

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action
No. 15-mj-01104-DLC

V.

DAVID KENNETH DRUMM,

November 13, 2015
10:06 a.m.

Defendant.

TRANSCRIPT OF DETENTION HEARING/STATUS CONFERENCE

BEFORE MAGISTRATE JUDGE DONALD L. CABELL

UNITED STATES DISTRICT COURT

JOHN J. MOAKLEY U.S. COURTHOUSE

1 COURTHOUSE WAY

BOSTON, MA 02210

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Donald L. Cabell, United States Magistrate Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on November 13, 2015.

The defendant, David Kenneth Drumm, is present with counsel. The Assistant U.S. Attorney is present.)

THE CLERK: The case of United States v. David Kenneth Drumm, criminal action number 15-mj-01104 will now be heard before this Court. Would counsel please identify themselves for the record?

MS. BURKART: Good morning, your Honor. Amy Harman Burkart for the United States.

THE COURT: Good morning.

MR. McNALLY: Good morning, your Honor. Edward McNally, David Fetterman, and Tracy Miner for David Drumm.

THE COURT: Good morning to you all.

And good morning, Mr. Drumm.

THE DEFENDANT: Good morning, your Honor.

THE COURT: All right. We're here today for a couple matters relating to the extradition request. The first is, in no particular order, there is a motion for release that was filed by Mr. Drumm on November 10th, and in connection with that, a fair number of papers, roughly 125 pages or so, and the

1 government has filed a response to that, which I received
2 yesterday. Are those -- and I've gotten all the submissions, I
3 believe, that were provided, both in unredacted and redacted
4 form. Is there anything beyond that with respect to the motion
5 for bail that I should have in front of me? I have that and
6 the government's opposition. Is there anything else or does
7 that --

8 MS. BURKART: Your Honor, I received a letter this
9 morning, which I provided to the Court via e-mail, which I also
10:07 10 provided to Ms. Russo just now from the Irish government to the
11 Office of International Affairs.

12 THE COURT: I have a copy of that, too. I have not
13 read that letter yet, but I have a copy of that up here, too.

14 MS. BURKART: I can refer to it in court, your Honor.
15 It was in response to some filings that were received yesterday
16 by our office. We spoke with the Irish authorities yesterday
17 afternoon with some questions, and then they sent a letter this
18 morning addressing those questions.

19 THE COURT: So we'll address that in due course.

10:08 20 Then the other issue that I really do want to address
21 today is to start thinking about the actual hearing in this
22 matter, and I would like to set a date today. Obviously, we
23 need to talk through some things, but I want to make sure that
24 we are all on the same page as to what that hearing might look
25 like and whether there are any necessary things that need to

1 take place between today and the hearing. I want to make sure
2 that we identify those and allow those to take place, and if
3 you don't mind, I think I'd like to do that before we address
4 the issue of bail.

5 So, first, let me ask the government, when do you
6 believe the government would be ready to hold the actual
7 extradition hearing in this case? And as part of that, I want
8 to make sure, whether you agree with me or not, as I understand
9 it, the inquiry at that hearing is fairly narrow. One, we need
10:09 10 to determine whether there's a valid treaty between the
11 countries; two, whether the crime charged or the crimes charged
12 are covered by the treaty; and then, third, whether there's
13 probable cause to believe that Mr. Drumm committed the crimes
14 as alleged therein. If you have a different understanding, you
15 can let me know.

16 MS. BURKART: No, your Honor. I would agree that that
17 would be the scope of the inquiry. As a result because it's
18 rather narrow -- though Mr. Drumm has argued that he would need
19 a great deal of time to analyze a number of records, I believe
10:09 20 that's unnecessary in this case --

21 THE COURT: I'll hear from them on that. When do you
22 think you'd be ready to do it?

23 MS. BURKART: I could to it in a few weeks, your Honor
24 or I have a pretty lengthy trial in front of Judge Casper that
25 begins on January 4th that I expect will go about three or four

1 weeks, so that would be an impediment for the January time
2 frame and the late December time frame due to the holidays, but
3 I could do it in a few weeks or I could do it after the trial
4 in front of Judge Casper.

5 THE COURT: Which is to say you could do it roughly
6 early to mid-December.

7 MS. BURKART: Yes, your Honor. I was thinking sort
8 of -- yes, early to mid-December. The earlier, the better in
9 December for me, just due to --

10:10 10 THE COURT: Around the second week of December or so.

11 MS. BURKART: That would be about right, your Honor,
12 yes, absolutely. Or I could do it after the trial in February,
13 and I have a very open schedule in February and March.

14 THE COURT: And presently, do you intend to rely just
15 on the record as we have it, that is, those documents submitted
16 by the Irish government in support of the extradition request
17 and any other papers that accompanied that?

18 MS. BURKART: I did have some questions, your Honor,
19 after reviewing the record, so I posed those to the Office of
10:11 20 International Affairs, to the Irish government, and requested
21 some additional clarification on some of the points. So I've
22 asked for a supplemental affidavit on those points. I expect
23 it would be forthcoming relatively soon. There were some
24 narrow points that I needed some additional clarification on,
25 so I would expect that would be relatively soon.

1 THE COURT: All right.

2 So let me hear from the defense on this.

3 MR. McNALLY: Thank you, your Honor, Edward McNally.

4 The defendant, David Drumm, has a very different view
5 of the complexities of this case. He's charged in 33 separate
6 crimes, the most recent conduct involved ended seven years ago.
7 His Irish counsel is present in court today, Mr. Michael
8 Steins, and he has said in his affidavit that there may be many
9 millions and millions of pages of documents that relate to this
10:12 10 case.

11 THE COURT: I can't tell you how much it concerned me
12 to see an allusion to that in the papers. I don't want to stop
13 you, but let me ask you right there. You're familiar with
14 extradition proceedings, they're not trials, they're not a
15 trial on the merits, that would take place in Ireland. It's
16 really, in many respects, more akin to a probable cause
17 hearing. Generally speaking, the representations and the
18 allegations that are contained in the papers are accepted as
19 true for the sake of argument. Why, then, would we need to
10:12 20 worry about millions of pages of other documents that might be
21 material and relevant to a trial on the merits but not
22 necessarily germane to the narrow scope of inquiry that I just
23 summarized a few minutes ago?

24 MR. McNALLY: Judge, let me try and be efficient in
25 some ways. You have a sealed document that we're referring to

1 as the BOP situation. Never in my experience have I had as
2 much difficulty in communicating with a client as has been true
3 in this case. It's certainly despite what I view as the best
4 efforts of the United States. Assistant U.S. Attorney Amy
5 Burkart has tried to assist at every turn, graciously and
6 professionally, but the challenges have been extraordinary.

7 We have not had an opportunity to discuss most of
8 these issues yet with our client. He is the greatest resource
9 available to us about some of the questions that the Court is
10 asking. We have not had an opportunity to have fulsome or even
11 preliminary conversations with him on many of these subjects.

12 So, for all these reasons, it appears at this moment
13 that unless there is a remarkable change in the coming days or
14 weeks, we may have great challenges in preparing for this
15 hearing. And we're happy to address that in the right time and
16 place, but the Assistant U.S. Attorney suggested that one
17 window might be February and March, and I think that would be a
18 date we should look for.

19 THE COURT: Okay.

10:14 20 So there's a couple of things in there, and maybe
21 we're kind of moving from one to the other, and this is a fluid
22 conversation, but I was more concerned with the statement that
23 you raised suggesting somewhere, somehow you would need time,
24 first, to go through all of those other documents in order to
25 prepare for this hearing. I'm not sure I'm persuaded that

1 that's necessary, but it is helpful to have this conversation
2 so we can figure out timing.

3 If both sides agree on an ideal time to hold the
4 hearing, and that is not, say, in December, but rather in
5 January or February, I can try to accommodate that.

6 So have you actually conferred in terms of trying to
7 arrive at an ideal time to have the hearing?

8 MR. McNALLY: We have not had an opportunity for that.
9 Your Honor, quite honestly, I have not had an opportunity to
10:15 10 consult with my client on some of this, which is the threshold
11 question.

