 A. The Benjamin that I saw -- again, when you use that term

1 "edge master," that's what I'm seeing from what I've heard
2 today.

3 Q. Okay. You didn't know about the videos or the pornography
4 or any of that stuff. What assurances can you give the Court
5 that you and your wife are going to be able to maintain his
6 safety and his presence and assure that he's going to be here
7 when he needs to be here for the Court hearings that come up?

8 A. Either my wife or I will be with him at all times. There
9 won't be any computer internet access to do any of that. And,
10 you know, I can just guarantee that we can try to get him some
11 help because there seems to be some concerns with the mental
12 health awareness, and that we will be with him at all time and
13 limits -- or audit what he does.

14 Q. And we contacted a couple -- or you've contacted a couple
15 of forensic psychologists, correct?

16 A. Yes.

17 Q. And there's a group that y'all have contacted for people
18 who have been involved or have been --

19 A. Yeah. There's a group in Chicago actually made up of
20 former white supremacists called Life After Hate. And what
21 this group's ethos is now is to take people who may have the
22 hatred, and work with them where they no longer have this type
23 of hate.

24 Q. Okay. And is there a way that he can engage with them
25 either online or --

1 A. There's online, and I have phonecalls into them, but they
2 have not got back with me yet.

3 Q. You understand pretrial could require that you have
4 monitoring software on every computer in your house, that every
5 website you go to goes to pretrial services, that they would
6 see all that?

7 A. We're agreeable to that.

8 Q. Okay. You understand that he may -- that Benjamin may have
9 to have an electronic monitor on at all times when he's living
10 with you?

11 A. And we're agreeable to that, and I think it gives the Court
12 a greater guarantee that nothing will happen.

13 Q. Okay. And you're willing to pay for that if you have to
14 because he doesn't have resources, right?

15 A. I am.

16 Q. Okay. What about the ability to know where he is and
17 when -- if Benjamin's not where he's supposed to be or not
18 where he told you he's going to be, are you able to call
19 pretrial services and report on your own son?

20 A. Yes, I could.

21 Q. Okay. And you're agreeing to the Court that that's what
22 we're going to do if he's not where he's supposed to be?

23 A. Yes, sir.

24 MR. MORRIS: Okay. I'm going to pass the witness.

25 Thank you.

1 THE COURT: All right. Ms. Thompson.

2 CROSS-EXAMINATION

3 BY MS. THOMPSON:

4 Q. Mr. Bogard, you said you removed the firearms from your
5 home. How many firearms did you remove?

6 A. The starter pistol and the shotgun.

7 Q. You didn't find any other firearms in the house?

8 A. No. And my wife and I did a very, very thorough audit of
9 the house.

10 Q. What did you do with the firearms?

11 A. They're with Mr. Morris.

12 Q. Is it fair to say you did not have any idea your son was
13 making these hateful videos where he threatens to kill people?

14 A. That's a very fair statement to say.

15 Q. Is it fair to say you didn't know he had chosen not to go
16 back to school until he ran away?

17 A. No. That's not fair to say. He told us -- we kept asking
18 him what his schedule for the fall semester was. And he said
19 he was having problems getting on the computer system for Texas
20 State University.

21 And so we asked him the day before classes were supposed to
22 start, Hey, what's your schedule?

23 So he goes in his bedroom, says, Let me print the schedule
24 off.

25 And he's in there for 30 to 45 minutes and then comes back

1 out and makes the statement to us that, I no longer enjoy
2 college; that I'm not going back.

3 Q. So that was in August?

4 A. I'd have to look at the Texas State calendar to see exactly
5 when that was, but it was either late August or early
6 September.

7 Q. You made a -- you reported him missing to Comal County when
8 he left your home on October 8th and didn't return; is that
9 correct?

10 A. That is correct.

11 Q. Do you remember speaking with Doug Phillips, the officer
12 that took the report?

13 A. Yes, I do.

14 Q. Do you recall telling him that you had contacted Benjamin's
15 supervisor, John Sharrott, at Texas State University, and found
16 out Benjamin hasn't been at Texas State since early September
17 when school started?

18 A. That was for his job at Texas State. That wasn't for
19 school.

20 Q. You were still under the impression that even if he didn't
21 go to school, he could still work there?

22 A. We had questioned him on that, and he was under the belief
23 that he could continue with the job. However, it was a student
24 hire-type job. So when he was no longer enrolled as a student,
25 he was not able to keep the job.

1 Q. So at least in October you didn't know he was working at
2 Texas State?

3 A. We believed he was working. He had only been a driver
4 since we had come back from Europe. The licensing system is
5 different over there. And we filed a missing persons report
6 because most of the -- if you can remember the rain we had in
7 September, and it was one of the very rainy nights that he
8 didn't come home. And we were very concerned about his safety,
9 thinking that he was in a horrific crash. So we became
10 concerned with his whereabouts.

11 Q. He had a phone at that time, correct?

12 A. He did.

13 Q. He wasn't answering his phone?

14 A. No.

15 Q. And he took one of your vehicles that he was allowed to use
16 when he went to Dallas, the station wagon?

17 A. Yeah. It's -- the vehicle -- I can't remember if it's in
18 my wife's name or my name. But when we bought the vehicle, we
19 told him it was his vehicle for going to university.

