

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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UNITED STATES OF AMERICA * NO. 4:19-CR-181-ALM-CAN-1
 * Plano, Texas
VS. *
 * 3:13 p.m. - 3:55 p.m.
CONRAD ROCKENHAUS * February 20, 2020

* * * * *

PRELIMINARY AND DETENTION HEARING
(Re: Revocation or Modification of Pretrial Release)

BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

* * * * *

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3:13 P.M. - FEBRUARY 20, 2020

THE COURT: The Court calls Case No. 4:19-CR-181, United States vs. Conrad A. Rockenhaus.

MS. LOPEZ: Camelia Lopez for the Government,
ready to proceed.

MR. REAVES: Walter Reaves for Mr. Rockenhaus,
Your Honor.

THE COURT: Good afternoon.

MR. REAVES: Good afternoon, Your Honor.

THE COURT: Mr. Rockenhaus, please raise your right hand to be sworn.

DEPUTY CLERK: Do you solemnly swear the testimony you are about to give in the case before the Court will be the truth, the whole truth, and nothing but the truth, so help you God?

DEFENDANT ROCKENHAUS: I do.

THE COURT: We're here today regarding Defendant's Motion to Reconsider Order of Detention Pending Trial, which was filed after Initial Appearance in Waco regarding a Petition for Violations of Pretrial Release for an underlying Indictment in the Eastern District of Texas.

The record is a bit unclear in terms of what hearings were requested when Mr. Rockenhaus was

1 seen in the Western District. I can tell from the
2 papers that we've received from that court that an
3 initial hearing was held and it looks like that's it.
4 The papers that I've received do not reflect that
5 Mr. Rockenhaus waived his right to a Detention and
6 Preliminary Hearing there and reserved the right to
7 have those hearings here.

8 But, counsel, was that your intent?

9 MR. REAVES: I think that's accurate, Your
10 Honor. He was -- he was picked up and appeared before
11 the Magistrate without -- we weren't notified when that
12 happened, so we weren't present. But our understanding
13 from that hearing was that he was --

14 THE COURT: Wait, wait, "we" what? You
15 weren't present?

16 MR. REAVES: I was not present, Your Honor.

17 THE COURT: Okay.

18 MR. REAVES: No, ma'am. So our understanding
19 of that was that he was being taken into custody to be
20 transferred here for the purpose of having a hearing on
21 the petition that had been filed.

22 THE COURT: Right. That should have happened.

23 MR. REAVES: It should have happened.

24 THE COURT: But there's obviously been a
25 delay that should not have happened for reasons that

1 I'm somewhat unclear. But be that as it may,
2 Mr. Rockenhaus is entitled, unless he wants to waive
3 it, to a Preliminary Hearing and a Detention Hearing.

4 So how would you like to proceed,
5 Mr. Reaves?

6 MR. REAVES: I think we would request that
7 Preliminary Hearing and Detention Hearing, Your Honor.

8 THE COURT: All right. And are you ready to
9 proceed with that at this time?

10 MR. REAVES: We are.

11 THE COURT: Ms. Lopez, are you?

12 MS. LOPEZ: Yes, we are.

13 THE COURT: Okay. All right, counsel, if you
14 want to have a seat at counsel table with your client.

15 MR. REAVES: Yes, ma'am.

16 THE COURT: Ms. Lopez, you may call your
17 witness.

18 MS. LOPEZ: Government calls Tiffany Routh,
19 please.

20 DEPUTY CLERK: Do you solemnly swear the
21 testimony you are about to give in the case before the
22 Court shall be the truth, the whole truth, and nothing
23 but the truth, so help you God?

24 THE WITNESS: I do.

25 Deputy clerk: You can have a seat, please.

1 State your name and spell it for the record.

2 THE WITNESS: My name is Tiffany Routh.

3 T-i-f-f-a-n-y R-o-u-t-h.

4 U.S. PRETRIAL OFFICER TIFFANY ROUTH,

5 DIRECT EXAMINATION

6 BY MS. LOPEZ:

7 Q. Good afternoon, Ms. Routh. Are you with Pretrial
8 Services with the Court?

9 A. Yes, I work for the United States Probation Office
10 and I work in the Eastern District of Texas, Sherman
11 Division, the Plano Office, as a Pretrial Officer.

