UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. **25-MJ-1421**

REPLY TO GOVERNMENT RESPONSE

LUKE MARSHAL WENKE.

Defendant.

The government claims that because it moved for detention under additional grounds separate from 18 U.S.C. § 3142(f)(1)(A) Mr. Wenke's motion fails. However, that framing oversimplifies the analysis.

The Government in its response fails to recognize the fact that this Court's determination at the time of the detention hearing that 18 U.S.C. 2261A(2)(B) is a crime of violence has a ripple effect through the hearing arguments and into the Court's ultimate conclusion as it considered the factors under 18 U.S.C. 3142(g) that there are no conditions or combination of conditions that would ensure the safety of the community. True, defense argues the government was not entitled to move for detention under 18 U.S.C. 3142(f)(1)(A) as the crime Mr. Wenke is charged with is not a crime of violence, but it also asks the Court to consider whether it was entitled to use the classification of the charge as a crime of violence as a reason favoring detention. *See* ECF No. 11 at 5.

When it comes to addressing the question of whether Mr. Wenke is charged with a crime of violence it appears the government implicitly concedes the elemental and focuses its response on the residual clause and substantial risk. It cites cases including *Harrison* from the Western

District of New York where the Court found that the statute at issue was a crime of violence for purposes of the Bail Reform Act but also made note of the limited arguments before it. *United States v. Harrison*, 354 F. Supp. 3d 270, 278 (W.D.N.Y. 2018). The cases the government cites do not sufficiently address how 18 U.S.C. § 2261A criminalizes a wide range of nonviolent conduct including speech and self-harm. These cases leave room for this Court to conclude that the offense is not categorically a crime of violence under the Bail Reform Act. Because the statute can be violated without the use, attempted use, or threatened use of physical force, it does not categorically qualify.

The government would like this Court to believe it does not need to break new ground to conclude that the offense at issue is a crime of violence, but the ground can shift over time and this Court can and should consider whether it believes 18 U.S.C. 2261A(2)(B) categorically qualifies as crime of violence for purposes of the Bail Reform Act, and if so whether that labeling influenced its decision to reject release conditions.

Based on the reasons stated above defense respectfully requests this Court reopen the detention hearing, resolve the question raised surrounding whether 18 U.S.C. 2261A(2)(B) is a crime of violence under the Bail Reform Act, and release Mr. Wenke on conditions.

Dated: April 14, 2026

Rochester, New York

Respectfully submitted,

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