

15 JBJKNOEN

16 UNITED STATES DISTRICT COURT  
17 SOUTHERN DISTRICT OF NEW YORK  
18 -----x

19 UNITED STATES OF AMERICA,

20 v.

21 19 CR 830 (AT) (SN)

22 TOVA NOEL, MICHAEL THOMAS,

23 Defendants.

24 -----x  
25 New York, N.Y.  
November 19, 2019  
3:54 p.m.

30 Before:

31 HON. SARAH NETBURN,

32 Magistrate Judge

## 33 APPEARANCES

34  
35 GEOFFREY S. BERMAN,  
36 United States Attorney for the  
37 Southern District of New York  
38 NICOLAS ROOS  
39 REBEKAH DONALESKI  
40 Assistant United States Attorneys41 JASON FOY  
42 Attorney for Defendant Noel43 MONTEL FIGGINS  
44 Attorney for Defendant Thomas

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1 (Case called)

2 MR. ROOS: Good afternoon, your Honor. Nicolas Roos  
3 and Rebekah Donaleski for the United States.

4 THE COURT: Thank you.

5 MR. FOY: May it please the Court, your Honor, my name  
6 is Jason Foy, attorney for Ms. Tovah Noel, standing to my left.  
7 Good afternoon, your Honor.

8 THE COURT: Good afternoon. Thank you. Good  
9 afternoon.

10 MR. FIGGINS: Good afternoon, your Honor. Montel  
11 Figgins, from the Law Offices of Montel Figgins, on behalf of  
12 Michael Thomas, who's standing to my left.

13 THE COURT: Thank you. Good afternoon to all of you.  
14 My name is Judge Netburn.

15 Can I have the date and time of the defendants'  
16 arrests?

17 MR. ROOS: Both defendants self-surrendered to the FBI  
18 this morning at approximately 10:00 a.m.

19 THE COURT: Thank you.

20 The purpose of today's proceeding is to advise you of  
21 certain rights that you have, inform you of the charges against  
22 you, consider whether counsel shall be appointed for you, and  
23 decide under what conditions, if any, you shall be released.

24 I'm now going to explain certain constitutional rights  
25 that you have.

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1           You have the right to remain silent. You are not  
2 required to make any statements. Even if you have already made  
3 statements to the authorities, you need not make any further  
4 statements. Any statements that you do make can be used  
5 against you.

6           You have the right to be released, either  
7 conditionally or unconditionally, pending trial unless I find  
8 that there are no conditions that would reasonably assure your  
9 presence in court or the safety of the community.

10          You have the right to be represented by an attorney  
11 during all court proceedings, including this one and during all  
12 questioning by the authorities.

13          If you cannot afford an attorney, I will appoint one  
14 to represent you. I understand that each of you has retained  
15 private counsel. If at any point in time you run out of money  
16 and you are unable to afford counsel, you can petition the  
17 Court to appoint counsel at the government's expense and at no  
18 cost to you.

19          You both have been charged in a six-count indictment,  
20 and I will just state that I understand that Judge Torres has  
21 referred this not just for presentment but also for  
22 arraignment.

23          MR. ROOS: That's correct, your Honor.

24          THE COURT: The defendants have both been charged in a  
25 six-count indictment.

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1                   Count One charges the defendants with conspiracy in  
2 violation of Title 18 of United States Code, Section 371. And  
3 Counts Two through Six each charge an individual act of false  
4 records in violation of Title 18, United States Code, Sections  
5 1001(a)(3) and (2).

6                   Let me ask, Ms. Noel, have you received a copy of this  
7 indictment?

8                   DEFENDANT NOEL: Yes, your Honor.

9                   THE COURT: Have you had an opportunity to review it  
10 and discuss the charges with your lawyer?

11                  DEFENDANT NOEL: Yes, your Honor.

12                  THE COURT: Would you like me to read the indictment  
13 to you in open court?

14                  DEFENDANT NOEL: No, thank you.

15                  THE COURT: How do you plead to the charges?

16                  DEFENDANT NOEL: Not guilty.

17                  THE COURT: Thank you.

18                  DEFENDANT NOEL: You're welcome.

19                  THE COURT: Mr. Thomas, I'm going to ask you the same  
20 questions.

21                  Have you received a copy of the indictment?

22                  DEFENDANT THOMAS: Yes, your Honor.

23                  THE COURT: Have you had an opportunity to read the  
24 indictment and discuss the charges with your lawyer?

25                  DEFENDANT THOMAS: Yes, your Honor.

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1                   THE COURT: Would you like me to read the indictment  
2 to you in open court?

