THIS CASE HAS NOT BEEN SET FOR ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-3093

UNITED STATES OF AMERICA, **Appellee,**

v.

DANIEL GOODWYN, **Appellant**.

APPELLANT'S REPLY TO APPELLEE'S RESPONSE TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

Appellant, DANIEL GOODWYN, respectfully submits this Reply to the Response at Document #2071942 ("Response"), and requests that this Court grant his Emergency Motion for an Injunction (Document #2071044)(the "Motion").

SUMMARY

Mr. Goodwyn lost his occupation of documentary contributor, video investigator, journalist, and web site designer due to the district court's supervised release special condition of computer monitoring that completely disregarded his occupation and did not except his work devices and accounts. He lost his occupation because he lost all privacy in computer and internet use, access to web sites, information searches, posts, texts, emails, and all other correspondence. To regain clients' trust in the confidentiality and security of their communications, and their

proprietary and source information as a significant step in reestablishing himself in his profession, his Motion requested that this Court enjoin the lower court to answer specific questions about the computer and internet use monitoring.

The Motion is not moot because the Court can still grant relief. Mr. Goodwyn was irreparably harmed and faces continuing irreparable injury due to violation of substantial U.S. Constitutional issues. The Constitutional issues involve the First and Fourth Amendments, overall privacy, and his fundamental right to earn a living in his profession. The Motion asks the Court to grant relief that will allow him to exercise his fundamental right to work.

This Reply addresses the government's Response that asks this Court to bypass any examination of implementation of the expansively vague Orders (Exhibit to Motion at 35-50) that gave no specifics about software and what would be surveilled; and applied no oversight of what was installed or was not removed. In causing loss of occupation, the lower court delegated all details to arbitrary decisions by Probation Services for a non-standard, vague computer monitoring area of "disinformation," "misinformation," "January 6th," and whatever other "related" terms those conducting monitoring decided to spy on, with unspecified software and access. Probation Services did not attend the June 27, 2024 hearing where Mr. Goodwyn was oddly ordered to show cause as to why computer monitoring should not be continued rather than the court using the record that existed prior to sentencing

in June 2023 (which had already failed on appeal) to list coherent, legal "reasons" if it wanted to justify the special condition. At this hearing, the DOJ admitted computer and internet surveillance activity that was not only for the year after sentencing, but was for the period after this Court vacated the computer monitoring special release condition on February 1, 2024. The surveillance was not just about information that was available through public examination.

Mr. Goodwyn needs to assess whether he can "clean" his devices. Government spyware is not something that is flagged with blinking lights once installed. As stated in the Motion, installation of spyware no longer requires physical access to devices. He must engage a professional to examine the computer and determine what remains imbedded, and what can be removed. With answers, Mr. Goodwyn faces less damages in costs to try to rehabilitate his equipment and devices for privacy in use. Without answers, Mr. Goodwyn faces continued and irreparable harm that will include having to replace ~$10,000.00 of equipment, devices, and services. His harm of having non-specified spyware remotely installed and potentially not removed, and used by unknown parties, is not only repeatable against him, but sets a precedent where the lower court's judges can institute computer and internet monitoring and restrictions as punishment unrelated to crimes of conviction without any accountability.

The Response includes assertions without evidence or detail that no monitoring was ever conducted by the government. The Response wrongly asserts that all surveillance was only from what was publicly available, when the government's arguments to convince the lower court to continue computer monitoring show surveillance of web site activity *that was not public*. As one example, the DOJ stated, "For example, Goodwyn's contribution as a team member of the website, '1000 Days of Terror,' places targets on USCP officers." Document #2065876 at 78. Ignoring that the assertion of targeting police was false, *the only way* the DOJ can have made this statement that Mr. Goodwyn posted content to the StopHate.com website was by accessing internal website posting data and Mr. Goodwyn's computer activity. Nothing on the site as seen publicly indicated who posted the legal notice and false assertion about a deck of playing cards. The example is one of several DOJ admissions that demonstrate surveillance was implemented and involved information that was not publicly visible.