12 Q. In this case the defendant, Mr. Rockenhaus, is
13 being supervised here or out of Waco?

14 A. He was being supervised out of the Waco office.

15 Q. And then how -- what is your role in this case?

16 A. So my role in this case is I take care of the case
17 from our side. He's just supervising the defendant.
18 And then any type of information violations or whatever
19 is going on, he relays to me and I handle it on this
20 end.

21 Q. When you say "he," who are you speaking of?

22 A. Officer Luis Ramos.

23 Q. All right. And so did Officer Ramos, does he keep
24 you in touch with you or report to you what
25 Mr. Rockenhaus, the defendant, is up to with regard to

1 his compliance while on pretrial release?

2 A. Yes, correct.

3 Q. When was Mr. Rockenhaus placed on pretrial release?

4 A. He was placed on pretrial release in Waco in the
5 Western District on August 22, 2019, and then appeared
6 here on August 29th in the Eastern District in front of
7 Judge Johnson, yeah, on August 29, 2019.

8 Q. Due to the nature of the offense charged being a
9 computer-related crime, did he have specific
10 restrictions on his pretrial release as it relates to
11 his computer usage?

12 A. Yes. One of the conditions was that he must
13 participate in the Computer Restriction and Monitoring
14 Program.

15 Q. How is that program enforced?

16 A. That program is enforced -- the defendant has to
17 download a software program onto his computer or iPhone
18 or whatever, any type of device that has access to the
19 Internet. That information is -- the monitoring
20 company, they monitor -- they are able to monitor what
21 he is accessing on the Internet. And the Probation
22 Officer has been allowed to review weekly reports about
23 what sites he's accessing, things like that.

24 Q. And is the defendant notified and made aware and
25 provided with a document that states the terms of that

1 agreement?

2 A. Yes.

3 MS. LOPEZ: And may the Court take judicial
4 notice of I believe this is a record in the Court's
5 file. If not, I can provide it. It's titled Exhibit B
6 at the top and it's basically a contract outlining the
7 terms and the price of the monitoring service. And
8 Mr. Rockenhaus' name appears at the bottom, dated
9 August 29th, and then the Probation Officer's name
10 appears to be noted a few days later.

11 Does the Court have that?

12 THE COURT: I don't have it in front of me.
13 I've got the conditions that were set. And so I think
14 that's just the contract that's signed with regards to
15 the software after the conditions are entered. I don't
16 have it in front of me. If you have an extra copy, you
17 can --

18 MS. LOPEZ: Yes, Your Honor, may I approach?

19 THE COURT: Yes, please.

20 **[Pause]**

21 MS. LOPEZ: Your Honor, I have marked the
22 exhibit at the bottom Government's Exhibit 1 for
23 purposes of this hearing. Defense counsel has a copy
24 of that, and that's the document I'd ask the Court to
25 take judicial notice of.

1 THE COURT: Okay.

2 BY MS. LOPEZ:

3 Q. So, Ms. Routh, having been acknowledged of his
4 obligations to monitor and pay for the service on
5 August 29th, can you please tell the Court how
6 Mr. Rockenhaus complied or didn't comply with the terms
7 of his release?

8 A. Yes. On September 22nd the defendant did
9 successfully download the monitoring software program
10 on his computer. On October 11th Officer Ramos
11 contacted the defendant regarding his lack of computer
12 usage. So he reviewed some reports and realized that
13 nothing was appearing, indicating that he was using his
14 computer.

15 The defendant stated at that time that he had
16 not been using his computer, that he had been sick, and
17 that he was utilizing his iPhone to access the Internet,
18 check emails, and watch television.

19 Officer Ramos at that time advised him that he
20 could not be accessing his iPhone -- he could not be
21 accessing his iPhone and getting on the Internet if his
22 iPhone was not being monitored. There was no software
23 monitoring on there. At that time Officer Ramos
24 advised him that iPhones could not have the software on
25 there and that he would need to get a new iPhone -- I'm

1 sorry, get an Android phone or different phone so that
2 it could be monitored.