3                   DEFENDANT THOMAS: No, your Honor.

4                   THE COURT: How do you plead to the charges?

5                   DEFENDANT THOMAS: Not guilty, your Honor.

6                   THE COURT: Thank you. Be seated.

7                   Have the parties discussed an appropriate bail  
8 package?

9                   MR. ROOS: Yes, your Honor.

10                  THE COURT: Shall we begin with Ms. Noel?

11                  MR. ROOS: Certainly, your Honor. I actually think  
12 the bail packages are nearly identical with the exception of  
13 one or two conditions that are set forth in the pretrial  
14 services report, so maybe I'll first give your Honor all of the  
15 conditions that are the same for each of the defendants and I  
16 will note the variation at the end.

17                  For both defendants, it's \$100,000 bond, secured by  
18 two financially responsible persons and their own signature;  
19 pretrial supervision, as directed; surrender of travel  
20 documents, and no new applications; no contact with  
21 codefendants; surrender of firearms.

22                  For travel restrictions, for Defendant Thomas, it will  
23 be Southern District of New York, Eastern District of New York,  
24 and the District of New Jersey.

25                  And for Defendant Noel, it will be Southern District

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1 of New York, Eastern District of New York, District of New  
2 Jersey, and the Eastern District of Pennsylvania.

3 And then the special conditions that are set forth in  
4 the pretrial reports, it's condition number 4, relating to use  
5 of alcohol for Defendant Thomas, and condition 7 for Defendant  
6 Noel, which relates to mental health evaluation and treatment  
7 as directed by pretrial services.

8 And, finally, your Honor, that they be both released  
9 today on their own signature.

10 THE COURT: And how long do the parties propose to  
11 satisfy the balance of the conditions?

12 MR. ROOS: A week is appropriate, your Honor, for the  
13 two cosigners.

14 THE COURT: Any objection from defendants?

15 MR. FIGGINS: No, your Honor.

16 MR. FOY: There is one.

17 THE COURT: Okay.

18 MR. FOY: Before today's proceedings, we did have an  
19 agreement on the terms of release. And, of course, as part of  
20 that process, pretrial services is involved and they're not  
21 necessarily privy to the terms of our agreement. And I  
22 understand that we've added some things that were not part of  
23 the agreement, and I'm fine with that. But there's one  
24 condition I'm not fine with and I'd like your Honor to  
25 consider.

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With regards to the surrender of firearm, I'm asking that your Honor not make that a requirement of her release. I ask that because - in this nonviolent allegation, in which no firearm was involved, with a history of having no criminal record of any kind or any history of violence - she, who legally possesses and has a permit for the firearm, should still be able to possess her firearm because she's not a convicted felon and someone who's not permitted to do so.

She's --

THE COURT: Is that a duty firearm or personal use?

MR. FOY: Personal.

So that's the only issue that I have, because I think that at this time, to sacrifice that right that she legally has, and has complied with everything that it means to have that firearm, that she still be able to do so. I could imagine that there could be an argument about safety of others; however, there's nothing to really corroborate the fact that her continuing to possess her firearm, just like she has in the past, would actually endanger anyone. We voluntarily surrendered. We participated in a pretrial interview. There's just no reason for it, other than probably a policy that says that's what they would like to do.

Now, it's a meaningful one, I'm not saying that it's a bad thing, but under the unique circumstances here, in this case, in the history and type of case that it is, I'm asking

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1 that that one condition be withheld and with all the other  
2 conditions being fine.

3 THE COURT: Just so I understand your argument, you  
4 would like your client to retain her personal-use firearm  
5 because she otherwise has the right to do so? She doesn't need  
6 it for any particular reason?

7 MR. FOY: Well, I suppose a person who has a firearm  
8 may feel that they need it for their self-protection. Now, I'm  
9 not suggesting that there's been some specific threat or  
10 anything, other than the world is crazy, but if she hasn't done  
11 anything improper with regards to that important right, it  
12 shouldn't be sacrificed now, at an arraignment, as a condition  
13 of her release, when she has fully cooperated with everything  
14 up until this point. We've been in communication with the  
15 government since August 14th, and communicated about her  
16 international travel since this investigation began. All we've  
17 done is comply and put the government on notice as to her  
18 whereabouts and what's going on. We've been completely  
19 cooperative in that respect.

20 But when you talk about removing someone's personal  
21 firearm, that they legally possess in their home - she doesn't  
22 have a license to carry it anywhere, just in her home - unless  
23 there is a reason connected to the case, to the crime, that  
24 suggests that it could be in fact a danger to a third party or  
25 someone else, then, in that case, I would understand, but not

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1 in this kind of case, which is an allegation about documents.