12 THE COURT: Well -- okay.

13 Well, then, that kind of collapses back to the
14 government.

15 The government is prepared to go ahead, and the
16 default is, okay, let's go ahead, unless you tell me you can't.

17 Now, I know you need to talk with your client about
18 that, but I want to as soon as possible, I mean, I want to come
19 up with a firm date, and I don't want it to turn on, first,
10:15 20 considering several hundred thousand pages of documents,
21 because then we're going to have the tail wagging the dog.

22 MR. McNALLY: If I may respectfully suggest this, your
23 Honor -- we take your point. We'd be happy and delighted and
24 will confer both with our client and with the government, and,
25 if possible, in good faith we'll come up with an agreed-upon

1 date or set of dates we could suggest.

2 THE COURT: Or time period.

3 MR. McNALLY: Fair enough.

4 THE COURT: And then, as part of that, I mean, I'm not
5 going to put you on the spot now, but I do want -- I want all
6 of us to consider what that hearing is going to look like. I
7 really don't want it to be one where we've got volumes and
8 volumes and volumes of documents that might be -- again, might
9 be admissible and germane in Ireland, but, as I see it, don't
10:16 10 really go to any of the issues raised here.

11 So we don't have to resolve that today, but I just
12 want you to understand that if you're going to try to introduce
13 evidence outside of the record as we have it, and I understand
14 the statute contemplates there may be some additional evidence
15 introduced, and the government has talked about introducing
16 other evidence, I'd like to get notice ahead of time of what it
17 is so we can all explore whether it should properly be
18 considered at the extradition hearing, okay?

19 MR. McNALLY: Understood.

10:17 20 THE COURT: How soon can you confer and jointly
21 propose something?

22 MS. BURKART: Other than school vacation week, your
23 Honor, I have no conflicts in February, so it would just be a
24 matter of Mr. McNally conferring with his client and his
25 colleagues.

1 THE COURT: All right.

2 So I'm going to ask you both to talk outside of the
3 court, and, if you can, within a week submit something to us.
4 You can do it informally, if you can submit something to
5 Ms. Russo and then we can use that to set a formal date and
6 then we'll issue that as a notice of the hearing.

7 MR. McNALLY: Thank you, your Honor.

8 THE COURT: Okay.

9 All right.

10:17 10 With respect to the bail issue. For the most part, I
11 have read everything. I've read the legal papers, I've read --
12 I mean, both sides, for various reasons, have attached a copy
13 of the appellate brief or pertinent papers in the bankruptcy
14 proceeding, I've looked at that, and I have gone through,
15 quickly, but I've gone through all of the letters that were
16 submitted on Mr. Drumm's behalf. So I will hear you,
17 Mr. McNally, on the issue of release.

18 MR. McNALLY: Thank you, your Honor.

19 On behalf of David, his wife, Lorraine, who's here in
10:18 20 court, his family and friends, clergy and employers, we thank
21 the Court for this opportunity to be heard on David's behalf.

22 David is grateful to be standing before this Court,
23 and he's grateful to be standing in this country. He's
24 personally grateful for the fundamental decency and
25 professionalism and the dispassionate approach that the United

1 States Attorney's Office has taken, and he's grateful, most of
2 all, that he stands here before the Court actually and truly
3 presumed to be innocent.

4 Your Honor, seven years ago, in December of 2008, as
5 the worldwide financial crisis struck home with its full fury,
6 David Drumm resigned his position as CEO of the Anglo Irish
7 Bank in Dublin, Ireland. And David stands before you today
8 because only now, only now has the government of Ireland gotten
9 around to seeking to extradite him based on a number of alleged
10:19 10 offenses from that time. To be clear, David has not been
11 accused of any violent crimes, he has not been accused of
12 stealing any money, he is not accused of personally profiting
13 from any of these alleged actions. Instead, the Irish
14 government has implicated him in a number of actions that were
15 taken collectively with the advice and ratification of the
16 Irish government and the advice of counsel during the peak of
17 the global financial meltdown. In essence, he has been
18 implicated in the actions that he, among many others, took in
19 furtherance of the Anglo Irish Bank's interest and the general
10:20 20 interest of the Irish economy.

21 Several of his putative co-defendants have already
22 been through trial in Ireland. The court withheld from the
23 jury the evidence showing that the men had the advice of
24 counsel and that they had acted at the behest of government
25 regulators, who were also trying to save the banks and the

1 economy, because, unbelievable as it may seem, neither the
2 advice of counsel nor government authorization are defenses in
3 Irish law. But after the men were convicted, the judge took a
4 very different view at the sentencing. He found that the Irish
5 regulators, quote, gave a green light to the transactions in
6 question and held that, and again I quote, it would be most
7 unjust for this court to imprison these two gentlemen when it
8 seems to me that a state agency has led them into error and
9 illegality. And the court sentenced them to community service
10:21 10 with zero jail time.

11 David Drumm is a father and a husband who first moved
12 to Boston 17 years ago in 1998, and who has been gainfully
13 employed in the U.S. these past seven years. He has long been
14 an officer in a respected asset management company, a job on
15 which he and his family depend for their livelihood.

16 Like his family and his neighbors and his friends,
17 three of whom are in court today, having pledged the
18 Massachusetts homes they live in, confident that David is not
19 going anywhere, his employers are here as well. They have
10:21 20 stood with him throughout his last month in jail and have held
21 his job open for David.

22 In the American experience, it's common, once the
23 indictments come and the man is actually arrested, for the
24 company to run for the hills. They terminate that same day,
25 gone. But that didn't happen here. It's remarkable and rare

1 for an American company.

2 In extradition cases like this, as the Court knows
3 well, there is no Speedy Trial Act. In complex international
4 financial cases, such as this, with documents and where the
5 most recent evidence is already seven years old, the experience
6 in U.S. jurisprudence is that multiple steps and multiple
7 stages and multiple courts of the extradition process could
8 easily consume two or four years, if not more.

9 And so today, in Boston, we are charged with
10:22 10 considering whether it is necessary under the law to continue
11 to confine David Drumm, although presumed innocent and although
12 convicted of no crime, to an unrelentingly harsh prison
13 experience for two to four years in a case on which the judge
14 in Ireland gave the convicted counterparts not one day in jail.

15 And David is here today to tell you that this would be
16 a severe and punishing and unjust and entirely unnecessary
17 result, particularly when there are many effective alternatives
18 available, and it would be a result that is supported by
19 neither the law nor the facts of this case. So we'd like to
10:23 20 get two things out of the way at the outset.

21 First of all, the one issue that it seems clear both
22 the government and David Drumm are in agreement on is that
23 David represents absolutely no danger to the community. He has
24 no criminal history, he's never been arrested or charged with
25 any other crime, and even the offenses for which Ireland seeks

1 him are a hundred percent entirely non-violent in nature.

2 Which brings us to risk of flight. The vast majority
3 of the government's brief is directed squarely and really
4 solely at risk of flight. And although we certainly
5 acknowledge that there is a presumption against bail in
6 extradition cases, and we do so in a case where the applicable
7 law and the undisputed facts of this case provide an
8 overwhelming rebuttal to any such presumption.

9 The government attempts to make much in its brief of
10:24 10 an unrelated bankruptcy case that has been in the courts now
11 for five years and which remains both in dispute and on appeal.
12 But when David Drumm went to the government earlier this week
13 to propose the imposition on himself of a strict set of bail
14 conditions, he did not in any way ask either the government or
15 the Court to simply take him at his word. In fact, the
16 evidence available for this Court to make its findings today as
17 to risk of flight does not depend on any of David Drumm's words
18 at all. It need only rely on his deeds, his conduct, his
19 actions in living and working and worshipping openly in
10:25 20 Wellesley these past many years, in raising his children,
21 earning a living, maintaining his family, all the while knowing
22 for seven years that this day almost surely would come.