3 On October 29th Officer Ramos was reviewing
4 the reports again and noticed that the defendant was
5 still not accessing the Internet based on the reports.
6 There was just nothing there. The defendant stated
7 that he was not accessing the computer at all, but the
8 officer spoke to his wife, who stated he had been
9 accessing the computer, but only to check emails.

10 The officer, you know, again was trying to
11 understand that that couldn't really be possible that
12 he would be accessing the Internet on his computer
13 because the software, monitoring software program,
14 would be catching that, and it wasn't.

15 So that officer then contacted IPPC's
16 technology, the people who monitor the software, and
17 he spoke to Phillip Danford, who I also spoke to on
18 November 7th.

19 Excuse me, if I could get some water.

20 **[Pause]**

21 I apologize, I'm sick.

22 So Mr. -- Officer Ramos spoke to Phillip
23 Danford with IPPC Technology and he stated that, yes,
24 the defendant had downloaded the software. They showed
25 that on September 22nd he said that the defendant --

1 they see that the defendant looking at, it's called the
2 TOR Network website on September 23rd, which is where
3 you download software to access the dark web.

4 He doesn't see that he actually downloaded the
5 TOR software because the software technology usually
6 blocks that. So he said that he did see that he was
7 successful in downloading a Linux operating system
8 called Spice, and that when he did download that
9 operating system, that it would knock out their
10 monitoring software.

11 Q. Ms. Routh, did you provide me with multiple copies
12 of the monitoring reports that was produced from the
13 defendant's activities?

14 A. Yes, I did.

15 MS. LOPEZ: Your Honor, may I approach the
16 Court with a copy?

17 THE COURT: Yes.

18 **[Pause]**

19 MS. LOPEZ: I've tendered to the Court what's
20 marked as Government's Exhibit 2. Mr. Reaves has also
21 been provided with a copy. And at this time the
22 Government moves to admit Exhibits 1 and 2.

23 THE COURT: Any objections?

24 MR. REAVES: No objection.

25 THE COURT: All right, they're admitted.

1 MS. LOPEZ: And at this time the government
2 passes the witness and we will have another witness to
3 explain the actual technology.

4 THE COURT: All right. Cross-examination?

5 **CROSS-EXAMINATION**

6 **BY MR. REAVES:**

7 Q. Ms. Routh, the exhibit that -- the user agreement,
8 you were not present when that was executed or signed;
9 correct?

10 A. I was not.

11 Q. Okay. Because he doesn't really have his signature
12 anywhere, so you don't really know how that took place
13 or how that was executed; is that fair to say?

14 A. I don't -- other than when I read the officer's
15 comments where he made the entry that he went over the
16 computer restrictions.

17 Q. Okay. And the conditions of his pretrial release
18 were not that he not have access to a computer or not
19 use a computer at all; correct?

20 A. Correct.

21 Q. It was that he install and have the computer
22 monitoring software; correct?

23 A. Correct.

24 Q. Okay, which he did?

25 A. He did install the software on September 22nd.

1 Q. And that was -- that's the company, IPPC; correct?

2 A. Correct.

3 Q. Okay.

4 MR. REAVES: I think that's all the questions
5 I have.

6 THE COURT: All right. Any redirect?

7 MS. LOPEZ: No, Your Honor. May this witness
8 step down?

9 THE COURT: Yes. Thank you.

10 MS. LOPEZ: And the Government calls
11 Supervisory Special Agent Brett Leatherman.

12 DEPUTY CLERK: Do you solemnly swear the
13 testimony you are about to give in the case before the
14 Court will be the truth, the whole truth, and nothing
15 but the truth, so help you God?

16 THE WITNESS: I do.

17 DEPUTY CLERK: If you could have a seat,
18 please, and if you would state your name and spell it
19 for the record.

20 THE WITNESS: Brett (B-r-e-t-t) Leatherman
21 (L-e-a-t-h-e-r-m-a-n).

22 **SPECIAL AGENT BRETT LEATHERMAN,**

23 **DIRECT EXAMINATION**

24 **BY MS. LOPEZ:**

25 Q. Good afternoon. Special Agent Leatherman, can you

1 please tell us where you work and what your duties are.

2 A. I'm a Supervisory Special -- Senior Supervisory
3 Resident Agent for the FBI's Frisco Office. I manage a
4 team of agents responsible for the investigation of a
5 variety of criminal violations in the Eastern --
6 primarily in the Eastern District of Texas.