20 Q. And are you aware he was going to leave the vehicle in
21 Dallas when he bought the van?

22 A. He told us he planned on having a friend bring it back.

23 Q. Did he have a lot of friends at that time in his life?

24 A. I'm not exactly sure.

25 Q. Did you know any of his friends in the fall of 2018?

1 A. The ones that he had been involved with in Boy Scouts in
2 New Braunfels. We had only been back -- I returned from an
3 assignment in Germany June of 2017, and then he was up at the
4 Texas State University. But there were things that he did with
5 some of his former Boy Scout friends who lived in
6 New Braunfels.

7 Q. And that ended in 2014, correct?

8 A. Yes. And then we went overseas after that.

9 Q. And since you moved back in June of 2017, you're not aware
10 of him having any friends?

11 A. Some of the same Boy Scout friends that he had from June
12 2014, the kids were still around.

13 Q. You saw him with them?

14 A. Yes.

15 Q. You hired a private investigator when he went missing and
16 wouldn't return your phonecalls; is that right?

17 A. That is correct.

18 Q. And it took three days for him to locate?

19 A. I believe it was three days.

20 Q. The friend had not returned the car at that point?

21 A. No.

22 Q. You -- in fact, you and your wife had to drive up and drive
23 the car home?

24 A. That is correct.

25 Q. Is it fair to say there's a side of your son that you

1 didn't know existed?

2 A. We've always known there's been sort of a secretive side to
3 him. We didn't understand all that that involved.

4 Q. When your son went -- ran away, for lack of a better term,
5 or went missing, he took his passport --

6 A. Correct.

7 Q. -- which was still valid at that time?

8 A. Yes.

9 MS. THOMPSON: Thank you. I have nothing further.

10 THE COURT: All right. Mr. Morris, anything further?

11 MR. MORRIS: I'm sorry.

12 THE WITNESS: Could I finish answering that question?

13 MR. MORRIS: About the passport?

14 THE WITNESS: Yeah.

15 MR. MORRIS: I was going to ask you about the passport
16 anyway.

17 THE WITNESS: Okay.

18 REDIRECT EXAMINATION

19 BY MR. MORRIS:

20 Q. He's got a passport?

21 A. Yeah.

22 Q. And --

23 A. Actually, it was -- he took the information that he needed
24 to join the Air Force with him. So there was the birth
25 certificate. There was the passport. I can't remember all the

1 other information. But it wasn't just the passport. It was
2 exactly the information recruiters require for him to join the
3 Air Force, is the information that he took.

4 Q. To the best of your knowledge has your son ever traveled
5 outside the country without you or your wife?

6 A. No, he never has.

7 Q. Never has, to the best of your knowledge?

8 A. No.

9 Q. And he's an adult. Does he have to tell you everywhere he
10 goes?

11 A. No, he doesn't.

12 Q. But generally, he does?

13 A. Yes.

14 Q. Okay. Last quick question. You indicated previously that
15 when Benjamin was at Laurel Ridge, were you able to interact
16 with Laurel Ridge at all and have conversations with them about
17 anything going on there?

18 A. Not a whole lot.

19 Q. Because they weren't allowed to disclose anything to you,
20 correct?

21 A. No.

22 Q. But what have you put in place -- I forgot to ask you about
23 this. Are there churches, daycares, schools in your
24 neighborhood?

25 A. I think the closest one -- it's six-tenths of a mile just

1 to get out of my neighborhood, when I get on the main street in
2 my neighborhood. So --

3 Q. Right. But not in your --

4 A. -- it's almost eight-tenths of a mile just to get out of my
5 neighborhood. And then I believe the nearest church, and I
6 think it's on the preservices report, may be 1.5 or 1.9 miles.
7 I can't remember exactly.

8 Q. But then the answer to my question is there's no churches,
9 anything like that --

10 A. No.

11 Q. -- in your neighborhood?

12 A. No, not at all.

13 Q. Daycares, any of those kind of things?

14 A. No, sir.

15 Q. You and your wife have done quite a bit of homework trying
16 to figure out counseling scenarios. Are you committed to being
17 -- to get him to and from whatever counseling he's required to
18 attend?

19 A. Yes. And that's one of my concerns. If he stays in
20 detention, he's not going to get the counseling that he needs.
21 And that's something that we're hoping we could get him into as
22 soon as possible.

23 MR. MORRIS: Very good. Thank you.

24 THE COURT: All right. Anything further,
25 Ms. Thompson?

1 MS. THOMPSON: One clarification.

2 RECCROSS-EXAMINATION

3 BY MS. THOMPSON:

4 Q. You stated that he took what he needed to join the
5 Air Force. Did he tell you that's why he left, was to join the
6 Air Force?

7 A. That's been his goal all along, since he's quit college.

8 Q. So when he left October 8th, took his passport, his
9 driver's license, birth certificate, whatever he needed so that
10 he could join the Air Force?

