

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

_____	)	
United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:23-cr-000010-HCN-JCB
	)	
PLASTIC SURGERY INSTITUTE OF	)	
UTAH, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

PRETRIAL RELEASE VIOLATION HEARING  
AS TO MICHAEL KIRK MOORE, JR.,  
BEFORE THE HONORABLE  
MAGISTRATE JUDGE JARED C. BENNETT

NOVEMBER 8, 2024

\*\* ALL PARTIES ATTENDED VIA TELECONFERENCING \*\*

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**E X H I B I T S**

**EXHIBIT NUMBER**

**PAGE**

Exhibit Nos. 1, 2, and 3

24

1 November 8, 2024 Salt Lake City, Utah 1:00 p.m.

2 P R O C E E D I N G S

3 \* \* \*

4 **THE COURT:** Let's go on the record in the case of  
5 *United States of America v. Dr. Michael Moore*. This is case  
6 2:23-cr-10. We're here today for purposes of a pretrial  
7 release violation petition.

8 Before we get started, could I please have counsel  
9 make their appearances beginning with the United States.

10 **MR. STRAIN:** Jacob Strain, Todd Bouton, and Sachiko  
11 Jepson for the United States, Judge.

12 **THE COURT:** Thank you.

13 **MR. BRONSTER:** This is Jeffrey A. Bronster appearing  
14 for the defendant, Dr. Moore. David Drake is my co-counsel and  
15 was on earlier. I'm not seeing him on now.

16 **THE COURT:** Nor am I, but are we okay to go ahead  
17 without him, Mr. Bronster, just in case he's having technical  
18 difficulties? I know Ms. Mumford already sent him the  
19 invitation again, so hopefully that will take care of the  
20 problem.

21 **MR. BRONSTER:** Yeah, hopefully he'll join us  
22 momentarily, but we're prepared to proceed, Your Honor.

23 **THE COURT:** Okay. Terrific.

24 Okay. I'll note that Mr. Moore is present today on  
25 this video teleconference call.

1           Mr. Moore, I need to make you aware of an important  
2 right that you have, which is you have the right to have --

3           And so for everybody who's appearing here today  
4 that's in the public, welcome. At the same time I need to make  
5 sure that we have all of our microphones muted for those who  
6 are not participating today. So for those that that applies  
7 to, please make sure that your microphones and videos stay  
8 muted.

9           Anyway, as I was saying, Dr. Moore, you have the  
10 right to have this hearing conducted in person. However,  
11 because of the emergency motion that was filed, and the Court's  
12 attempt to accommodate that, despite the fact I am a long ways  
13 away from Utah, we're doing this hearing today by video. Would  
14 you like to proceed today by video or come in later for an  
15 in-person hearing?

16           **THE DEFENDANT:** Your Honor, I would like to proceed  
17 today.

18           **THE COURT:** Thank you. I'll take that as a knowing  
19 and voluntary waiver of the right to an in-person appearance,  
20 and we'll go ahead and proceed today by way of video.

21           All right. So we have a one allegation petition  
22 basically alleging that Dr. Moore has communicated with  
23 others -- other co-defendants.

24           Mr. Bronster, is Dr. Moore prepared to admit to the  
25 allegation, or does he want an evidentiary hearing?

1           **MR. BRONSTER:** Your Honor will understand, of course,  
2 that because of the circumstances, Dr. Moore and I have had  
3 only moments to talk. I'm going to tell Your Honor my opinion  
4 is to how we should proceed, but of course it will be subject  
5 to my client.

6           We are not going to burden the Court with an  
7 evidentiary hearing simply for the purpose of showing that the  
8 texts were sent.

9           However, in the prior hearing, I heard an extensive  
10 discussion by the Government and then subsequently from the  
11 Court about things that Ms. Burgoyne has supposedly said to the  
12 Government. And Your Honor considered and discussed those  
13 accusations when making your determination about how to proceed  
14 as to Ms. Andersen.

15           If and to the extent either the Government or the  
16 Court wished to rely on accusations that Ms. Burgoyne has made  
17 other than the mere allegation that these texts were exchanged,  
18 then we do request an evidentiary hearing at which Ms. Burgoyne  
19 testifies.

20           I filed a submission last night that I'm sure that  
21 Your Honor has had a chance to see that talked somewhat  
22 extensively about Ms. Burgoyne's motivations in this matter,  
23 and they are not only criminal but civil as well. So that's  
24 really, I think, respectfully the position that I have to take  
25 in order to protect my client. We will not burden you on the

1 issue of the texts themselves, but we would request a hearing  
2 if anything that Ms. Burgoyne has accused him of outside of  
3 that is going to be in any way a subject of the hearing.

4 **THE COURT:** Right. Just to make sure I understand.  
5 The emails, or the text messages, no dispute there. But if the  
6 United States is going to rely on information from Ms. Burgoyne  
7 that was proffered to them and is evidence in this hearing or,  
8 I mean, in this proceeding generally, that you would want to  
9 have an evidentiary hearing wherein you could cross-examine  
10 Ms. Burgoyne and try and get it to the truth from your  
11 perspective; is that right?

12 **MR. BRONSTER:** Yes, with just one small  
13 clarification.

14 **THE COURT:** Sure.

15 **MR. BRONSTER:** The texts themselves, it is not my  
16 intention to concede that they are clear and convincing  
17 evidence of a violation. But that's a matter of legal argument  
18 that I could discuss with Your Honor. It doesn't require a  
19 hearing. So aside from that, Your Honor's analysis of it is  
20 exactly correct.

21 **THE COURT:** All right. So fair enough. You're  
22 willing to concede as a matter of fact that these text messages  
23 were sent, everything else is up for grabs. Is that right?

24 **MR. BRONSTER:** Yes, Your Honor.

25 **THE COURT:** Okay. All right.

1           Mr. Strain, I assume -- are you arguing this one as  
2 well, or is it Ms. Jepson or Mr. Bouton?

3           **THE PROBATION OFFICER:** I'll be arguing this one as  
4 well, Judge.

5           **THE COURT:** All right. Do you plan on relying on  
6 Ms. Burgoyne's assertions for purpose of evidence in showing  
7 why pretrial release should be revoked here?

8           **MR. STRAIN:** Yes, Judge. I plan to discuss the  
9 things that Ms. Burgoyne told us when -- when addressing  
10 whether or not it's likely that the Defendant will comply with  
11 his release conditions.

12           In terms of the allegations, the allegation is just a  
13 one-count allegation that Dr. Moore has communicated with his  
14 co-defendants on a specific day as reflected by the message.

15           I'm also confused, Your Honor, are we -- is the  
16 defendant admitting to the allegation or is he not?

17           **THE COURT:** My understanding -- and I guess  
18 Mr. Bronster can fix it if I'm incorrect -- my understanding is  
19 that he's admitting to the allegation; that is, there was  
20 communication on a certain day between co-defendants. I think  
21 what this whole, in terms of the text messages being sent, I  
22 think that's undisputed.

23           The question then that naturally follows is the  
24 United States going to seek revocation, as the filing of the  
25 United States has made says.

1           Mr. Bronster's responded by saying to the extent  
2 revocation -- since we're arguing about pretrial release  
3 revocation -- an important factor the United States appears to  
4 rely on as to why that should happen would be these additional  
5 meetings which further demonstrate noncompliance to the Court's  
6 orders.

