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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 vs.
13 Chauncey Hollingberry,
14 Defendant.

Case No. 20-3058MJ-001-PHX-MTM
**GOVERNMENT'S DETENTION
MEMORANDUM**

15 The United States of America, by and through Lisa E. Jennis, Assistant United
16 States Attorney, submits this memorandum in support of the government's motion for
17 detention as to defendant Chauncey Hollingberry. The detention hearing for this defendant
18 is scheduled for Friday, March 20, 2020.

19 The United States asserts that defendant is charged with a crime of violence and that
20 he poses a serious risk of nonappearance for future proceedings, and there is a serious risk
21 that he will obstruct and attempt to obstruct justice, and intimidate prospective witnesses.
22 18 U.S.C. § 3142(f)(1), (f)(2).

23 On March 13, 2020, defendant was arrested by the Phoenix Police Department for
24 Aggravated Assault with a deadly weapon/dangerous instrument pursuant to 13-1204(a)(2)
25 after striking a Department of Economic Security (DES) security officer with his cellular
26 telephone which was in a hard case (weighing .586 pounds) attached to a tripod which was
27 approximately five feet long (weighing 4.193 pounds). The defendant used both hands to
28 swing the tripod with cellular phone and struck the security guard on the left side of his
face causing a mark and scratch from his ear to his eye. Subsequent to that arrest, defendant

1 was arrested by the Federal Bureau of Investigation pursuant to an arrest warrant out of
2 this district charging defendant with Cyberstalking in violation of Title 18, United States
3 Code, Section 2261A(2). Defendant had his initial appearance before this court on March
4 16, 2020. (CR 7.)

5 **ARGUMENT**

6 **I. Legal Framework**

7 Under the rubric of the Bail Reform Act, the Court shall hold a detention hearing in
8 a case that involves a “crime of violence” or other enumerated offenses, 18 U.S.C. §
9 3142(f)(1)(A), or if there is a serious risk that the defendant will flee, obstruct or attempt
10 to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or
11 intimidate, a prospective witness or juror, 18 U.S.C. § 3142(f)(2). If, following a hearing,
12 “the judicial officer finds that no condition or combination of conditions will reasonably
13 assure the appearance of the person as required and the safety of any other person and the
14 community,” then the judicial officer must order the defendant detained pending trial. 18
15 U.S.C. § 3142(e). In making its determination, the Court must take into account the
16 available information concerning (1) the nature and circumstances of the offense charged;
17 (2) the weight of the evidence against the defendant; (3) the history and characteristics of
18 the defendant, including (a) the defendant's character, physical and mental condition,
19 family ties, employment, financial resources, length of residence in the community,
20 community ties, past conduct, history relating to drug or alcohol abuse, criminal history,
21 and record concerning appearances at court proceedings, and (b) whether, at the time of
22 the current offense or arrest, the defendant was on probation, parole, or other pretrial
23 release; and (4) the nature and seriousness of the danger to the community that would be
24 posed by the defendant's release. 18 U.S.C. § 3142(g).

25 A finding that no condition or combination of conditions will reasonably assure the
26 safety of the community must be supported by clear and convincing evidence. 18 U.S.C. §
27 3142(f).
28

1 A finding that no condition or combination of conditions will reasonably assure the
 2 defendant's appearance, however, must only be established by a preponderance of the
 3 evidence. *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

4 **II. Cyberstalking is a Crime of Violence**

5 A “crime of violence” under the Bail Reform Act includes “an offense that has as
 6 an element of the offense the use, attempted use, or threatened use of physical force against
 7 the person or property of another,” 18 U.S.C. § 3156(a)(4)(A), and “any other offense that
 8 is a felony and that, by its nature, involves a substantial risk that physical force against the
 9 person or property of another may be used in the course of committing the offense,” 18
 10 U.S.C. § 3156(a)(4)(B). The latter definition, sometimes referred to as the “residual
 11 clause,” is “intended to cast a wider net, specifying that it relates to any other offense that
 12 does not necessarily involve violence but by its nature involves a substantial risk that
 13 physical force may be used in committing the offense.” *United States v. Flores-Ortiz*, Crim.
 14 No. 15-605 (PAD), 2015 WL 7574765, at *3 n.2 (D.P.R. Nov. 25, 2015) (citing *United*
 15 *States v. Dillard*, 214 F.3d 88, 92 (2d Cir. 2000)).