11 A. We believe so.

12 Q. Do you know if he ever contacted the Air Force in those
13 three days he was gone?

14 A. I don't know that. But I know there's been quite a bit of
15 email traffic between him and the recruiter. I personally
16 talked to the recruiter myself before this incident and after
17 the incident. So I believe he was just really concerned that
18 he did not have a job, and our rule was -- has been, since he's
19 been 18 years old, is, hey, you're either going to school or
20 you have a job if you're living at home.

21 Q. So he ran away because he didn't have a job?

22 A. I wouldn't really say running away because he is an adult.
23 But I think he was afraid of the repercussions that he'd have
24 to face from mom and dad.

25 Q. Okay. So it wasn't to join the Air Force. He didn't leave

1 in October to join the Air Force?

2 A. No. He's still waiting on his paperwork to join.

3 Q. And you know when he went to Dallas, he did not find a job?

4 Are you aware of that? He did not get a job?

5 A. I don't know if he even looked for a job when he went to
6 Dallas.

7 Q. You do know he looked for a white van, though, correct?
8 And bought a van?

9 A. Yeah. He did buy a van.

10 Q. And you do know that he looked online for a shotgun and
11 bought a shotgun?

12 A. Yes, he did.

13 Q. And that he retrofitted the van so that he could live in
14 it?

15 A. Yeah. And my wife and I both helped him retrofit the van.

16 Q. That's before you saw the videos of his plan to be
17 homeless; is that correct?

18 A. I've never seen these videos.

19 MS. THOMPSON: Okay. Nothing further, Your Honor.

20 THE COURT: Mr. Thompson [sic]?

21 MR. MORRIS: Nothing further.

22 THE COURT: Thank you, sir, for your testimony. You
23 may be excused from the witness stand.

24 Any additional witnesses that you'd like to present or by
25 way of proffer, any information --

1 MR. MORRIS: Can I do it by proffer just real quick,
2 Your Honor --

3 THE COURT: Let's find out. Yeah.

4 MR. MORRIS: -- because I hate to -- the late hour
5 here.

6 THE COURT: Let's find out.

7 MR. MORRIS: I would just say the testimony of
8 Mr. Tobin Hoffmann would be as to the excellent character, the
9 stalwart character of Benjamin Bogard, that he's known him for
10 many years of his life. He's known him in New Braunfels, known
11 his connections to the community are very strong, friends who
12 he's made through Boy Scouts continue to be friends of his now,
13 today. And those continued connections are just as strong
14 today as they were back when he graduated in '14. And then his
15 leadership qualities of bringing up other scouts underneath him
16 as part of that program and being a mentor to the others.

17 I think he would also testify no knowledge of criminal
18 history, no previous disregard for the law, no previous
19 run-ins, none of those things as well.

20 THE COURT: I'm assuming that proffer would also
21 include, however, that he was completely unaware of this -- all
22 this other information?

23 MR. MORRIS: Completely unaware of any of this.

24 THE COURT: All right. Ms. Thompson, this gentleman
25 is here if you wish to question him -- question him. But with

1 the limited proffer, you have any objection to me considering?

2 MS. THOMPSON: I don't have any objection to the
3 proffer. But there's no information as to how much time he's
4 actually spent with him since 2014 when he was the Eagle Scout
5 leader, or whether he's -- I assume he's not aware that
6 Mr. Bogard is burning the U.S. Constitution and that that would
7 have some effect on the oath he took as an Eagle Scout.

8 THE COURT: Let me just check and see if they've had
9 any contact since then.

10 Mr. -- do you know?

11 MR. MORRIS: Very few. They've visited a couple of
12 times I think --

13 THE COURT: Less contact obviously than when he was in
14 the Scouts?

15 MR. MORRIS: That's correct.

16 And it's not the Constitution.

17 THE COURT: Oh, well, I thought it was the
18 Constitution.

19 MS. THOMPSON: He said it is in the video.

20 THE COURT: Oh, oh, oh, oh, I understand.

21 MR. MORRIS: It's not the Constitution.

22 MS. THOMPSON: We have the video if you want to see
23 it.

24 THE COURT: No. I really -- I got the picture so to
25 speak of what the video indicated.

1 MR. MORRIS: Very nice.

2 THE COURT: Any additional evidence you'd like to
3 present, Ms. Thompson?

4 MS. THOMPSON: No, Your Honor.

5 THE COURT: Can we turn to -- then to argument, and
6 I'll hear from the government first.

7 Oh, you know what? I am sorry, Ms. Thompson. I have to
8 get one more proffer from Mr. Morris.

9 Mr. Morris, I forgot to inquire of the father whether there
10 was a landline in that home.

11 MR. MORRIS: We can install one. There's not one
12 currently.

13 THE COURT: Thank you.

14 Now you can -- I forgot. And I'm sorry about that,
15 Ms. Thompson.

16 MS. THOMPSON: No problem, Your Honor.

17 THE COURT: Okay.

18 MS. THOMPSON: It is the government's position that
19 there are no conditions or combination of conditions that would
20 assure the safety of the community in this case. It is an Adam
21 Walsh case. It does fit under that 2006 legislation, and that
22 means there is a presumption of detention.