23 When David learned through the media last winter that
24 the Irish government might come looking for him, now ten months
25 ago, he did not go underground, he did not flee to a country

1 without an extradition treaty. Instead, he instructed his
2 counsel, here at this table, to contact this office, the United
3 States Attorney's Office, and to let them know that Ireland
4 might be seeking him, where he lived and where he could be
5 found, and offered to surrender to the United States at the
6 time and place of the government's choosing.

7 And the evidence on which this Court can base its
8 findings as to risk of flight today is right here in this
9 courtroom. It's in his three business colleagues, none from
10 the company where he works, none related to him by law or
11 marriage or blood or otherwise. Each of these three men is
12 married, most of them have children, and all of them are here
13 to tell you, your Honor, that they are so certain that David is
14 not going anywhere, that they are prepared to pledge and risk
15 the Massachusetts homes that their families live in.

16 More than a dozen letters have been submitted to the
17 Court, including by the three men who are here who have pledged
18 their home, and if the Court or the government would like to
19 see additional guarantors on the hook, as these letters make
20 clear, there are others who are willing to do so who are here
21 at the courthouse today.

22 The evidence that there's no risk of flight is in his
23 employers, also here in court today, and here to tell that you
24 they are standing with David Drumm, and frankly, that David is
25 dependent on them to hold and maintain and keep one of the few

1 such jobs available to a man who came with so much talent but
2 also with the kind of baggage that made few employers willing
3 to take the risk.

4 And most of all, the evidence here in this courtroom
5 is in the person of Mrs. Lorraine Drumm, David's wife of nearly
6 25 years, and their two daughters, also here today. Both girls
7 are Massachusetts raised and educated, both are still in
8 school. All four of them make their home together in
9 Wellesley, and the only home that the family has.

10:27 10 Add to this that David and his employer have offered
11 to the government that he will work from home, 24/7 home
12 confinement, monitored electronically and at David's own
13 expense, that his wife, both daughters, and David will
14 surrender all of their passports to the government, they've got
15 nowhere else to go.

16 And it's clear on the evidence that this is not a man
17 who is going to risk his job, forfeit his home, forfeit the
18 homes of his closest and bravest and most stalwart of friends,
19 and destroy the future of the three women most central to his
10:28 20 life on earth.

21 Your Honor, this is not a man who is fighting or
22 fearing or fleeing the legal process of the United States. He
23 is embracing it, glad of it, and eager to engage in the hard
24 work ahead that will be incumbent on many of us here in this
25 room in this difficult and challenging case.

1 He did not run away last winter when he heard he was a
2 wanted man, and he is not running away today. In fact, David
3 was running towards this country for the same reason that other
4 people have for many decades and more. He came to a land where
5 he would be presumed innocent, where he would not be judged on
6 rumor or innuendo or on his politics, a land where both the
7 people and the law offer a new life, a fair shake, and a second
8 chance, and a place where even strangers, like David, are
9 offered the fullest protections of our Constitution and the
10:29 10 law. And those protections say, America's courts say that when
11 special circumstances, like those seen here, are present, it is
12 entirely appropriate for the court to release the accused on
13 bail and to impose strict security to make that bail real.

14 Your Honor, when you look at the two briefs before you
15 today side by side, perhaps one of the primary takeaways is
16 that the government and David Drumm are by and large in very
17 heated agreement on the law and on the standards to apply here.
18 It's a two-part test, risk of flight, and special
19 circumstances. There is nothing novel here. More than a
10:30 20 century ago, the Supreme Court made clear that we have a duty
21 here, each of us, in our roles to address the questions of
22 special circumstances. We have not yet heard from the
23 government on this question. And as to special circumstances,
24 it's not even clear from the government's brief whether or not
25 there is all that much daylight even between our positions on

1 the facts.

2 David Drumm's claims of special circumstances rest on
3 a list of seven factual claims that are supported by evidence,
4 and citation and are listed in the last seven pages of
5 Mr. Drumm's brief. We provided that list and an informal copy
6 of the entire brief to the government on Monday evening in an
7 effort to see if we could resolve any disputes before filing
8 and bringing this to -- the dispute before this Court.

9 The government brief does not challenge any of those
10:31 10 seven statements of fact, and we would invite the government
11 today, if they are so inclined, to let the Court know which, if
12 any, of these seven facts they challenge, and, if so, on what
13 basis.

14 So here are the basic fact statements, they're
15 labelled A through G on the last seven pages of our brief.

16 Ireland has a constitutional presumption favoring bail
17 and regularly grants bail for the very offenses which David is
18 charged.

19 Ireland regularly grants bail to American citizens for
10:31 20 whom the United States is seeking extradition.

21 Third, the Irish government delayed charging and
22 seeking extradition by seven years.

23 Fourth, the issues here are complicated and will
24 require many weeks, if not months, if not years, in process and
25 due process in the U.S. court system.

1 Fifth, David's wife and their two daughters are
2 dependent on him for their livelihood.

3 Sixth, the BOP situation, the subject of the sealed
4 declaration we referenced earlier that's been provided to the
5 government and this Court.

6 And last, that, particularly given the BOP situation
7 and given the many pages of documents and years of complex
8 evidence known to and understood by Mr. Drumm and him alone, it
9 will be very challenging, if not impossible, for David to
10:32 10 adequately work with his counsel to prepare an effective
11 defense while in jail potentially here for the next several
12 years.

13 These are the facts on which David's claims of special
14 circumstances are based, and no contrary evidence has been
15 presented and none of these factual statements had even been
16 challenged in the government's brief.

17 I said earlier that there was not much daylight
18 between the parties' views on the rule of law. In its brief,
19 the government concedes that bail considerations are made, and
10:33 20 I quote, based on a confluence of factors, as opposed to any
21 single consideration, and that such findings are very case
22 specific within the discretion of this Court. The government
23 further concedes that even with respect to certain individual
24 factors that have been found not to constitute special
25 circumstances on their own in certain specific cases, the

1 reality is that in exceptional cases, these very same factors
2 has been deemed by the court to be special circumstances. And
3 we agree with both points of the government's brief.

4 As our own brief makes clear, this is exactly the kind
5 of case that is before the Court today. This is an unusual
6 case and a combination of special circumstances in which the
7 sum of the parts is greater than the sum of the whole, and
8 that's exactly what the courts have asked us to look to in
9 assessing whether special circumstances are present. And on
10:34 10 these time-proven standards, this is precisely such a case.
11 The special circumstances here are each significant on their
12 own, but when they are taken together, they overwhelmingly
13 justify and support the conclusion that David Drumm should be
14 granted bail in this case.

15 I'd like to conclude where we began, with the sole
16 focus of the government's brief, risk of flight. Home
17 detention and electronic monitoring are no longer novel. They
18 are time-proven mechanism that enable those, particularly those
19 protected by the presumption of innocence, to participate in
10:34 20 these often lengthy legal proceedings and processes while still
21 maintaining and taking responsibility for their fundamental
22 obligations to their families, their employers, their
23 communities, and themselves. This is not an either/or
24 situation. The legitimate interests of both the government and
25 the accused can be regularly accommodated by the Court in any

1 orders issued out of today's proceedings, both can be firmly
2 protected, and it's not a heavy lift, it does not need to break
3 any new ground.

4 We understand that the United States Attorney's Office
5 was obliged to oppose bail here, as they are in every
6 extradition case. On this question, their hands are tied by
7 the Department of Justice, and we don't begrudge them that.
8 There is a memo that says AUSAs who appear on these matters,
9 must oppose bail, no discretion, zero. It's a rare thing in
10:35 10 the practice of the U.S. Attorney's Office, no discretion, no
11 ability to assess the law and the facts and offer its own
12 independent judgment. But this Court has discretion, that's
13 what the Supreme Court said more than a century ago. The court
14 said that America's magistrate judges and their fellow courts
15 do have the discretion, especially here, where the executive
16 branch, by its own edict, has abdicated and stripped discretion
17 from the hands of its own prosecutors. And this is a case on
18 special circumstances, a case that cries out for the exercise
19 of that independent discretion because, as we said, the sum of
10:36 20 the parts is greater than the sum of the whole.

