

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 CR 247 (PAE)

5 AMOS MUNDENDI,

6 Defendant.

Hearing
(via Telephone)

7 -----x
8 New York, N.Y.
9 May 18, 2021
2:40 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 United States Attorney for the
Southern District of New York

16 BY: DINA McLEOD

Assistant United States Attorney

17 FEDERAL DEFENDERS OF NEW YORK, INC.

18 Attorneys for Defendant

19 BY: TAMARA GIWA

20 Also Present:

Francesca Piperato, U.S. Pretrial Services

1 (Case called)

2 THE COURT: Let me call the case, and I'll take the
3 role. This is United States v. Amos Mundendi, docket No. 21 CR
4 247. Who do I have for the government?

5 MS. McLEOD: Good afternoon, your Honor, Dina McLeod
6 for the government.

7 THE COURT: I'll note that Ms. McLeod is participating
8 by audio.

9 Who do I have for the defense?

10 MS. GIWA: Federal Defenders of New York, by Tamara
11 Giwa, for Amos Mundendi. Good afternoon, your Honor.

12 THE COURT: Good afternoon, Ms. Giwa, who is
13 participating by video.

14 Mr. Mundendi, I can see you, but just to confirm, can
15 you hear me?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Good afternoon to you, and Mr. Mundendi is
18 also participating by video.

19 Is the pretrial officer, Officer Piperato, Francesca
20 Piperato, on the line?

21 THE DEPUTY CLERK: Judge, it's AJ. Sorry to
22 interrupt. I just sent an e-mail to Ms. Piperato. She
23 mentioned she was just kicked off the call, but she is
24 reconnecting.

25 THE COURT: I am going to move forward, particularly

1 since at the outset I have some nonsubstantive preliminaries to
2 take care of.

3 We are here on an appeal by the government of Judge
4 Netburn's bail ruling last Wednesday, which ordered that the
5 defendant could be released consistent with Section 3142 of
6 Title 18, subject to a range of conditions.

7 At the outset I need to just put on the record the
8 relevant CARES Act finding. Because of the pandemic I'm
9 conducting this proceeding through a blend of video, for those
10 who could participate by video, and telephone in the case of
11 the government and the court reporter and, when appearing, the
12 pretrial services officer.

13 Ms. Piperato, have you just rejoined?

14 MS. PIPERATO: Yes. I was able to get in. I was
15 having some difficulty. I apologize.

16 THE COURT: No worries. I'm in the middle of making
17 CARES Act findings, but I saw your name pop up.

18 Ordinarily, Mr. Mundendi, you would be appearing in
19 person before me in court and, if that is your preference, we
20 can do that. It will take a little bit of time to arrange it
21 just because of all the logistics involved and because of the
22 challenges presented by in-person proceedings during the
23 pandemic, but that's something that I can arrange. My
24 understanding, though, is that your preference and your choice
25 is to proceed remotely today, and that you are consenting to do

1 so.

2 Ms. Giwa, is that correct?

3 MS. GIWA: Yes, your Honor. I spoke to Mr. Mundendi
4 about the fact that he has a right to appear in person before
5 your Honor, and he is agreeing to proceed remotely. He waives
6 the right to appear in person. I have provided a signed waiver
7 to the Court.

8 THE COURT: Thank you. I much appreciate your doing
9 that. Not everyone does, and I appreciate that attention to
10 good procedure.

11 Mr. Mundendi, do you understand, first of all, that
12 you have a right to have this proceeding take place in person
13 before me in my courtroom with you sitting beside your lawyer
14 and everyone else there in person?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Am I correct that you are choosing to
17 waive that right, to consent, for the purposes of this
18 proceeding only, to having the proceeding done remotely?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And you authorize Ms. Giwa to sign the
21 form for you that reflects your consent?

22 THE DEFENDANT: Yes, your Honor, I do.

23 THE COURT: Very good. I find a knowing and willing
24 consent, a knowing and voluntary consent by Mr. Mundendi to a
25 virtual proceeding, and I would note that the most important

1 participants, the defendant and his counsel, are appearing by
2 video. The others who are not, including the government, are
3 less critical to this. And Ms. McLeod, prior to getting
4 started, consented to her participation by audio.

5 Can you confirm that, Ms. McLeod?

6 MS. McLEOD: Yes, that's confirmed, your Honor.

7 THE COURT: I will note for the record that all
8 relevant persons consent.

9 Before we get going on the content on this, I am
10 required by the Due Process Protections Act at an initial
11 proceeding of a defendant in a case to put the following on the
12 record, which is an obligation I have pursuant to statute to
13 notify the government, both orally and in writing, as to its
14 obligations under *Brady v. Maryland* with respect to the
15 production of exculpatory evidence.

16 Ms. McLeod, I am going to read aloud a paragraph to
17 you along those lines. At the end of it I will be asking you
18 whether the prosecution confirms that it understands its *Brady*
19 obligations and will fulfill them. Here goes.

20 I direct the prosecution to comply with its obligation
21 under *Brady v. Maryland* and its progeny to disclose to the
22 defense all information, whether admissible or not, that is
23 favorable to the defendant, material either to guilt or to
24 punishment and known to the prosecution.

25 Possible consequences for noncompliance may include

1 dismissal of individual charges or the entire case, the
2 exclusion of evidence, and professional discipline or court
3 sanctions on the attorneys responsible. I will be entering a
4 written order more fully describing this obligation and the
5 possible consequences of failing to meet it. I direct the
6 prosecution to review and comply with that order.

7 Ms. McLeod, does the prosecution confirm that it
8 understands its obligations and that it will fulfill them?

9 MS. McLEOD: Yes, I confirm.

10 THE COURT: With that, before we begin with argument
11 on the bail application, let me just ask if there are any other
12 preliminary matters I need to take up.

13 Government.

14 MS. McLEOD: No. I don't believe so, your Honor.

15 THE COURT: Ms. Giwa.

16 MS. GIWA: Nothing for me, your Honor.

17 THE COURT: In preparation for this I have read the
18 full transcript of the hearing before Judge Netburn. I have
19 read the pretrial services report out of Texas which
20 recommended the defendant's detention. I have read the
21 pretrial services addendum from this district, which
22 recommended the defendant's release on conditions, I have read
23 the complaint and the indictment in the case, and I've read the
24 government's recent letter seeking this bail hearing.

25 Ms. McLeod, is there anything else that exists in the

1 record that I ought to have read in preparation for this?

2 MS. McLEOD: There were two exhibits in the
3 government's letter, but I assume you have looked at those as
4 well.

5 THE COURT: Yes. I meant to include the exhibits when
6 I said the government's letter.

7 Ms. Giwa, anything else.

8 MS. GIWA: No, your Honor.

9 THE COURT: Ms. McLeod, you are the appellant here.
10 The standard of review here is *de novo*, and I'll be happy to
11 hear, in the course of the argument, what the underlying
12 standards are. Given the offense here with respect to
13 Mr. Mundendi, it does not appear to me that this is a
14 presumption case.

15 Go ahead, Ms. McLeod.

16 MS. McLEOD: Your Honor, the government has not taken
17 a position that this is a presumption case. We are seeking
18 detention on both flight and dangerousness, although I'll start
19 with flight. That was primarily the argument below, although I
20 do think continuing danger to the community is also a concern.