7           So aside from just the sheer fact that we've got an  
8 exchange of text messages, it seems that these other issues may  
9 be relevant to the likelihood that Dr. Moore will comply with  
10 the Court's orders going forward; and therefore, it's relevant  
11 enough to have -- to have that as part of an evidentiary  
12 hearing to determine whether he is, indeed, going to comply  
13 with court orders.

14           So I think there's no dispute these messages were  
15 sent. But the dispute in terms of what Ms. Burgoyne has to say  
16 and to the extent it's relevant showing the likelihood of  
17 further additional compliance down the road is really the  
18 issue. Does that make sense?

19           **MR. STRAIN:** It does, Your Honor. And we weren't --  
20 just so the Court is aware, we weren't planning to call  
21 Ms. Burgoyne as a witness either today or later in an  
22 evidentiary hearing. The Defense can call her if they would  
23 like.

24           **THE COURT:** All right.

25           Mr. Bronster, what are your thoughts on this? Now



1 that you've heard what the United States plans to rely upon in  
2 terms of arguing for pretrial release revocation, what is your  
3 preference here in terms of the style of hearing you would like  
4 to have?

5 **MR. BRONSTER:** I think it's interesting that in a  
6 proceeding to take away the Defendant's liberty, the Government  
7 is proposing shifting the burden to the Defendant to call a  
8 witness who supposedly is going to damn him.

9 I would say a few things. Number 1, and I just want  
10 to make this as clear, the answer to Mr. Strain's question,  
11 original question, is we are not admitting the violation. We  
12 are admitting the fact of the sending of the texts, and then  
13 reserving the right to argue to Your Honor that they don't  
14 constitute a violation, but Your Honor will make the  
15 determination on that. And so in that sense, Ms. Burgoyne's  
16 statements are not strictly necessary to prove the sending of  
17 the text.

18 And I assume that the Government's position will be  
19 that that being the case, they can use what she said without  
20 calling her as a witness because they're not proving the  
21 essence of the offense charged, but only using it as part of  
22 argue as to what the deposition should be.

23 But let's be very clear. I heard the first hearing,  
24 and the discussion of what Ms. Burgoyne has supposedly said to  
25 the Government became a very significant factor in Your Honor's

1 discussion of the facts.

2           **THE COURT:** It did, and I mentioned it, but I said I  
3 wasn't relying on it because there was no evidence present. I  
4 just said that. I don't know how we get to the point where  
5 it's a significant part of my ruling. I didn't rely on it. I  
6 said that. So help me understand what I'm missing.

7           **MR. BRONSTER:** Okay. That being the case, Your  
8 Honor, I would respectfully submit that the Court should  
9 preclude, and I mean where we're, you know, we're undoing  
10 what's been done because Your Honor's already heard it, but  
11 Your Honor has experienced with hearing evidence and then  
12 determining whether or not it should be considered. We would  
13 seek to preclude Mr. Strain from even referring to anything  
14 that Ms. Burgoyne has said about meetings or anything like  
15 that.

16           If Your Honor has already heard and decided not to  
17 consider it, then there would be no reason to allow him to go  
18 back into it here.

19           If he is going to go back into it here, I don't see  
20 how we could be precluded from having a hearing with testimony.  
21 I have no -- I have not got the slightest question about  
22 Mr. Strain's credibility. I would never question his  
23 representations. But that's not the issue. The issue is that  
24 Ms. Burgoyne has all kinds of motives to lie that Your Honor  
25 can't analyze just from hearing what Mr. Strain has to say.

1           So, respectfully, I would submit that if Your Honor  
2 is prepared to preclude the Government from relying on any of  
3 that in its argument for relief, then a hearing would not be  
4 necessary; otherwise, subject to what Your Honor decides, I'd  
5 respectfully submit that it is.

6           **THE COURT:** All right.

7           Any thoughts on that, Mr. Strain, before we decide  
8 our path forward here?

9           **MR. STRAIN:** It sounds like we need an evidentiary  
10 hearing. In our district it's common to proceed by proffer.  
11 And if the Defense wants an evidentiary hearing, it sounds like  
12 we need to have one.

13           **THE COURT:** Okay. Let's go ahead and schedule an  
14 evidentiary hearing then. It would have to be -- Monday is a  
15 federal holiday. I'm happy to do that, but I'm sure no one  
16 else would be. We could do Tuesday, but I'm full on that day,  
17 full of hearings. Wednesday, I'm traveling to Washington, D.C.  
18 Could we do Thursday afternoon by Zoom?

19           **THE COURTROOM DEPUTY:** Judge, we're going to have to  
20 check with ADC. It may have to happen after the hearing,  
21 because I can't -- unless it's going to be by Zoom?

22           **MR. BRONSTER:** I have some objection, Your Honor, to  
23 the fact that the Defendant is now going to have to wait in  
24 additional week to even have a chance to get out. Is there no  
25 ability for us to have a hearing, either before Your Honor, or

1 the -- or anyone who is available for him to have a chance?

2           The other thing is -- and I don't know if this is  
3 possible, Your Honor -- I don't know Dr. Moore's position on  
4 this. Dr. Moore faced now with possibly an extra week in jail  
5 might say to me, "No, I'd rather go ahead and not have the  
6 hearing." I don't suspect that that would be his position, but  
7 I have no way of knowing, and I feel that it really his  
8 decision to make.

9           Is there any vehicle for my having a very brief but  
10 private conversation with him to discuss that matter of legal  
11 strategy?

12           **THE COURT:** Unfortunately, because I'm using my iPad  
13 today, I don't have my computer, I don't have the ability to  
14 make break-out rooms, which is one of, I'm afraid, the lousy  
15 features of the iPad features of Zoom. Certainly, if I was at  
16 my desktop or laptop, I would be able to do so. But I can't  
17 today, and I don't think anyone else can either here.

18           **MR. BRONSTER:** I understand, Your Honor, and I  
19 realize that there are limitations; and, you know, frankly, I  
20 appreciate the Court granting our request to have a hearing  
21 this quickly, so we have to live with those limitations.

22           If I may then just address to my client by framing  
23 for him the exact question that he has to decide right now so  
24 that he can at least give a response.

25           Dr. Moore, we are being presented with two choices:

1 We can proceed and do the hearing today to get a determination.  
2 The tradeoff for that will be that Mr. Strain will once again  
3 be proffering the same information to the Court about what  
4 Ms. Burgoyne has supposedly said, and we will -- we will have  
5 an opportunity to dispute what value it has, but we will not  
6 have the ability to cross-examine Ms. Burgoyne to attempt to  
7 show the Court that she perhaps is not even a truthful witness.

8           If we want that opportunity to cross-examine  
9 Ms. Burgoyne, the Court is willing to give it to us, but it  
10 cannot happen until, as I understand it, next Thursday; and  
11 obviously, you're going to remain incarcerated until that time.

12           It would be my recommendation to you that we proceed  
13 without the ability to cross-examine her, but it is not a  
14 strong recommendation. I believe that there is substantial  
15 merit both ways, and I have to leave up to you what -- I'm  
16 sorry that you have to make this decision so quickly and under  
17 such pressure -- but I leave up to you the choice of whether we  
18 should proceed today without the ability to cross-examine her,  
19 or whether you're prepared to remain where you are for another  
20 week so that we have that opportunity?