21 I'd like to conclude on Mr. Drumm's behalf with the
22 words of Supreme Court Associate Justice David Souter in his
23 remarks in the United States Senate during confirmation
24 hearings. He said, "The first lesson, simple as it is, is that
25 whatever court we're in, whatever we're doing, at the end of

1 our task, some human being is going to be affected. Some human
2 life is going to be changed by what we do. And so we had
3 better use every power of our minds and our hearts and our
4 beings to get those rulings right."

5 Your Honor, that human being is David Drumm, and those
6 human lives are gathered behind him in this courtroom. And
7 when our arguments are concluded this morning, Mr. Drumm has
8 asked that he be given an opportunity to be heard by the Court,
9 and we understand that the government has no objection to that
10:37 10 request.

11 Judge, the government doesn't need this man in
12 solitary confinement in order to lock him down or to expend
13 potentially years of taxpayer resources in order to protect
14 diplomatic or other legitimate interests. We can lock this man
15 down on bail, we can lock him down tight using all the tools
16 that the law and David Drumm himself have offered, and he and
17 we will be back here before you each and every time you direct,
18 each and every time the government requests, month after month,
19 and, if need be, year after year.

10:38 20 Thank you.

21 THE COURT: Can I ask you a question for my
22 edification? You alluded to two individuals in Ireland who
23 have already been tried and convicted, and you talked about
24 their disposition. What were their positions in comparison to
25 Mr. Drumm's? Were they subordinates, peers, superiors? And

1 were they charged with the same offenses that he is charged
2 with, both the type of conduct alleged, as well as the
3 quantity, in Mr. Drumm's case, 33 offenses? Were those
4 individuals charged with that many offenses, if you know?

5 MR. McNALLY: I don't know. I know that some of the
6 charges overlap, your Honor.

7 THE COURT: Okay.

8 And do you know what their positions were relative to
9 Mr. Drumm?

10:38 10 MR. McNALLY: I don't know their titles, sir.

11 THE COURT: Okay.

12 All right.

13 Thank you.

14 MR. McNALLY: Thank you.

15 THE COURT: Do you want to have Mr. Drumm address the
16 Court now before the government? Because I think, in fairness,
17 they may want to respond to anything he may have to say.

18 MR. McNALLY: Sure.

19 THE COURT: Okay.

10:39 20 MR. McNALLY: David, come on over.

21 THE DEFENDANT: Good morning, your Honor.

22 I'm very grateful for this opportunity to very briefly
23 address the Court.

24 I want to give you a sense of my -- and Attorney
25 McNally has dealt with it to an extent -- myself and my

1 family's history here in the United States.

2 We first came out to the Boston area around the summer
3 or the early summer of 1998. I had been asked by the bank that
4 I worked for, Anglo Irish Bank, to set up a new office for
5 them. The bank then was primarily based in Ireland and in the
6 UK, so it was a big deal to come over and open an American
7 office, and, of course, Boston was chosen after some research
8 on the basis of its Irish heritage and an Irish domiciled bank
9 might be well received in the area.

10:40 10 So our second daughter was actually born that year,
11 Abby, Sarah was about three years old when we moved over.

12 Suffice it to say, we loved living in Boston back
13 then. We ended up living out in Sudbury. We had a fantastic
14 neighborhood, we made fantastic friends. Our children got into
15 very good like formation schools, and we just loved being here.
16 It was a wonderful time in our lives, perhaps maybe the
17 happiest times in our lives, the five years we were here.

18 I was asked to come back to Ireland in 2003 to take up
19 a more senior position within the bank, and we went back, after
10:40 20 much debate within the family, we went back to Ireland I think
21 in was June of that year.

22 As Attorney McNally said, in December of 2008, I lost
23 my job in the bank, and to be frank, it was instinctive in us
24 to think about going back to Massachusetts. We -- in the 17
25 years that had passed since we first came out here, 15 of them

1 we've owned a home here. We have had our heart here for the
2 longest time. We came back because we felt it was good for the
3 family, good for two girls in terms of their education and the
4 lifestyle here, and we felt that I would have much better
5 prospects of getting a good job here, which -- all of which
6 turned out to be the case.

7 I did not flee Ireland, and I reject the notion that I
8 fled Ireland. Nobody was charging me with anything back then.
9 I was free to come and go. We wanted to come back as a family,
10:41 10 and, you know, after a lot of work getting visas and everything
11 else, I think I was six or seven months out of the bank at that
12 stage, we eventually packed up and came back here.

13 That was the year 2009. In that year, I went back
14 twice, having moved the family back out here. I went back
15 twice to meet with my former employer because I had outstanding
16 loans and I needed to sit down and talk to them about how I was
17 going to deal with those loans. So that was in the latter part
18 of the year, I think October and November of that year. So I
19 really do strongly reject the notion that somehow, you know, we
10:42 20 ran away from Ireland. We did not.

21 Your Honor, the last six years or so have been very
22 difficult for me. As you can imagine, they have been very
23 difficult for my family. We have had what I can only describe
24 as unprecedented media attention, sometimes quite intrusive,
25 into the family, looking through the windows, knocking at the

1 door. My children are not the better of that, I know they're
2 not. All of us have suffered in some way from it, but I feel
3 for them because of the prevalence of social media and the
4 whisper campaigns and so on, that's been a big issue for them.
5 But all that served to do at the end of the day was glue the
6 family closer together.

7 Both of our families are in Ireland, I'm from a very
8 big family, I've got seven siblings, my mother is alive.
9 Lorraine has her parents in Ireland, she's got three siblings.
10:43 10 I think between the two families there are 25 grandchildren.
11 So it's a big sacrifice to be an emigrant. You leave that
12 behind. Through the wonders of Skype, you can talk to them as
13 much as you want, but it's not the same as being there. Again,
14 that's probably glued the four of us together in a unit in the
15 most extraordinary way and, frankly, that's what's kept me sane
16 and going in the last number of difficult years.

17 In relation to the extradition, Attorney McNally
18 already alluded to it, that we knew about this. It was all
19 over the Irish papers for a couple years, journalists calling
10:43 20 for it, never mind mentioning that it might happen. Even
21 political figures, when things heated up in my case, you know,
22 screaming from the rafters to get him home. So we kind of knew
23 it was inevitable, that this was going to come. Then, when the
24 press announced quite specifically about it in January of this
25 year, they were able to mention the number of charges, they

1 were able to mention sources in the government of Ireland, we
2 knew that was real, and that's why we approached the U.S.
3 authorities, to say, Look, I'm here, I live in Wellesley, I'll
4 come in, I'll surrender, you can arrest me, whatever it takes,
5 but this may come, and this is where you're going to find me.

6 So, again, I didn't run then, I'm not running now. I
7 have no intention of going anywhere. I'm happy to work through
8 all of the issues that I have with all of my heart and soul.
9 The concept or even the theory that I would somehow take off
10:44 10 and run away from my family right now is just an anathema to me
11 because it's the very center of my world. The three women, as
12 Mr. Mr. McNally said, are in my life. I believe all of my
13 actions to date support that position. Were I to flee now, I
14 would be abandoning my wife of 24 years, I'd be abandoning my
15 children, potentially derailing their education, pulling out
16 financial support from them, never mind the damage that it
17 would due to me personally. That's something that I just could
18 not take. So I say to you I would not even contemplate that.

19 I am -- despite all that negativity, I am one very
10:45 20 fortunate man in that the support I have from family here, my
21 wife and kids, and the support I have from the family in
22 Ireland is phenomenal. I also have phenomenal friends that
23 I've known since I came to Massachusetts, and they put their
24 heart and soul behind me here today by offering to support the
25 bail application with their private homes and their own

1 reputations because they know, they know me well, they know me
2 for a long time, and they know that I am not going anywhere.
3 I'm not going to do anything that would damage my family, that
4 would break up my family. So I'm fortunate to have that
5 support.