16 To determine whether a particular offense is a crime of violence, courts in the Ninth
 17 Circuit employ the categorical approach. *See, e.g., United States v. Montoya*, 486 F. Supp.
 18 2d 996, 1002 (D. Ariz. 2007). Under the categorical approach, courts do not evaluate facts
 19 specific to the case, nor do they inquire “whether the statutory elements of a crime require
 20 (or entail) the creation of such a risk in each case that the crime covers.” *Sessions v.*
 21 *Dimaya*, 138 S. Ct. 1204, 1211 (2018). Rather, the Court inquires whether the “ordinary
 22 case” of an offense presents a substantial risk that physical force against the person or
 23 property of another will be used in the course of committing the offense. *Id.*

24 While the Ninth Circuit has not yet considered the issue, courts across the country
 25 have consistently found cyberstalking to be a crime of violence under the Bail Reform Act.
 26 *See United States v. Kukstis*, No. 4:18-mj-04174-DHH (D. Mass. May 04, 2018)
 27 (Memorandum and Order on Detention); *United States v. Harrison*, 354 F. Supp. 3d 270,
 28 278 (W.D.N.Y. 2018); *United States v. Grooms*, 3:15-mj-00025, 2015 WL 1982097, at *5

1 (S.D. W. Va. Apr. 29, 2015); *United States v. Shrader*, No. 1:09-cr-00270, 2010 WL
 2 503092, at *3 (S.D. W. Va. Feb. 8, 2010); *United States v. Neuzil*, No. 09-CR-2020-LRR,
 3 2009 WL 2030373 (N.D. Iowa July 13, 2009).

4 The rationale behind these decisions is strong. For one, the cyberstalking statute
 5 punishes stalking with “the intent to kill, injure, harass, or intimidate,” the ordinary case of
 6 which naturally involves a substantial risk of physical force. *Kukstis*, No. 4:18-mj-04174-
 7 DHH at 10 (“Conduct intended to ‘kill, injure, harass, or intimidate’ another implicates
 8 categorically a substantial risk of the use of physical force during the course of stalking.”);
 9 *Harrison*, 354 F. Supp. 3d at 278 (“Cyberstalking . . . categorically involves a substantial
 10 risk that physical force against the person or property of another may be used”); *Grooms*,
 11 2015 WL 1982097, at *3 (agreeing that intent to “‘kill, injure, harass . . . or cause
 12 substantial emotional distress,’ . . . naturally involved a substantial risk of physical force);
 13 *Shrader*, 2010 WL 503092, at *3 (same). The Court in *Kukstis*, relying on the dissent in
 14 *Malta-Espinoza v. Gonzalez*, 478 F.3d 1080, 1086 (9th Cir. 2007), also found persuasive
 15 research conducted by the National Center for Victims of Crime and the United States
 16 Department of Justice. Specifically, this research shows that 46% of stalking victims
 17 experience one or more violent incidents by the stalker, approximately 29% of stalkers
 18 vandalize the victim’s property, and 9% of stalkers kill or threaten to kill the family’s pets.
 19 Indeed, “because stalking, by definition, requires *repeated* victimization, it is intuitive that
 20 there is an increased opportunity for violence.” *Malta-Espinoza*, 478 F.3d at 1087 (Duffy,
 21 J., dissenting) (emphasis added). *See also* 18 U.S.C. § 2261A(2) (requiring a “course of
 22 conduct” rather than a single, isolated event).

23 The conclusions of these courts are further underpinned by Congress’ intent in
 24 enacting the cyberstalking statute. As *Grooms* acknowledged, the statute was enacted as
 25 part of the Violence Against Women Reauthorization Act of 2005. *Grooms*, 2015 WL
 26 1982097, at *5. Citing “the sobering statistic” that nearly one-third of American women
 27 report enduring physical or sexual abuse, “the act implicitly recognizes that stalking and
 28 cyberstalking are crimes of violence, like sexual assault, domestic battery, and dating

1 violence, which require the appropriation of funds for the creation of hotlines, education,
2 training, prosecution, and punishment.” *Id.* *Grooms* reasoned that, against this legislative
3 backdrop, it would be “illogical and counterintuitive” for a court to not consider whether
4 an alleged offender poses a danger to victims and the community. *Id.* Together, these
5 decisions stand for the consistent understanding that cyberstalking by its nature involves a
6 substantial risk that physical force against the person or property of another may be used
7 in the course of committing the offense, and therefore is a crime of violence under the Bail
8 Reform Act.