21           **THE DEFENDANT:** Um, talk about a rock and a hard  
22 place.

23           **MR. BRONSTER:** I know. I know it's difficult.

24           **THE COURT:** Well, if it makes you feel any better, if  
25 you want to proceed today, as I indicated with Ms. Andersen,

1 given that there is an absence of information here, we can go  
2 ahead. And I'm not going to consider what Ms. Burgoyne has to  
3 say until we have that evidentiary hearing.

4 Now, but -- I mean, if that's -- because it's  
5 disputed fact. But if we do have an evidentiary hearing, I'll  
6 consider whatever the Government and you put forward in terms  
7 of testimony, I'll listen to it and give it, its appropriate  
8 weight.

9 **MR. BRONSTER:** I recommend, Dr. Moore, that we take  
10 advantage of what the Court is offering. I think there are a  
11 lot of things I would want the Court to hear today that may  
12 assist the Court in making its decision without what  
13 Ms. Burgoyne has to say. But if that ends up becoming a  
14 critical factor that may lead to you remaining in jail, the  
15 Court is offering to allow us the opportunity to have that  
16 hearing next week.

17 If I have understood Your Honor correctly.

18 **THE COURT:** I think that's right.

19 **MR. BRONSTER:** Are you prepared under those terms to  
20 proceed, Doctor?

21 **THE DEFENDANT:** Yes. I trust Dr. Bennett to be able  
22 to kind of evaluate the information that he's going to have  
23 appropriately. Thank you.

24 **MR. BRONSTER:** All right. Thank you, Doctor.

25 Thank you, Your Honor.

1           **THE COURT:** All right. Well, I guess I've been  
2 elevated to doctor. I get called that in Latin America.

3           **THE DEFENDANT:** I'm sorry. I said doctor. I meant  
4 to say Judge Bennett.

5           **THE COURT:** No, it's -- I'm only kidding. No  
6 worries. They call me doctor here when I'm in Latin America  
7 like I am now. So it's all right.

8           All right. Let's go ahead and talk about the emails  
9 that were admitted, let's go ahead and talk about the written  
10 submission, and whether that constitutes a violation of the  
11 Court's order.

12           Unless and before -- I'll just tell you where I'm  
13 leading right now based on the papers, and if you want to give  
14 me additional argument, I'm happy to hear it. But let's talk  
15 about the plain language of what the Court's order was, and I  
16 think it was unmistakable, and I don't think the rules of  
17 grammar support Mr. Bronster's argument here.

18           So we basically have a plain language argument that  
19 the word "potential," which was in front of the word  
20 "co-defendant" or was in front of the word "witness" somehow  
21 carries over to the word "co-defendant." So the Court intended  
22 to preclude communication with only the potential co-defendants  
23 even though the word "potential" does not appear in front of  
24 the word "co-defendant."

25           Let's talk about why, at least on the papers I'm not

1 really persuaded by that argument. I'll listen to whatever you  
2 have to say, but I'll explain why.

3 No. 1, I'm not aware of any rule in the English  
4 language that would say that a modifier like potential in front  
5 of one word somehow carries through over to other separate and  
6 different nouns like the word "defendant" or "co-defendant."

7 No. 2, I can't really see how that construction would  
8 be logical here because a defendant is not going to know who a  
9 potential co-defendant is in an ongoing investigation.

10 Moreover, the Government's not going to write out a  
11 list of, "Hey, these are people that we're investigating and  
12 may become your co-defendant one day." That's not how that  
13 works.

14 So to interpret co -- or potential witness, and then  
15 say that potential carries over to co-defendant to me does not  
16 make linguistic or practical sense in terms of how it would  
17 work out on -- on the real world.

18 And so as I read this plain language argument I'm not  
19 persuaded by it because I was really clear in the hearing as to  
20 what I meant by "Don't talk to your co-defendants." I said,  
21 "You can talk about it through lawyers."

22 And so let's talk about the argument that there is a  
23 joint defense agreement. There are three different schools of  
24 thought when it comes to joint defense agreements. The first  
25 is you can have lawyers -- the client of Lawyer A talk to



1 Lawyer B. If they're part of the same joint defense agreement,  
2 whatever Lawyer B says to the client of Lawyer A would be  
3 privileged. That's true. I think that's pretty much  
4 undisputed.

5           Group 2 would say, okay, maybe clients of Lawyer A,  
6 and clients of Lawyer B can talk to each other without the  
7 lawyer, but there has to be something there within the  
8 communications between the clients of Lawyer A, and the clients  
9 of Lawyer B that would get to the lawyer. The lawyer somehow  
10 has to be involved.

11           Then there is a third school of thought that says,  
12 well, no attorney may be necessary to have the privilege  
13 between clients of Lawyer A, and the clients of Lawyer B. But  
14 the communication between the parties, that is the clients of  
15 Lawyer A, and the clients of Lawyer B within themselves would  
16 have to be subject to the privilege because after all, the  
17 joint defense agreement doesn't expand attorney-client  
18 privilege beyond what attorney-client privilege is. It's  
19 simply an offshoot of attorney-client privilege.

20           When the Court issued its order, it was aware that  
21 attorney-client privilege would be maintained if the attorneys  
22 spoke to one another about the case, legal advice. If the  
23 clients of Lawyer A spoke to -- or if the client of Lawyer A  
24 spoke to one of the other co-defendants' attorneys, in a joint  
25 defense world that would absolutely be covered. That was the

1 way it was supposed to be done. But what the Court was  
2 precluding was Group 3, which is these individuals speaking to  
3 each other about the case or for reasons that the Court stated  
4 previously on the record. I don't think I could have been  
5 clearer.

6 And so my intention is to find that by clear and  
7 convincing evidence there is a violation of the Court's  
8 condition because I don't find even in the plain language  
9 argument or the joint defense agreement argument very  
10 persuasive given what the law is, what the rules of English  
11 are, and what I intended to do instead at the hearing. "You  
12 can talk through your lawyers." That is what I said, and that  
13 includes two groups of attorney-client joint defense agreement  
14 that didn't preclude the preparation of a case whatsoever.

15 And so, Mr. Bronster, help me understand what it is  
16 I'm missing either linguistically here or legally.

17 **MR. BRONSTER:** Well, I don't think as much as -- as  
18 much as I have some slight sense that Your Honor might actually  
19 be as interested in the linguistics of it as I am, myself. I  
20 don't think it merits my taking your time on that except to  
21 point out one thing. I was drawing that linguistic distinction  
22 only as to the pre-printed text in that provision. I was not  
23 suggesting that it applied in any way to what Your Honor said.

24 I do think that my linguistic interpretation has some  
25 merit not just as a matter of English language, but because

1 otherwise this really what is a standard form is criminalizing  
2 co-defendants working together to prepare a defense to criminal  
3 trial.