6 Your Honor, I'm asking the Court to let me out on bail
7 on whatever conditions, restrictions, no matter how severe they
8 have to be, so that I can be with my family, first of all, so
9 that I can work and support my family, and that I can get
10:45 10 through in an effective way this whole legal quagmire that I'm
11 in which just cannot -- I've had 33 days in jail to think about
12 it, there is no way on earth I can do that from a jail cell,
13 it's too complex a matter, hence, I'm beseeching the Court.

14 Your Honor, that's all I have to say. I thank you
15 very much for the opportunity again.

16 THE COURT: Thank you.

17 All right, Ms. Burkart.

18 MS. BURKART: Thank you, your Honor.

19 There's a strong presumption against bail in a
10:46 20 detention hearing on an extradition. Mr. McNally is correct,
21 we do not disagree in our briefs about the governing law here,
22 it's very clear, but what strikes me about both his argument
23 and Mr. Drumm's statements is that they both seem to think that
24 the regular rules don't apply to him and don't apply to this
25 case.

1 The process is in place very specifically, treaties
2 govern it, they're very well defined, what steps need to be
3 taken. There's a request from one government to another
4 government through the State Department, the Office of
5 International Affairs reviews the request, it comes eventually
6 to the district. When we arrive here at this moment, there is
7 a great deal of guidance about what happens. We're not
8 supposed to argue the merits of the case, we're not supposed to
9 talk about how the treaty should work or how Mr. Drumm feels
10:47 10 the rules would be better serving him. It's about determining
11 whether the person is a flight risk under very clear burdens
12 and then determining whether the conditions of the treaty have
13 been met.

14 Here today we're determining both the flight risk and
15 the special circumstances. It's a clear test, two parts.

16 Mr. McNally mentioned several times that I was not
17 disputing the special circumstances. I am. I mentioned that
18 in my brief. I was receiving filings and various things in
19 this case right up through yesterday afternoon, and, as I said
10:47 20 in my reply, I am arguing both flight risk, that he has not met
21 the very strong presumption to show this Court that he is not a
22 flight risk, I'm also arguing that each of the special
23 circumstances that he has suggested are an inappropriate basis
24 to release him. Mr. Drumm fails on both prongs.

25 And in making his arguments, he, again, I think very

1 clearly demonstrates that he believes that the rules that apply
2 to this court, that apply to extradition proceedings, should
3 not apply to him.

4 I believe there are primarily six rules -- six reasons
5 why Mr. Drumm has not demonstrated that he is not a flight
6 risk, he's failed to meet the burden.

7 One, the circumstances under which he came to the
8 United States in 2009. Mr. Drumm makes pains here and there
9 are pains made in the letters and in the memorandum to suggest
10:48 10 that this is very natural progression, it was, essentially, a
11 homecoming for him. That may have been true in one way, but in
12 other way he is leaving a country that he, his wife, and his
13 two children are citizens of on the heels of a very difficult
14 situation. He's remained here for six years, not visiting any
15 of the extended family he mentioned, specifically to avoid the
16 government of Ireland's inquiries. That's essential to
17 considering whether he's a flight risk. He has in many ways
18 become a fugitive from the laws of Ireland by living here for
19 these six years, despite how open he has been in doing so.

10:49 20 Two, he is not cooperating with the authorities in
21 Ireland. Again, in the memorandum there's a suggestion that
22 Mr. Drumm has made efforts to be cooperative by responding to
23 written requests and agreeing to appear by video testimony.
24 First of all, that was an entirely separate inquiry from the
25 criminal investigation, that related to an Irish parliamentary

1 inquiry. But the very fact that Mr. Drumm is saying that while
2 he will not be interviewed here or in Ireland but he's willing
3 to do video testimony speaks to this fact, that he thinks some
4 kind of special rules should to apply to him.

5 Third, Mr. Drumm clearly has significant assets and
6 the means to flee. Throughout the record, throughout what's
7 happened here over the last few weeks, there are a number of
8 examples of Mr. Drumm's ingenuity with marshaling resources
9 when it serves his purposes.

10:50 10 He came to the United States in 2009, according to the
11 bankruptcy court proceedings, and not disputed in his own
12 filings in that proceeding, owing over \$11 million. Yet, he
13 managed to buy a house, which appears to have been about a \$2
14 million house, based on the bankruptcy filings that he's filed,
15 talking about the amount of the down payment, the amount of the
16 payments that were made there, moved to Wellesley, which is a
17 very wealthy suburb outside of Boston, and he and his family
18 maintained a very wealthy lifestyle while they were living
19 there, despite the fact upon arrival he owed a great deal of
10:50 20 money to his former employer.

21 He tries to downplay this lifestyle through the
22 filings, but it comes through very clearly. He describes his
23 Wellesley home as a four bedroom home. Again, a \$2 million
24 home in Wellesley is a significant asset. There's nothing
25 wrong with having a lovely home in Wellesley, but it's relevant

1 to the bail proceeding considering what assets Mr. Drumm has
2 and what means he may have to depart the United States.

3 Similarly, in the memorandum, he describes his
4 daughters attending a local Catholic school. Again, I believe
5 this is disingenuous. The school that his daughters attend and
6 have attended is a Catholic school that is nearby to Wellesley,
7 but it's one of the most expensive schools in this country.
8 The publicly available information on their website about the
9 tuition shows that it's over \$44,000 a year. The private
10:51 10 college that his other daughter is at with room and board is
11 over \$60,000 a year.

12 There are at least eight lawyers working on this case
13 for Mr. Drumm both in Boston, in New York and in Ireland.
14 These are only the ones that I'm directly aware of.

15 I'm not suggesting there's anything wrong with having
16 the best representation money can buy, sending your children to
17 great schools, living in a lovely town, but it's very relevant
18 for this proceeding. As uncomfortable as it is in some ways to
19 bring these kind of things up, it's relevant because Mr. Drumm
10:52 20 has put his family front and center of this discussion.

21 He has the ability to marshal assets when he finds it
22 appropriate for himself to do so, and he tried to discharge his
23 debts in bankruptcy and failed to do so in January of this
24 year, yet, he continues to maintain this lifestyle. This
25 strongly suggests that if he were to use -- attempt to use

1 those assets to flee this jurisdiction, he could do so.

2 Fourth, white collar criminals certainly do flee,
3 especially those that aren't citizens. Mr. Drumm has made
4 mention in both his memorandum and his lawyer has done so in
5 court today about him calling our office in January and saying
6 he'd be willing to surrender and suggesting that that makes him
7 not a flight risk. Your Honor, of course we can't negotiate a
8 surrender of someone who we have an arrest warrant for that
9 we're going to seek to detain. It's the policy of the office,
10:53 10 it's not a -- it's not a personal slight to Mr. Drumm. When we
11 have arrest warrants, we seek to arrest people. If they prove
12 they're not a flight risk, we seek to release them.

13 Mr. Drumm wasn't negotiating a plea to an information,
14 he was being arrested. Repeatedly counsel has suggested
15 there's something improper about arresting him on a Saturday,
16 despite the fact that I've spoken with him openly about the
17 difficulties of surveilling someone who is living in a
18 different -- excuse me, working in a different state. And yet,
19 they then agreed, asked, requested that Mr. Drumm stay in jail
10:53 20 for three weeks, seeking two requests for extensions. There's
21 clearly nothing improper about us arresting him when we did,
22 and he continued to bring it up after they've continually
23 requested extensions suggests, again, there's some kind of
24 perception that Mr. Drumm should have some kind of special
25 rules that apply to him. But we arrest white-collar criminals,

1 just like we arrest criminals who commit other types of crimes
2 because that's the policy of the office. Admittedly, that
3 wasn't always the policy of the office. There have been times
4 where we did not do so. But I'm personally aware of at least
5 six instances in the white-collar world where we have had
6 defendants attempt to flee within the last year or so or have
7 done so successfully, and it's perhaps not surprising. We're
8 about three hours south of the Canadian border. There are
9 options for people who have assets, there are options for
10:54 10 people who have means. It's not so unimaginable that somebody
11 would make the decision to flee the jurisdiction because it's
12 happened before, particularly someone in Mr. Drumm's situation.
13 His ability to stay in the country is at issue. He came here
14 under an investor visa, but that has been called into question
15 by the bankruptcy court. There are other questions raised by
16 the bankruptcy court about potential perjury charges, and that
17 certainly complicates Mr. Drumm's situation and his ability to
18 stay in this country. That has got to be part of the calculus
19 that he is considering when he decides whether to stay here and
10:55 20 submit himself to the rules of the court.