23 Now, if the defense meets its burden of production, that
24 doesn't mean it's a bursting bubble and that presumption goes
25 away. But the Fifth Circuit in *U.S. versus Fortna* followed the

1 First Circuit by saying that presumption continues to carry
2 weight even if the defense makes some showing in opposition of
3 it. And that's important in this case for a number of reasons.

4 The factors that the Court has to consider in determining
5 whether to set conditions of release are: One, the nature of
6 the offense charged. He was charged with receiving and
7 possessing child pornography. That is a crime of violence. It
8 is also a crime involving minor children as victims.

9 What makes this case different as far as the nature of the
10 offense goes is that not only do you have the crime of violence
11 and minor children as victims, but he also has various firearms
12 and has used those firearms. There are numerous threats of
13 violence against every minority group I could think of, and
14 mailmen. I don't know where that fits in, but he includes
15 mailmen in his list of people he's going to kill and rid the
16 world of.

17 The weight of the evidence the Court has to consider -- and
18 in this case it's strong. The video is of a very young
19 minority child being anally penetrated. The defendant admitted
20 having the -- trading -- not trading. He admitted being a part
21 of Instagram groups where he knew people were sharing child
22 pornography, and that video, as well as other images, are
23 specifically saved on his phone.

24 The amount of material he's going through on a daily basis
25 is large. He chose to save that as one of the things he wanted

1 to keep on his phone. He admitted to the agents that he
2 knowingly obtained the material using Instagram, and the
3 forensic review of the phone actually shows the material was
4 obtained in a variety of ways, one of which was Instagram. So
5 I would suggest that the weight of the evidence in this case is
6 strong.

7 And the third factor is the history and characteristics of
8 the defendant. It is significant that he's only 20 years old.
9 He's young. His brain isn't fully formed. We know
10 biologically that your brain fully forms for men at age 26.

11 What is significant about his young age and the -- all of
12 the information that he's posting, it isn't like he's spending
13 an hour or two a day doing this. He doesn't go to school. He
14 doesn't work. He is spending most all of his time living
15 online. So he can say it's a fantasy or it's not really real,
16 but it is his reality. He's not going out and walking the dog
17 and going to the grocery store and hanging out with other
18 people. He's living online. So while that -- he says that's
19 not real, it's real to him because that's all he's doing.

20 And the hateful propaganda that he puts out there is
21 troublesome for a variety of different reasons. We know that
22 if you look at violent behavior on a consistent and ongoing
23 basis, it normalizes that behavior. He says he does it to get
24 attention. It's shocking and edgy, and he gets attention.
25 Well, that's why people go shoot up churches, too, is to get

1 attention.

2 And not -- when I first got this case and the FBI asked --
3 or wanted to confirm that I was going to move for detention,
4 they seemed very concerned and gave me more information. And I
5 looked up -- the shooter at Marjory Stoneman Douglas High
6 School was 19. Adam Lanza, who killed his -- a family member
7 before he went to Sandy Hook Elementary and killed 20 people,
8 was 20. The Sutherland Springs shooter was 26. He's the
9 oldest.

10 The movie theater in Colorado, that dude was 25. Eric
11 Harris and Dylan Klebold from Columbine were in their teens.
12 They were both high school seniors. The Charleston church
13 shooter was 21. And that's Dylann Roof who this defendant
14 seemed to have a fascination with and scarily, if that's a
15 word, admiration for.

16 The videos he makes about starting a race war and killing
17 minorities is -- goes beyond disturbing. And what stuck out to
18 me originally was, he has this plan. And the video -- I asked
19 the FBI to bring it because it's one thing to hear about it,
20 but it's really another to see it, where he's got the mask on.
21 And he doesn't sit all quiet and slumped over. He is a totally
22 different persona. He's large and loud and angry, and he
23 screams in these videos.

24 And he -- his plan is to go -- what you have to do to rid
25 us of all these bad people is you buy a van, and he did. And

1 you buy a shotgun, and he did. And you buy a skull mask, and
2 he did. And then you pull the trigger.

3 And he talks about driving the van. That's what he's going
4 to do through neighborhoods. And he's firing the shotgun as
5 he's going through different groups. And the fact that he went
6 and did that is frightening.

7 There are many things -- the white supremacy crap stuff,
8 propaganda that he states. But he dropped out of school. He
9 doesn't work. He plays video games and spends his life online.
10 And the Court has to consider that when looking at the history
11 and characteristics of him.

12 He ran away in October, went missing for three days, didn't
13 call his parents, didn't -- ditched their car to go buy his van
14 to enact his plan. After that, the timeline involves him
15 dropping out of school and then going missing and then being
16 found in -- the beginning of November is when he makes a whole
17 series of videotapes of himself shooting his new toy behind his
18 house, which is a crime, and then culminates on December 29th
19 when he chats as ProphetOfExtinction333, says, I'm thinking
20 about getting a loan, buying a new rifle, ammo, gear and going
21 HAM on a state capitol building.

