

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)

v.)

KEVIN YORK,
Defendant)

Crim. No. 2:16-CR-0065-JDL

**DEFENDANT KEVIN YORK’S MOTION TO MODIFY CONDITIONS OF RELEASE
(OBJECTION)**

NOW COMES the Defendant, Kevin York by and through undersigned Counsel, and respectfully requests that this Honorable Court modify Mr. York’s conditions of release. In support thereof, Counsel states as follows:

1. This matter is before the Court on the Government’s Petition for Revocation of Supervised Release. *ECF #53, 65.*
2. On February 16, 2021, the Court issued an Order of Detention pending hearing. *ECF #57.*
3. A hearing on the Government’s Petition is scheduled for March 31, 2021. *ECF #64.*
4. Subsequent to the Order of Detention, undersigned Counsel, Probation, and the Government reached an agreement that Mr. York would enter an inpatient treatment facility, the Aroostook Mental Health Residential Treatment Center, commonly called ‘The Farm’ on April 9, 2021. <https://www.recovery-journey.com/the-farm/>.

5. Mr. York was admitted to that program and subsequently made a \$200.00 deposit to hold his 'bed' at 'The Farm.'
6. After that agreement, Mr. York was subsequently charged with an additional count, Charge 2, of violation of supervised release. *ECF #65*. Mr. York, through counsel, has been informed that Probation and the Government no longer agree to his entry into 'The Farm.'
7. Mr. York hereby notifies this Court that there has not been 'probable cause' found as to the amended Petition, charge two. See *Fed.R. Crim.P. 32(b)(1)(C)*. Mr. York seeks a hearing on this issue to be consolidated with the scheduled date of March 31, 2021 for the original Motion and that if probable cause is not found for charge two, that Mr. York's conditions of release be amended to allow him to enter the impatient program, 'The Farm,' on April 9, 2021.
8. Mr. York hereby requests a testimonial hearing on March 31, 2021. Mr. York intends to produce the testimony of Timothy Zerillo, Esq. in support his denial of charge two and additionally, requests that any evidence from the Government be testimonial in nature. Mr. York advises that he does not agree to the factual representations in the Amended Petition regarding the allegation of charge two. *ECF #67*. See *United States v. Jordan*, No. 2:04-cr-20008-SEM-TSH-1 (7th Cir. March 18, 2021).
9. A prehearing detainee's freedom from pretrial confinement is a fundamental right protected by the Due Process Clause; any government action infringing on this right must be narrowly tailored to achieve a compelling government interest. *United States v. Salerno*, 481 U.S. 739, 755 (1987). The constitutional protections of pretrial

detainees arise under the Fifth Amendment Due Process Clause, which provides protection even greater than the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The Eighth Amendment, which applies to persons convicted of criminal offenses, allows punishment as long as it is not cruel and unusual, but the Fifth Amendment’s due process protections do not allow pretrial punishment at all. *Id.* Although the Government has an interest in detaining a defendant to secure their appearance at trial, Government may only subject a detainee “to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution.” *Id.* at 536–37. In *Kingsley v. Hendrickson*, the Supreme Court affirmed the Due Process Clause’s prohibition on pretrial punishment, and elaborated that “if the condition of confinement being challenged ‘is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment.’” 135 S. Ct. 2466, 2470 (2015); see also *Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (“a particular restriction or condition is punishment if the restriction or condition is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective”).

WHEREFORE, Mr. York respectfully requests this Honorable Court order his release to ‘The Farm’ together with any and all other relief that is fit and just.

Dated this 24th day of March, 2021 at Portland, Maine.

Respectfully submitted,

/s/ David J. Bobrow, Esq.
Attorney for Defendant
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CERTIFICATE OF SERVICE

I, David J. Bobrow, Esq., hereby certify that I have caused to be served via ECF the Defendant's Motion to Modify Conditions of Release on the following individuals:

1. Nicholas Scott, Esq. at Nicholas.scott@usdoj.gov;
2. All other attorneys of record in this matter.

Dated this 24th day of March 2021 at Portland, Maine.

Respectfully submitted,

/s/ David J. Bobrow, Esq.
Attorney for Defendant
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