4           And as I indicated in my letter, I can understand  
5 that there are circumstances where that may be merited.  
6 Certainly, co-defendants have no right to engage in witness  
7 tampering or other criminal activity under the guise of  
8 preparing for trial, but to have a blanket prohibition when  
9 there is no evidence of any such circumstance against  
10 defendants preparing for trial together and assisting each  
11 other and their attorneys, and Your Honor, I'm sure realize  
12 that these texts are largely directed towards, "Could you talk  
13 to my attorney about this?" or "Could you let my attorney know  
14 if there are witnesses?"

15           **THE COURT:** Mr. Bronster, that's exactly my point.  
16 Because remember this is not an extension of -- this does not  
17 expand the scope of the attorney-client privilege. So what  
18 does the attorney-client privilege cover? It covers  
19 confidential communications communicating between lawyer and  
20 client.

21           Now, if Kari, for example, would have said, "Hey,  
22 Dr. Moore, your lawyer told me X," that -- setting aside what  
23 the Court's order was -- that would be privileged. I would  
24 agree with you. That would be attorney-client privilege within  
25 the realm of the joint defense agreement.

1           **MR. BRONSTER:** I --

2           **THE COURT:** But what the Court --

3           **MR. BRONSTER:** I --

4           **THE COURT:** But what the Court -- I'll give you a  
5 chance in a second. It's important for you to hear what I have  
6 to say, and hopefully it will help you to answer some of my  
7 questions that I've got.

8                   But what I'm saying here is that's -- these texts  
9 don't do that, first of all.

10                   Secondly, this did not in any way, shape, or form, my  
11 order, preclude them from preparing a defense. They absolutely  
12 could have spoken with different attorneys of their  
13 co-defendants. That was what I intended to have happen is that  
14 you can prepare a defense. So if Mr. Brass wanted to speak  
15 with your client, and you were fine with that, and vice versa,  
16 no problem.

17                   What I didn't want to have happen was collusion, and  
18 that was crystal clear. I mean, that's why we have that  
19 provision, and it includes co-defendants. That's a pretty  
20 standard condition especially whereas here you got a group  
21 that's tightly working together. And I already warned them  
22 once not to do it, and yet here we are.

23                   So it's not like we were without a factual basis here  
24 for concerning this concern about collusion and still providing  
25 them a fairly ample way of being able to prepare a defense by

1 communicating with other co-defendants' attorneys.

2           So help me understand what it is I'm missing here by  
3 saying that this provision I included is overbroad or  
4 unreasonable. It seems to me that it allows you to do exactly  
5 what you need to do while concern -- reducing the Court's  
6 concern, which is why it was imposed about collusion, because  
7 they were talking after I told them not to.

8           **MR. BRONSTER:** I think Your Honor and I are much  
9 closer to being on the same page than I might have anticipated  
10 a few minutes ago.

11           Your Honor's intent -- and this is going to come down  
12 partly to a question of a reasonable interpretation of your  
13 language, but for the moment, let me concede that the language  
14 of your order precluded this communication.

15           Part of the reason that Dr. Moore would not  
16 understand that he was violating the Court order is because the  
17 reason for your order was very clear. It is exactly what you  
18 just stated. The Court has legitimate concerns about  
19 collusion.

20           And Dr. Moore, interpreting the term "collusion" even  
21 broadly rather than narrowly would have to be very scrupulous  
22 to avoid any such conduct.

23           So now let's again look at the texts in which  
24 Dr. Moore, on the eve of a hearing that was going to shape the  
25 entire remainder of this litigation, is writing to a

1 co-defendant and saying, "Have your lawyers come to this  
2 hearing. My lawyer wants to know what patients there may be,"  
3 whatever the exact language was.

4 That may come under the heading of collaboration,  
5 which is a purely neutral word. By no interpretation of the  
6 word does it constitute any type of collusion. Collusion by  
7 definition includes an aspect of wrongdoing. And there is  
8 nothing here, and I submit to you that although you may find  
9 and may have basis to find that Dr. Moore violated the  
10 technical, exact meaning of the words written in the order. He  
11 certainly did not violate the spirit of it, which is to prevent  
12 the Defendant from colluding to do something improper.

13 These texts were sent, on their face as desperate  
14 communication to get everybody working on the same page, to  
15 work and help -- to work with and help the lawyers to put  
16 together a defense. There's no ill-intent in any of these  
17 texts. And there's only a handful of texts to begin with.

18 And so, respectfully, I would submit that there is at  
19 worst, and I don't say that to minimize it, but at worse, a  
20 technical violation, and that the Court -- despite your  
21 obligation to scrupulously uphold the Defendant's legal  
22 obligations, I think that the Court can readily understand how  
23 in the pressure of moment on the eve of that hearing, when much  
24 of the Defendant's future was probably going to be decided,  
25 that he may not have realized in that moment that asking a

1 co-defendant to reach out and to help his attorney in preparing  
2 a defense would violate the intent of the Court's order.

3 Does that completely excuse what Dr. Moore did? I  
4 think reasonable people could differ on that.

5 **THE COURT:** Let me just hit the pause button there,  
6 because the issue that we're talking about, it seems like we're  
7 about to talk about whether pretrial release should be revoked.  
8 We're not there yet.

9 All I want to know is -- the first step I have to  
10 determine is, was there a violation? And it sounds like to me  
11 what you're saying is, Yeah, there may be one. It's technical  
12 in nature; therefore, it doesn't require the revocation of  
13 pretrial release. But at least there's a technical violation  
14 of the condition that I put in place. Would you agree with me  
15 on that?

16 **MR. BRONSTER:** Almost, Your Honor. I would like to  
17 say this, and I want to clarify that this position is not  
18 Dr. Moore speaking. It's me as his attorney. And I think  
19 you'll understand very clearly why I make that distinction in  
20 view of history of the case.

21 For the appellate record, I am taking the position  
22 that there is not violation because the order prohibiting any  
23 discussion among criminal co-defendants in the absence of  
24 evidence of misconduct does violate their Constitutional right  
25 to trial. That is a legal position that I am taking.

1           Understanding how Your Honor will most likely rule on  
2     that issue, I'm inclined to agree with you that the remainder  
3     of what I have to say is probably more relevant to what you do  
4     next rather than to the legal determinations.

5           **THE COURT:** Fair enough. I appreciate that  
6     clarification, Mr. Bronster.

7           Mr. Strain, your thoughts on whether a violation has  
8     occurred here?

9           **MR. STRAIN:** Your Honor, before I forget, I'd like to  
10    admit Government's Exhibits 1 through 3 into the record.

11          **THE COURT:** Any objection, Mr. Bronster?

12          **MR. BRONSTER:** No, sir.

13          **THE COURT:** All right. 1 through 3 are admitted.

14                 (Government's Exhibits 1, 2, and 3  
15                 were received into evidence.)

16          **MR. STRAIN:** Your Honor, 3142(c)(1)(B) provides a  
17    non-exhaustive list of conditions that the Court can impose to  
18    assure the appearance and safety of the community -- appearance  
19    of the Defendant, and the safety of the community, including  
20    abiding by specific restrictions on personal associations.  
21    That's in the statute. And avoiding, quote, "all contact ...  
22    with a potential witness who may testify concerning the  
23    offense."