2 THE COURT: Understood. Thank you.

3 I have a few responses. The first is, although I  
4 greatly appreciate when the parties are able to reach agreement  
5 on the terms of a defendant's release, that agreement is  
6 meaningful to me but it's certainly not controlling. I  
7 ultimately decide how defendants should be released. And there  
8 have been occasions where I've disagreed with an agreement  
9 between the parties. So the fact that you and the government  
10 reached agreement on certain terms, the terms that will be  
11 imposed may be different than that agreement. It's simply, the  
12 way that court proceeds. And the fact of the agreement - while  
13 very helpful and I appreciate it, and it suggests that the  
14 parties are working well together - doesn't necessarily mean  
15 that those are the conditions that I'm going to impose.

16 The second thing to say with respect to the issue of  
17 firearms is that it is in fact a policy. It's not a policy of  
18 the U.S. Attorney's Office; it's a policy of our pretrial  
19 service office, because they are going to be sending officers  
20 in to enforce the terms of your client's release, and, as you  
21 said yourself, the world is crazy, and they have safety  
22 concerns, which isn't to say that they have specific safety  
23 concerns about Ms. Noel. And, as you point out, this case is  
24 not a violent case and there are not allegations that your  
25 client has engaged in violence, either in connection with this

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1 case or in her history, but I need to be concerned about  
2 sending law enforcement officers who work for the Court, who  
3 are going to be supervising your client, and it is for their  
4 safety that we impose that condition.

5 So I am going to impose the condition. I am going to  
6 require your client to surrender her firearm. Both defendants  
7 will have to surrender their firearms and their permits so that  
8 they can't secure new firearms. That is a safety precaution  
9 that we undertake to protect our people who are going to be  
10 enforcing the terms of this release. It has nothing to do with  
11 the government per se.

12 So with that, I will release the defendants today on  
13 their own signature and the posting of \$100,000 bond that needs  
14 to be secured by two financially responsible cosigners.

15 You're going to report, each of you, to your pretrial  
16 officer, as directed.

17 I believe you've surrendered your travel documents,  
18 your passports, and the like. If you haven't, you need to  
19 surrender your travel documents, and you're prohibited from  
20 making any new travel applications.

21 Each of you is prohibited from having contact with the  
22 other, meaning your codefendant, except in the presence of  
23 counsel. As I just stated, each of you needs to surrender any  
24 firearms, both personal use and duty firearms, and the permits  
25 that authorize those, to pretrial.

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1                   With respect to travel for Mr. Thomas, your travel  
2 will be restricted to the Southern District of New York, the  
3 Eastern District of New York, and the District of New Jersey.

4                   And for Ms. Noel, your travel will be restricted to  
5 the Southern and Eastern Districts of New York, the District of  
6 New Jersey and the Eastern District of Pennsylvania.

7                   In addition, I'm imposing the requirement for  
8 Mr. Thomas that he refrain from the excessive use of alcohol,  
9 and, for Ms. Noel, the requirement that she -- I'm going to  
10 give the authority to pretrial to determine whether or not a  
11 mental health evaluation or support is needed, but that will be  
12 at the direction of your pretrial services officer.

13                  Let me warn each of you that if you fail to appear in  
14 court or if you violate any of the conditions of your release,  
15 a warrant will be issued for your arrest, and you and anybody  
16 who cosigned the bond may be responsible for paying its full  
17 amount, which is \$100,000, and you will be charged with a  
18 separate crime of bail-jumping.

19                  In addition, if you commit an offense while you're on  
20 pretrial supervision, you may be subject to a more severe  
21 punishment than you would receive if you committed the very  
22 same offense at any other time.

23                  Has Judge Torres set the next conference date?

24                  MR. ROOS: Yes, your Honor. The judge set it for  
25 November 25, 2019.

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1           And the government would move to exclude time between  
2 today's date and that date so that the government may produce  
3 discovery and the defense may begin to review the discovery.

4           THE COURT: Thank you.

5           Any objections from defense counsel?

6           MR. FOY: No, your Honor.

7           MR. FIGGINS: No, Judge. I think there is just an  
8 issue of the timing of the court date. The time --

9           THE COURT: You should just reach out to Judge Torres'  
10 deputy. I'm sure, if necessary, it can be rescheduled. For  
11 now, I'm going to exclude time, on defendants' consent, from  
12 today to November 25th.

13           Anything further from either side?

14           MR. ROOS: No, your Honor. Thank you.

15           MR. FOY: No, thank you, your Honor.

16           MR. FIGGINS: No, Judge. Thank you.

17           THE COURT: Thank you, everybody.

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