21 The first main concern for the government arises from
22 the defendant's, I guess, self-claimed status as a Moorish
23 citizen and his professed belief that essentially he does not
24 have to comply with the law of the U.S. Government, that he's
25 not subject to their jurisdiction. That was something that he

1 said directly to a police officer in December of 2020. That
2 was the subject of the police report that's Exhibit A, where he
3 was pulled over and did not have a license plate on his
4 vehicle, told the police officer, you know, he didn't have to
5 follow the speed limit because the government couldn't tell him
6 what to do. He said he didn't have to have a license plate.
7 He didn't have to have a driver's license or car insurance.

8 In addition to that, he presented the officer with
9 three different IDs, some of which have different names and
10 different dates of birth. That is consistent with evidence
11 that the government has received from Apocalypse Bella's cell
12 phone. Apocalypse Bella is a codefendant and his cell phone
13 was seized pursuant to his earlier arrest in the Eastern
14 District of Virginia. That phone has been searched pursuant to
15 a search warrant. The contents of that phone are attached as
16 Exhibit B.

17 As the Court can see there, the defendant essentially
18 is engaging in a conversation, it appears, with Bella where it
19 appears, and this is the government's interpretation of the
20 messages, that he's discussing a possible sale of some IDs or
21 Moorish citizen credentials to Bella. He then sends a photo of
22 his own four Moorish IDs to Bella, and you can see on there
23 that he has a public minister credential, IDs that include the
24 words private sovereign. Those identifications have a
25 different name. El Ashile Mundi. They also do not have his

1 correct date of birth. In the text messages he tells Bella, I
2 can go anywhere in the world without a visa. He says that he
3 can get a Moroccan passport. That's part of the concern.

4 Then those two data points, the arrest in December and
5 the text messages from the phone, are also compounded by the
6 fact that Mundendi has traveled with different IDs, in fact in
7 the same trip.

8 So, in March, he took a trip from Dallas to Fort
9 Lauderdale. On one leg of the flight he used his El Ashile
10 Mundi ID, and on the flight back he used his Amos Mundendi ID.
11 That's based on the passenger manifest, which shows El Ashile
12 Mundi on the one leg, Amos Mundendi on the other leg, and
13 that's consistent as well. That travel pattern is consistent
14 with respect to location data that we have on the phone at the
15 time which shows that the phone that we believe Mundendi used
16 was traveling from Dallas to Miami and back on those dates.

17 It's not just that he is rejects, essentially,
18 government authority. It's the fact that he has what appears
19 to be multiple IDs of himself with different names, with
20 different dates of birth.

21 In the text messages to Bella he also appears to be
22 saying that he can procure IDs and passports for Bella. Also
23 concerning. Certainly the fact that he has these Moorish ID
24 cards, someone either premade those or he got them from someone
25 who makes ID cards, suggesting that he has access to those

1 services or can do it himself.

2 This is all in conjunction with the incentive for
3 flight. He is facing significant exposure in this case. The
4 attempted loss amount is over \$14 million. The actual loss
5 amount is approximately \$7 million. Solely on that basis alone
6 he is looking at potentially a five-year guidelines sentence,
7 and that is not taking into account the defendant's criminal
8 history, which I will go into momentarily.

9 The incentives here are essentially that he is facing
10 a lot of time in prison. I can speak a little bit about the
11 strength of the government's case at the end, but the
12 government's evidence is very strong against Mr. Mundendi. I
13 will go through that shortly. The incentives are tilted in
14 that direction.

15 The government also submits that the defendant poses a
16 danger to the community. He has no legitimate employment. He
17 has sort of unexplained access. For example, he was stopped in
18 December for driving a late-model Mercedes, but he has no job.
19 As far as the government can tell, he only makes money from his
20 fraudulent activities and potentially from selling these IDs
21 that he was trying to sell to Mr. Bella or with Mr. Bella.

22 He has previously given a number of different types of
23 arrests on his rap sheet. Some are for assault. Some are for
24 misdemeanor, DUI type things. But he has been arrested for
25 fraud in the past, once in 2014 for theft of property, over

1 \$100,000, and once actually in a pending case last year for
2 fraudulent use of possession of identifying information.

3 As the government noted in its submission, the
4 defendant was arrested twice in December of 2020. Within a few
5 weeks of each other these arrests happened. One is for assault
6 causing bodily injury and one is the arrest that we discussed
7 above that took place on December 28 where he failed to
8 identify himself.

9 The concern there is that the defendant has been
10 arrested many times, has been convicted, has a pending charge,
11 a pending fraud charge in Texas, and appears to have a pending
12 assault charge as well. None of these arrests have deterred
13 the defendant from either assaulting people or from committing
14 fraud.

15 There is a serious concern on the government's part
16 that he would continue to do so even on release, that there are
17 no set of conditions that could mitigate that, particularly,
18 again, because he appears to reject the authority of the U.S.
19 Government, which, of course, pretrial services is that.

20 I'll end a little bit just on the strength of the
21 government's case because that is one of the considerations
22 that the Court looks at under the Bail Reform Act. In this
23 case the evidence specific to Mr. Mundendi is very strong.

24 The government has recorded phone conversations
25 between Mr. Mundendi and a cooperating witness in which the

1 participants discussed applying for a new fraudulent PPP loan
2 application. There are also recorded WhatsApp messages between
3 the cooperating witness and Mr. Mundendi discussing similar
4 things.

5 In at least one of those conversations the cooperating
6 witness provides some documentation, the financial
7 documentation that is needed for the application. Mr. Mundendi
8 says, in sum and substance that he will have his guy, you know,
9 change the document as needed. So the evidence is fairly
10 direct against this defendant. It is recorded. And so that,
11 again, is something that the Court and Should consider in
12 considering whether to set bail and what the defendant's
13 incentives are.

14 Unless the Court has any questions, we would sum up
15 there.

16 THE COURT: Thank you very much. I have a number of
17 questions, and I was waiting for you to finish so I can go
18 through them in an orderly way.

19 Let's begin where you left off with the nature of the
20 offense that he's been charged with being. Explain to me what
21 the false representations are here. In other words, it's a PPP
22 loan scam. What's the thrust of the material falsehood
23 alleged?

24 MS. McLEOD: For the Payment Protection Program, the
25 amount of the loan that you get from the government is based on

1 your purported payroll because the purpose of the loan is to
2 cover your payroll, essentially. It's supposed to help
3 businesses keep people on the job. So if you had wanted to get
4 an inflated loan amount from a lender, you would provide
5 information that would inflate your payroll. So you would say
6 that you had a payroll of \$800,000 a month instead of \$100,000
7 a month. So the false representations are, typically -- in
8 this case they are the number of employees and the volume of
9 the payroll, the monthly payroll.

10 THE COURT: Is the government's thesis that there were
11 no employees and there was no payroll or that the number is
12 just exaggerated?

13 MS. McLEOD: That the number was significantly
14 exaggerated.

15 THE COURT: Are there use of false documents as part
16 of the alleged crime here?

17 MS. McLEOD: We are still reviewing some of the
18 e-mails that we have. I don't think I have an example of a
19 specific false document, but I believe that the conversation
20 between Mr. Mundendi and the cooperating witness indicates that
21 there was some intention on the part of the conspirators to
22 doctor documents to the extent that they were needed in order
23 to show a higher volume of the payroll. Typically, applicants
24 would submit like IRS documents to show their payroll and those
25 can be doctored. I think there was certainly that intention,

1 although I can't point the Court to a specific document.