The government urges this Court to disregard transparency and specificity, and to ignore the relief it can grant by dismissing the case as moot. Because Mr. Goodwyn can receive relief as requested from this Court, his case is not moot. To date, he has received no official confirmation from Probation Services Agency that his supervised release is completed. Regardless, to allow Mr. Goodwyn to reestablish his profession with minimized costs (since he is broke and unemployed) his

emergency Motion should be granted, with the lower court enjoined to provide the answers to the matters as he requested. The government already ignored this Court's vacatur on February 1, 2024 for the special release condition and spied into Mr. Goodwyn's internal web activities. The lower court either ignored that spying or was not astute enough in computers to understand the abuse its order caused.

If this Court denies the Motion, the use of computer restrictions and monitoring as a punishment for protected speech and to chill viewpoints by not only Judge Walton but other judges in the lower court will spread like a virus. This is a matter of great public interest - making the matter not moot. Computer and internet use restrictions are already being ordered despite not adhering to caselaw, the statutes, and the U.S. Constitution because judges, the DOJ, and Probation Service Agency are not answering to anyone. Mr. Goodwyn will address his Constitutional and illegitimate, surveillance issues in another forum, but this Court can deliver relief as requested so he can get back to being employed without obtaining private loans for all new equipment, services, and devices. Whether this Court decides to issue any declaratory relief to prevent ongoing abuses is justiciable. *Powell v. McCormack*, 395 U.S. 486, 517-18 (1969).

ARGUMENT

I. Without Evidence, the Government Incorrectly Asserts That No Monitoring Occurred

The Response asserts that Mr. Goodwyn was wrong "in assuming that computer monitoring actually occurred. If he had filed this motion in the district court, the government would have established that the Probation Office in fact never installed any monitoring software because of Goodwyn's appeal." Response at 1-2. See also *Id*. at 6-7. The response provides no name, no affidavit, or anything to support this assertion that monitoring never occurred. It speculates that the district court could have provided an answer even though the district court in all activity - including denying Mr. Goodwyn's emergency motion for a stay, refused to address the issue. As stated in the Motion, both the DOJ and lower court deliberately evaded addressing the issue raised many times by Mr. Goodwyn that there were no specifics as to software and what was implemented. No filing again in the lower court was practical given the court's willful ignoring of what had or was happening with its vague monitoring orders.

The response incorrectly wrote, "Yet those pleadings merely reference public websites and social-media accounts and do not discuss any matters that could be learned only through monitoring of Goodwyn's computers." Response at 7. Mr. Goodwyn will highlight here that if not Probation Services, then the DOJ or some other government entity installed monitoring. Some government entity did in fact

monitor Mr. Goodwyn's postings that were not visible publicly. The example in the above Summary shows the DOJ stated, "Goodwyn's contribution as a team member of the website, '1000 Days of Terror,' places targets on USCP officers." Document #2065876 at 78. *The only way* the DOJ can have asserted that Mr. Goodwyn posted content to the StopHate.com website was by accessing Mr. Goodwyn's internal website posting data and computer activity. Mr. Goodwyn concedes the previous false assumption before the June 27, 2024 hearing that because the local probation services officer stated he had no guidance for monitoring that no monitoring happened. Monitoring not limited to public viewing occurred. An element of the government monitored Mr. Goodwyn using software and techniques not limited to what was public facing. The DOJ received the information, whether it or its FBI were the monitoring perpetrators. The Response's speculation that the lower court could have found "the Probation Office never installed any monitoring software because it learned that the supervised-release condition had been appealed and it found out too late that the condition had been reinstated on remand" (*Id*.) lacks all credibility and is obfuscation of truth when computer monitoring did in fact occur.

The Court should not lose sight of the irony that the Response wants to block the requested answers to questions about installed software, and then asserts that Mr. Goodwyn lacking such answers bears the burden of proving software was installed. *Id*. at 6. Mr. Goodwyn has shown such.

II. The Government's Argument About Mootness Fails.

There are three main exceptions to mootness: (1) capable of repetition yet evading review; (2) voluntary cessation; and (3) public interest.

