

**United States District Court
District of Stetson
Westview Division**

UNITED STATES OF AMERICA,

CASE NO.: 1:21-cr-36

v.

WANDA MAXIMOFF,
Defendant.

_____ /

Initial Appearance
Thursday, September 23, 2021
2:00 p.m. EST

The Honorable Valentina Allegra de Fontaine
United States Chief District Judge
District of Stetson

APPEARANCES:

FIRST ASSISTANT UNITED STATES ATTORNEY SHARON CARTER
ASSISTANT UNITED STATES ATTORNEY SAMUEL WILSON
United States Attorney's Office
1 Ellis Avenue
Westview, Stetson 61650

Counsel for the United States of America

JAMES B. BARNES, ESQ.
Barnes & Rogers, P.A.
15 Ellis Avenue
Westview, Stetson 61650

Counsel for Defendant Wanda Maximoff

SPECIAL AGENT JIMMY WOO
Department of Homeland Security (DHS)
970 Broad Street
Westview, Stetson 61650

1 [COURT IN SESSION AT 2:02 P.M.]

2 THE COURT: We are here on a specially set docket for an
3 initial appearance. Clerk, please call the case.

4 CLERK: United States v. Wanda Maximoff. Case Number
5 1:21-cr-36. Chief Judge Valentina Allegra de Fontaine
6 presiding.

7 THE COURT: And can we have appearances for the record?

8 MR. WILSON: For the United States, Assistant United
9 States Attorney Samuel Wilson. Also here are the District's
10 First Assistant United States Attorney Sharon Carter and
11 Department of Homeland Security Special Agent Jimmy Woo.

12 THE COURT: Good afternoon, Mr. Wilson and Agent Woo.
13 Ms. Carter, it is always a pleasure. For the defendant?

14 MR. BARNES: James Barnes for Defendant Wanda Maximoff.
15 I was retained by her family.

16 THE COURT: Good afternoon, Mr. Barnes. Is this case
17 unsealed?

18 MR. WILSON: Yes, Your Honor signed the order this
19 morning right after Ms. Maximoff's arrest and Madam Clerk
20 advised me prior the hearing that it is on the docket.

21 THE COURT: Okay. Ms. Maximoff, you were arrested
22 earlier today because this week a grand jury of this Court
23 returned an Indictment against you on one charge. This is your
24 initial appearance. I will explain the charge against you and

25 advise you of the maximum penalties should you plead or be found
26 guilty. This is something I must do even though, I am sure, you
27 have had the opportunity to read the Indictment and discuss the
28 charge with your attorney.

29 Count One, the sole charge in the Indictment, alleges that
30 between May 31, 2007, and July 24, 2010, you conspired to
31 encourage and induce aliens to continue residing in the United
32 States knowing that such residence would be in violation of the
33 law and for the purpose of commercial advantage or private
34 financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(iv) and
35 (v). For this charge, you face a maximum term of imprisonment
36 up to ten years, a maximum term of supervised release of up to
37 three years, a \$250,000 fine, and a special assessment.

38 Because an Indictment was returned against you, you do not
39 have the right to a preliminary examination hearing for a
40 determination of probable cause. The Indictment is itself a
41 finding of probable cause that you committed the charges against
42 you.

43 What is the government's position as to—

44 MR. BARNES: Excuse me your honor, but before proceeding
45 any further we would move to dismiss the Indictment on its face
46 because it was returned in violation of the statute of
47 limitations. Section 3298 requires that for an INA offense,
48 "the Indictment is found or the information is instituted not

49 later than 10 years after the commission of the offense." It is
50 plain from what you just read, based on the conspiracy alleged
51 in the Indictment, that the statute of limitations expired on
52 July 24, 2020.

53 THE COURT: Good catch. What says the government on the
54 motion?

55 MR. WILSON: There is more procedural history here than
56 meets the eye. I am going to tender to the Court and opposing
57 counsel a materially identical Information filed by the United
58 States under seal against Ms. Maximoff on July 22, 2020, and an
59 order signed by Judge Bradley dismissing the Information without
60 prejudice. We were forced to file the Information last summer
61 after the Court, in Administrative Order No. 20-019, suspended
62 the grand jury because of COVID-19 as of March 23, 2020. When
63 the Court lifted that suspension on March 29, 2021, in
64 Administrative Order No. 21-008, we sought an Indictment by the
65 grand jury within six months to comply with 18 U.S.C. § 3288.

66 If the Court is inclined to disagree, there is also an
67 argument for equitable tolling of the statute of limitations.
68 We were in and continue to be cognizant of an unprecedented
69 pandemic, and Special Agent Woo can explain why Ms. Maximoff's
70 fraud only recently came to light.

71 MR. BARNES: Ms. Maximoff did not waive her right to an
72 Indictment under Federal Rule of Criminal Procedure 7, namely

73 because she never knew was under investigation for a federal
74 crime until her arrest this morning. So, the July Information
75 was always null and void. I also know one federal circuit has
76 held that equitable tolling will not "rescue a government
77 indictment filed after the statute of limitations has lapsed."
78 We still seek dismissal of this Indictment.