22 Now, he gets attention from this online because it's
23 shocking. But that's what he wants, is the attention. He
24 mentioned that to numerous FBI agents when he was being
25 interviewed.

1 His search terms are disturbing. How to make a homemade
2 gun, different things about guns, blowing up a building.
3 There's a video about purchasing explosive material that he's
4 posted on there. He's not only normalizing the domestic
5 terrorist behavior, but he's beginning to act out those
6 fantasies. And that's where it takes a turn.

7 He's in a vacant house that's still being built when he's
8 got his skull mask on and his angry voice and is burning --
9 supposedly burning what looks to me like a copy of the
10 Constitution. And he is saluting Hitler and talking about the
11 race war at that time.

12 If there's a theme in going through his material, including
13 the child pornography, it's degradation and the humiliation of
14 others. I don't know if he has a strong -- I don't know if he
15 has a sexual interest in children. I don't know if he knows
16 his sexual identity. Given the pictures that I've seen on his
17 phone of him dressing up as a girl in a cheerleading outfit,
18 with and without the gun and the gas mask, and pictures of him
19 attempting almost, without going into too much detail, to
20 change the look of his gender, given the other pornography
21 that's found on his phone, I don't know if he knows where he is
22 in that, what his sexual interest is or what his sexual
23 identity is, for that matter.

24 And I say that because it makes him more dangerous in the
25 fact that he doesn't know who he is, and he doesn't know --

1 well, he knows what he's doing, and he knows it's wrong, and he
2 does it anyway. But he's young and extremely impressionable,
3 and we still don't know really what his mental condition is.

4 The diagnosis that I have is anti-social personality
5 disorder and major depressive disorder. And those should cause
6 the Court concern because given the untreated mental health
7 issues of those, no employment, no education, no real
8 connection to the community -- he lives with his parents.
9 They've been back for a year and a half, but he doesn't have a
10 connection. He's not engaging with other people, as far as we
11 can tell, that aren't online. There's no information that I
12 recall, from looking at his phone, where he has friends in or
13 around the neighborhood or real people that come and spend time
14 with him.

15 So there's really -- when I look at it, there's no reason
16 for him not to engage in dangerous behavior. Everything I know
17 about him, he has nothing to -- he feels he has nothing to
18 lose. Hopefully that changes over time. But if he was at a
19 state when the FBI -- when the San Antonio FBI got information
20 about him, that they believed he was going to engage in an act
21 of mass violence at that time, the only thing that's changed is
22 now he's charged with a federal felony where he knows he can go
23 up to -- go to prison for up to 20 years and then be on
24 supervised release for the rest of his life.

25 That doesn't move his ball forward as far as getting better

1 and getting mental health treatment. That gives him more
2 incentive to go get attention in a very, very bad way. And
3 that's our concern. That's what fits into the nature and
4 seriousness of the danger to any person if he's released.

5 We know what he wants to do by looking at what he's posted
6 online and by what's on his phone. He can tell the FBI or the
7 therapist what -- that that's not true. I don't really want to
8 do that. But he's smart enough to know that at that point he's
9 in trouble. Of course I'm going to say, No, I don't really
10 want to do that.

11 But the amount -- as Special Agent Doran testified, the
12 sheer volume of violent material on his phone makes him a
13 complete danger, someone that we just can't take the risk in
14 letting out at this point.

15 THE COURT: I have one question for you, Ms. Thompson.
16 You've been focusing on the risk of danger to the community.
17 It seemed to me there might be circumstances upon which you
18 would also be arguing there's a risk of flight in this case.

19 MS. THOMPSON: Yes. I think there's a huge risk of
20 flight. One, in him fleeing. He's lived in other countries
21 around the world, and of him committing suicide. The postings
22 show some suicidal ideation. He did not indicate any of that
23 to the individuals at Laurel Ridge, but he's not going to. He
24 knows that's going to hurt him at this point, not help him. He
25 wants to go back home and live with mom and dad until he

1 decides to go do something else.

2 And I think they will do anything the Court asks of them.
3 I think they want this to work out. But he bought a gun in an
4 hour, maybe an hour and a half online. Even Mr. Morris
5 commented that he could do that in a shorter period of time.
6 There is just no way to protect the community from what he has
7 spent an enormous amount of time and energy on planning to
8 devastate. I just don't see any way that we can take the risk
9 in letting him out at this time.

10 THE COURT: All right. Thank you.

11 Mr. Morris, let me hear from you.

12 MR. MORRIS: Thank you, Your Honor.

13 Unfortunately, the way this is being characterized is that
14 Benjamin somehow developed a plan and then started executing a
15 plan, and then now the government is concerned about him going
16 through with the steps in this plan.

17 What you see in the video in which he's talking about, Oh,
18 you got to have a gun, you got to have a van, you got to have
19 your mask. He's already got them. He had these props so that
20 he could create this video. If he'd had a machete, then he
21 would have said, Oh, you got to have a mask, got to have a
22 machete, got to have a station wagon, or whatever it was he
23 had, he was already in possession of it.