In *City of Mesquite v. Aladdin's Castle, Inc*. 455 U.S. 283 (1982), the Court found both that given voluntary cessation where the defendant ceased its action, that because the city could reenact precisely the same provision if the case were dismissed on mootness grounds, the Court needed to confront the issue. Here, the government argues that the activity of monitoring ceased with the end of supervised release (and incorrectly asserts it never started). The Response speculatively infers that nothing is repeatable against Mr. Goodwyn when in fact the increasing viral spread can cause the computer condition to be imposed anywhere nationally even if he is (wrongly) charged with a misdemeanor. Contrary to the government's claim (Response at 8) where the computer monitoring had nothing to do with his trespass, the Probation Services (PSA) and DOJ will be emboldened to request it for anything - as done in Mr. Goodwyn's current case. Highlighting his Motion, the lower court, DOJ, and PSA have all now recommended computer monitoring, internet restrictions, and searches without reasonable suspicion of any crime despite there being no use of a computer or internet to commit any crime, and the condition is being imposed as punishment and restraints on speech for holding viewpoints that disagree with the government.

The Supreme Court has generally declined to deem cases moot if they present issues or disputes that are "capable of repetition, yet evading review." See, e.g., *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016); *Turner v. Rogers*, 564 U.S. 431, 439–41 (2011); *Davis v. FEC*, 554 U.S. 724, 735–36 (2008); *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007). "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012). Mr. Goodwyn can receive relief and has a continuing interest. The remaining period of supervised release was too short for the matter to be fully litigated, with the appellant's brief due on September 9, 2024. Whether it is Mr. Goodwyn or another January 6th defendant, the issues are not moot, especially for the Injunction Motion, and this Court should inquire on the matter.

Regarding the end date of supervised release, the DOJ ignores that Mr. Goodwyn will continue to be damaged, with that damage becoming irreparable as to his fundamental right to earn a living when he cannot clean his devices and restore client confidence, and does not have $10,000.00 to buy new work equipment. Since the Court retains the ability to "fashion some form of meaningful relief, "then that" is sufficient to prevent th[e] case from being moot." *Church of Scientology*, 506 U.S. at 12–13. *See also, e.g.*, *Chafin v. Chafin*, 568 U.S. at 177 ("[E]ven the availability

of a partial remedy is sufficient to prevent a case from being moot.") (quoting *Calderon*, 518 U.S. at 150).

Because mootness does not apply, this Court should afford the relief that Mr. Goodwyn requested.

III. No Rules or Statutes Preclude this Court From Enjoining the Lower Court.

The Response at 8 asserts that injunctions are only valid for civil cases. However, the Federal Rules of Appellate Procedure Rule 8 and D.C. Cir. Rule 8(a) makes no such distinction for only civil cases. It appears the rules conflate "stay" and "injunction" where the Title of FRAP 8 is: "Stay or Injunction Pending Appeal." Congress has not legislated to prohibit an injunction in a criminal case. Certainly, this Court issues orders all the time to the lower federal court, which is what the Injunction at issue requests. It is accepted practice that under specific conditions a federal circuit court can enjoin a state court from certain actions related to Constitutional rights. Given that this Court issued a vacatur order on February 1, 2024, with a mandate in March 2024, and the lower court never ordered the government to cease monitoring, and then Ordered on Nune 27, 2024 that *computer monitoring should continue*, it is curious that the Response asserts that this Court has no authority to enjoin the lower court for answers, and has no jurisdiction. *Id*. at 1;2;8;9.

CONCLUSION.

Wherefore, for the foregoing reasons, the Court should enjoin the district court to answer the issues raised in the Motion.

August 28, 2024

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) of the Federal Rules of Appellate Procedure. As measured by the undersigned's word-processing system used to prepare this motion, the Reply contains 2282 words.

2. This document complies with the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a 14 point proportionally spaced roman-style typeface (Times New Roman).

August 28, 2024

/s/ Carolyn Stewart
Carolyn Stewart
Appellant's Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2024, I caused the foregoing Appellant's' Motion to be served on Appellee by the Court's electronic filing system where the Appellee is registered.

August 28, 2024

/s/ Carolyn Stewart
Carolyn Stewart
Appellant's Counsel