79 THE COURT: That's enough, counsel. I agree this
80 presents two legal issues that the Court can resolve prior to
81 trial. First, the issue of Section 3288, and second, the issue
82 of equitable tolling. Let me pause on that for a moment.

83 Mr. Wilson, is the government seeking detention in this
84 case? This is not an enumerated offense under the Bail Reform
85 Act, right?

86 MR. WILSON: It's not, but we are seeking detention under
87 Section 3142(f)(2)(A) because there is a serious risk Ms.
88 Maximoff will flee if she is released pending trial.

89 MR. BARNES: What a joke. It's not like she is just
90 going to vanish into thin air.

91 MS. CARTER: Magic is not the government's concern. The
92 United States is prepared to present evidence that Ms. Maximoff
93 has substantial foreign ties, significant assets, and an obvious
94 motive to flee. Special Agent Woo can testify to her recent
95 flight records and her finances, all of which are discussed in
96 the Affidavit accompanying the July Information. When she is

97 adjudicated guilty, we will seek prison time. We are not
98 inclined to call her a terrorist, but-

99 MR. BARNES: So don't. Ms. Maximoff does not present a
100 serious risk of flight. Her health conditions are another
101 factor. She gets dialysis three times per week, which I would
102 doubt she'll get in the jail. And even if she could get
103 dialysis, she has a compromised immune system. Requiring her to
104 go to the county jail at the rate the Theta Strand can spread
105 when she is not vaccinated would be a death sentence. She has a
106 family who can care for her, and she will submit to an ankle
107 bracelet for GPS monitoring, a curfew, or even some form of home
108 confinement.

109 We would ask the Court to set a hearing on the Government's
110 motion for detention and our motion to dismiss for next Monday.

111 THE COURT: That's a sound idea. On the motion to
112 dismiss, you will file your motion and memorandum by close of
113 business today. The Government will have 24 hours to file its
114 response. I will ask the Clerk to assign this case to a judge
115 who can hear oral argument on the motion on Monday.

116 Assuming the motion is taken under advisement, you will
117 have your detention hearing. Neither party will submit
118 memoranda on detention because the law is straightforward, but
119 the Court will hold an evidentiary hearing for the parties to

120 present witnesses and make argument under the Bail Reform Act.

121 Understood?

122 MR. BARNES: Yes, your honor.

123 MR. WILSON: Of course.

124 THE COURT: Now, let me address the Defendant directly.

125 I understand these initial appearances can be fast and complex.

126 I don't want you leaving here under any misimpression about what
127 is going to happen from here.

128 Your case will be set for trial by separate order, and you
129 are going to be held at the county jail until Monday. Due to
130 the limited information I have about your health conditions, I
131 will direct the Marshal to ask the jail to assign you to a cell
132 without a roommate.

133 There will be a detention hearing on Monday at the
134 Government's request, during which a judge will determine
135 whether you should be in custody pending trial or released on
136 any number of conditions. For you to be detained pending trial,
137 the Government must show by a preponderance of the evidence—
138 basically that it is more likely than not—that you are a serious
139 risk of flight. This is a fact-specific examination requiring
140 the Court take into account whether you have substantial foreign
141 ties, access to considerable funds that would finance flight
142 from this jurisdiction, or whether you have manifested any
143 intent to flee. The Court cannot find you present a serious

144 risk of flight just because you may face a long sentence if
145 convicted. We look at aliases, unstable residence, efforts to
146 avoid arrest, foreign business ties, and hidden assets.

147 If the United States makes that initial showing of serious
148 risk of flight, the Court turns to the second prong of the Bail
149 Reform Act. The question there is whether any condition or
150 combination of conditions of release will reasonably assure your
151 appearance for future proceedings and trial. Unlike in state
152 court, where there are bail schedules and cash bond, I cannot
153 just demand you pay a certain amount of money to get out of
154 jail. You may be released on your own recognizance, I can order
155 a bond that is entirely unsecured or secured by certain property
156 (like a family home) that you will forfeit if you flee, or there
157 are a number of conditions like GPS monitoring or a curfew that
158 are listed in Section 3142(c) of the Bail Reform Act.

159 In doing so, I must look at the nature and circumstances of
160 the offense charged, the weight of the evidence against you,
161 although I must stress that is, by far, the least important
162 factor, your history and characteristics such as your physical
163 health, family ties, employment, financial resources, community
164 ties, any criminal history, or general past conduct, and,
165 lastly, the seriousness of any danger you present to one person
166 or the community if released.

167 Both the United States and your counsel will present
168 evidence, call witnesses, and make argument at the detention
169 hearing. You may be familiar with legal objections, like
170 hearsay and speculation. Although those rules generally don't
171 apply at detention hearings, any judge in this courthouse is not
172 going to entertain rank hearsay or conjecture by witnesses
173 without foundation to back it up.

174 Does all of that make sense?

175 DEFENDANT: Yes, your honor. Thank you.

176 THE COURT: You're welcome. We are adjourned.

177 [COURT ADJOURNED AT 2:18]