2 THE COURT: You mentioned earlier that the defendant
3 has traveled with different identifications, has exhibited
4 different identification documents, including to Apocalypse
5 Bella. Any insight on whether he has thought to have made them
6 himself, or he has gotten them from others? Do you have any
7 idea how these came about?

8 MS. McLEOD: I don't know who is making the ID cards.
9 I don't know what it's the defendant or whether it's someone
10 else. The doctored documents appear to be done by somebody
11 else because he sort of referenced a guy that he had that was
12 going to do that. But whether he had potentially a different
13 person for document versus ID cards, I don't know if he's doing
14 those himself.

15 THE COURT: Relevant to the codefendants, what is
16 Mr. Mundendi's role in the offense, according to the
17 government?

18 MS. McLEOD: I would say that Mr. Mundendi is of a
19 more minor role than the other two defendants, compared to
20 Bella and Toussaint. Both Bella and Toussaint, I would say,
21 have a more significant role.

22 THE COURT: Did the government consent to the release
23 on conditions of those two defendants and what were the reasons
24 those two defendants were released on conditions?

25 MS. McLEOD: The government sought detention for

1 Apocalypse Bella and was unsuccessful, and then for

2 Mr. Toussaint we agreed to a set of conditions.

3 THE COURT: Go ahead.

4 MS. McLEOD: The basis for the joint proposed bail
5 package for Mr. Toussaint was that he was a U.S. citizen with
6 minor kids in the country. He had very little international
7 travel. I believe he even had an infant. And, based on that,
8 the risk of flight argument was not as compelling.

9 THE COURT: Did Mr. Toussaint have a criminal record
10 or identification or an association with multiple
11 identification documents?

12 MS. McLEOD: No. That was also a major consideration.
13 I have to check. I don't think either Bella or Toussaint had
14 any criminal history, or if they did, it was not significant.
15 Both Bella and Toussaint are U.S. citizens and have families.
16 I understand that Mr. Mundendi also has family in the United
17 States and children as well.

18 But the main sort of distinction for us in our
19 thinking was his explicit expression of not having to comply
20 with government authority and with having not just, you know,
21 various IDs, but also claiming to have access to IDs and
22 passports. Given those two things, it did not seem like there
23 was any set of conditions that would work because, for example,
24 Judge Netburn, I think, really put together a thoughtful set of
25 conditions. I think she was, you know -- she was taking a lot

1 of things into consideration when she put together the bail
2 package.

3 But one of the conditions, for example, was that he
4 has to surrender all of his IDs. That's entirely based on just
5 the good faith of the defendant and his belief that he has to
6 do that. If the defendant, as he appears to believe, does not
7 essentially accept the authority that the U.S. Government has
8 over him, he could just not do that.

9 It was those two things, in addition to the
10 defendant's significant and fairly recent criminal history,
11 that was the key distinction for us.

12 THE COURT: Let me just ask you, is there any
13 information before me that was not before Judge Netburn?

14 MS. McLEOD: I don't think so.

15 THE COURT: Let's go to the criminal record. Below,
16 in consideration under the statute, is whether the defendant,
17 either at the time of this offense or, analogously, at the time
18 of prior offenses, had been on supervision for, you know,
19 brushes with the criminal law. It's a little hard for me to
20 tell from the pretrial report out of Texas the extent, if any,
21 to which that is so.

22 Starting with the current offense, the current
23 offense, as alleged in the indictment or complaint, begins
24 essentially in March 2020, more or less when COVID and soon the
25 PPP began, and extends until a year later. At any point during

1 that time period was the defendant under any form of
2 supervision for a criminal offense, parole, probation, federal
3 supervised release, anything like that?

4 MS. McLEOD: The government had a similar issue sort
5 of deciphering what the defendant's whole status was. It
6 seemed like, based on -- let me pull up -- I'm looking at the
7 rap sheet. It seems like he should have -- he would have -- I
8 guess he was discharged from probation in 2019 and it says he
9 was not placed on conditions of the bond until February 10,
10 2021. That is for the July 2020 offense.

11 Just based on that, it seems like it's possible that
12 in that time period, no, although I'm not fully understanding
13 exactly why the conditions of bond for the July offense were
14 placed in February.

15 THE COURT: It's a little unclear. The criminal
16 record, as reported here, contains various events that, at
17 least in the federal or, for that matter, New York State system
18 would ordinarily have a defendant on at least pretrial release,
19 if not postsentencing date release. They would be under some
20 form of supervision. It doesn't literally say that, I think,
21 with respect to any of the recent offenses, and the one time
22 that probation is discharged during the period before the
23 discharge is reflected a liquor violation, but it doesn't
24 result in a disposition.

25 I am trying to figure out if there is any determinable

1 point in which he commits an offense while under somebody's
2 supervision.

3 MS. McLEOD: I think from the government's perspective
4 we wouldn't make that argument because there is nothing in the
5 pretrial report or, frankly, from the rap sheet that I have and
6 that defense counsel has as well.

7 Just in my experience, and it sounds like your Honor's
8 experience as well, I can say that I think the way the Court
9 might be able to think about this is that, at a minimum, being
10 arrested, he would return to court. He can't commit any other
11 crimes. Even if you are on specific supervision, it
12 specifically should create some sort of effect, and that hasn't
13 happened here. But I don't think it's clear as to the specific
14 nature of his status in that regard.

15 THE COURT: You helpfully addressed one of the
16 conditions put in place by Judge Netburn. Your point was that
17 the obligation to surrender identification documents is only as
18 good as the defendant's willingness to surrender all of them
19 and not obtain new ones. There is a different provision that
20 she puts in place involving, in fact, parental custody.

21 What is your perspective on why that is not reasonably
22 guaranteed to ensure his appearance?

23 MS. McLEOD: I mean, a couple of things. I don't
24 doubt the good faith of Mr. Mundendi's parents, but he is, I
25 believe, in his thirties. He is not a just-out-of-high-school

1 kind of kid. He's in his thirties. He has a child. He has
2 committed various crimes going back to 2011, all apparently
3 with, I believe, living at least in the same city as his
4 parents. I am not sure whether he was sharing a house with
5 them at the exact same time.

6 But, in reality, I am not sure -- people are parents,
7 not bodyguards and parents have different relationships with
8 their children and different abilities to control them.
9 Frankly, it's not particularly reassuring, given the
10 defendant's lengthy history of disobeying the law.

11 THE COURT: One moment.

12 I think your letter indicated in July 2020 he was
13 arrested for the fraudulent use of identifying information.
14 There is a reference somewhere in here to 10 to 50 such items.
15 Where does that come from and tell me about that.

16 MS. McLEOD: Let me find the statute. That was based
17 on the statute that's cross-referenced in the rap sheet. So
18 the fraudulent use or possession of identifying information is
19 the title of that statute, and then there are various differing
20 penalties within the statute, depending on the number of items
21 of identifying information that one possesses. So the
22 government's production from the charge is that he was found to
23 be in possession of 10 to 15.

24 THE COURT: The rap sheet says that those charges,
25 unlike the DWI that was the subject of contemporaneous arrest,

appears to have been dropped.

MS. McLEOD: Yes.

THE COURT: Was it an arrest where the charges were dropped and where we really don't have any factual proffer as to what was going on?

MS. McLEOD: Sorry, your Honor. I was just reviewing the pretrial report.

I think that the Court can put certainly a limited amount of weight on it. I understand the Court's point that the charges are not pending and we are not moving forward with that.