7 Q. Do you have a specialized knowledge or training or
8 experience in the investigation of cyber-related
9 offenses?

10 A. My undergraduate degree is in Computer Information
11 Systems. Prior to the FBI, I was a Director of
12 Technology in private sector. I managed at a national
13 level several cyber teams for FBI Headquarters for
14 about three and a half years. And I've obtained a
15 number of industry recognized cyber certifications.

16 Q. Are you also the case agent on this case?

17 A. Yes.

18 Q. And with respect to the issue at hand with the
19 petition for revocation of pretrial release, did I
20 present to you a document, a report of monitoring
21 activity that was produced by monitoring the
22 defendant's computer?

23 A. You did.

24 Q. Can you please tell us, you do understand what was
25 in the report. Did you get a chance to look at it and

1 read it?

2 A. I did.

3 Q. And what basically did the report entail?

4 A. So the report indicated that Mr. Rockenhaus was
5 looking up the Spice software or the Spice Open Source
6 software. Basically, I've not used the software, but I
7 conducted a review of the software. I'm very familiar
8 with virtual machines and how virtual machines operate.

9 In the case of monitoring software, if
10 software is downloaded and installed on a host machine
11 and somebody installs a virtual machine, you can
12 circumvent on that host level machine any computer
13 monitoring capability.

14 In the case of the Spice software, it allows
15 connectivity to a remote virtual machine. And so not
16 only can you circumvent -- potentially circumvent the
17 host base monitoring, but any network base monitoring
18 that may be occurring as well. It's an intentional
19 effort to circumvent monitoring based on the logs that
20 I reviewed.

21 Q. Based on your knowledge of the defendant and his
22 activities in this case, does he possess the knowledge
23 and capability to install this kind of software and
24 find it?

25 A. Yes. So, based on the case at hand, throughout the

1 investigation we identified his unauthorized access or
2 exceeding authorized access in the instant case, or in
3 the indicted case on a Linux or Unix base server. And
4 this is also indicative of that same kind of
5 capability, the ability to install a virtual machine to
6 utilize Linux based operating systems.

7 Q. Did the report indicate to you approximately the
8 time frame that it took to install this software or to
9 attempt to install TOR? Do you recall when that took
10 place?

11 A. I don't. If I looked at the report, I would see
12 that, but --

13 Q. Okay. Just looking at the report here, would
14 approximately 2:00 in the morning, does that ring a
15 bell?

16 A. Yes. And to be frank, that was consistent with
17 the case that we indicted as well. And by his own
18 admission, in our case, in our interview with him, he
19 did operate, you know, late at night, early in the
20 morning when it came to both legitimate work and, I
21 believe in this case, accessing the -- either the TOR
22 Network or the remote virtual machine.

23 Q. So this remote virtual machine, you testified that
24 it was -- it is installed primarily to avoid
25 monitoring; is that a fair --

1 A. No, a virtual machine can be used for a variety of
2 legitimate reasons. There's many legitimate reasons to
3 use a VM. In this case, though, if you are trying to
4 circumvent monitoring capability, you could install a
5 VM to do that.

6 Q. And specifically -- and I should correct my
7 question -- the Spice software, with respect to
8 installing the Spice software, regardless of whether or
9 not it's on the virtual machine, would that be
10 indicative of somebody that's trying to avoid detection?

11 A. To me that would be indicative of somebody in this
12 case. Because there's a legitimate use for that as
13 well. But in this case it would be indicative of
14 somebody who was looking to circumvent both host and
15 network based monitoring.

16 Q. And so in this case, given that we can see that
17 Spice Windows 10 was attempted or was downloaded, and
18 then we see no further activities within that, is it
19 safe to say that the software that he installed worked?

20 A. I would say that given my knowledge of the prior
21 investigation, given my knowledge of how computers
22 work, and given, you know, prior investigative work on
23 this case, that if you see activity occurring that
24 somebody is conducting research or downloading that
25 kind of software, and then there is no monitoring

1 beyond that, it's possible that that was done in order
2 to avoid monitoring.