24 What we're talking about is not somebody who's planning out
25 some heinous crime. We're talking about somebody who's making

1 videos that, quite frankly, are in poor taste and are offensive
2 to many, many, many populations. It used to be, young men
3 would try and one up each other with their car, with their
4 trading *Playboys*, with getting -- who could steal beer from
5 dad's house. That's not today.

6 Today it's these shock videos, these gore videos, these
7 trading pornography, by the way, none of which is illegal in
8 this country. And that's where this hearing is quickly --
9 difficult to reign back in to where we started, which is the
10 charges facing him are one charge of having two photos and one
11 video of child pornography on his phone. And they don't know
12 necessarily how they got there, whether he had to click on them
13 or whether he had to save them or which Instagram tool put them
14 there. That's the government's case. Out of hundreds of
15 videos that are nothing to do with that.

16 And that's the problem. We've got someone who is clearly
17 wanting attention, clearly seeking to get the approval of
18 others by sending them stuff that's surprising to them and is
19 shocking to them. And they're doing the same, sending it back.
20 And that's what these group chats are for.

21 Every indicator from Laurel Ridge -- and thank God, they're
22 mental health professionals. They get to make these decisions,
23 and we don't have to because we're not. They know how to ask
24 questions. They know how to determine whether someone has
25 suicidal ideation or homicidal ideation. Regardless of what

1 you tell them, they can make that determination based on
2 additional factors that they're looking at and additional
3 information.

4 That research was done, and they're not seeing that.
5 They're seeing somebody who's depressed. They're seeing
6 somebody who's anti-social. Well, no doubt, his community ties
7 have changed because he's an Air Force kid. A dad who
8 honorably serves for 35 years is going to be somebody who moves
9 his family around a lot, nine times during the time that he was
10 growing up. That is always going to be the challenge for
11 someone as an only child like Benjamin who's got to make
12 community ties. And he did it through Boy Scouts and keeping
13 his friends from Boy Scouts even after he left that system.

14 We've got somebody who has no online posting -- nothing
15 that Ms. Thompson showed you or any of the agents showed you is
16 Benjamin recommending or holding up or somehow lifting up these
17 shooters that she's talking about or these people who cause
18 violence and cause tragedy.

19 And the one thing that's missing from that analysis, no one
20 that Ms. Thompson mentioned had a previous run-in with the law
21 to catch them in their act and to intervene, which is what the
22 Court has the opportunity to do now. This is the moment when
23 we get a once-in-a-lifetime chance to take him out of custody
24 and to put him in treatment where he is actively engaged in
25 online college, where he's actively engaged in attending real

1 life college with a flip phone, not a cellphone that's a smart
2 phone, and with the ability to engage with a therapist and a
3 forensic psychologist, who's going to help figure out how to
4 move away from what is apparently a very short period into this
5 world. I think Detective -- I'm sorry -- Agent Miller said
6 three to four months with that Instagram account. That's a
7 short time in and a short time out.

8 And that's been -- I think Ms. Thompson and I's both hope
9 through this whole thing is to find a way to quickly intervene
10 and to quickly get him away from this world online, this
11 persona of shocking videos as a edgelord because that's -- the
12 fact that it's now part of our common parlance among that
13 community ought to indicate that this is a much more prevalent
14 problem than we were aware.

15 I think there is all kinds of good indicators that there's
16 plenty of support available at home. He knows the first time
17 he's not where he's supposed to be, pretrial services is going
18 to get a phonecall, and this is all going to be for naught
19 because he's on a very short leash based on the fact that he's
20 in federal custody.

21 But I think this is the moment to intervene in that and to
22 move forward with the ability to change his future in a way
23 that's for the positive instead of lock him up and wait for
24 months and months and months where he's with people who have
25 similar problems, and not fixing them either.

1 So this point, Your Honor, I think based on the discharge
2 summary, based on their recommendation for outpatient treatment
3 on the third page, based on the observations of his being in a
4 stable mood the entire time, very appropriate, interacted with
5 peers in the unit, these are all indicators of someone whose
6 only downside when they're in Laurel Ridge was their inability
7 to have enough time with him to do more work with him and their
8 desire to at some point say to the FBI, Take him now instead of
9 a couple of days from now.

10 But they did recommend, Let's do a forensic psych
11 evaluation and let's get that help, instead of locking him up.

12 THE COURT: All right. Thank you.

13 Ms. Thompson, I saw you were looking through papers. Was
14 there something else you wanted to argue by way of short
15 rebuttal?

16 MS. THOMPSON: Well, I'm trying to find the -- because
17 I just got the discharge summary right before we walked in,
18 where it says outpatient treatment needed.

19 THE COURT: It's on Page 4.

20 MS. THOMPSON: I think --

21 THE COURT: I'm sorry. Page 3.

22 MS. THOMPSON: We started this with the idea that
23 he -- based on what we have, he clearly has some undiagnosed
24 mental health issues. And if we could get him treated in a
25 safe -- in a place that keeps the community and him safe, that

1 that would be ideal. But we don't have that. In fact,
2 pretrial hasn't even done a home visit of the parents' house.