24                 Your Honor, there is a substantial societal interest  
25    in interrupting an ongoing conspiracy. And in this case, in



1 fact, after the indictment, we learned that Dr. Moore  
2 instructed Ms. Burgoyne to destroy the remaining COVID-19  
3 vaccines that were stored in their refrigerator on the third  
4 floor of the Plastic Surgery Institute, that the destructive  
5 acts happened after indictment. These Defendants needed to be  
6 stopped from further harm --

7 **THE COURT:** Just to be clear, that isn't charged in  
8 any superseding indictment obstruction; is that right?

9 **MR. STRAIN:** That's correct. Not yet. Not yet. But  
10 the Government just met with Ms. Burgoyne, and we're  
11 anticipating looking into doing a superseding indictment,  
12 Judge.

13 **THE COURT:** Okay.

14 **MR. STRAIN:** But this is a basic condition, to avoid  
15 all contact with the co-defendant. And it is not beyond the  
16 Court's statutory authority. The discussion has been  
17 interesting. A great AUSA, now retired, once told me that you  
18 can analyze anything to vapor.

19 The condition here is beautiful in its simplicity.  
20 The Defendants will not talk about the case amongst themselves.  
21 The Defendants talked about the case amongst themselves. They  
22 violated the condition. Period. The end. Full stop.

23 I'll admit, Judge, that I'm confused by the Defense's  
24 strategy here. We have a defendant who at one time claimed to  
25 be a sovereign citizen, claimed that the Court lacked authority

1 over him, and his personal motto is "Do not Comply." And his  
2 defense is now, without citing a single case, Your Honor --

3 **THE COURT:** Well, let's -- before we get to there, I  
4 just want to focus on the violation first. We can get to the  
5 revocation issue here in a moment if we need to, but is there  
6 anything else to say as to whether this constitutes or not a  
7 violation of my previous order?

8 **MR. STRAIN:** Your Honor, it's a violation. The  
9 messages are clear. There were other violations as well that  
10 will go to whether or not he's likely to abide by the  
11 conditions. But I'll submit it there, Your Honor.

12 **THE COURT:** All right. So with that, the Court finds  
13 by clear and convincing evidence that there was a violation of  
14 the Court's order. We can talk about its significance here in  
15 a moment because I know the United States in its filing is  
16 seeking revocation of pretrial release, and whether this  
17 violation warrants that or not.

18 For the reasons previously stated, I do not find that  
19 there is any linguistic support in the way that it was worded  
20 that somehow that mister -- or Dr. Moore, here, would be  
21 justified in thinking that this condition applied only to a  
22 potential co-defendant, because after all how in the world  
23 would he even know that, nor is the Government going to divulge  
24 that. So linguistically and practically, that construction  
25 makes no viable sense to me whatsoever. And nor does it

1 deprive Dr. Moore of his ability to prepare a defense.

2 In fact, he and all the others that may be part of a  
3 joint defense agreement have an ample opportunity through their  
4 attorneys to engage in that joint defense, to exchange facts  
5 and other information they would find necessary to defend  
6 themselves.

7 And of course, the Court wants to point out that it  
8 did give a verbal warning in a prior hearing saying that this  
9 thing shouldn't happen based on the fact that after the Court  
10 issued it the first time, it was disobeyed, and it seemed like  
11 that was going to be a problem. So the Court pointed out that  
12 this shouldn't happen.

13 If I am wrong on this as a matter of Constitutional  
14 law, Judge Nielson or the Tenth Circuit can certainly correct  
15 me. And if I'm wrong on that, I'll absolutely bow to law. But  
16 as I read -- what I understand the case law in terms of being  
17 able to prepare a defense, this provided more than an ample  
18 room to do so, while at the same time under our record  
19 protecting the integrity of the process. So I find that there  
20 was a violation.

21 The United States is seeking revocation of pretrial  
22 release, which then brings up three things:

23 First, I have to consider whether there is a risk  
24 of -- an unmanageable risk of nonappearance of Dr. Moore.

25 I have to also consider whether he poses an

1 unmanageable risk of danger to the community. And, again,  
2 danger does not mean that he poses as a risk of physical  
3 violence. It means that he poses a risk of committing crime if  
4 released.

5 And finally, under 18 U.S.C. 3148, I also have to  
6 consider whether he is likely to abide by any condition of the  
7 Court.

8 I suspect from out last hearing as well as what I've  
9 read thus far in the papers submitted by the parties, the real  
10 issue here is not the risk of non-appearance nor that of danger  
11 but so much that as whether Dr. Moore is willing to -- is going  
12 to abide by Court conditions. And so I suspect that will be  
13 our debate today.

14 So because the United States bears the burden of  
15 showing that Dr. Moore's pretrial release should be revoked,  
16 the Court is first going to hear from -- first going to hear  
17 from the United States. I'll then give Mr. Bronster the  
18 opportunity to respond, and then I'll give the United States  
19 the last word given that it is their burden to carry.

20 Mr. Strain, go ahead.

21 **MR. STRAIN:** Thank you, Your Honor.

22 Which brings me back to what I was saying earlier,  
23 that I'm confused. I'm confused by the strategy here. To have  
24 a defendant who has once claimed that the Court lacks authority  
25 over him, and that his motto is, "Do not comply." That his

1 attorneys are now claiming without citing a single case that  
2 the Court lacks authority to impose these basic conditions.

3 I'm still confused as to whether they've admitted or  
4 denied the allegations that the Court has already ruled on  
5 this, but they also promise in their papers that -- to the  
6 Court -- that the Defendant will scrupulously abide by  
7 conditions if released.

8 Well, my head is spinning, Judge. The Court can be  
9 confident of one thing: Dr. Moore will not scrupulously abide  
10 by any condition that the Court imposes. If he doesn't believe  
11 that he should do it, he won't do it. And he doesn't believe  
12 that the Court has the right to limit his activities while on  
13 pretrial release, and apparently his attorneys, to some extent,  
14 seem to agree with them.

15 I can say, Judge, that the arguments that this was  
16 completely unintentional or just a misunderstanding is  
17 destroyed by the procedural posture of the case, and by the  
18 evidence itself.

19 The Court could not have been more clear to Dr. Moore  
20 on multiple occasions. This was a condition that was repeated.  
21 It's a condition that was reemphasized and bolded. He knew the  
22 condition. He understood the condition. He violated the  
23 condition.

24 The evidence destroys this argument as well.  
25 Dr. Moore wrapped his GPS ankle monitor in a towel because he

1 was afraid that probation was listening to his conversations  
2 that he was having with his co-defendants. This --

3 **THE COURT:** And that's from Ms. Burgoyne; is that  
4 right?

5 **MR. BRONSTER:** It came from Ms. Burgoyne, Judge, but  
6 it's such a strange piece of evidence that I can't imagine that  
7 it's something that she would just make up.

8 In addition, Judge, this is not just Ms. Burgoyne  
9 they used Signal. Dr. Moore was on a computer- and  
10 text-monitoring provision. And he was on home detention when  
11 he was released from jail. And he pivoted to an app that he  
12 knew that he could use without detection from probation and  
13 that's why he was using it. And that's why he was  
14 communicating with his co-defendants in violation of the  
15 Court's order using that app. This provides clear indicia of  
16 consciousness of guilt. He understood what he was doing, and  
17 he did it any way.

18 Based on his past behavior, his previous violations,  
19 and his current violations, Judge, it's our position that he  
20 will not comply with the Court's orders. I'll leave it there.