3 Q. We also see an attempt to download TOR onto the
4 computer. Can you briefly summarize what TOR is?

5 A. Yeah, TOR is The Onion Router and basically it's
6 commonly known as the dark web. And so it provides
7 client side access to the dark web, and the dark web
8 allows you to surf and engage in online activity in an
9 anonymized fashion.

10 MS. LOPEZ: Thank you. I'll pass the witness.

11 THE COURT: Ms. Lopez, I have a question.

12 MS. LOPEZ: Yes.

13 THE COURT: When you are referring to the
14 report, are you referring to Government's Exhibit 2?

15 MS. LOPEZ: Yes, Your Honor.

16 THE COURT: Okay, thank you.

17 Cross-examination?

18 **CROSS-EXAMINATION**

19 **BY MR. REAVES:**

20 Q. Agent Leatherman, first of all, the information
21 that you have shows a -- basically shows web searches;
22 is that correct?

23 A. The form that I reviewed did, yes.

24 Q. Okay. And specifically, I'm referring to, I guess,
25 defendant's -- both would be Government's Exhibits 1

1 and 2.

2 A. Yes.

3 Q. And there's a categorization -- first of all, are
4 you familiar with those type of reports?

5 A. In general. Not this specific IPPI report.

6 Q. Okay. But in general, or at least in this case,
7 there is a listing of -- well, first of all, we're
8 looking at basically one day; is that correct?

9 A. If I reviewed the report, I could refresh my
10 memory. I don't have it in front of me right now.

11 Q. Okay.

12 MR. REAVES: May I approach and show it to
13 him, Your Honor?

14 THE COURT: Yes.

15 **[Pause]**

16 A. Yeah, this one, it looks like, is September 23,
17 2019. And this one appears to be the same, consistent
18 with that same date.

19 BY MR. REAVES:

20 Q. Okay. And there are separate entries for, I guess,
21 each search; is that correct?

22 A. Correct.

23 Q. Okay. And there's a notation that I assume is
24 generated by the software that says "Low."

25 A. Yeah, I'm not familiar with the way they

1 categorize, but I see that.

2 Q. Okay. And basically, what that is, is a search;
3 correct?

4 A. Yeah. So a web search or a URL hit. It could be
5 either one. In fact, in this case it's likely a URL
6 hit.

7 Q. Okay. And there's also -- it shows you what the
8 search terms -- it shows you a search string.

9 A. It gives you a risk term, you've got the URL, and
10 then it looks like they have some separate screenshots
11 that they've taken.

12 Q. Okay. Now as far as downloading anything, there's
13 no evidence that anything was downloaded; correct?

14 A. Not in this report.

15 Q. Okay. And in fact, I guess to determine -- or
16 would reports like that show if software was actually
17 downloaded?

18 A. It all depends on the monitoring company's
19 capability. In this case it looks like they did a
20 specific query from 9/23 to 9/23 to generate these
21 results. So I don't know exactly why they targeted
22 that time frame, but that's the result of the search
23 that they made.

24 Q. Okay. So, just to be clear, we're looking at
25 search terms and not anything that was actually

1 downloaded?

2 A. Well, we're looking at website hits, both search --
3 so, when you see Google domain, you're looking for
4 search terms. And where you actually see a URL, like
5 in this case **spicespace.org/download**, that HTML, that's
6 consistent with somebody having visited the download
7 page for that particular software.

8 Q. Okay. And that's a program that's readily
9 available just -- like it's called an open source
10 program; correct?

11 A. I believe it's open source, but yes, it's readily
12 available.

13 Q. Okay. Now, to determine -- I guess you could look
14 at the computer to determine whether it would --
15 whether the software was actually downloaded; correct?

16 A. Yes.

17 Q. Okay. And that monitoring program, do you also
18 note, does it also have -- does it log keystrokes?

19 A. Not in this report. I don't know if it has that
20 capability or not.

21 Q. Okay. Do most monitoring programs have that?

22 A. Not necessarily.

23 Q. Okay. So, as far as specifically accessing
24 anything dark web, otherwise, there's no evidence that
25 you have that that occurred?

