IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09 CR 849
	)	Emergency Judge Matthew F. Kennelly
TAHAWWUR RANA,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION FOR REVOCATION OF
THE MAGISTRATE JUDGE'S DETENTION ORDER

Defendant, **TAHAWWUR RANA**, by and through his attorney, **PATRICK W. BLEGEN**, respectfully moves this Court, pursuant to 18 U.S.C. §3145(b), to revoke the detention order entered in this matter on December 15, 2009, by Magistrate Judge Nan Nolan.

I. BACKGROUND

Defendant was arrested on Wednesday, October 18, 2009, and was charged by criminal complaint with conspiracy to provide material support to terrorism, in violation of Title 18, United States Code, Section 2339A. The complaint was amended on October 28, 2009, adding a substantive count of providing material support under §2339A. The amended complaint alleges, in essence, that Defendant provided support in the form of arranging for travel and providing a business "cover" for a second individual's travel to Copenhagen, Denmark. The purpose for this travel is alleged to be the planning of a terrorist attack against a newspaper in retaliation for the publishing of cartoons of the prophet Muhammad in 2005.

In its initial report, Pretrial Services stated that there appeared to be a combination of conditions which would reasonably assure Defendant's presence at future court hearings and the safety of the community. Pretrial Services was at that time unaware of a co-signor and available

collateral for a secured bond, however, so detention was recommended. After having an opportunity to speak with Defendant's family, Pretrial Services issued an addendum to its report on October 26, 2009, recommending that Defendant be released on bond subject to several conditions. Pretrial Services proposed that Defendant post his home as security, report to Pretrial Services as directed, refrain from the unlawful use or possession of a narcotic drug, refrain from travel outside of the Northern District of Illinois, surrender all passports and travel documentation, surrender his Canadian citizenship card, refrain from obtaining any passport or travel documentation and refrain from possessing a firearm or other dangerous weapon.

In addition to these conditions, Defendant himself proposed additional conditions to secure his release. Defendant, in addition to offering to post his business, First World Management Services, Inc., offered to post nearly one million dollars in property in order to secure his bond, including the following properties:

— Defendant's home at [address redacted];

— A home owned by Defendant's sister-in-law at [address redacted] (also deeded in Defendant and his wife's name);

— A home owned by Defendant's brother at [address redacted];

— A home owned by Defendant's wife's cousin at [address redacted];

— A home owned by family friends at [address redacted];

— A home owned by family friends at [address redacted].

The combined equity in these properties is approximately $950,000. Defendant also proposed that the court could impose home detention with electronic monitoring, as well as any other conditions the court found appropriate.

Despite the proposed conditions, and the recommendation of Pretrial Services, Magistrate

Judge Nolan ordered Defendant detained based on an assessment that Defendant would pose a risk of flight.[1] A copy of Judge Nolan's Order is attached hereto as Exhibit A. A copy of the transcripts of the detention hearings on November 3, 2009, and December 2, 2009, are attached as Exhibits B and C, respectively.[2] Defendant submits that Judge Nolan was wrong in concluding that there were no conditions or combination of conditions that would reasonably assure the appearance of Defendant if he were released pending trial.[3]

II. RELEVANT LAW

As this Court is no doubt aware, the Bail Reform Act of 1984, 18 U.S.C. §3142, provides a court with four options with respect to release or detention pending trial: (1) release on personal recognizance; (2) release on conditions; (3) temporary detention to permit revocation of conditional release; and, (4) detention. *See*, 18 U.S.C. §3142(a) & (e). In order to determine whether conditions exist that will reasonably assure the defendant's appearance and the safety of the community, courts are directed under the act to consider: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug; (2) the weight of the evidence against the defendant; (3) the history and characteristics of

[1]Judge Nolan indicated that because she was detaining Defendant as a risk of flight, she did not need to reach the issue of danger to the community.

[2]Issues related to bond were discussed on October 28, 2009, November 3, 2009, December 2, 2009, and December 15, 2009. Defense witnesses testified at the December 2, 2009, hearing, and Judge Nolan gave her oral ruling at the December 15, 2009, hearing. A transcript from the October 28, 2009, hearing is unavailable because the court's audio recording system apparently malfunctioned. A transcript from the December 15, 2009, hearing has been requested but is not yet prepared. Counsel will provide the December 15, 2009, transcript to the Court as soon as it is available.