21 **THE COURT:** Thank you.

22 Mr. Bronster?

23 **MR. BRONSTER:** Thank you, Your Honor. I'd like to  
24 start by making a legal argument before I address some of the  
25 more fact-sensitive issues. And here, again, I think based on

1 the history, it's worth prefacing it by saying that this is not  
2 an argument Dr. Moore is making as a sovereign citizen. I had  
3 actually meant to keep track of how many times the Government  
4 could manage to squeeze in the term "sovereign citizen" in its  
5 argument, and I forgot to do so, but this is his lawyer making  
6 a legal argument.

7           Hopefully, this argument will not confuse the  
8 prosecution, and hopefully it will not further bolster the  
9 Government's apparent opinion that Dr. Moore's attorneys treat  
10 the law and the Court's order cavalierly, and agree with  
11 anybody that they could be lightly discarded. I would  
12 certainly like to think that the Court does not have the same  
13 confusion on that issue that the Prosecutor does.

14           I will simply add to that, that after 45 years as a  
15 state and federal prosecutor and private attorney, I can assure  
16 the prosecutor that every bit as seriously as he does, I value  
17 and heed the orders of a federal district judge.

18           The legal argument, You Honor, is simply this: Your  
19 Honor cannot as a matter of law revoke Dr. Moore's release and  
20 incarcerate him. And here is the explanation for my position.

21           The statute allows three remedies, which in effect is  
22 really two.

23           It allows you to invoke the conditions of release.

24           It allows you to detain him, and those two are part  
25 and parcel of the same thing. And it allows to you to initiate

1 a contempt proceeding.

2           Having found the existence of a violation I will not  
3 contest Your Honor's right to initiate a contempt proceeding.  
4 I am certainly hoping that Your Honor will not. I would  
5 certainly argue that on the merits of what is appropriate, it  
6 is not the right way to go. But I can't dispute Your Honor has  
7 that right, and if it's what you decide to do, then you will do  
8 it.

9           But you do not legally have the right to incarcerate  
10 him, and here is why: The statute on the procedure for the  
11 violation -- for what the Court can do after finding a  
12 violation refers directly back to the detention statute itself.  
13 And under the detention statute, there are only two reasons why  
14 you can detain a Defendant prior to trial. Either because he  
15 presents a substantial risk of flight, and Your Honor has  
16 already acknowledged that nothing here establishes that; or  
17 because he is a danger to an individual or to the community as  
18 a whole. And as Your Honor has said, we generally equate that  
19 presence of danger as being will he commit a crime, and there  
20 is nothing in these text messages that suggests in any way,  
21 shape, or form that he will. If you do not --

22           **THE COURT:** Mr. Bronster, let's talk about this legal  
23 argument for a second because I guess I'm confused about this.  
24 So as I'm looking at 18 U.S.C. 3148(b)(2), it says that the  
25 judicial officer basically can revoke and detain. So those are



1 two separate things. It's revocation and detention. If after  
2 a hearing I find that there's clear and convincing evidence  
3 that there's a violation of the condition of release, which  
4 I've done.

5 Then there's part two, which says, "and finds that  
6 based on the factor set in 3142(g)," which is the flight and  
7 danger components. And then it says "or (b) the person is  
8 unlikely to abide by any condition or combinations of  
9 conditions of release."

10 I am not bound as I read the text here, and I'm  
11 curious as to how we get there with statutory construction, how  
12 3142 is the limit of my abilities here to revoke when clearly  
13 there's is separate -- Congress took the time to put a separate  
14 condition, a separate reason in there, "the person is unlikely  
15 to abide by any condition or combinations of conditions of  
16 release." That's an "or." Meaning, I interpret it in the  
17 disjunctive. I'm not bound solely by 3142(g). I have another  
18 option, if necessary, and that is the likelihood that he's  
19 going to abide by conditions.

20 So help me understand what am I missing in terms of  
21 statutory construction given the fact that Congress took the  
22 time to pars out something completely separate from 3142(g)'s  
23 inquiry.

24 **MR. BRONSTER:** Here's the reason why, Your Honor:  
25 Because what the -- what the construction of that is that you

1 can find that there are conditions that would prevent the  
2 Defendant, for example, from fleeing, like an ankle bracelet.

3           The second subsection says, however, though, even if  
4 you find that that condition would suffice, if you don't think  
5 that the Defendant would follow it, if you don't believe that  
6 it is enforceable, then, of course, you can detain him. And  
7 that's fine. I have no problem with that.

8           But the -- excuse me -- the statute still then refers  
9 you back to 3142, and the fact of the matter is that the  
10 condition of not talking to his co-defendants is not a  
11 condition -- I would respectfully submit to you that it's a  
12 condition that for the reasons I'm going to say should not have  
13 been imposed in the first place, but that's not the point. You  
14 imposed it, and he violated it, so we have to deal with that as  
15 it is. But it is not a condition that has anything to do with  
16 the risk of flight or danger to the community; and therefore,  
17 you cannot incarcerate him now, take away his liberty, because  
18 it does not meet the two criteria Congress found to allow you  
19 to do so.

20           What you can do is initiate a contempt proceeding.  
21 I'm not saying that there are no repercussions of what the  
22 Defendant arguably did. And if you decide to avail yourself of  
23 that part of the statute that allows you that remedy, then so  
24 be it. But you still have to go back to 3142, and if the  
25 condition that he violated does not threaten the community or

1 create a risk of flight, then the remedy cannot be  
2 incarceration.

3           You may have other conditions that you seek to  
4 impose. I respectfully submit to you, Your Honor, that at this  
5 point Your Honor should actually lift the restriction on  
6 co-defendants, because I respectfully submit to you that with  
7 trial two months away, we desperately need to be able to  
8 coordinate.

9           Now, when I say trial two months away, let me just  
10 clarify, because, of course, Your Honor was not party to the  
11 hearing in front of Judge Nielson. After that hearing,  
12 Judge Nielson very graciously agreed to consider an application  
13 that would put the trial off to July to allow more time for the  
14 Defense to prepare in light of his rulings. But I can tell  
15 Your Honor straight out that if Dr. Moore is incarcerated, he's  
16 not going to be making that motion. He's not going to sit in  
17 jail eight months waiting for trial.

18           So, I'm sorry, Your Honor --

19           **THE COURT:** Yeah, no. I'm opening up 3148 so we can  
20 all look at it together.

21           **MR. BRONSTER:** Thank you, Your Honor. Thank you. I  
22 thought that was my computer.

23           Because of my problems with Zoom, I had to relocate.  
24 May I briefly run into my office next door to get my copy of  
25 the statute.

1           **THE COURT:** I've got it right up in front of you,  
2 actually, if you want to look at it.

3           **MR. DRAKE:** Judge, David Drake here. Can you hear  
4 me?

5           **THE COURT:** Yes.

6           **MR. DRAKE:** All of a sudden I have this Thomson  
7 Reuters Westlaw classic select a registration key come up. I  
8 don't know how to get out of it.

9           **THE COURT:** I'm not sure because, sadly, I went into  
10 law instead of computers, but what I've done is simply shared  
11 my screen here so that we can look at the law that Mr. Bronster  
12 is telling me I have discretion under. We need to hurry  
13 because the jail has other cases it has to get to today, so  
14 let's get this moving along.