3 And it just -- as far as one more piece of rebuttal, none
4 of -- buying a van, all that stuff, none of that is illegal.
5 But we're not charging him -- we're not trying to charge him
6 with other crimes. We're not showing them as acts of criminal
7 behavior. But they are clearly good indicators of
8 dangerousness.

9 THE COURT: All right. Thank you.

10 All right, Mr. Bogard. We've had a relatively long hearing
11 this afternoon. There are two things that I have to determine
12 in these cases. One is, are there conditions I can set which
13 are going to reasonably assure that you appear in court? And
14 we were talking about that. Also, are there conditions I can
15 set which will reasonably assure the safety of the community?

16 The attorneys have been arguing about the factors I have to
17 consider. Ms. Thompson actually listed them as the nature and
18 circumstance of the offense, including whether there's a minor
19 victim, which this is a minor victim offense, the weight of the
20 evidence, history and characteristics of the person, including
21 community ties, physical and mental condition, family ties,
22 also -- and to your favor, whether there's any drug abuse or
23 alcohol abuse and criminal history, which there's not, and
24 also, as Ms. Thompson pointed out, the nature and seriousness
25 of the danger to any person or the community that would be

1 posed by your release. So I have to consider all those
2 factors.

3 As Ms. Thompson pointed out, and I have to say I agree with
4 her, this is a presumption case. That means because of the
5 charge in the complaint -- and that's -- it not on the front of
6 the complaint, but it's in the affidavit -- there's probable
7 cause to believe that there's a receipt of child pornography in
8 this case. For that reason there's a presumption that I can't
9 set conditions.

10 But that presumption can be rebutted, which means if your
11 attorney presents evidence, then I can set conditions if I find
12 that they will reasonably assure that you're going to appear in
13 court and reasonably assure the safety of the community.

14 I will tell you that I have great concerns in this case. I
15 think Ms. Thompson has eloquently presented the risks that are
16 involved here. We have two -- first of all, I am considering
17 the discharge summary which shows two mental disorders that
18 are -- at this time have been untreated to this day. In fact,
19 I think we just now have the medication. We have what looks to
20 me to be a example of flight; that when you were facing a bad
21 situation, you left for Dallas. And at the same time you did
22 that, you bought a van and got a shotgun, things that are --
23 show -- or concern me. Firearms are -- we have child victims
24 in these cases, in child pornography cases. That's of great
25 concern to the Court.

1 And, as argued by the -- by the agents, each one of them,
2 we have all these videos, including videos that you made
3 showing a desire to engage in extremely violent activity.
4 That's of great concern to the Court. These are the sorts of
5 things -- as Ms. Thompson has eloquently argued, these are the
6 sorts of things that we see every day in the paper. They give
7 great concern. And I have to be -- I have to have a lot of
8 pause and hesitation before I release somebody like that
9 because it's up to me to reasonably assure the safety of the
10 community. And I've got concerns in this case.

11 That being said, the issue is not whether you're a risk of
12 danger. The issue is whether there are conditions I can set
13 which would reasonably assure the safety of the community. I
14 believe there are conditions I can set. But I'll be very frank
15 with you, Mr. Bogard. They're the most restrictive conditions
16 I can set. I cannot set anything but the most restrictive
17 conditions in this -- in this case because I'm very concerned.

18 What the conditions I would be recommending -- or be
19 imposing in this case are, first of all, there'd be home
20 incarceration, which means you are home unless you're visiting
21 your attorney, going to the doctor or going to court. I am --
22 and then if -- anything else besides that would be very
23 limited, have to be approved by the Court. And obviously no
24 firearms. Your parents would both have to sign as sureties in
25 this case and custodians.

1 I am going to be setting a higher bond than I usually set,
2 a bond of \$75,000. So if you don't show up for court, not only
3 would -- or do anything in violation of the conditions, not
4 only would you have that judgment against you, but your parents
5 would have a \$75,000 judgment against them.

6 I will require electronic monitoring in this case, which
7 means your parents have to get a landline, which means if you
8 leave the house, I'm going to know about it, and we're going to
9 come pick you up. I'm going to require mental evaluation and
10 treatment. I am very thankful for Laurel Ridge to give this
11 evaluation, but I think we need a full forensic evaluation to
12 see if there's any other concerns that have to be raised. And
13 you have to -- you have to submit to all treatment that's been
14 recommended.

15 Your home has to be approved by pretrial services, which it
16 has not yet. And a landline has to be put in so that I can
17 have electronic monitoring. Also, you have to agree and your
18 parents have to agree to subject your home to search at any
19 time if the government wants to search, because they have not
20 searched that house. And I'm going to let them do that. I'm
21 going to make absolutely sure we have no other dangers there.
22 I know that your parents have looked for guns. That doesn't
23 satisfy the Court. I want the FBI to be able to do that if
24 they wish.

25 I am also going to require the full sweep of Adam Walsh

1 protections, which means you can't have any access to the
2 internet; that all the access to the internet the home will be
3 modified -- will be monitored; and that any internet device
4 will have a password on it that only your parents know. I'm
5 going to take -- I'm taking -- I'll be frank. I'm taking every
6 single security that I can here because I'm concerned.