We attempted to obtain the police report for that and have not been able to do so as of yet, but I do think it's not inconsistent with the rest of the record in front of your Honor, which he has other arrests where he has produced multiple IDs and he has -- we have photos where he shows those IDs. It's certainly not out of the sort of character where you would think, well, that must be completely wrong, but I agree that the Court doesn't have to weigh that particularly heavily.

THE COURT: On the rap sheet there are three separate assault arrests, all from Texas, one of which was resulted in a release and another of which resulted in a conviction and a 30-day sentence, and a third of which from just five months ago is pending.

Any knowledge of what the facts were underlying those

1 charges?

2 MS. McLEOD: No, your Honor. We also tried to get
3 police reports for those and haven't been able to do so.

4 THE COURT: Has the government had experience in prior
5 cases with people who adopt the same belief system that has
6 been attributed to Mr. Mundendi?

7 MS. McLEOD: I have not. I certainly have not. I
8 know that others in the office have had defendants who are
9 sovereign citizens, and I think more sovereign citizens
10 probably somewhat similar, but I can't speak to sort of the
11 specifics of those cases or what their bail conditions were.

12 THE COURT: The question is really whether there is
13 any track record with people who profess to not accept the
14 authority of the Court or the government in complying with
15 pretrial release conditions.

16 Ms. Giwa has just dropped off, so we will pause for a
17 moment.

18 MS. GIWA: Your Honor, this Tamara Giwa. I'm still on
19 the audio line, so I can hear everybody. My video has been
20 cut.

21 THE COURT: Ms. Giwa, I am close to finishing with the
22 government, at which point we will take a couple-of-minute
23 break, and hopefully you can then restore the video before you
24 and I start speaking. Are you OK with my continuing with you
25 just in audio-only mode?

1 MS. GIWA: Yes, your Honor. That's fine.

2 THE COURT: Back to you, Ms. McLeod.

3 The real issue is, I understand completely why the
4 government puts weight on Mr. Mundendi's statement --

5 There you are. Welcome back, Ms. Giwa.

6 -- Mr. Mundendi's statement that he doesn't respect
7 the authority of the government and, presumably, the courts and
8 pretrial.

9 The question is, words are words. Do we have
10 anything, either in his prior background or in the background
11 of other people who have subscribed to similar belief systems,
12 that suggest that in the crucible of an actual criminal case
13 they will not obey?

14 Ms. Giwa, you're gone again. Can you still hear?

15 MS. GIWA: I'm here, your Honor. I'm on the line.

16 THE COURT: Go ahead, Ms. McLeod.

17 MS. McLEOD: I myself have not had any personal
18 experience with someone with this sort of belief.

19 I think what sort of sets this case apart to me or
20 what is of particular interest is not just that he says he is a
21 Moorish citizen or a sovereign citizen, it's the fact that he
22 actually, during an arrest, not only does he say these things
23 to the officer, but also kind of acted on it. His car didn't
24 have a license plate because he said he doesn't have to have a
25 license plate.

1 It goes sort of beyond just saying these things. He
2 doesn't -- it appears, perhaps, he didn't have a driver's
3 license. It wasn't clear all of the IDs he showed. But I
4 think, you know, the concern for a supervision, right -- it is
5 one thing when you are face to face with a law enforcement
6 officer who, you know, is right there, and basically you have
7 to comply with their instructions. They are typically armed.

8 A lot of what pretrial does is a requirement, but they
9 are not next to the defendant. They don't go and search across
10 his house and try to find his IDs and search his phone. That's
11 not what they do. A lot of what pretrial services does is
12 requires the defendant to sort of honor code compliance with
13 things, and that is a much bigger concern where you have this
14 sort of professed beliefs, in the government's view.

15 THE COURT: On the rap sheet there is a reference at
16 the very end, on March 9 of this year, to a warrant. This is
17 in connection with a failure of ID misdemeanor. It states
18 that: On 12/28/2020, he was held -- I guess, arrested and the
19 charge remains pending. Then it says two and a half months
20 later, March 9, 2021, warrant. Perhaps that's construable as
21 an outstanding bench warrant as in he was supposed to show up
22 somewhere and he didn't, but maybe it's construable in another
23 way.

24 Any insight as to what that one word means?

25 MS. McLEOD: I construed it as a bench warrant,

1 although I agree it is not clear. At that point there would
2 not have been a federal warrant on him, placed on him. That
3 was prior to the charges in this case. So it wouldn't have
4 been that there was a new warrant from the federal case. But
5 it appears to be unclear.

6 THE COURT: This defendant, Mr. Mundendi, is not an
7 American citizen, unlike his codefendants. On the other hand,
8 it doesn't appear as if the country of which he is, I gather, a
9 citizen, the DRC, is one that he has any excitement about
10 returning to, given the circumstances under which he left, as a
11 refugee seeking asylum.

12 Assuming that he were incited to flee, does the
13 government have a scenario here as to where he could
14 practically go?

15 MS. McLEOD: I don't know if we have sort of thought
16 about other countries. He left the DRC quite sometime ago, so
17 I am not sure whether the situation on the ground has changed
18 or not or to what extent he has extended family in that area.

19 Certainly, we have had, and this is in a different
20 type of case, in an e-mail compromise case, we have had
21 defendants who were originally from the African continent end
22 up fleeing to Mexico. I am not sure where that person that I'm
23 thinking of ended up, but you could just cross the border.

24 I guess the answer is, I don't have another country
25 other than the DRC in mind.

1 THE COURT: Very helpful. Thank you. Let me take a
2 two-minute break. When we come back I'm hopeful that Ms. Giwa
3 will be able to appear by video.

4 Ms. Giwa, we will resume with you in two minutes.

5 Thank you. I'm stepping away.

6 (Recess)

7 THE COURT: This is Judge Engelmayer. I see
8 Mr. Mundendi and Ms. Giwa on the screen.

9 Ms. Giwa, the floor is yours.

10 MS. GIWA: Thank you, your Honor.

11 Your Honor, before I begin, I would just like to make
12 an introduction of sorts just to say that Mr. Mundendi's family
13 has called in. I expect that both of his parents are on the
14 line and also his girlfriend, Ms. Charisma Iwu, is on the line,
15 and I think it's possible that some of the siblings might also
16 call in. I just wanted to let the Court know that since we are
17 not in person, they are not in the courtroom.

18 THE COURT: Let me just say for the record, for those
19 who are calling in, especially the family of Mr. Mundendi,
20 welcome and thank you for participating in that way.

21 Go ahead.

22 MS. GIWA: Your Honor, I would ask the Court to
23 release Mr. Mundendi on bail under the quite strict conditions
24 that Judge Netburn has already imposed here and, as I will
25 point out again, conditions that were, at least in part,

1 recommended by pretrial services.

2 THE COURT: I was going to ask pretrial about this,
3 and I will later, but there is an internal disagreement between
4 pretrial in Texas, where he would be stationed, who says detain
5 him. New York pretrial says release him on conditions.

6 MS. GIWA: I understand that, your Honor. I would ask
7 the Court to adopt the recommendations in the addendum filed by
8 pretrial in Southern District.

9 On that point about pretrial, during the government's
10 argument there was, I think, some attempt to minimize the
11 supervisory capabilities of pretrial, but I will say that they
12 have tremendous success in ensuring that defendants return to
13 court. I forget the numbers now, but I think it is in the high
14 nineties in terms of percent of defendants who come to court on
15 their cases. Although they don't supervise with a gun,
16 whatever it is they do, they are quite effective in doing it.