21 Fifth, Mr. Drumm's arguments about the strong ties
22 that he has here in the community that keep him from leaving
23 when examined closely do not support his claim. He had strong
24 ties in Ireland, too. He just described the very large
25 extended family that he and his wife had there, and yet, twice

1 he picked up and moved and came to the United States. He's
2 certainly capable of doing it. Family ties and ties of
3 friendship can be broken by a move. They can also be
4 maintained through e-mail, through other means. The fact that
5 Mr. Drumm has affection for people that live here in the United
6 States and they have it for him, though genuine, is not a
7 reason why he shouldn't be -- it's inconceivable that he would
8 leave.

9 The fact that he's got friends who are nice enough to
10:56 10 put up their homes for him is a credit to Mr. Drumm, but it
11 also is the type of thing that puts the government in a very
12 difficult position. If someone flees and betrays their
13 friendships, they have then become a victim, but the government
14 is put in the position of having to enforce the obligation to
15 take that person's home and put them and their family onto the
16 street. It does not provide comfort, frankly, that they're
17 willing to do that.

18 The Drumm home has been repeatedly brought up as an
19 example of something that should secure his presence, but that
10:56 20 itself is subject to the creditors we've just spoken about. An
21 entire section of the bankruptcy court proceeding was about how
22 the home was purchased by the Drumms in a structured way so as
23 to try to shield it from the creditors only in Mrs. Drumm's
24 name, the first time in their marriage they ever bought an
25 asset like that only in Mrs. Drumm's name.

1 Your Honor, I don't doubt the sincerity of the many
2 letters that have been put before your Honor. They're from
3 friends, from family, many of them are very heartfelt, and
4 those are difficult, because we see those a lot in this
5 courthouse. We see them often in sentencing. But there's
6 nothing inconsistent with somebody being a wonderful father and
7 a terrific husband and a good co-worker and a good friend but
8 also having committed a crime, and that's what Mr. Drumm is
9 charged with being, not with not being a good co-worker, but
10:57 10 with having committed a crime.

11 So the letters are no doubt very persuasive for
12 showing that Mr. Drumm has got good friends and family, but
13 they're not persuasive in proving that he is not a flight risk,
14 because, again, those are the kind of ties that can be broken
15 and their genuineness does not ultimately end up being
16 persuasive on the question of flight.

17 Finally, I think one of the most powerful examples of
18 why he can't be trusted by this Court is that he was not found
19 to be trustworthy by another judge in this district very
10:58 20 recently. I have quoted that opinion, I have attached it, I
21 find it very compelling. I know that it is on appeal. I don't
22 think that the fact that Mr. Drumm disagrees with the decision
23 means that it is not persuasive. There was a six-day trial in
24 which Mr. Drumm and Mrs. Drumm both testified, and at the
25 conclusion of that trial, I think the court's words are very

1 powerful here: Finding Drumm not remotely credible and his
2 conduct both knowing and fraudulent, I conclude that the
3 plaintiffs have established cause to deny him a discharge many
4 times over. Drumm's statements to this court were replete with
5 knowing false statements, failures to disclose, efforts to
6 misdirect, and outright lies. It was a judge in this district
7 in January of 2015, this year.

8 Ultimately, the question of bail and flight risk comes
9 down to trust and respect, trust for the rules of the court,
10:59 10 not the rules as Mr. Drumm, his attorneys would like them to
11 be, and respect for the rule of law.

12 Mr. Drumm has demonstrated already in the District of
13 Massachusetts that he cannot be trusted. For this reason, I
14 think Mr. Drumm is -- has not met his burden of demonstrating
15 that he is not a flight risk.

16 The second prong of the test is special circumstances.

17 Again, I vehemently oppose the special circumstances.
18 The fact that they were not fully briefed in the filings
19 relates to the timing of the filings and the challenges of the
10:59 20 week and has nothing to do with the government's position on
21 them. As I said in the filings, I plan to address them in
22 court today, so I will address each of them in turn.

23 One, he claims that there is no diplomatic need for
24 him to be held. This is incorrect. The government of Ireland
25 has correctly followed the process to seek his extradition.

1 They obtained their arrest warrant, they followed each of the
2 steps. Now, pursuant to the treaty, it's our turn to follow
3 the steps that have already been outlined through the
4 procedures and the law that are controlling here, and we are at
5 that step.

6 As a result, the political insinuations that have been
7 made in the brief have no place here. Under the rule of
8 non-inquiry, it is not the Court's place to determine whether
9 there is something suspicious regarding the timing of the
11:00 10 elections in Ireland. I will note, however, that the
11 extradition was sought, the process was begun about two years
12 ago, so the elections were well far off. So that argument is
13 both misplaced and irrelevant.

14 Mr. Drumm has tried several times to make merit-based
15 arguments, again, they have no place at a bail hearing. But he
16 also attempts to assert various defenses, and they have no
17 place here at all. That will be something for him to fully, no
18 doubt very well represented, argue in Ireland where he is being
19 put to trial. He's not being put to trial here in the United
11:01 20 States, as much as he might like to have the trial here.

21 Worth noting, your Honor, in terms of the interest of
22 the Irish government in having Mr. Drumm extradited under the
23 treaty is the letter that I received today. Having received
24 the memo and having some questions, I posed them through the
25 Office of International Affairs and received some

1 clarifications. One of them speaks to the point that your
2 Honor raised just now asking about the colleagues that were on
3 trial.

4 The last paragraph of the letter quotes the judge who
5 sentenced Mr. Fitzpatrick, who I believe was the chairman of
6 the board of Anglo Irish Bank, you asked about his position;
7 Mr. McAteer, and Mr. Whelan. Mr. McNally quoted that judge's
8 finding and claiming that -- or in correctly stating, no doubt,
9 that the judge had said something to the effect of there had
11:02 10 been a green light provided for some of these charges. But
11 these gentlemen were found guilty of having breached the law,
12 and the judge said, another quote from the judge which is
13 provided in the letter is, I've also come to the conclusion
14 that David Drumm was the instigator and author of this scheme
15 in question and is -- that the lending -- excuse me -- that is,
16 the lending to the ten individuals, and it seems to me that
17 both of the defendants in this case, referring to Mr. McAteer
18 and Mr. Whelan, played their part in execution of the scheme.

19 So these were the two men that were sentenced to
11:02 20 community service, your Honor. They were both subordinates to
21 Mr. Drumm at the Anglo Irish Bank, and the judge, having found
22 or having at least stated that Mr. Drumm was the instigator and
23 author of the scheme in question, is no doubt relevant to the
24 judge's determination of what the appropriate sentence was in
25 that case.

1 Again, I think it's very demonstrative of their
2 interest in this case that they sent this information so
3 quickly. And I think that the letter gives another interesting
4 insight into how Mr. Drumm is situated against his other
5 co-defendants. They were, in fact, all released, but it states
6 in the letter that all of them were in country at the time the
7 arrests were sought, and -- with the exception of one,
8 Mr. Fitzpatrick, the chairman of the board, who was actually
9 vacationing in the United States, but having heard of the
11:03 10 arrests of the others, got on the next available flight to
11 Ireland and was arrested early in the morning in Dublin that
12 next day. I think that is very telling in terms of the
13 relationship between Mr. Drumm and his co-defendants and the
14 argument that because they were released on bail that that
15 would be persuasive for him. It is not a special circumstance
16 under the full vetting of the facts.