[3]Between the December 2, 2009, and December 15, 2009, court appearances, Judge Nolan reviewed evidence that had been provided by the government to the defense. That evidence is the subject of a protective order, so counsel cannot provide it to the Court with this pleading. Counsel has requested that the government provide to this Court copies of the evidence provided to Judge Nolan.

the defendant;[4] and, (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *See*, 18 U.S.C. §3142(g). The statute also specifically directs that "[n]othing in this section shall be construed as modifying or limiting the presumption of innocence." 18 U.S.C. §3142(j). Notably, the Bail Reform Act is not designed to determine guilt before trial, or to serve as a form of pretrial punishment. Pretrial detention should be the exception rather than the norm. *United States v. Orta*, 760 F.2d 889, 890 (8th Cir. 1985) (en banc). A court must consider "the possibility of less restrictive alternatives to detention." *United States v. Infelise*, 934 F.2d 103, 105 (7th Cir. 1991).

Pursuant to 18 U.S.C. 3142(e)(3)(c), a rebuttable presumption in favor of detention arises from a charge under 18 U.S.C. §2339A. To rebut the presumption, the defendant need only establish that a condition or combination of conditions will "reasonably assure" the defendant's appearance as required, and the safety of the community. A defendant bears only a burden of production, and it is not a heavy one. *United States v. Dominguez*, 783 F.2d 702, 706-07 (7th Cir. 1986). Only in rare circumstances should release be denied, and doubts regarding the propriety of release should be resolved in favor of the defendant. *United States v. Chen*, 820 F.Supp. 1205 (N.D.Cal. 1992); *United States v. Gebro*, 948 F.2d 1118 (9th Cir. 1991); *United States v. Montamedi*, 767 F.2d 1403 (9th Cir. 1985); *United States v. Hammond*, 204 F.Supp.2d 1157 (E.D.Wisc. 2002).

When a district court reviews the detention order of a Magistrate pursuant to 18 U.S.C.

[4] History and characteristics include: (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and, (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State or local law.

§3145, the review is *de novo*. *See, e.g., United States v. Portes*, 786 F.2d 758 (7th Cir. 1985); *United States v. Jones*, 804 F.Supp. 1081 (S.D.Ind. 1992). And, the district court need not defer to the Magistrate's findings. *United States v. Shaker*, 665 F.Supp. 698 (N.D.Ind. 1987), *citing*, *United States v. Leon*, 766 F.2d 77 (2nd Cir. 1985), and *United States v. Delker*, 757 F.2d 1390 (3rd Cir. 1985). The district court may start from scratch and hold a new hearing, or may review the transcript of the hearing before the Magistrate. *United States v. Torres*, 929 F.2d 291 (7th Cir. 1991). The court may also hear additional evidence, and decisions regarding whether to accept additional evidence is left to the broad discretion of the district court. *Shaker*, 665 F.Supp. at 704, *citing*, *United States v. Dominguez*, 783 F.2d 702 (7th Cir. 1986); *Delker*, 757 F.2d at 1393-94; *United States v. Fortna*, 769 F.2d 243 (5th Cir. 1985); *United States v. Daniels*, 622 F.Supp. 178 (D.C.Ill. 1985); *United States v. Freitas*, 602 F.Supp. 1283 (N.D.Cal. 1985).

III. ARGUMENT

Defendant respectfully submits that Judge Nolan's decision to detain Defendant as a risk of flight was erroneous. As an initial matter, the court incorrectly found that Defendant had failed to rebut the presumption against release. Moreover, in detaining Defendant, the court relied on the following factors: (1) the nature of the charges; (2) Defendant's Pakistani background; (3) Defendant's management of an immigration office; (4) Defendant's financial means; (5) Defendant's ties to Canada; and, (6) Defendant's history of international travel.[5] None of these factors, alone or in combination, is sufficient to conclude that Defendant is a risk of flight. And, the court misunderstood or misapplied many of the facts used to support its conclusions.

[5]Judge Nolan's oral ruling is contained in the transcript that is not yet available. This list of factors comes from counsel's recollection and notes of the ruling.

A. Rebuttable Presumption

Because Defendant has been charged with violations of 18 U.S.C. §2339A, there is a rebuttable presumption against release. As noted above, however, Defendant's burden to rebut the presumption is not a heavy one, and Defendant submits that the information regarding his wife, children, employment history, and unblemished record as set forth in the Pretrial Services report is alone sufficient for that purpose. Defendant is married with three children, ages 18, 16 and 14. The two youngest children, both daughters, are in high school in Chicago, while his eldest, a son, is a college student. Defendant has maintained a residence in Chicago since 1997. He owns and operates businesses in the Chicago area. Furthermore, he has no history of prior arrests whatsoever. Defendant also presented witnesses at his bond hearing who testified as to Defendant's honesty and trustworthiness — indications that he would follow all bond conditions imposed by the court. The court's conclusion that Defendant failed to rebut the presumption was wrong.