7 I'm also going to have, obviously, no contact with children
8 under 18 years old, no going where they congregate. I am going
9 to restrict your travel to Comal and Bexar County. I don't
10 think you need to go anywhere else for the things that you
11 need. But if you need to go somewhere else for, for example,
12 mental health treatment or other sort of -- or treatment like
13 that, I will consider allowing you to go for that treatment.

14 So those are -- I will tell you, those are about as
15 restrictive conditions as I can set. I don't think I've ever
16 set anything more restrictive than that. I have to set all of
17 these conditions in my -- in this mind, because I am actually
18 quite persuaded by the government that's there a serious risk
19 here. I'm going to take every action I can to [inaudible]
20 against that risk.

21 However, I believe -- and I know Ms. Thompson may disagree
22 and the agents may disagree. But I believe that we take all
23 these conditions and I get the approval from pretrial services
24 as to your parents' home, then those conditions will reasonably
25 assure the safety of the community.

1 I will tell you, Mr. Bogard, you can't violate any of these
2 conditions. I've -- if you violate any of the conditions, I
3 have to put you in jail. I have no choice. My job here is
4 to -- I don't care about guilt or innocence. That's not my
5 job. That's a different court. My job is to protect the
6 safety of the community, and that's what I'm going to do. So
7 that's the Court's ruling.

8 Ms. Thompson, it's going to take some time for all this to
9 happen. You maybe wish to appeal this decision. In my view I
10 think these conditions are sufficient, but I understand your
11 concerns.

12 MS. THOMPSON: I don't know how long it will take for
13 pretrial to do the home visit, but I would --

14 THE COURT: And to also get the landline. Yes.

15 MS. THOMPSON: I would ask for a stay of seven days to
16 at least confer with my supervisors about the issue of appeal.

17 THE COURT: Well, I'll do this. I don't want to stay
18 that investigation. I want them to go over there.

19 MS. THOMPSON: Oh, not the pretrial services
20 investigation but --

21 THE COURT: Well, I'm going to -- the conditions I
22 would set, all those conditions will be subject to their
23 approval. I'm not going to sign the approval until they've
24 come back to me. And I'm happy to -- I don't know if I can
25 wait seven days. I may wait until Monday, give you until

1 Monday to decide, to see if you're going to appeal.

2 But I've thought about this. This is a troubling case to
3 the Court's view. I'm not going to stay it beyond Monday. If
4 all -- if pretrial services approves the home and a landline's
5 in place, I'm going to release him. But you can seek a stay
6 from the -- from the duty district judge if you believe it's
7 appropriate, or if you want me to reconsider that decision, you
8 can file a motion asking me to reconsider the decision.

9 MS. THOMPSON: And could that be -- either one be
10 filed by the end of the day on Monday?

11 THE COURT: Yes. Well, yeah, let's try -- can we do
12 by noon on Monday? Because if I'm going to get his parents
13 down here and get this squared away, I don't want to be doing
14 it at 6:00 at night.

15 MS. THOMPSON: I will try. And I'm going to try and
16 confer with my supervisors tomorrow.

17 THE COURT: All right. Right. But if you need
18 additional time, you know, just come to me and tell me, file
19 something and I'll consider it. It's going to take a little
20 bit of time to get all these things squared away, and I want to
21 be -- I'll be frank with Mr. Bogard and his family and
22 Mr. Morris. I've got to be completely satisfied myself that
23 all those conditions that I've set are imposed.

24 If there are any additional conditions that pretrial
25 services wants me to consider besides the ones I've mentioned,

1 I'm happy to consider those as well. Oh, I should mention, no
2 drugs and no alcohol. Though I don't believe that's a big
3 issue in this case, I'm still going to impose it.

4 Yes, Mr. Morris.

5 MR. MORRIS: Last quick question. Are we withdrawing
6 the exhibits?

7 THE COURT: The exhibits are -- the government's
8 exhibits, as far as I know -- the report that you gave me has
9 not been admitted as an exhibit, but the parties have argued
10 from it.

11 MR. MORRIS: Right.

12 MS. THOMPSON: I would like mine to be a part of the
13 record.

14 THE COURT: Which one? I'm sorry. They're made part
15 of the record.

16 MR. MORRIS: Can we ask then that they be sealed?

17 THE COURT: The -- yeah, sure.

18 MR. MORRIS: The exhibits themselves.

19 THE COURT: Yeah. Sure. They'll all -- all exhibits
20 will be sealed.

21 MR. MORRIS: Thank you very much.

22 THE COURT: But they need to be part of the record in
23 case there is an appeal.

24 MR. MORRIS: I totally understand.

25 THE COURT: And it's just the Government's Exhibit 1

1 [inaudible]. Hold on one second. Let me get someone to
2 clarify all the things I may have did wrong. Yes.

3 (At the bench off the record)

4 THE COURT: All right. That concludes this hearing.
5 We'll be in recess.

6 * * *

7 (End of proceedings at 5:09 p.m.)
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2 I certify that the foregoing is a correct transcript from
3 the electronic sound recording of the proceedings in the
4 above-entitled matter.

5
6 Date: 3/4/2019

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