1 A. In the corners of this report, no.

2 MR. REAVES: Okay. Nothing further.

3 THE COURT: Redirect?

4 MS. LOPEZ: Yes, Your Honor. May I approach
5 the witness just to look at a page number?

6 THE COURT: Yes.

7 **[Pause]**

8 **REDIRECT EXAMINATION**

9 **BY MS. LOPEZ:**

10 Q. Okay. Special Agent Leatherman, I was just with
11 you at the witness stand looking at some of the pages
12 of Government's Exhibit 2. Do you see pages that
13 appear to be screenshots -- image screenshots?

14 A. Yes. Separate from the URL login, it looks like
15 there was the capability within the filtering or the
16 monitoring software to take screenshots of activity.

17 Q. And what does those screenshots indicate?

18 A. So those screenshots do indicate that file names
19 consistent with the technology we're talking about,
20 the Spice -- specifically the remote -- the VM remote
21 interface software was downloaded to the downloads
22 directory of the PC in question.

23 MS. LOPEZ: And, Your Honor, I apologize, my
24 numbering -- I don't believe my numbers are the same as
25 the Court's copy of Government's Exhibit 2. But the

1 top of one of the pages --

2 BY MS. LOPEZ:

3 Q. And Special Agent Leatherman, if you can confirm
4 this with me. There's a screenshot that appears to be
5 in the folder "This PC," and then the subfolder is
6 "Downloads." We see a couple of files and perhaps some
7 program files that say "Spice."

8 A. Yes.

9 THE COURT: Can you give me maybe the time?
10 That might be the best way for me to see where you're
11 looking.

12 BY MS. LOPEZ:

13 Q. This particular screenshot I'm referring to is at
14 2:15 a.m., September 23rd.

15 A. It's the second page of one of the reports, the top
16 half of the second page of one of the reports.

17 THE COURT: Okay.

18 BY MS. LOPEZ:

19 Q. And the page immediately preceding that screenshot
20 we see something else that looks like a screenshot, and
21 it's got the title "Index of Download Windows Spice."

22 A. Correct.

23 Q. Do you see that?

24 Does this indicate to you that the defendant
25 did, in fact, download?

1 A. If this is, in fact, screenshots taken as part of
2 that remote monitoring software of Mr. Rockenhaus'
3 computer, then yes, there are executables within the
4 downloads folder of that PC.

5 MS. LOPEZ: Thank you, nothing further.

6 THE COURT: Any other questions?

7 MR. REAVES: May I approach and get my report
8 back, Your Honor?

9 THE COURT: Yes.

10 Do you have any other questions, counsel?

11 MR. REAVES: If I can get a few minutes, Your
12 Honor?

13 THE COURT: Yes.

14 ***[Pause - Counsel conferring with defendant]***

15 **RECROSS-EXAMINATION**

16 **BY MR. REAVES:**

17 Q. Agent Leatherman, the screenshots that we were just
18 looking at, that's -- explain that to me again.

19 A. I'm presuming the monitoring capability -- the
20 monitoring software capability has the ability to look
21 at screenshots within his operating system as the
22 monitoring company deems necessary.

23 Q. Okay. And that was -- and that's an ".exe" file;
24 correct?

25 A. Within that downloads directory, yes.

1 Q. Okay. Now, were you were aware that he was also
2 taking -- or had been authorized, at least, to take an
3 online class?

4 A. No.

5 Q. Okay. So would any of this be consistent with
6 that?

7 A. I don't know what the class is.

8 Q. Okay. Or just operating systems, in general. I
9 mean, what's the purpose of that particular screenshot
10 or that particular file that you were looking at?

11 A. So that would be -- it appears to me the Spice
12 executable file, which would allow him to install
13 remote access to a remote VM and to use it on a host
14 machine in a more seamless manner.

15 Q. Okay. And again, other than that file, there's no
16 evidence of any activity as far as accessing any kind
17 of prohibited sites, dark web, or anything like that?

18 A. I do see screenshots again. If these are in your
19 other report related to the TOR network, no executable
20 files related to clients, but it appears that, you
21 know, accessing or websites related to the TOR project,
22 that would be kind of the entrance to the dark web,
23 looking for client capability within the dark web.

