IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. 1:25-MJ-01421-MJK

LUKE MARSHAL WENKE,

Defendant.

RESPONSE IN OPPOSITION TO DEFENDANT LUKE MARSHAL WENKE'S MOTION TO REOPEN THE DETENTION HEARING

Relying on a single district court decision unrelated to the Bail Reform Act, Defendant Luke Marshal Wenke seeks to reopen the detention hearing, arguing that Cyberstalking in violation of 18 U.S.C. § 2261A(2)(B) is not a crime of violence that would allow the government to seek a detention hearing under 18 U.S.C. § 3142(f)(1)(A). But Wenke's motion fails for several reasons. Wenke fails to satisfy 18 U.S.C. § 3142(f)(2)'s demanding standard for the Court to consider reopening the detention hearing because the decision he cites does not have a material effect on the matter at hand. But even if Wenke were correct (which he is not), at best he could only win the proverbial battle while still losing the war. That is, because the government moved for detention under additional grounds separate from 18 U.S.C. § 3142(f)(1)(A), which is the subject of his current motion, a detention hearing was still warranted under 18 U.S.C. §§ 3142(f)(2)(A) and (f)(2)(B) such that the Court would still have been required to conduct the hearing it already did, where it would consider all of the same § 3142(g) factors it already did. The motion to reopen the detention hearing should be denied.

ARGUMENT

I. The Legal Standard

18 U.S.C. § 3142(f)(2) permits the reopening of a detention hearing if the Court finds that "(1) information exists that was not known to the movant at the time of the hearing" and (2) that

information "has a material bearing on . . . whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." As the movant, Wenke "bears the burden of establishing both elements." *United States v. Singletary*, No. 1:22-CR-477-1 (GTS), 2026 WL 366606, at *1 (N.D.N.Y. Feb. 10, 2026).

This section of "the Bail Reform Act states only that a hearing 'may' be reopened if new and material information is presented[,] ... [and] therefore leaves the decision to reopen a hearing to the sound discretion of the district court." *United States v. Zhang*, 55 F.4th 141, 148 (2d Cir. 2022). If the newly presented information does not materially affect the detention decision, the Court need not reopen the hearing. *See United States v. Havens*, 487 F. Supp. 2d 335, 339 (W.D.N.Y. 2007) (electing not to reopen a detention hearing because the new information would not have changed the court's decision to detain the defendant until trial).

II. The Southern District of New York's Decision in *Mangione*

Wenke's motion to reopen the detention hearing rests entirely on a single district court decision: *United States v. Mangione*, No. 25-CR-00176 (MMG), 2026 WL 251490 (S.D.N.Y. Jan. 30, 2026). There, that district court determined that cyberstalking was not categorically a crime of violence under the so-called elements clause of 18 U.S.C. § 924(c)(3)(A) (that is, whether the offense is a felony and "has as an element the use, attempted use, or threatened use of physical force against the person or property of another"), and as a result, held that cyberstalking could not be the predicate crime of violence to support corresponding criminal violations of 18 U.S.C. §§ 924(c) or (j) for possessing or discharging a firearm in furtherance of a crime of violence that resulted in death.

Wenke argues that *Mangione* constitutes a changed circumstance that requires reopening the detention hearing because. In Wenke's view, *Mangione* means that the government was not entitled to a detention hearing under 18 U.S.C. § 3142(f)(1)(A) (which authorizes the government to move for detention if the crime charged is a "crime of violence"), since the *Mangione* court found cyberstalking not be a crime of violence under 18 U.S.C. §§ 924(c) or (j). He is incorrect.

Critically, *Mangione* does not address the Bail Reform Act and in fact, the words "bail" or "detention" appear nowhere in that decision. Instead, *Mangione* dealt with the charging and punishment provisions of a federal criminal statute, which as discussed below, are applied and analyzed very differently than how a seemingly similar term is analyzed under the Bail Reform Act. Put simply, because *Mangione* has nothing to do with the Bail Reform Act's definition of crime of violence, it cannot support the present reopening motion. And as noted below, courts (including in this district) that have addressed cyberstalking in the context of the Bail Reform Act have found it is a crime of violence to support a detention hearing under 18 U.S.C. § 3142(f)(1)(A).

III. "Crime of Violence" and the Bail Reform Act

The Bail Reform Act allows the government to move for a defendant's pretrial detention in "case[s] that involve[]," among other crimes, "a crime of violence." 18 U.S.C. § 3142(f)(1)(A). As relevant here, the term "crime of violence" is defined as a felony "that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. § 3156(a)(4)(B)." And here, 18 U.S.C. § 3142(f)(1)(A) was but one of three bases for which the government cited in moving for Wenke's detention.