17 Pretrial services in New York also spoke with
18 Mr. Mundendi. They spoke with, I believe, his partner. They
19 reviewed the rap sheet. They reviewed the pretrial report from
20 Texas. And after considering all of that information, they
21 then made the recommendation that Mr. Mundendi should be
22 released on bail which, of course, is not something that they
23 do in every case, and I think the Court should take that fact
24 into consideration here.

25 THE COURT: I will.

1 MS. GIWA: Your Honor, the conditions that were
2 imposed, I think they adequately address the concerns about
3 both danger and risk of flight, but I would like to focus on
4 this issue of risk of flight. I think that's really the main
5 issue here.

6 The way I'd like to do that is, first, by providing
7 some brief background about Mr. Mundendi and also painting a
8 little bit of a picture for the Court about what relief would
9 actually look like here.

10 By way of background, and I will say that I have
11 gotten this information both in my conversations with Mr.
12 Mundendi and also with his family. At this point our office
13 has spoken with his parents, his partner, and his siblings, so
14 we have been able to get a lot more information than I had last
15 week on the date of his sentence.

16 What I know about Mr. Mundendi is that he came to the
17 United States in 2005, and he came here in asylum status when
18 he was 16 years old. His family fled the Democratic Republic
19 of the Congo because, as I'm sure the Court is aware, there was
20 a war that persisted there for quite sometime.

21 While Mr. Mundendi was a child in the DRC, he lived
22 under really terrible conditions. He had limited access to
23 food, limited access to water. He had no real home and endured
24 just really unthinkable trauma. The trauma that he endured
25 resulted in him becoming essentially mute. When he moved to

1 the United States, he did not speak. He, in fact, did not
2 resume speaking until he was 19 years old.

3 Mr. Mundendi's family was one of the, I think, over 2
4 million people that were displaced from his country, and he
5 sought asylum in the United States, and his family was
6 resettled in Dallas. Mr. Mundendi and his family have lived in
7 Dallas since 2005. They have not resided anywhere else in the
8 country, in the world, since that time.

9 Once Mr. Mundendi got to Dallas in 2005, at the age of
10 16, he developed an interest in basketball. He found a
11 basketball coach and that coach mentored him and slowly taught
12 him to speak English, until at 19 he started speaking again.

13 This is really somebody who has endured a lot in
14 getting to the United States and arriving in Dallas, a place
15 which gives him hope. Everything about Mr. Mundendi is deeply
16 tied to Dallas. He went to school there. He graduated from
17 high school there. He attended some college there. He played
18 basketball quite well and actually got a basketball
19 scholarship. But it was out of state, so he chose not to
20 attend because he didn't want to leave his family. He remained
21 in Dallas. He has had a child there. He has an eight-year-old
22 son. He has a partner who is also in Dallas. So that really
23 is his home. His ties there are substantial, they are
24 significant. He really is deeply, deeply tied to the
25 community.

1 The government did make this point in their argument
2 that they are concerned about Mr. Mundendi's flight, about the
3 fact that he might leave Dallas and that he might leave the
4 country. But, really, he doesn't really have the ability to
5 leave. He is here on asylum status, but he has no passport.
6 As a result of his DUI conviction, he actually has no driver's
7 license either.

8 So he doesn't have a form of identification and he
9 doesn't have an ability to leave, and he has no ties to any
10 other place other than Dallas.

11 THE COURT: Let me just jump in. Factually, I
12 appreciate that that's your representation. Given the fact
13 pattern here, how can I know that that is true, that he doesn't
14 have another driver's license in, say, another name?

15 MS. GIWA: Your Honor, I understand that, your Honor.
16 But my understanding is that as a result of the case in Texas,
17 the DUI case, his driver's license, I think, was taken. He
18 cannot obtain a new driver's license as a result of that case.

19 THE COURT: I understand he can't obtain a lawful one.
20 But if he wants to drive, the record suggests an ability to
21 access fake IDs, including fake driver's licenses. Maybe
22 that's harder to use to get out of the country with, but on the
23 facts here, I would have to worry, would I not, that he could
24 come upon obtaining such documents.

25 MS. GIWA: Your Honor, to be clear, I don't think the

1 government is actually maintaining that the identifications
2 were fake. What I understood them to be saying is that the
3 identifications that they have photographs of have Mr.
4 Mundendi's face and have different names, but not actually that
5 those IDs were fake because I don't think that those IDs were
6 issued by any state.

7 That's the bulk of what the government said initially
8 at presentment. I would be happy to clarify that. I don't
9 want to make any misrepresentations. But I don't think there
10 really is an allegation here that Mr. Mundendi has fake
11 identification.

12 THE COURT: Go ahead.

13 MS. GIWA: Your Honor, I think there are some very
14 specific conditions that Judge Netburn imposed that really
15 addressed this issue about the risk of flight, and specifically
16 that's the GPS monitoring, the surrender of any travel
17 identifications, not obtaining new documents, restrictions on
18 travel, and then this issue of Mr. Mundendi residing with his
19 family and having one of his parents act as a third-party
20 custodian.

21 I understand that they are not his bodyguards, they
22 are merely his parents, but this is a very close-knit family,
23 in large part for what they endured in coming to the United
24 States, and his parents are both hard-working people who are
25 both United States citizens. They both work. They have

1 provided our office with copies of their identification, as
2 well as substantial financial information so that they can be
3 immediately approved as cosigners. They have taken his arrest
4 extremely seriously, and they will certainly take their
5 responsibility as a third-party custodian very, very seriously.

6 THE COURT: May I ask, as to that, presumably they
7 were aware, though, of the prior criminal history. What say
8 you to the government's point that their parental concern for
9 him going astray appears not to have deterred any of the serial
10 arrests or worse that are reflected on the rap sheet?

11 MS. GIWA: Your Honor, Mr. Mundendi's family certainly
12 has concern with him with every contact. However, they never
13 before had the responsibility of both signing a bond and also
14 serving as a third-party custodian. Contact with the criminal
15 justice system at the state level is entirely different than at
16 the federal level.

17 Mr. Mundendi was arrested on April 22, and he was
18 detained by the marshals and transported across the country
19 through Oklahoma. It was a pretty arduous transport, based on
20 my conversation with him, and he was really overwhelmed by
21 that, as is his family.

22 So I think this new arrest really is quite different
23 than any other context he has had, and his parents view the
24 part that they play differently. And I think also the fact
25 that there would be a bond here in such a significant amount.

1 His parents are people who are really working-class
2 people who have working-class jobs. This \$200,000 bond, which
3 I think is what Judge Netburn imposed, is a huge amount of
4 money, and Mr. Mundendi understands that. The fact that his
5 partner and his parents have signed that bond certainly is
6 something that would act as an incentive for him to remain in
7 Dallas and to abide by all the conditions set by the Court.

8 Your Honor, I do want to briefly address this issue,
9 also, of the Moorish citizenship or the sovereign citizenship.
10 I did speak with Mr. Mundendi some more about this after his
11 presentment, and what he explained to me is this. He was
12 approached by somebody he knew who told him about this Moorish
13 etiology, and he was interested in it, but it certainly is not
14 a belief that he subscribes to wholeheartedly.