15           I think I understand your argument, Mr. Bronster, and  
16 we can look at it textually here in a minute. Is there  
17 anything else that you think that I need to know?

18           **MR. STRAIN:** Your Honor, if I remember, Mr. Bronster  
19 stepped out to get his copy of the law.

20           **THE COURT:** Okay. Well, I said it was up in front  
21 because that way he wouldn't have to do it, but anyway...

22           **MR. DRAKE:** Judge, while he's out -- this is David  
23 Drake again for the record -- would you have any problem or  
24 Mr. Strain have any problem with me adding one bit of tail end  
25 to Mr. Bronster's argument? Because there's something I have

1 personal knowledge of that he does not.

2           **THE COURT:** Well, what I would encourage you to do at  
3 this point in time, Mr. Drake, is to communicate with  
4 Mr. Bronster. As I indicated, we've been on this hearing for  
5 55 minutes, and the jail -- we're probably backing them up  
6 right now, and we need to get this argued. I tried to be very  
7 patient, but let's get this thing going. So I'd communicate  
8 with him and ask him to say it.

9           **MR. DRAKE:** Okay. All right. Thanks. It has to do  
10 with the motive by Ms. Burgoyne.

11           **THE COURT:** Yeah, and I'm not -- to be honest with  
12 you, I'm not really taking into account anything that she's  
13 alleging at this point because there is a factual contention.  
14 We're focusing solely on what is in front of me in terms -- I  
15 mean, if it's any consolation to you, it's not going to be  
16 important to me because what Ms. Burgoyne allegedly said  
17 doesn't really move the needle for me at this point.

18           **MR. DRAKE:** Thanks, so much, Judge. Appreciate it.

19           **THE COURT:** Is Mr. Bronster back yet?

20           **MR. BRONSTER:** Yeah, no, I'm here Your Honor. I  
21 still have this Thomson Reuters thing on my screen. I didn't  
22 know if Your Honor was waiting for something to come up there  
23 or not.

24           **THE COURT:** No. It was the law, but go ahead.

25           **MR. BRONSTER:** In any event, Your Honor, it is our

1 contention that 3142, which is what you have to go back to if  
2 there's a violation, does not allow you to incarcerate him  
3 unless you find one of the two criteria, and Your Honor has  
4 already essentially stated that you do not.

5           If you want to punish him for what he did, there is a  
6 way to do it, and that is a contempt proceeding. But the act  
7 itself serves a different purpose. It serves the purpose of  
8 making sure that we don't take away a person's liberty pretrial  
9 without one of two very specific and important reasons, and we  
10 don't have those here.

11           I understand, Your Honor, that there are time  
12 concerns and restraints, and I know Your Honor understands the  
13 importance of the arguments I need to make, but that is the  
14 legal argument.

15           Moving beyond it in terms of what is fair and  
16 appropriate for you to do, if I may say a few words.

17           First of all, the -- I am at least several decades,  
18 to be charitable, older than the Prosecutor, and I still heard  
19 of Signal. It's not some nefarious, right-wing conspiracy site  
20 that people use. It's a site just like WhatsApp or a dozen  
21 others. It happens to be used by many prominent people,  
22 including a formal president of the United States. There is  
23 nothing nefarious about communicating on that application. So  
24 there's nothing covert about what they were doing.

25           Plus, by the time these texts were sent, the --

1 the -- if I can use the phrase the civil war, because they're  
2 in dispute over a very expensive set of medical equipment. The  
3 war between Dr. Moore and Ms. Burgoyne had long since broken  
4 out, and they were on the verge and are on the verge of  
5 litigation against each other.

6 Does Your Honor find it credible that Dr. Moore would  
7 include her on a text that had some nefarious, conspiratorial  
8 purpose?

9 What Dr. Moore did may have been a technical  
10 violation, but it is nothing more. And whatever Your Honor may  
11 feel about his conduct, it doesn't justify taking away his  
12 freedom. There are other ways to handle it.

13 I -- I would say to you that it is very clear that  
14 Dr. Moore will not violate it again, but Your Honor will view  
15 that, I am sure, somewhat skeptically, which I can appreciate.

16 But the only other thing I want to say is that we  
17 keep going back to this sovereign citizen issue. And if we're  
18 going to talk about it, then let's talk about it.

19 Dr. Moore, after being arrested and facing a felony  
20 charge that could involve many years incarceration learned of a  
21 defense that has been tried many times by many people that he  
22 raised in order to defend himself. It didn't work out. And he  
23 came to understand that the law in this country doesn't  
24 recognize the defense. So. He said, "Okay. I was wrong. I'm  
25 abandoning it."

1           He didn't refuse to show up because of it. He didn't  
2 go out and make speeches that he was going to do whatever he  
3 wanted and the Court be damned. It doesn't mean that he's any  
4 more likely to violate your conditions or the law any more than  
5 any other person.

6           And his political beliefs about COVID, his political  
7 beliefs about the vaccination, his political beliefs in the  
8 moment about the propriety of a sovereign citizen argument,  
9 they don't make him a target for Government prosecution. And  
10 it doesn't give them the right to say that he should be  
11 incarcerated because of what he believes, and that's what's  
12 going on here.

13           And Your Honor was clearly affected and impacted by  
14 the sovereign citizen incident, and I don't say that in any way  
15 as a criticism. I understand Your Honor's reaction to it. But  
16 the Government is trying to exploit that by saying that that  
17 makes him someone who cannot be trusted and who is not going to  
18 abide by court orders. And that's simply not the case, and  
19 it's not a valid argument.

20           You have to judge the Defendant -- and I think the  
21 Government would agree with this -- you have to judge the  
22 Defendant by his actions. The Government interprets his  
23 actions a certain way. But the fact of the matter is that the  
24 reason we're here today is because on the eve of a hearing  
25 Dr. Moore texted a co-defendant, "Could you get in touch with



1 my attorney about this issue." That's why we're here. And  
2 respectfully, the legislature did not contemplate that kind of  
3 act resulting in a defendant's incarceration prior to trial.

4 Thank you, Your Honor.

5 **THE COURT:** Thank you.

6 Mr. Strain, anything else?

7 **MR. STRAIN:** Your Honor, I just want to say that the  
8 prosecution and me in particular, we have never prosecuted  
9 anyone for their personal beliefs. That is not something that  
10 has ever happened. It's not something that I ever will do.

11 Look, these communications that Dr. Moore had with  
12 these co-defendants would not have been detected without the  
13 assistance of a co-defendant. Probation was not able to detect  
14 these violations.

15 Let me just end with Dr. Moore's own words in an  
16 interview that he gave in August of this year that he posted  
17 online. "I'm not going to let anybody tell me what I can and  
18 can't say, and I'm going to live with the consequences." Those  
19 are his words. That's all I have for you, Judge.

20 **THE COURT:** All right.

21 **MR. BRONSTER:** May I briefly follow up, Your Honor?

22 **THE COURT:** It better be briefly, Mr. Bronster.

23 **MR. BRONSTER:** It will be.

24 Dr. Moore has every right to promote his free speech  
25 concerns and to make those statements, even if it's in terms

1 that the prosecution's not particularly comfortable with. As I  
2 stated in my brief, we've come a long way as a country if  
3 saying something like that makes you subject to incarceration.  
4 Thank you.