The Second Circuit "appl[ies] the categorical approach to determine whether" a particular crime "constitutes a 'crime of violence' for purposes of § 3142(f)(1)(A)." *United States v. Watkins*, 940 F.3d 152, 163 (2d Cir. 2019). This means that the Court must "decide whether, in the 'ordinary case,' the conduct encompassed by the elements of the [charged] offense presents a substantial risk that physical force against the person or property of another may be used." *Id.* at 162. In other words, the Bail Reform Act requires the Court to "focus[] on the riskiness of an 'idealized ordinary case of the crime' and not on the actual conduct underlying" the charged offense. *Id.* at 162 (quoting *Johnson v. United States*, 576 U.S. 591, 597 (2015)). To perform this analysis, the Court looks to "the least of the acts criminalized, and then determine[s] whether even those acts" involve a substantial risk of the use of force. *Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013) (quotation marks and brackets omitted) (interpreting "generic" definition of controlled substance offense).

The Supreme Court has held that similar (or identical) definitions of "crime of violence" in the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), and 18 U.S.C. § 16(b) are void for vagueness. *See Johnson v. United States*, 576 U.S. 591 (2015) (ACCA); *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (§ 16(b)). But Wenke does not argue here that the residual clause in § 3156(a)(4)(B) is void for vagueness as applied to the Bail Reform Act, nor could he. As the Second Circuit has held, unlike ACCA and § 16(b), the term "crime of violence" in the Bail Reform Act "does not define criminal offenses, fix penalties, or implicate the dual concerns underlying the void-for-vagueness doctrine." *Watkins*, 940 F.3d at 161. Instead, § 3142(f)(1)(A) "merely performs a gatekeeping function by narrowing the types of offenses that render an arrestee eligible for a detention hearing." *Id.* at 160. As a result, § 3142(f)(1)(A)'s definition of "crime of violence" "is not amenable to a due process challenge and is therefore not unconstitutionally vague." *Id.* at 161. Thus, although *Johnson* and *Dimaya* overruled many

decisions interpreting ACCA and § 16(b)'s residual clauses, those past decisions are still instructive when interpreting the residual clause in the Bail Reform Act's definition of "crime of violence" and these principles show why the *Mangione* decision cannot do the work Wenke asks it to do in his present application.

The critical question is not whether "force may . . . be present in all circumstances" but, instead, whether "the *risk* of force is inherent in each of the offenses set forth in the statute. It matters not one whit whether the risk ultimately causes actual harm." *Chery v. Ashcroft*, 347 F.3d 404, 408 (2d Cir. 2003) (quotation marks omitted; emphasis in original). The "risk" identified in § 3142(f)(1)(A) "concerns the defendant's likely use of violent force as a means to an end." *Jobson v. Ashcroft*, 326 F.3d 367, 373 (2d Cir. 2003) (interpreting § 16(b)).

When applying this standard, courts must consider real-world cases. The "focus on the minimum conduct criminalized by the [predicate] statute is not an invitation to apply 'legal imagination' to the [predicate] offense." *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013) (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). The categorical approach, in other words, "requires a realistic probability, not a theoretical possibility," that the statute would apply to "conduct that falls outside" the ordinary case. *Duenas-Alvarez*, 549 U.S. at 193. A crime is not a "crime of violence" merely because a defendant has "[c]oncoct[ed] hypothetical and unrealistic examples divorced from case law." *United States v. Patterson*, 853 F.3d 298, 304 (6th Cir. 2017).

Judged by these standards, cyberstalking under § 2261A(2)(B) fits comfortably within § 3142(f)(1)(A)'s definition of "crime of violence." To be convicted of cyberstalking, a defendant must, with the intent to harass or intimidate another person, use a facility of interstate commerce to engage in a "course of conduct" that causes, attempts to cause, or would reasonably be expected to cause the person to experience "substantial emotional distress." 18 U.S.C. § 2261A(2)(B). A "course of conduct" means a "pattern of conduct composed of 2 or more acts,

evidencing a continuity of purpose." 18 U.S.C. § 2266(2). The government is not required to prove that "each act" making up the course of conduct "was intended in isolation to cause serious distress or fear of bodily injury to the victim." *United States v. Shrader*, 675 F.3d 300, 311 (4th Cir. 2012). Instead, the government need only show that "the totality of the defendant's conduct 'evidenced a continuity of purpose' to achieve the criminal end." *Id.* Thus, when deciding whether a "course of conduct" exists, the proper focus is on "persistent or repetitive conduct" by the defendant. *Id.* at 312 (noting that the "cumulative effect of a course of stalking conduct may be greater than the sum of its individual parts.")

The question, then, is whether, in the ordinary case of stalking—not "in all circumstances," *Chery*, 347 F.3d at 408—a "course of conduct" that causes, or might cause, "substantial emotional distress" carries a "substantial risk" that physical force "may be used." The question, once again, is *not* "whether the risk ultimately causes actual harm." *Chery*, 347 F.3d at 408. It is simply whether the risk exists.