9 **III. No Conditions Will Reasonably Assure the Safety of the Victim and Others.**

10 Defendant acted in retaliation against Victim K for having videos with her image or
11 information removed from his YouTube Channel, Law Offices of Daddy and Master aka
12 Chauncey Dragonfyre. YouTube removed a video from a July 2018 interaction at the
13 Arizona Attorney General’s Office (AGO) where Phoenix Police Department (PPD)
14 responded to the scene and charged defendant with trespassing.¹ PPD spoke with Victim
15 K in her work capacity, and she later filed a privacy complaint after the defendant posted
16 the PPD Officer’s bodycam video on his YouTube channel. Thereafter, for approximately
17 14 months, defendant called and visited the AGO complaining about AGO employees
18 getting privacy complaints against him and the AGO’s no-filming policy. In January 2020,
19 defendant’s harassing conduct against Victim K escalated. In January 2020, he filmed
20 himself threatening to file a complaint against Victim K, calling her a “bitch” on the video.
21 He asked the viewers watching his YouTube videos to send him Victim K’s home address,
22 phone numbers, pictures and any “dirt” that they have on her or other AGO employees.
23 Defendant told Victim K’s co-workers to blame her for his actions. In response to the
24 video, viewers of defendant’s YouTube channel wrote derogatory posts threatening
25 physical harm and even death. They posted her address, the value of her home, and other
26 personal information. All the while, defendant kept returning to the AGO and filming

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28 ¹ Trespassing charges were later dismissed.

1 Victim K's office requiring her to have security escort her to and from work. Defendant
2 has repeatedly publicized the victim's personal information and has routinely referred to
3 her in a derogatory fashion.

4 Victim K isn't the only one defendant has victimized. The United States submitted
5 six letters to the court which describe the defendant's history of stalking and terrorizing
6 members of this community. These victims describe in detail the fear, emotional distress
7 and anxiety caused by the defendant, and they all request that he be detained. Two of those
8 victims, in addition to Victim K, have current Injunctions against Harassment against the
9 defendant.

10 On January 24, 2020, Defendant was served with an Injunction Against Workplace
11 Harassment to stop his harassment of Victim K. He ignored it and the same day sent out a
12 mass email to Victim K's co-workers and compiled an email list of 56 government workers,
13 including Victim K, directing his followers to email bomb the people on the list. This list
14 was available to all viewers.

15 There are two other Injunctions Against Harassment out of Superior Court of
16 Arizona against the defendant. One of them was filed by the defendant's uncle on
17 December 3, 2019 and served on the defendant on December 17, 2019, in response to the
18 defendant sending defamatory emails to the uncle's donors which contained false and
19 disturbing accusations. In addition, in October 2019, the defendant's uncle discovered that
20 the defendant created a website mimicking the uncle's non-profit website but used .net in
21 place of .org. Defendant also ignored that court order and continued to talk about his uncle
22 in disparaging ways on video and on March 7, 2020, sent an email to his uncle's counsel,
23 in which he says he is "doing everything I can to cause your client to physically die."
24 Defendant mentioned several times in videos that he had level 5 body armor and was going
25 to the gun range. And defendant took a poll on YouTube on whether he should go to "a
26 synagogue on the public sidewalk with body armour, an AR-15 assault rifle and a
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28

1 camera?”² The second was filed by a news reporter who the defendant also harassed and
2 posted video about on his YouTube channel. He was served with the court order on May
3 2, 2019.

4 In addition to harassing individuals, the defendant frequently goes to state and
5 federal buildings to film employees and members of the public visiting those locations. He
6 films at public schools, churches and synagogues. He attempts to incite people by carrying
7 “fuck Jesus” signs outside of churches and goes to synagogue pretending not to speak
8 English and stating “Allah Akbar” which means “God is Greater”, an Islamic declaration
9 of faith used in the opening declaration of every Islamic prayer. This phrase has also been
10 used as a “battle cry” in various religious and military conflicts and when committing acts
11 of terrorism or religious or political violence. These videos were posted on his YouTube
12 channel.

13 The nature and circumstances of the offense support detention. The offense with
14 which the defendant is charged is a serious crime of violence that involved conduct
15 intended to harass and intimidate the victim and cause reasonable fear of serious bodily
16 injury to the victim and her family. By spreading disparaging information about the victim,
17 to the public and to her co-workers, defendant turned the internet into a weapon of terror.
18 The victim received threats to harm her and her family members from unknown persons
19 some of whom appear to subscribe to defendant’s YouTube channel. These threats cannot
20 be dismissed as idle. Rather, the defendant intended to incite hate and/or violence against
21 the victim and her family, and his actions proved successful.

22 Defendant is also a danger to his mother and he has access to all her money.
23 Defendant’s mother, age 59, was interviewed by law enforcement on March 13, 2020, after
24 the defendant’s arrest. She lives with the defendant and stated that she hasn’t left the home
25 since they moved there approximately two years ago. She stated that the defendant told

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28 ² A search warrant was executed at defendant’s home and on his vehicle and no
firearms or body armor was located.