17 Also noted in this letter is the fact that repeatedly
18 the Irish authorities attempted to interview Mr. Drumm, and he
19 refused to be interviewed by them.

11:04 20 Another special circumstance put forward by Mr. Drumm
21 is that there was substantial delay by Ireland in moving
22 forward, but, again, Mr. Drumm was the cause of that delay.
23 Having not agreed to being interviewed, he created the delay,
24 and the record in the case shows the various steps that were
25 followed, the different times they tried to interview him, the

1 progression they made with colleagues. It appears the Irish
2 authorities have been vigorously pursuing this case for a
3 number of years, it has worked its way through the process, and
4 now it comes in a timely fashion before your Honor.

5 This is entirely different than the Castaneda-Castillo
6 case, which was cited by defendants. That was a case here in
7 the office about five years ago. The defendant in that case
8 had committed a crime approximately 25 years before, and he was
9 in jail for five years while waiting for that process to go
11:04 10 through. The Mexican government waited three years, the United
11 States government waited two years before having the
12 extradition properly brought before the court. Judge Dein
13 found that that was a lengthy delay and that the five-year
14 delay on a 25-year-old charge was compelling. It was also very
15 important to the judge in that case that the defendant was
16 indisputably not a primary player in the crime that was
17 alleged. He was a player sort of on the fringe of what had
18 occurred, and the judge found that persuasive. That is the
19 exact opposite of the situation here.

11:05 20 Sort of the next response, your Honor, collapses a
21 number of different things that are put forward as special
22 circumstances but broken out into a couple of different points
23 but I think fundamentally come down to the argument that
24 there's such an extraordinary amount of information and
25 documents in this case that delay is warranted because it's

1 going to take, according to Mr. McNally's estimate just now,
2 two to four years before this case is properly heard.

3 That is directly in contrast to the case law. The
4 case law limits the scope, as your Honor reminded us this
5 morning, of what happens at the preliminary hearing. And the
6 courts have consistently found that the normal passage of time
7 inherent in the litigation process, the complexity of the
8 pending litigation, is not a special circumstance. Here we
9 have a limited role. We're finding whether there's probable
11:06 10 cause on these 33 charges. Fundamentally they're charges that
11 Mr. Drumm engaged in actions to make the financial health of
12 the bank look stronger than it was. No doubt that's not the
13 most straightforward crime, but it's also not the most complex
14 thing we deal with either. We regularly deal with white-collar
15 crimes in this district. It's not that unusual in the scheme
16 of things that there would be a crime alleging transactions at
17 a bank. A hundred million pages of documents are no doubt
18 going to be relevant, although I question whether many of them
19 are repetitive bank documents, but it's of no matter, because
11:07 20 they are not relevant here. That is for the Irish authorities
21 to determine, and that's something that Mr. Drumm and his
22 defense can mount vigorously when he returns.

23 Reading the memorandum, it jumped out at me that he
24 talked about needing to spend a great deal of time analyzing
25 the record, retaining accountants and experts to review and

1 analyze the evidence. I don't understand what the need for
2 that would be, given the scope of the hearing.

3 Basically what Mr. Drumm has said here is that he's
4 going to cause a delay by mounting a defense, which is
5 inappropriate in this context, and then he's going to claim
6 that because there's going to be a delay, he is entitled to the
7 special circumstance of being released. That cannot be the way
8 special circumstances work. You cannot make your own special
9 circumstance by delay. And facing extradition on complex
11:07 10 charges certainly is not outside the purview of the type of
11 thing that is normally considered by courts handling
12 extradition.

13 What's been referred to as the BOP situation by
14 counsel has been resolved. I think it's an example of the
15 system working. The fact that Mr. Drumm wants a different
16 system is not relevant here. Making discovery available to
17 counsel when they're in jail is something that we deal with
18 regularly, and it's something that we'll be dealing with in
19 Mr. Drumm's case. He has had full access to counsel.

11:08 20 Finally, your Honor, what's put forth as the last
21 special circumstance is, I think, in many ways the most
22 egregious. Mr. Drumm cites the dependency of his family. I,
23 again, note that Mr. Drumm is the one who has put his family
24 front and center in this case, and his attorneys cite to a case
25 from 1952 to talk about the importance of a defendant

1 supporting his wife and children. Many cases that are more
2 recent say that that is not a special circumstance in an
3 extradition hearing. And it is, sadly, common in this
4 courthouse that people appear before your Honor and the other
5 judges in this building who have families. That is not a
6 special circumstance, and it is often very sad and it is an
7 unfortunate collateral consequence of the criminal justice
8 system that loved ones are hurt. But here, your Honor, I think
9 it's not even a close call. Mr. Drumm's wife is an able woman,
11:09 10 and his children are 20 and 17 years old. His wife's letter
11 talks about sacrifices that, frankly, are not the kind of
12 sacrifices that are compelling in a criminal context. Not
13 being able to do a study abroad program is not the type of
14 compelling special circumstance here, and I think it shows a
15 lack of understanding of the severity of what's happening here
16 and how the rules are going to be applied.

17 Mrs. Drumm talks about being homeless, penniless, and
18 unable to travel, but knowing that this was coming for seven
19 years, they have sent their children to the most expensive
11:09 20 schools in the country and continue to maintain this lifestyle.
21 Again, there's nothing wrong with providing for your family and
22 trying to give them the best life that you can, but it's very
23 relevant to a proceeding in determining whether Mr. Drumm is a
24 flight risk, and it is, when he has pointed out the dependency
25 of his family as a special circumstance, relevant to note that

1 what he wants to do is stay in the United States with his
2 family, living the same lifestyle he has somehow managed to
3 maintain for all of these years since they came here, despite
4 all that has happened without responding to the charges against
5 him in Ireland. Enough.

6 The special circumstances have to be extraordinary in
7 order to meet the burden. None of the factors put forward by
8 Mr. Drumm are extraordinary. They're the kind of things faced
9 by all defendants facing extradition. The rule is that he
10 should be held unless he is both not a flight risk and he
11 demonstrates special circumstances. He does not want to abide
12 by those rules, but those are the rules that bind him. He
13 should not be released. Fairness requires that he be held.

14 Thank you, your Honor.

15 THE COURT: Thank you.

16 Mr. McNally, briefly, is there anything you want to
17 say in response?

18 MR. McNALLY: Yes, I think Mr. Fetterman will respond,
19 your Honor.

11:11 20 THE COURT: Okay.

21 Mr. Fetterman.

22 MR. FETTERMAN: Thank you, your Honor.

23 I would like to start, your Honor, by addressing
24 something Ms. Burkart said.

25 It's completely not the case that we are not -- that

1 we are trying to avoid application of the rules. In fact, as
2 your Honor has seen in our briefing, we are relying on case law
3 and the application of the law to the compelling facts in this
4 case, and I believe that Mr. McNally comprehensively addressed
5 the risk of flight. We completely reject the government's view
6 that given Mr. Drumm's actions that he poses any risk of
7 flight. And I'll rely on Mr. McNally's argument, unless the
8 Court has a question specifically about the risk of flight
9 issues.

11:12 10 And I'd like to turn to the special circumstances.
11 Because the government is relying almost entirely on the strong
12 presumption that they say applies, but the issue that the Court
13 should address is that, as we've said in our papers, your
14 Honor, the presumption is based on a diplomatic necessity, that
15 is, that somehow the government of the United States would be
16 embarrassed because the government of Ireland has, as
17 Ms. Burkart said, followed the rules and asked that Mr. Drumm
18 be returned. But as we've set forth in our papers, I think
19 it's extremely important here, and we cited the cases that
11:12 20 discuss this, there is no diplomatic necessity here for two
21 reasons: One, the government of Ireland, the country of
22 Ireland has a constitutional presumption in favor of bail and
23 regularly bails, grants bail for people accused of the crimes
24 that Mr. Drumm is accused of.