This Court does not need to break any new ground to find that cyberstalking in violation of § 2261A(2) is a crime of violence under the Bail Reform Act. In *United States v. Harrison*, 354 F. Supp. 3d 270, 278 (W.D.N.Y. 2018), United States District Judge Richard Arcara found that "cyberstalking in violation of 18 U.S.C. § 2261A(2) categorically involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense, so that pretrial detention is available pursuant to 18 U.S.C. § 3142(f)(1)(A)…" Other courts agree. *See, e.g., United States v. Hollingberry*, No. 20-03058MJ-001-PHX-MTM, 2020 WL 2771773 at *3 (D. Ariz. May 28, 2020), aff'd, No. 20-10183, 2020 WL 5237342 (9th Cir. July 23, 2020); *United States v. Grooms*, No. 3:15-mj-00025, 2015 WL 1982097, at *5 (S.D. W. Va. Apr. 29, 2015) (Bail Reform Act implicitly recognizes that stalking and cyberstalking are crimes of violence); *United States v. Shrader*, No. 1:09-cr-00270, 2010 WL 503092, at *3 (S.D. W. Va.

Feb. 8, 2010) (same); *United States v. Neuzil*, No. 09-CR-2020-LRR, 2009 WL 2030373, at *2 (N.D. Iowa July 13, 2009) (same). Wenke has cited no cases to the contrary, nor am I aware of any.

One final point: the version of § 2261A(2) that gave rise to the current statute was created by the Violence Against Women Act (VAWA) of 2000. *See* 114 Stat. 1465, Pub. L. 106-386, § 1107(b)(1) (Oct. 28, 2000). That statute has been amended four times since 2000, but the amendments have generally expanded the statute's coverage and are not material to the issue before the Court.

VAWA was "specifically intended to address the problem of domestic violence and reduce violent crimes against women." *United States v. Grooms*, No. 3:15-mj-00025, 2015 WL 1982097, at *5 (S.D. W. Va. April 29, 2015). (discussing Violence Against Women Reauthorization Act of 2005). As that court noted, "[a]cknowledging the sobering statistic that nearly one third of American women report physical or sexual abuse by a husband or boyfriend at some point in their lives, [VAWA] implicitly recognizes that stalking and cyberstalking are crimes of violence, like sexual assault, domestic battery, and dating violence." *Id.*

> This conclusion is supported by 18 U.S.C. § 2263, which states that:
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> > In any proceeding pursuant to section 3142 [i.e., the Bail Reform Act] for the purpose of determining whether a defendant charged under [Chapter 110A of Title 18, which includes § 2261A(2)] shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

Congress, in other words, recognized that defendants may be detained for alleged violations of 18 U.S.C. § 2261A(2). It would make little sense for Congress, on the one hand, to expressly acknowledge the possibility of a detention hearing in a § 2261A(2) case while, on the other hand, tacitly concluding that § 2261A(2) is *not* a crime that allows the government to seek

pretrial detention under the Bail Reform Act.

For all of these reasons, cyberstalking under § 2261A(2) is a crime of violence under the Bail Reform Act, such that a detention hearing is authorized under § 3142(f)(1)(A).

IV. Crime of Violence Was But One of Three "Gateways" to the Detention Hearing

There is an even simpler reason why Wenke's motion fails: because even if he's correct (he's not) that cyberstalking under § 2261A(2) is a not a crime of violence under the Bail Reform Act, he could obtain no relief on this motion to reopen the detention hearing. That is because the government obtained the detention hearing in this case by moving under three separate sections of the Bail Reform Act: under 18 U.S.C. § 3142(f)(1)(A), in that the crime charged is a crime of violence; under 18 U.S.C. § 3142(f)(2)(A), in that the defendant presents a serious risk of flight; and under 18 U.S.C. § 3142(f)(2)(B), in that the defendant presents a serious risk that he will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

As *Watkins* explained, the subsections of § 3142(f) "merely perform[ ] a gatekeeping function by narrowing the types of offenses that render an arrestee eligible for a detention hearing." *Watkins*, 940 F.3d at 160. Put another way, so long as the "gatekeeping function" is met, whether the government moves under one or more of subsections (f)(1) and/or under one or more of subsections (f)(2), the result is the same: the exact same detention hearing would be held after which the Court must weigh the § 3142(g) factors to determine "whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community."

Wenke does not challenge the government's ability to move for his detention under § 3142(f)(2)(A), nor under § 3142(f)(2)(B), both of which trigger the exact same hearing that was

already held and after which the Court must conduct the exact same analysis under § 3142(g) that already occurred and resulted in Wenke's pretrial detention. As such, even if he is right (which, for the reasons articulated above, he is not) that the government was not entitled to a detention hearing under § 3142(f)(1)(A), the government was still entitled to a detention hearing under § 3142(f)(2)(A) and § 3142(f)(2)(B), such that the hearing was authorized at least twice over (really, thrice over) and the Court has already held the necessary hearing.

In sum, Wenke's motion does not present anything that would support a finding of changed circumstances that could then permit the Court to reopen the detention hearing. On the contrary, the singular issue he now raises is without merit, and in any event, does nothing to address the other two grounds upon which a detention hearing was sought and held.

Further, as the Court previously concluded, the § 3142(g) factors require Wenke's detention, and nothing presented in the current motion does anything to alter those conclusions.

CONCLUSION

For the reasons stated, the motion to re-open the detention hearing should be denied.

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