15 What he explained to me was also what I had observed
16 from reading the paperwork in this case, which is that when he
17 made this statement that the government is relying so heavily
18 on about not needing to respect the authority of the United
19 States Government, he was intoxicated, and the fact that there
20 was a breathalyzer, we know, really, as a matter of fact, as
21 much as I make an admission here in the state case, but he
22 really was intoxicated at the time he spoke with the police
23 officers there.

24 And what he has described to me really is sort of this
25 idea that it was given to him, and he was getting interested in

1 it and maybe was grandstanding the rule a bit, but that's not
2 an ideology that he has.

3 He spoke freely to me when I met him last week, he
4 spoke freely with pretrial services in Texas and pretrial
5 services in New York, and at no point did he say that he would
6 not comply with any of the authority of the Court or the
7 government. I don't think that that statement made by him
8 while he was intoxicated is something the Court really should
9 give too much weight to.

10 Your Honor, just very briefly, I do want to also turn
11 to what release would look like for Mr. Mundendi. As I stated
12 earlier, he has lived in Dallas his whole life. He doesn't
13 have a significant work history. I think that's true, as the
14 government states, although he has had some work history.

15 I think, also, coming to the United States at 16, not
16 speaking for many years and yet still graduating from high
17 school was a significant accomplishment for him. And he has
18 had jobs working in a trucking company. He worked at a bank.
19 He did some basketball-related work. Prior to his arrest, he
20 was taking real estate classes in Plano, Texas in order to get
21 his real estate license.

22 One of the conditions that Judge Netburn imposed here
23 was that Mr. Mundendi maintain or actively seek employment, and
24 that is certainly something he will do.

25 He has five siblings who live in Dallas and all five

1 of them have families. They work. Both of his parents work.
2 This is something certainly that is part of his family culture.
3 But I don't think it will be an issue for him to maintain or to
4 obtain, rather than maintain, employment.

5 Your Honor also raised an issue that I raised
6 initially in front of Judge Netburn, which is about
7 Mr. Mundendi's son. He has an eight-year-old son that he
8 co-cares. He separated from his son's mother, but he's
9 actively involved in the child's life.

10 His son has been diagnosed with autism and, as a
11 result of his autism diagnosis, he does not communicate
12 verbally with a lot of people. But what we learned from the
13 family is that his son communicates a lot with Mr. Mundendi,
14 and everybody sort of understands the reason for that as being
15 that Mr. Mundendi is someone who, for a significant portion of
16 his childhood, did not communicate verbally, has been able to
17 connect in this way with a deeper understanding with his son in
18 terms of issues with communication.

19 I raise this and the family has raised a concern about
20 Mr. Mundendi's son because his incarceration has already had
21 and will continue to have a significant impact on his son, just
22 given his diagnosis and given how close Mr. Mundendi and his
23 son are.

24 Very briefly, your Honor, just a little bit more
25 information about the cosigners, although I think I have given

1 the Court really everything the Court needs at this point, but
2 the plan would be for Mr. Mundendi to live with his parents;
3 his mother, Ms. Elonga; his father, Mr. Mundendi. As I said,
4 they both work full time. They send us pay stubs and other
5 financial information. They are both U.S. citizens. They are
6 prepared to sign the bond immediately. The third proposed
7 cosigner would be Mr. Mundendi's partner, Ms. Iwu. She is on
8 the line. She also works full time in Dallas. Then as a
9 fourth cosigner, I think really any one of Mr. Mundendi's
10 siblings would be willing and would be approved as a cosigner.
11 All five of those people also work. So I think there should
12 not be an issue getting any cosigners approved.

13 Finally, your Honor, and I raised this initially in
14 front of Judge Netburn, and the Court addressed this today, but
15 the comparison with the two other codefendants. As your Honor
16 inquired and knows, the two other codefendants are out on bail,
17 also under strict conditions, and I think the Court today could
18 fashion similarly strict conditions here to allow
19 Mr. Mundendi's a release.

20 Your Honor, with consideration all of those factors,
21 Mr. Mundendi's background and substantial ties to Dallas, the
22 fact that he has a tremendous family support system, and the
23 fact that there are conditions here that would address risk of
24 flight and danger, I would ask the Court to release him today.

25 THE COURT: Thank you. Very helpful presentation.

1 Tell me just the mechanics of his supervision while in
2 Texas as set out by Judge Netburn. In other words, he would
3 wear a GPS bracelet. Would there be reporting requirements?
4 How would that work?

5 MS. GIWA: Your Honor, my understanding is -- I'm just
6 looking at my notes again -- my understanding is that he would
7 be under pretrial supervision, which would mean he would have
8 to appear in person with the pretrial services office.

9 I think pretrial can make home visits, although my
10 understanding, in COVID times, that's not something that they
11 are doing.

12 A further understanding with regards to the GPS is
13 that blackout zones can be imposed around airports or other
14 transportation hubs so that the GPS monitoring can further
15 restrict movement.

16 THE COURT: That's within the discretion of pretrial.

17 MS. GIWA: Yes, your Honor. Although I think the
18 Court can specifically order those conditions, also.

19 THE COURT: I notice that you did not say anything
20 about the nature and circumstances of the offense or the weight
21 of the evidence. Can I assume from that that you are not
22 taking issue with what Ms. McLeod said?

23 MS. GIWA: Your Honor, I agree with Ms. McLeod's
24 statements that Ms. Mundendi played a minor role in all of
25 these alleged facts, but just because the case is so new and I

1 have not been able to meet with Mr. Mundendi in person, I just
2 don't have a lot of information at this point.

3 THE COURT: Does Mr. Mundendi have any continuing ties
4 to the DRC?

5 MS. GIWA: As far as I understand, no, your Honor. He
6 came to the United States as a political refugee and he is here
7 on asylum status.

8 THE COURT: Does he currently have any paid
9 employment?

10 MS. GIWA: Your Honor, I don't think that he does at
11 this point, although I did speak about this issue with him
12 earlier today, and both him and his partner think that he would
13 able to get employment pretty easily.

14 THE COURT: Thank you, Ms. Giwa. Very helpful.

15 Let me come back to Ms. McLeod with one factual
16 question relating to the case. I know that in the complaint
17 that there were large transfers of money alleged to have gone
18 abroad during July and August of last year.

19 Any knowledge of what became of those or whether
20 Mr. Mundendi had access to them?

21 MS. McLEOD: Our understanding is that many of those
22 large transfers were made at the direction of Bella, and it's
23 difficult to parse out what has come of them now, so I don't
24 know that there is -- I know that Bella knows Mundendi, and
25 they are together and you can see that they have contact with

1 each other, but I don't have a specific -- I can't specifically
2 say that any of those transfers made their way to Mr. Mundendi.

3 THE COURT: Do you know one way or the other whether
4 they are accessible to him?

5 MS. McLEOD: I don't know one way or another.

6 THE COURT: Your letter, I think, indicated that
7 Mr. Mundendi had participated in a second round -- it wasn't
8 clear that it came to any fruition -- of making what the
9 government perceives to be fraudulent applications in and
10 around February of 2021.

11 What can you tell me about that?

12 MS. McLEOD: Again, to be clear, your Honor, there
13 were sort of two separate parts in time of the scheme.

14 The first happened in around June 2020, when the PPP
15 applications first went out. His role primarily in the second
16 part of the scheme, when the PPP loan program were re-funded by
17 Congress in December of 2020, at that point he was -- the
18 cooperating witness was put in touch with Mr. Mundendi, and
19 they then started to talk about and discuss and put into
20 process putting in a new loan application for the same company
21 that had submitted that in June of 2020. Some of those
22 applications -- at least one of those applications actually was
23 submitted. However, I don't believe as of -- I don't believe
24 that that has funded.