24 MR. REAVES: Okay. Nothing further.

25 THE COURT: Anything else, Ms. Lopez?

1 MS. LOPEZ: No, Your Honor.

2 THE COURT: I actually have a couple of
3 questions before you step down.

4 One of the conditions that was imposed,
5 as a pretrial condition was the prohibition of using,
6 accessing, or posting on the dark web forum, on any
7 electronic device. I believe you testified the entries
8 that we have for the TOR, they were attempts -- they
9 appear to be attempts, but he was not successful in
10 accessing the dark web; is that correct?

11 THE WITNESS: Based on what I have here, it
12 appears that he had visited **torproject.org**.
13 **Torproject.org** is one site where you can find clients
14 in other ways to access the dark web. I don't see an
15 indication that the client software was downloaded.
16 The concern is if you have access to a remote virtual
17 machine, you can gain access to TOR or any open source
18 or dark web website without visibility by Pretrial
19 Services.

20 THE COURT: Well, and also, in looking at
21 Government's Exhibit 2, particularly the date and the
22 time, I believe Ms. Routh testified that the monitoring
23 software was downloaded September 22nd. So then
24 starting at 2:07 a.m. of September 23rd is when we
25 start having computer activity that's monitored. And

1 then we first see web activity with the TOR Project at
2 2:08 a.m.

3 Let me ask you about an entry. It's the
4 last page of the first set of documents in Government's
5 Exhibit 2. The entry is 2:10 a.m. a Google search for
6 North American Man/Boy Love Association. That is not
7 in any way associated with -- is that associated with
8 the dark web or is that a separate search?

9 THE WITNESS: No, that's an open web search
10 that was conducted from the computer.

11 THE COURT: And then that was at 2:10 a.m.
12 And then beginning at 2:13 a.m. is when we see those
13 searches for Spice; correct?

14 THE WITNESS: Correct.

15 THE COURT: And is Spice separate and apart
16 from the dark web?

17 THE WITNESS: Yes, Your Honor, it's separate
18 and apart. It allows for that remote connectivity to
19 basically your own virtual operating system, your own
20 virtual computer.

21 THE COURT: And so if Government's Exhibit 2
22 shows that he was successful in downloading Spice, that
23 could explain why there was no other computer activity
24 that was captured after that; correct?

25 THE WITNESS: Correct.

1 THE COURT: All right, thank you. You may
2 step down.

3 Ms. Lopez, do you have any other witnesses?

4 MS. LOPEZ: No, Your Honor. The Government
5 rests on this matter.

6 THE COURT: All right. Mr. Reaves?

7 MR. REAVES: No, Your Honor, nothing further.

8 THE COURT: All right, I'll hear argument from
9 counsel.

10 Mr. Reaves, you can come up to the stand
11 with your client, please.

12 MR. REAVES: Your Honor, I think the terms of
13 his pretrial release required him to do a couple of
14 things. One was to participate in electronic
15 monitoring, which may not be the clearest term, but he
16 did install that software, he was participating in the
17 monitoring program. I guess the issue was what
18 "participate" means.

19 But I think, more importantly, the purpose
20 of that whole process was to keep him from accessing
21 the dark web, posting on forums, or using his computer
22 for something that wasn't an appropriate purpose or
23 that was something less than a legitimate and legal
24 purpose. And I think, as the agent mentioned or
25 testified, there's not any evidence that that existed.

1 THE COURT: Well, I'm going to stop you right
2 there because I don't agree with what you just said.
3 The purpose of the conditions which I entered was not
4 just to prevent him from accessing the dark web. That
5 was one specific condition. But monitoring software,
6 as a part of a condition, is to monitor computer
7 activity. It's not limited to the dark web.

8 You are correct that in 7T there's a
9 specific condition relating to prevention of access to
10 dark web, but the monitoring software condition is much
11 broader than that. And so for you to argue that your
12 client complied with that condition, when the evidence
13 shows that he downloaded that software and didn't even
14 make it 24 hours before he started trying to access
15 TOR; and then within less than 10 minutes, when he
16 couldn't access TOR, went to download a different
17 software to allow him to be able to access other
18 computer that could not be monitored.