25 And secondly, and I think really even more

1 importantly, your Honor, that when the tables are turned and
2 American citizens who are facing extradition by the U.S., to be
3 returned from Ireland to the U.S., the country of Ireland
4 regularly grants bail for those American citizens. And we've
5 given the Court ample authority for that, both in the form of
6 the affidavit from Mr. Steins and also from a highly
7 well-regarded professor in Ireland.

8 THE COURT: Are you arguing, then, that if you show
9 that a country requesting extradition is one that presumptively
10 defaults toward releasing somebody on bail, then the issue for
11 me basically becomes just one of flight risk without the need
12 to show special circumstances?

13 MR. FETTERMAN: No, your Honor. I think it's clear we
14 have to show there's no risk of flight and special
15 circumstances. But I think in evaluating the special
16 circumstances, the question of whether there's a strong
17 presumption that you can just defer to and that the government
18 can hide behind is present I think gets nullified, and then you
19 can look whether there are other special circumstances present.
20 And here there are compelling additional special circumstances,
21 and the first and most important one is the delay. It's been
22 seven years, your Honor. And while I know Ms. Burkart
23 commented on the Castillo case, in the Chapman case that we've
24 cited, a court found that special circumstances existed where
25 Mexico waited three years before bringing extradition.

1 THE COURT: Okay.

2 I'm not trying to cut you off, but I think the salient
3 statement she made was that the delay was caused in this case
4 by Mr. Drumm, so not so much the length of time, but the reason
5 for the delay.

6 MR. FETTERMAN: Your Honor, that makes no sense.
7 She's saying Mr. Drumm, who was living openly and notoriously
8 in the United States, in fact, made his presence known and
9 agreed to cooperate with a government inquiry by providing
10 written testimony and agreeing to a videotaped testimony but
11 would not sit down with criminal investigators, would not sit
12 down with the FBI or the Irish equivalent while he's in the
13 United States and has a Fifth Amendment privilege against
14 self-incrimination, that somehow he's the cause of Ireland's
15 delay, that is a circular argument.

16 THE COURT: Well, I'm not sure that implicates the
17 Fifth Amendment because it relates to a crime possibly
18 committed in Ireland, doesn't necessarily expose him to
19 criminal liability here, but I understand your point, he
11:16 20 shouldn't be required to sit down and make incriminating
21 statements against himself.

22 MR. FETTERMAN: And he was being advised by counsel
23 and the like.

24 So the notion that the government, the U.S. government
25 is going to vitiate -- the issue of delay in cases in this

1 circuit weighs heavily in favor of bail. So our argument, your
2 Honor, is there are two special circumstances going directly to
3 diplomatic necessity that effectively vitiate the presumption,
4 and then you have strong factors weighing heavily in favor of
5 bail, the first one being delay; and the second one, your
6 Honor, being that his family is solely and wholly dependent on
7 him. You know, Ms. Burkart sounded a little callus when she
8 said, Well, sometimes bad things happen to, you know, people
9 who get caught up in the criminal justice system. But here,
11:17 10 this family has no other means of support, and that's another
11 factor that weighs in favor of bail.

12 And then I think it is just not appropriate to
13 completely dismiss the complexity of this case. As Mr. McNally
14 said, these cases, by the time they go through the appeals and
15 the like, often involve lengthy periods of time. This is a
16 complex case, and while it may be that the argument and the
17 issue that we're going to be trying when we next meet for the
18 hearing is probable cause, the government still has the burden
19 of proving probable cause, and we, as Mr. Drumm's counsel, have
11:17 20 the obligation to investigate the facts and see what arguments
21 are or not present to vitiate probable cause. So we expect
22 this is going to take a very long time.

23 The BOP situation which Ms. Burkart referenced has
24 been -- made it extremely difficult for us to even communicate
25 with our client, as we've referenced, and there's every reason

1 to expect, your Honor, that if Mr. Drumm stays in, that the BOP
2 situation will occur again. It happened more than once
3 already, and we have every expectation that it will occur
4 again, and we have no idea how many times that will happen. So
5 as both Mr. Drumm and Mr. McNally said, we cannot effectively
6 represent our client under those circumstances.

7 And the most important thing I would direct your Honor
8 to in summing up is that the question is not do you pick apart
9 each single special circumstance, as Ms. Burkart attempted to
10 do, but you look at the totality of the circumstances, and
11 where you have a country that waited seven years to seek
12 charges and extradition, that itself has a constitutional
13 presumption in favor of bail, regularly bails defendants in the
14 requesting country for the crimes that are being charged, also
15 regularly grants bail to American citizens when the United
16 States government makes the request for extradition. And you
17 have the other compelling special circumstances that exist in
18 this case, your Honor. We submit that this is not even a close
19 call, but that it's an overwhelming case in favor of the Court
20 releasing Mr. Drumm on the conditions that will assure his
21 appearance.

22 THE COURT: Thank you, Mr. Fetterman.

23 MR. FETTERMAN: Thank you, your Honor.

24 MS. BURKART: Your Honor, may I be heard?

25 THE COURT: The last voice, if you want it.

1 MS. BURKART: May I be heard very briefly on two
2 points?

3 THE COURT: Briefly.

4 MS. BURKART: One, on the point I was accused of
5 making no sense on, I will be very clear. I not saying that
6 Mr. Drumm was under the obligation to speak with Irish criminal
7 investigators. I was saying his leaving the country and his
8 refusal to speak with the investigators after repeated requests
9 to do so, both here and in Ireland, is something that led to
11:20 10 the delay. The proceedings went forward against the other
11 people that Mr. Drumm worked with, but are on a different track
12 as to Mr. Drumm because he moved here and then failed to speak
13 with the investigators. So it is unfair for Mr. Drumm to then
14 point to that delay and say that that is a special
15 circumstance. That was my point there, to the extent that was
16 not clear before.

17 Second, I took great pains not to be callus in
18 discussing Mr. Drumm's family situation. He is the one that
19 brought it before this Court, it is relevant for the
11:20 20 proceeding, and what I said was that it is an unfortunate
21 reality that people have children who appear in criminal
22 proceedings.

23 Thank you.

24 THE COURT: Thank you.

25 All right. Thank you both. This is helpful.

1 Obviously there's a lot to digest, and, as I noted at the
2 outset, some of the materials I've only received within the
3 last 24 to 36 hours, so we'll take this under advisement.

4 But let me end by underscoring what we talked about
5 earlier, which is, if you could confer and come up with a date
6 for a hearing in February, that would be helpful, and if you
7 can get that to us within one week, we will then issue a notice
8 with the official date.

9 I understand there's -- there are a lot of reasons
11:21 10 that have been offered arguing both ways that would affect
11 timing, but I am persuaded that we do need to set a schedule
12 for this and start to generate some momentum. So, as strongly
13 as I can, please pick a date in February, and let's treat that
14 date as a firm date once it's set and that whatever we need to
15 do to get ready by then, we'll make ourselves as available as
16 we need to. In some instances, if we have to have a conference
17 on short notice, we can do it by telephone rather than counsel
18 appearing in person, but I have every intention of us at least
19 conducting the extradition hearing in February. All the more
11:22 20 so, if counsel are correct and that the process writ large is
21 going to take longer than that, we need to start this.

22 So -- is there anything else that we need to address
23 today?

24 MS. BURKART: Nothing from the government, your Honor.

25 MR. McNALLY: Nothing from Mr. Drumm, your Honor.

1 THE COURT: Thank you. We'll be in recess, and
2 Mr. Drumm will be remanded for the time being to the custody of
3 the marshals.

4 THE CLERK: All rise.

5 (Court adjourned at 11:22 p.m.)

6 - - - - -

7 CERTIFICATION

8 I certify that the foregoing is a correct transcript
9 of the record of proceedings in the above-entitled matter to
10 the best of my skill and ability.

11
12
13
14 /s/Debra M. Joyce
15 Debra M. Joyce, FCRR
16 Official Court Reporter

November 14, 2015
 Date