B. The Nature of the Charges

Defendant's charges, both conspiracy and a substantive violation of 18 U.S.C. §2339A, providing material support to terrorists, are undoubtedly serious. The complaint alleges that Defendant arranged for travel and provided a business "cover" for a second individual's travel to Copenhagen, Denmark. The complaint further alleges that the second individual's purpose for the travel was to plan a terror attack against the Danish newspaper Jyllands-Posten, in retaliation for the publication of cartoons depicting the prophet Muhammad in late 2005. Though such allegations are serious, Defendant's role as alleged in the complaint is comparatively minor, given the scope and purpose of the supposed plot. Furthermore, the individual Defendant is

accused of aiding is presently in custody and, to counsel's knowledge, is not seeking pretrial release. As such, there is virtually no risk that Defendant's alleged conduct could be repeated. Moreover, there are certainly conditions, such as home detention and limitation on Defendant's ability to communicate with others, which can reasonably assure the safety of the community and that Defendant will not flee.

Perhaps more importantly, at this stage of the proceedings a Defendant cannot be expected to rebut the seriousness of an offense. *Cf. United States v. Dominguez*, 783 F.2d 702, 706 (7th Cir. 1986) ("A defendant can hardly be expected, after all, to demonstrate that narcotics trafficking is not dangerous to the community. Nor can a defendant "rebut" the government's showing of probable cause to believe he is guilty of the crimes charged."). The allegations are serious, but they are only allegations. The bond statute itself clearly states that "[n]othing in this section shall be construed as modifying or limiting the presumption of innocence." 18 U.S.C. § 3142(j).

While Defendant faces a significant period of incarceration if convicted, the potential sentence is not so extreme in and of itself as to justify pretrial detention. In support of their positions regarding bond, the parties filed pleadings arguing, among other things, whether the sentencing guidelines' "terrorism enhancement" under USSG § 3A1.4 applies to the conduct alleged in the complaint.[6] (Docket Nos. 16, 17, 19, 20 & 34) It is the defense position that under the facts alleged to date; *i.e*, a plot to attack a newspaper in Denmark, that the terrorism enhancement does not apply. As such, Defendant does not face a sentence near the statutory

[6]USSG § 3A1.4 indicates that for a "federal crime of terrorism" the underlying guideline is increased 12 levels, and the criminal history category is moved to Category VI. A "federal crime of terrorism" is an offense that "is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct." 18 U.S.C. § 2332B(g)(5).

maximum of 30 years for two violations of 18 U.S.C. § 2339A.[7] Instead, Defendant faces a guideline sentence of 135 to 168 months.

Judge Nolan's ruling did not resolve this dispute. But even if Defendant faces a lengthy possible sentence, the conditions proposed by Defendant and Pretrial Services are sufficient to reasonably assure that Defendant will not flee. Defendants often face statutory maximum sentences of life in narcotics cases, for example, and are released on secured bonds. Defendant should likewise be released here.

C. Defendant's Pakistani Background

Defendant's Pakistani background should raise no concerns whatsoever regarding risk of flight. As noted in the Pretrial Report, while serving as a physician in the Pakistani military, Defendant was transported to high elevation in the Northern Areas of Pakistan without proper acclimatization to the conditions. As a result, Defendant suffered from High Altitude Cerebral Edema ("HACE") which led to High Altitude Pulmonary Edema ("HAPE"). Though the effects of both conditions were temporarily reversed by bringing Defendant down to lower elevations, the lingering effects of the conditions were such that the Pakistani military could not properly administer treatment. Defendant requested and was granted leave to seek medical treatment and subsequently flew to England for treatment. While in England, it became apparent that such treatment would not be possible within the time frame of Defendant's leave. Despite having earned five years leave based on seven years service in the Pakistani military, Defendant was denied extended leave upon request. Defendant continued to request leave based on the need for treatment of both HACE and HAPE, which was denied.

[7]It was only the amendment of the complaint adding the substantive violation of § 2339A which increased the statutory maximum from 15 to 30 years.

Ultimately, Defendant's treatment forced him to overstay his leave, making him a *de jure* deserter from the Pakistani military. Defendant has not returned to Pakistan since, and any attempt to flee to Pakistan would be met with incarceration and court martial proceedings. As such, Defendant presents no risk of fleeing to Pakistan because to do so would only change the location of his detention.