5 **THE COURT:** All right.

6 So let's talk about the law because that's been  
7 brought into issue here. What does 3148 allow me to do? As I  
8 read, Congress has two different ways that detention can be  
9 imposed and pretrial release can be revoked.

10 No. 1, the 3142(g) factors; that is, unmanageable  
11 risk of nonappearance and an unmanageable danger to the  
12 community. They then bothered to include a second one, which  
13 was unlikely to abide by court orders.

14 Now, Mr. Bronster has said that the law then refers  
15 me back to 3142, and it kind of does, but let's look at the  
16 context in which it does so. It says:

17 "If the judicial officer finds that there are  
18 conditions of release that will assure that the person will not  
19 flee or pose a danger to the safety of any other person or the  
20 community, and that the person will abide by such conditions,  
21 the judicial officer shall treat the person in accordance with  
22 the provisions of ... 3142 of this title and may amend the  
23 conditions of release accordingly."

24 That's the law we're interpreting here.

25 So under 3148, there is an independent basis to

1 detain based on the violation of conditions.

2           Now, honestly, if this were the first violation that  
3 we were dealing with, with Dr. Moore, I mean, this, to me,  
4 would be pretty easy. I mean, it would be a pretty stern  
5 admonishment, and we'd send Dr. Moore out the door. We  
6 wouldn't reduce his conditions. I don't think it's worth  
7 rewarding people for violating court orders. I think that's  
8 backwards. But this isn't. Let's just kind of reach out here,  
9 because I have to consider the likelihood of abiding by court  
10 orders in context.

11           The Court notes that at the very outset of the case,  
12 and I want to be really clear here, because there has been a  
13 lot of discussion about what the First Amendment allows. And I  
14 agree, if people want to believe in whatever movement they  
15 want, flat earth, sovereign citizen, it's great. This is  
16 America. God bless you all. The question I have to ask myself  
17 is the reason why the sovereign citizen issue was an issue to  
18 me not because it's a sovereign citizen issue but two things:

19           Number one, Dr. Moore said, "I don't recognize the  
20 jurisdiction of the Court." That's a problem in terms of  
21 abiding by conditions.

22           Number two, he also said he was not going to follow  
23 court orders, and he proved it because we had a violation  
24 hearing. He didn't participate but was simply repeating some  
25 stuff that I told him had no legal impact, and every court in

1 the country has so said.

2 As I indicated, Dr. Moore is a very sophisticated,  
3 very smart guy. I mean, to be a plastic surgeon, that's an  
4 unbelievable amount of training and education. It's something  
5 far beyond my capacity to do, so I had to recognize that. This  
6 isn't somebody who got duped by someone smarter than them into  
7 believing this stuff.

8 This was -- by choosing to file something with the  
9 federal court saying, "I don't recognize your jurisdiction.  
10 I'm not going to abide by your conditions," not abiding by  
11 conditions, and then not really participating in the hearing in  
12 any meaningful way except in repeating some gibberish. That's  
13 the concern of the Court. Regardless of what he believes, I  
14 don't care. But it's how he's going to interface, how those  
15 beliefs are going to fuel the interfacing with the law is what  
16 I care about. So we had that issue.

17 I gave him a second chance. I realized people can  
18 make mistakes on pretrial release. I understand people get  
19 desperate, make mistakes, and maybe reaching for -- I  
20 understand that the weight of a federal prosecution over  
21 anyone's head would make anyone stressed out and looking for  
22 answers. I get that. He was given another opportunity. Put  
23 him on ankle monitoring. I got to credit him. He did well.  
24 We took that off. We gave him the benefits of his good work.

25 But then we get these Signal messages. I put him

1 on -- one of the monitoring things they put him on was computer  
2 and phone monitoring. Why? Because, again, I wanted to make  
3 sure there wasn't going to be this improper back and forth.

4 Now, the argument here is this isn't an improper back  
5 and forth. They didn't discuss about lying, cheating, or  
6 stealing, or manipulating testimony or anything, therefore,  
7 this is okay. No, it's not. I said no contact except with  
8 your lawyers.

9 So what this, in context, shows to me is that  
10 Dr. Moore is not interested -- he's going to do things his way  
11 regardless of what the Court says, and he uses an app that's  
12 going to avoid detection by probation because there is another  
13 condition that is specifically set to monitor these things. He  
14 did something. I don't need Ms. Burgoyne to tell me this  
15 because Signal, I'm well aware of what it is, is saying  
16 everyone is here. It's supposed to avoid detection so that  
17 they can communicate.

18 And although these are the communications that we  
19 have in front of us, and there's reasonable inference where you  
20 have a group on Signal called "Defense," indicates this is  
21 something far more than just a one-time deal.

22 Now, I understand that that's not -- there is an  
23 allegation of October 17th, but the reasonable inferences from  
24 this history would show otherwise, would show that it's broader  
25 than that, and that Dr. Moore, instead of just simply

1 responding to someone else, is the one leading the charge.

2           For those reasons I find that Dr. Moore is unlikely  
3 to abide by the Court's conditions. And I find, as I have  
4 before, and after stern warnings and all of this, it just  
5 doesn't seem to matter. And at some point in time the Court  
6 has to uphold its orders if they're going to mean anything at  
7 all.

8           Regardless of what people believe, again, I don't  
9 care. It's okay. They're Americans. You can believe what  
10 they want. That's the beauty of our country. But when it  
11 comes to being potential fuel for disobedience and repeated  
12 disobedience, that's something that the Court cannot ignore,  
13 and, therefore, I order the Dr. Moore detained in the custody  
14 of the United States Attorney General pending the resolution of  
15 this case.

16           I understand, and by the way, Mr. Bronster, just so  
17 you're aware, I understand how significant this is. And if you  
18 appeal this to Judge Nielson, believe me, there are no hard  
19 feelings. Again, if I am wrong, I will happily submit myself  
20 to the law. But based on the way I read the statute and the  
21 facts of this case, I'm ordering Dr. Moore detained.

22           Mr. Strain, is there anything else that you need to  
23 take up today?

24           **MR. STRAIN:** No, Your Honor.

25           **THE COURT:** Mr. Bronster, anything else that we need

1 to take up today?

2 **MR. BRONSTER:** (Inaudible response.)

3 **THE COURT:** All right. I saw him shake his head no,  
4 so I will assume that means not.

5 **MR. BRONSTER:** I apologize, Your Honor. I had it on  
6 mute. No, Your Honor, nothing for us.

7 **THE COURT:** No worries. All right. Thank you  
8 everyone. We'll be in recess.

9 (Recess taken by the Court.)

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C E R T I F I C A T E

STATE OF UTAH                    )  
  )  
  )     ss.  
  )  
COUNTY OF SALT LAKE )

This is to certify that the proceedings in the foregoing matter were transcribed by me, Michelle Gonsalves, RPR, CRR, CBC, CSR, in stenotype and thereafter transcribed into written form;

That said proceedings were taken at the time and place herein named;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

In witness whereof I have subscribed my name this 18th day of November 2024.

  
\_\_\_\_\_  
Michelle Gonsalves, RPR, CRR, CBC, CSR



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