25 THE COURT: Thank you.

1 Let me ask pretrial a question.

2 Ms. Piperato, as you heard, I have noted different
3 written recommendations from pretrial. Officer Poton in Texas
4 recommended detention. Your SDNY colleague, Officer Jackson,
5 recommended release on conditions that substantially resemble
6 those imposed by Judge Netburn. With the benefit of time and
7 reflection, with the benefit of hearing this argument, if you
8 could speak for pretrial, what is pretrial's current position?

9 MS. PIPERATO: In regards to pretrial's position, it
10 remains the same as the original recommendation.

11 THE COURT: I'm sorry. I don't know what that one is
12 referring to.

13 MS. PIPERATO: The original recommendation by pretrial
14 services in the Southern District of New York.

15 THE COURT: Meaning released on conditions that Judge
16 Netburn put in place.

17 MS. PIPERATO: Yes.

18 THE COURT: Does pretrial believe any modification of
19 those conditions is in order?

20 MS. PIPERATO: I don't have the ones that Judge
21 Netburn had put in place. I only have from the SDNY addendum.
22 I know the Court had mentioned location monitoring, so we would
23 agree to add that condition.

24 THE COURT: I think that one was already added.

25 Any other perspective that pretrial wants to indicate?

1 MS. PIPERATO: No, your Honor.

2 THE COURT: I am just going to take a moment and
3 collect my thoughts.

4 I am ready to rule. The governing standard is set
5 here by Title 18, United States Code, Section 3142(b). The
6 applicable provisions here are B, C, E, F, and G. But the nub
7 of it is that if the Court can't find that pretrial release
8 will reasonably assure the appearance of the person or the
9 safety of the community, that's Section B, the Court needs to
10 explore whether there are conditions or combination of
11 conditions that can satisfactorily assure those things.

12 In the event that the Court finds that no combination
13 of conditions can assure the defendant's appearance as
14 directed, that finding needs to be made by a preponderance of
15 the evidence. For the government to establish, however, that
16 there is a danger to the community that can't be rectified by
17 the imposition of conditions, the government needs to establish
18 its case by clear and convincing evidence. The point, though,
19 is that the burden is on the government as to each
20 consideration.

21 The Court, under 3142(g), is to consider a host of
22 factors, including the nature and circumstances of the offense
23 charged, the weight of the evidence, the history and
24 characteristics of the person, including a wide array of
25 criterion, and whether the defendant was on parole or probation

1 at the time of the instant offense.

2 I hope you can tell, from the nature of the questions
3 that I have put to counsel, that I have given close attention
4 to this case.

5 First of all, I will just deal with the danger to the
6 community. On that I do not find that the government has
7 carried its burden. I rely here largely on the burden. The
8 government's burden as to danger to the community is clear and
9 convincing evidence. There are certainly very good reasons to
10 worry about Mr. Mundendi committing new offenses. His criminal
11 record reflects that he has been undeterred by a series of
12 brushes with the law, culminating in what appears to be, at
13 least as charged, by far the most serious offense he has yet
14 committed. I say that with the qualification that there is a
15 lack of context in the arrest report attached to the pretrial
16 or reproduced in the pretrial services report. That makes it
17 hard for me to assess exactly what the prior Texas offenses
18 consisted of, but it certainly doesn't appear that there is
19 anything that looks like a \$14 million fraud with \$7 million
20 out-of-pocket loss or anything close to it. I am concerned
21 that Mr. Mundendi would reoffend.

22 That being said, Judge Netburn has put in place a very
23 muscular package of conditions. And the fact of having his
24 parents and his partner and one of his siblings exposed to a
25 \$200,000 bond, for a variety of reasons, made me less persuaded

1 by clear and convincing evidence that Mr. Mundendi would
2 reoffend. I think it's a fair question and I am concerned
3 about it. But given the high standard of proof, I am not there
4 to find that the government has established a danger to the
5 community that's uncontrollable by the bail package put in
6 place by Judge Netburn.

7 The close and hard question here is risk of flight,
8 danger of nonappearance. There are quite a number of factors
9 here that give rise to a genuine concern about a risk of
10 flight, and I'll just rattle what some of them are.

11 To begin with, the nature and circumstances of the
12 offense. This is a big one. This is a very serious offense.
13 Mr. Mundendi is charged with four federal felonies, all
14 relating to an alleged \$14 million fraud on the PPP program.

15 As alleged and recounted in the complaint, this was
16 not an instantaneous undertaking, but something that appears to
17 have taken thought and effort. It reflects a concerted effort
18 by whoever perpetrated this to break the law and to obtain
19 money through a clever and thought-out stratagem. And the
20 nature of the offense gives rise to an enormous incentive for
21 Mr. Mundendi to not face justice.

22 The government has estimated that solely based,
23 essentially, on the loss amount, without considering other
24 adjustments. Without considering potentially heightened
25 criminal history above category I, Mr. Mundendi would be facing

1 a guidelines sentence of five years or more.

2 I would note to that that there is something uniquely
3 appalling about the commission of an offense essentially right
4 at the beginning of the pandemic, when the rest of the world is
5 just trying to stay alive. Anybody who would commit a
6 multimillion dollar fraud on the PPP program, which is designed
7 to save lives, jobs, and stabilize the community, is naturally
8 looking at a heavy sentence to reflect just the gravity and
9 immorality of that conduct.

10 I'm not presupposing here the specific facts of the
11 offense or finding that Mr. Mundendi is guilty. However, he
12 has been indicted by a grand jury and, therefore, probable
13 cause has been shown, at least as to the fact of his
14 culpability in the offense, all of which gives Mr. Mundendi or
15 anyone in his situation an incentive to flee.

16 I also accept the government's representation that the
17 weight of the evidence, which appears to include, as
18 represented, recorded phone calls and text messages, which I
19 will credit are attributable to Mr. Mundendi, makes the
20 argument persuasive that the government has a consequential
21 case against him. Again, I'm not making any finding, but I
22 have to accept the government's representations based, as they
23 are, on a specific itemization of certain categories of and
24 exhibits that are, by nature, hard to cross-examine.

25 There are other aspects of Mr. Mundendi's history and

1 characteristics that would support a conclusion of a risk of
2 flight. He does not have gainful employment. He is not a
3 United States citizen. He does not appear to have gainful
4 financial resources. He has a consequential criminal history.
5 It is lost to history, or at least lost in the history
6 presented to me, whether Mr. Mundendi has faithfully complied
7 with the restrictions attendant to his prior arrests or
8 sentencings. Alas, the pretrial report just doesn't have that
9 level of detail.

10 I can't, therefore, find that Mr. Mundendi has
11 previously, or in connection with this alleged offense,
12 violated a condition of release. There is certainly grave
13 reasons to be worried that he may have, given the number of
14 prior offenses and that a number of them concatenate closely.

15 The bottom line, though, is that, at a minimum, we can
16 say that his prior brushes with the criminal law have not
17 deterred him.

