

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**PAULINE BAUER,
Defendant**

Case No. 21-cr-0386-2 (TNM)

*
*
*
*
*
*

MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE

Pauline Bauer, by her undersigned stand-by counsel, respectfully submits the following letters and other materials in support of her pretrial release.

INTRODUCTION

In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.

United States v. Munchel, 991 F.3d 1273, 1279 (D.C. Cir. 2021), quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Bail Reform Act authorizes a Court to detain a person pretrial only if it “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). “In common parlance, the relevant inquiry is whether the defendant is a ‘flight risk’ or a ‘danger to the community.’” *Munchel, supra*. At the status hearing held in this case on September 17, 2021, while noting that Ms. Bauer was not a danger to the community, the Court expressed its concern that her failure to contact Pretrial Services or allow Pretrial Services to conduct a virtual home inspection indicated that she was not willing to comply with the conditions of release. At the same time, the Court informed the government that it would need to make arrangements to enable Ms. Bauer, who is self-representing to review discovery while detained.

A. Review of Discovery While Incarcerated Is Not Practicable

Under current conditions, it is not practicable for detained defendants to review the volume of electronic discovery pertinent to this case. The anticipated discovery includes videos from inside the Capitol (“CCTV”), from body worn cameras (“BWC”) used by Metropolitan Police Department Officers, and from the many individuals who used their smart phones to record within the Capitol.

This week the Federal Defender A.J. Kramer provided a current update of the conditions at the D.C. Jail based on a power point presentation made by jail authorities.

The current quarantine numbers of 4 units, and 1 unit precautionary, means that somewhere between 300-400 inmates are presently quarantined. There is currently no way of knowing if your client is quarantined before you go to the jail to visit. Nor is there any way of knowing when the unit will be off quarantine.

The Power Point also explains the various visiting procedures. **If a client is in quarantine, there is no way to go over evidence with them, as they can’t have an in-person visit or a video visit. Finally, if you send electronic discovery to the jail for viewing by the client on the laptops there, there is currently a 4-6 week waiting period before they will be able to begin viewing it.**

Email from Mr. Kramer (emphasis added).

Accordingly, the continued detention of Ms. Bauer will delay and impair her ability to review the extensive amount of electronic discovery. She will therefore be prejudiced in her ability to represent herself.

B. Ms. Bauer Is Not A Risk of Flight

To the extent the Court’s concern about Ms. Bauer’s failure to abide by two conditions of release reflected its concern that she presents a risk of flight that risk, if any exists, is abated by the fact that Ms. Bauer has always appeared when ordered to do so as well as the support Ms. Bauer

enjoys from her family and friends and her active presence in the community, both as the owner of a local popular restaurant and as a result of her volunteer activities. Attached herewith are letters from two of her sisters as well as from friends, customers, and a member of the business community. All attest to Ms. Bauer's hard work and dedication to others, to her community and to Veterans. Lowell and Sherry Gillespie, business owners, mention Ms. Bauer's work in reviving a community park, Wildcat Park: "This historical park is is a treasure to our community. We are so very thankful for her dedication to others and her selfness."¹

Her co-defendant, Mr. Blauser, a Vietnam Veteran, writes of Ms. Bauer's generosity:

Pauline and her husband Jeff also have a banquet room where she has put on benefits for organizations like the Ludlow American Legion. She does not charge the veterans any money for rent or catering service. Pauline is more giving of herself for the service to her community, state, nation, family, and friends than any one I have ever known.

In an earlier letter (ECF 19), her sister described Pauline as

the hardest working woman I know who always puts others before herself. She has successfully operated her restaurant business for over 15 years and works 13-14 hour days right alongside of her employees. She has employed many young adults throughout the community and has mentored them through to graduation making sure that they are accountable for their responsibilities. She has helped with homework at times, provided volunteer opportunities, catered school events and has even provided financial assistance and basic essentials to those in need in order to advance them. She has volunteered her time and services to many events throughout the community and is always willing to help others in need when asked and sometimes when not even asked. I know this as being fact because I have personally helped in many of these events and have witnessed her generosity.

¹ With over 65 acres of beautiful land, Wildcat Park was first established in 1922 and offers pavilions, playgrounds, fishing, red covered bridge, trails and lots of history and much more. *See* <https://wildcatpark.weebly.com/history--location.html/>

C. The Stress on Ms. Bauer

When Ms. Bauer appeared before the Court on September 17, she had been working multiple days in a row, putting in 14 to 16 hours days and was suffering from lack of sleep as her sister relates in her letter. Ms. Bauer has also been receiving ugly hate mail. One such letter is attached as an exhibit. As she told the Court, each time she comes to court, she needs to take two-days off from work to travel and stay overnight. The combined stress of these circumstances have taken their toll on Ms. Bauer. Counsel respectfully requests that the Court take these circumstances into consideration and release Ms. Bauer to return to her productive and generous activities.

WHEREFORE, for all these reasons, Ms. Bauer respectfully requests that this Court release her, with the least restrictive conditions the Court deems necessary to reasonably assure her appearance.²

Respectfully submitted,

/s/

Carmen D. Hernandez
Bar No. MD 03366
7166 Mink Hollow Rd
Highland, MD 20777
240-472-3391
chernan7@aol.com

² The Bail Reform Act provides in pertinent part that the Court “shall order the pretrial release of the person *on personal recognizance* . . . unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.” 18 U.S.C. § 3142(b) “If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person . . . subject to the *least restrictive further condition*, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community. . .” 18 U.S.C. § 3142(c)(1)(B).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the instant Memorandum was served on all counsel of record via ECF on the 24th day of September, 2021.

/s/

Carmen D. Hernandez

CERTIFICATE OF SERVICE

I hereby certify that the instant Status Report was served this 16th day of July, 2021 via ECF on all counsel of record and a copy was emailed to Pauline Bauer.

/s/ Carmen D. Hernandez _____

Carmen D. Hernandez