1 her that if she left the apartment, the home would be raided by government freeloaders and
2 criminals that were always watching the apartment and waiting for her to leave. Defendant
3 resides in the master bedroom and his mother sleeps on a large beanbag in the other
4 bedroom. She told law enforcement that she used to enjoy a life of hiking and biking but
5 is now afraid to leave her home. She stated that defendant controls all her finances and her
6 inheritance checks. During an interview with FBI, defendant told them that his mother
7 signs her monthly checks from a trust for which she is the beneficiary. A review of those
8 checks shows that they are mailed to defendant's Post Office Box and are signed over to
9 the defendant. Defendant also told the agents he does not have a power of attorney but that
10 is untrue. Defendant has had power of attorney for his mother since July 2013, as it is an
11 exhibit to a civil complaint for Libel filed December 5, 2019, in Superior Court of
12 California, County of Santa Barbara against the defendant by his uncle.

13 What makes this history of animosity particularly troubling and relevant for
14 purposes of detention is his ready, apparent, and already-demonstrated capability to incite
15 violence toward the victim and her family. Defendant's actions demonstrate that he is
16 becoming more and more dangerous. He has become physically violent with a security
17 guard. He continues to harass and torment the victims despite receiving court orders to the
18 contrary.

19 Applying the factors set forth in 18 U.S.C. § 3142(g), there is ample evidence to
20 support a finding that no conditions of release will reasonably assure the safety of the
21 victim, her immediate family members, and others. Nor are there any conditions that negate
22 the risk that the defendant will obstruct or attempt to obstruct justice.

23 For these reasons, the nature and seriousness of the danger to Victim K cannot be
24 understated. This danger is multi-faceted, posing both a significant risk to Victim K's
25 emotional and mental well-being as well as a danger to Victim K and her family's physical
26 safety. The defendant's crime was, in essence, cyber-facilitated violence, and support
27 detention.
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1 The weight of the evidence against the defendant is similarly strong. As detailed in
2 the complaint, the communications toward or about Victim K speak for themselves in terms
3 of the express and implied threats and cyberstalking behavior contained within them. The
4 government's evidence consists of YouTube videos, social media posts, emails, and voice
5 messages involving the defendant's cyberstalking conduct. These communications prove
6 not only the defendant's direct dissemination of compromising material about Victim K to
7 members of the public and her work community, but also show the defendant actively
8 plotting his campaign to engage in cyberstalking and recruiting his viewers to assist him.

9 Defendant's conduct of sending derogatory information out via YouTube,
10 FaceBook and emails clearly evince the defendant's objective to harass, intimidate, shame,
11 embarrass, humiliate and otherwise, ruin Victim K's life³, as well as place a high risk of
12 harm to her and her family members.

13 In determining the defendant's capacity to obstruct justice and violate court orders,
14 his conduct and behavior preceding and while facing Injunctions Against Harassment is
15 informative. On February 20, 2020, Victim K obtained an Injunction Against Harassment
16 against Defendant. After being served with the court's order, defendant attempted to avoid
17 service by running to his car, and he even lied about it to his viewers claiming he never
18 read it.

19 When defendant was interviewed after his arrest, he stated that he would never stop
20 posting public information on the internet. He stated that as long as he didn't make a "true
21 threat" that he couldn't be prosecuted. He admitted that he didn't care how it made people
22 feel as he couldn't control their feelings. He stated that as long as a government employee
23 was going to infringe on his rights that he would continue to do what he is doing. He stated
24 that "either you have a free country or you don't, and you can publish public information
25 about someone, and you can talk about someone on the internet, period. If you can't do
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28 ³ The defendant has committed similar conduct against his uncle with the goal of
ruining his life and reputation.

1 that, you don't have a free country, what can you talk about on the internet? And I
2 understand the government doesn't like it but that's nice."

3 The United States has satisfied its burden of establishing by clear and convincing
4 evidence as to the defendant that there are no conditions of combination of conditions that
5 can reasonably assure the safety of the community if he is released.

6 **IV. No Conditions Will Reasonably Assure the Appearance of the Defendant at**
7 **Future Court Proceedings.**

8 The defendant's history and characteristics support detention and demonstrate that
9 there are no conditions or combination of conditions that can assure his appearance at
10 future court proceedings.

11 He has repeatedly demonstrated that he won't follow the rules. He continues to film
12 inside government buildings even though he is told he cannot do so. He also ignores the
13 court orders filed to prevent him from harassing others, specifically Victim K and his uncle.
14 This gives this court little reason to believe that he would follow any release conditions
15 imposed. Further, he is no longer employed and should not be allowed to reside with his
16 mother based on her statements to law enforcement. With nowhere to live, no employment,
17 and practically no reason to believe that he will abide by release conditions, the government
18 submits that it has established, by a preponderance of the evidence, that there are no
19 conditions or combination of conditions that can assure his appearance at future court
20 proceedings.

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CONCLUSION

Accordingly, the United States respectfully requests this Court to find that, in light of the factors set forth in 18 U.S.C. § 3142(g), the defendant should be detained pending trial and enter an Order of Detention accordingly.

Respectfully submitted this 19th day of March, 2020.

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/s/ Lisa E. Jennis

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