19 So I think it's disingenuous for you to
20 argue that he was compliant with the condition of being
21 monitored.

22 MR. REAVES: Yeah, I don't mean that he was --
23 I don't mean to suggest that he was completely
24 complicit, Your Honor. I realize there are some
25 issues. I would just ask that he be -- that I think he

1 understands the gravity of it, first of all, and that
2 he be allowed to be released again on bond with
3 whatever conditions you want to put on him. He's
4 already been incarcerated and served 60-something days.
5 So I think he's fully aware of the consequences and the
6 gravity of the situation.

7 And then the other issue that I just want
8 to -- I think I want to make the Court aware of, and I
9 think the Court is aware of, Mr. Rockenhaus has a
10 number of issues mental and physical, mental mostly,
11 just as a result of service-related disability, and he
12 was -- that was being taken care of. And seizure
13 medication is one of the issues or one of the things
14 that he has to take care of. And that's an issue for
15 us all is also that he just be allowed to -- or get
16 the services that he needs. He was getting pretty
17 expensive treatment when he was out from the V.A.,
18 almost weekly going to different places there.

19 THE COURT: Is he receiving -- is there any
20 specific treatment that he's not receiving, that he
21 should be, while he's been incarcerated?

22 DEFENDANT ROCKENHAUS: I haven't been
23 receiving consistent medications, Your Honor, and
24 consistent psychiatric care.

25 THE COURT: Right. But I'm asking

1 specifically. I mean, those services can be in our --

2 DEFENDANT ROCKENHAUS: They are --

3 THE COURT: Please let me finish.

4 DEFENDANT ROCKENHAUS: I'm sorry.

5 THE COURT: Can be and are provided for those
6 who are incarcerated. So, specifically, is there some
7 type of medication that you need that you are not being
8 provided?

9 DEFENDANT ROCKENHAUS: Yes, they have taken or
10 withdrawn four of my medications because they said they
11 cannot provide it to me while I'm incarcerated. And my
12 seizures that had been under control have started back
13 up again. And I usually -- I'm now experiencing two or
14 three seizures a week.

15 THE COURT: All right, Mr. Reaves, have you
16 attempted to address this with --

17 Are you at Fannin right now? Are you in
18 Fannin County Jail?

19 DEFENDANT ROCKENHAUS: Yes, at Fannin --

20 MR. REAVES: I have not addressed it there.

21 We addressed it in Waco and had it taken care of
22 because it started off as an issue there.

23 DEFENDANT ROCKENHAUS: Waco didn't do anything
24 either.

25 THE COURT: All right, Ms. Lopez?

1 MS. LOPEZ: Yes, Your Honor. We agree, if he
2 remains incarcerated, that we want him to have full
3 access to his medical care, as he has been receiving
4 from the V.A. at least.

5 But with respect to whether or not he
6 should be revoked on his release, as the Court pointed
7 out, he didn't even make it 24 hours before he tried to
8 circumvent the monitoring system. He is at home with
9 his wife. His wife is clearly not able to tell him not
10 to do that, either. He's able to do this.

11 And so based on his inability to follow
12 the Court's instructions in this matter and do so in
13 such a short amount of time, we request that his
14 pretrial release be revoked and he is remanded into
15 custody at this time because of his inability to follow
16 the Court's instructions in this matter.

17 THE COURT: All right, thank you.

18 Based on the testimony presented here
19 today, as well as the information in the record,
20 particularly the conditions of release in the petition,
21 I do find there's probable cause to believe that
22 Mr. Rockenhaus violated his conditions of pretrial
23 release. Because I don't believe there's any further
24 conditions that could be set to aid in compliance, I do
25 find that that pretrial release should be revoked and

1 Mr. Rockenhaus should remain detained pending his trial
2 in this case.

3 Mr. Reaves, I would ask you to please
4 follow back up with me about any pending medical issues
5 if you can't get those taken care of with Fannin
6 County on your own. Okay?

7 MR. REAVES: I will, Your Honor.

8 THE COURT: All right, anything further from
9 counsel?

10 MS. LOPEZ: No, Your Honor.

11 MR. REAVES: No.

12 THE COURT: All right, we'll stand adjourned.

13 ***[3:55 p.m. - Proceedings adjourned]***

14

15 C E R T I F I C A T I O N

16

17 I certify that the foregoing is a correct
18 transcript of the electronic sound recording of the
19 proceedings in the above-entitled matter.

20

21

22 /s/ Gwen Reed

23 6-2-22

24

25