18 In addition, as to the risk of flight, there is the
19 very important fact that Mr. Mundendi has presented multiple
20 identification cards with multiple names and dates of birth.
21 He has used the name Amos Mundendi, El Ashile Mundendi, and El
22 Mundi. He has offered, according to the text messages, ID
23 cards and passports for sale. He has depicted four of his own
24 IDs to his codefendant Apocalypse Bella, and he has bragged
25 that he could go anywhere in the world, essentially, without

1 getting caught.

2 It appears that he has been in the business of selling
3 Moorish IDs or passports, and, finally, he has got a previous
4 fraud arrest, which is concerning. While I don't know the
5 facts of it, the report is scanty on that. The offense itself
6 appears -- the statutory subsection correlates with the
7 fraudulent use of some 10 to 15 identification items.

8 However, I need to offset that fact considerably by
9 the fact that that charge was dropped. Somebody had some
10 reason to think that something along those lines had occurred,
11 but ultimately a decision was made to drop the charge, perhaps
12 disbelieving the evidence, perhaps disbelieving that the crime
13 could be established by the requisite burden of proof.

14 I note what has happened to Mr. Mundendi's
15 codefendants. I am not sure that their outcomes are
16 dispositive. There are a number of distinguishing factors.

17 On the flip side, however, there are substantial
18 arguments that defense counsel has made. True, Mr. Mundendi is
19 not a citizen, but there is no indication that he has any
20 lingering ties to a foreign country. There is no reason to
21 think that he will be able to lawfully obtain a passport or
22 driver's license. And he has a muscular bail package with a
23 large number of cosigners who, by all accounts, consist of
24 people who have moral suasion over him. In other words, there
25 is a good reason to think that his parents risking \$200,000

1 which would be a devastating loss to them, or the same for his
2 sibling or his partner, the risk that all would be exposed a
3 loss to of a figure like that, I think, would and should cause
4 Mr. Mundendi to hesitate.

5 I'm also mindful that Mr. Mundendi has a small child
6 who appears to rely considerably on Mr. Mundendi's care and
7 attention. Mr. Mundendi, as is, is taking the risk of
8 separation from that child and that may, in turn, affect,
9 Ms. Giwa, how you choose to lawyer the case in your dealings
10 with the government in the coming days and weeks. But, at a
11 minimum, Mr. Mundendi would be, if released on conditions,
12 unusually foolish to breach any of those conditions.

13 I note as well that Judge Netburn has put in place
14 about as muscular a bail package as I have seen in recent times
15 in a nonviolent case. I do, too, have confidence in the
16 ability of pretrial, which recommends release on conditions, to
17 administer all those conditions in a way that reasonably guards
18 against Mr. Mundendi's release.

19 Putting all that together and regarding this as a
20 very, very close call, it could easily come out either way, I
21 am going to affirm Judge Netburn and leave the set of bail
22 conditions in place. I think Judge Netburn has in fact
23 developed a very thoughtful, sophisticated set of conditions
24 here that presents a good possibility of guarding against
25 Mr. Mundendi's flight.

1 But I need to say this, Mr. Mundendi, to you. This
2 was a very close call, and I will tell you that I came to this
3 argument expecting and likely to come out the other way, based
4 on what I had read. This is genuinely a close question.

5 If there is one misstep, if you breach your conditions
6 of bail in the slightest way, you can expect that the
7 government will be before me asking for you to be detained, and
8 you can expect that I will do so.

9 What that means is, if pretrial tells you to appear,
10 you appear. It means that you have to scrupulously abide by
11 all the obligations that you have with respect to your pretrial
12 release. There can be no dispensing with the GPS, there can be
13 no cutting off of the guns bracelet. There can be no, I
14 forgot, I misunderstood. You are under strict rules here. If
15 there is any violation, you can expect that there is a high
16 likelihood that I would order your detention and transport to
17 New York for the balance of pretrial proceedings.

18 Just yes or no, Mr. Mundendi, did you hear and
19 understand what I just said?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: I mean that very seriously. You have the
22 great good fortune to have Ms. Giwa in your corner, and she has
23 made, against a high degree of difficulty, a successful
24 argument here today. Please be in active touch with her. She
25 has your interests at heart. Understood?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: With that, I will enter an order simply
3 reflecting that I have affirmed in full the entire bail package
4 as put in place by Judge Netburn.

5 I believe, Ms. Giwa, it now reverts to Judge Netburn,
6 to, for example, have the conversation with the prospective
7 cosigners, the parents, who would be the custodians and the
8 like, correct?

9 MS. GIWA: Yes, your Honor, that's my understanding.

10 THE COURT: Ms. Giwa, how close is your client to
11 satisfying the preconditions to his release?

12 MS. GIWA: Your Honor, we have all of the cosigners
13 lined up, as well as their information. As soon as we can
14 schedule the interview with the U.S. Attorney's Office, we are
15 good to go.

16 THE COURT: Very good.

17 Ms. Giwa, thank you again for your committed advocacy
18 on behalf of Mr. Mundendi.

19 Ms. McLeod, I assume that you will accommodate
20 Ms. Giwa by arranging for those interviews with the putative
21 cosigners as soon as she tells you that they are ready to be
22 met with?

23 MS. MCLEOD: Yes. We are ready to coordinate
24 interviews whenever we get the info.

25 THE COURT: Very good.

1 Mr. Smallman, before we adjourn, remind me when the
2 next conference date is in the case.

3 THE DEPUTY CLERK: TBD, Judge. I don't think we have
4 one.

5 MS. McLEOD: AJ, I think there is one scheduled for
6 June 15.

7 THE DEPUTY CLERK: That's correct. I'm sorry.

8 Judge, just to clarify a little bit, that is, as Ms.
9 McLeod pointed out, June 15, as a result of the scheduling
10 practices. As of right now that's tentative. That's what we
11 are hoping for.

12 THE COURT: That's right. That's what we are hoping
13 for, and we have asked that the time be excluded, and it was by
14 Judge Netburn until that date. Because of the way that court
15 appearances are centrally scheduled during the pandemic, as Mr.
16 Smallman points out, all of that is is directional, and we hope
17 for it. But I very much look forward to initial conference in
18 this case.

19 Mr. McLeod, particularly with three defendants being
20 held on conditions, I want to make sure that this prosecution
21 moves forward with rapidity, so I will be hopeful to hear at
22 the initial conference that discovery has either been provided
23 or will imminently will be provided to all three defense
24 counsel or sent to defense counsel. You've got a month or so
25 to get there, but I assume that you are on it.

1 MS. McLEOD: Yes. I am on it, your Honor.

2 THE COURT: Anything further from the government?

3 MS. McLEOD: No, your Honor. Thank you.

4 THE COURT: Anything further from the defense?

5 MS. GIWA: Nothing further. Thank you.

6 THE COURT: Before we adjourn, let me say a word to
7 Mr. Mundendi's family, who I understand is listening.

8 I am looking to you to make sure that Mr. Mundendi
9 complies strictly with all the conditions of release. I'm
10 specifically addressing myself to Mr. Mundendi's parents and
11 partner and siblings, but all of you have a responsibility
12 here. He is on very, very, very thin ice. If there are any
13 breaches of the conditions I have set, he is apt to be
14 detained, which is not where you or he want him to be. I know
15 from Ms. Giwa's representation that you are all in to make sure
16 that Mr. Mundendi complies with those conditions. I'm just
17 reinforcing her point that you really need to do that.

18 With that, we stand adjourned. Mr. Mundendi,
19 everyone, be well.

20 (Adjourned)

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