Furthermore, the United States and Pakistan have a long standing bilateral extradition treaty, so any attempt to flee to his home country would ultimately be in vain. *See*, Extradition Treaty Between the United States and the United Kingdom, Dec. 22, 1931, 47 Stat. 2122, 18 U.S.C. § 3181, *et. seq*, and *United States v. Khan*, 993 F.2d 1368, 1371, fn. 1 (9th Cir. 1993). Lastly, Defendant's Pakistani passport is long expired, and has been tendered to his counsel.

D. Financial Means

Judge Nolan also expressed concerns regarding Defendant's financial means, referencing a net worth of $1,645,800, as indicated in the Pretrial Services Report. The court's belief was that Defendant's money would allow him to survive as a fugitive from justice. But the court misunderstood that the estimated "net worth" reflected in the pretrial report was not liquid, and that it would not be available to Defendant if he were to be released on a secured bond.

First and foremost, Defendant offered to post his business as security. So, if he were released on bond, Defendant would not be able to sell it to fund his supposed flight. Moreover, even if not posted for bond, Defendant's estimation of the value of his businesses did not represent liquid funds; it is the value of his businesses including a Halal goat slaughterhouse, a grocery store, and an immigration office that Defendant does not own, but manages. Defendant would only realize $1.6 million if he were able to sell the businesses at a price of two million

dollars. If released pending trial, such a sale would be impossible to conceal from the watchful eyes of Pretrial Services and the FBI. The fact of the matter is that Defendant cannot remotely fund an international game of hide and seek with the government.

It cannot go unmentioned as well, that at the time of his interview with Pretrial Services, defendant was unaware that the slaughterhouse and immigration office had been raided by federal agents. As a result of the raids and Defendant's detention for the past two months, Defendant's businesses have effectively been shut down and are worth nowhere near what Defendant had previously estimated. If they have any value now, Defendant's businesses are worth only the value of the assets, such as the land on which the slaughterhouse sits and the slaughterhouse itself. Those assets carry liabilities in the amount of $600,000, and Defendant could not now sell them for more than that amount.

The suggestion that Defendant has $1.6 million available to him to fund an escape and flight from justice is simply wrong. Defendant's businesses barely kept their heads above water prior to his arrest. In the last two months, his businesses have been all but inoperable, and could provide him with no funds to flee whatsoever.

E. Extensive Travel and Business Connections

Judge Nolan also noted that Defendant's extensive business travel and international business ties supported her finding that Defendant posed a risk of flight. However, any such concerns should be assuaged by the fact that Defendant would have no ability to travel internationally if he were released on a secured bond. Defendant has turned over his Canadian passport to counsel and the passport would be provided to Pretrial Services prior to Defendant's

release. Defendant also has an *expired* Pakistani passport, and that passport is in the government's possession. If released pending trial, Defendant would be under close monitoring from Pretrial Services and would also be unable to obtain a new passport.

Moreover, the fact that Defendant has traveled internationally in the past should not cast him as a risk of flight. All of Defendant's immediate family ties are to Chicago. His wife and two high school age children are here; and, prior to his arrest, he operated businesses in the Chicagoland area. Other conditions such as home detention with electronic monitoring would also reasonably assure Defendant's appearance.

F. Ties to Canada

Judge Nolan was also concerned that Defendant's Canadian citizenship posed the risk that Defendant would flee the country. Judge Nolan cited the home owned by Defendant in Canada to suggest that he may be tempted to flee. Again, Defendant has given his passport to counsel and is therefore unable to return to Canada. Furthermore, the United States and Canada share a border and have a longstanding bilateral extradition treaty. *See*, Extradition Treaty Between the United States of America and Canada, December 3, 1971, 27 UST 1017 and 18 U.S.C. § 3181, *et. seq.* As noted previously, Defendant has offered nearly one million dollars in property. It strains belief that Defendant would attempt to flee to Canada, thereby forfeiting the property of his friends and relatives, and abandoning his family, when Pretrial Services is aware of his address in Canada and the extradition treaty virtually assures that Defendant will be swiftly returned to the United States if he could somehow cross the border in the first place.

G. Knowledge of Immigration Laws

Finally, Judge Nolan expressed concerns about Defendant's knowledge of immigration

law, suggesting that he has the ability to evade detection through this knowledge. Nothing could be further from the truth. In Defendant's management of an immigration office, he helped a largely Indian clientele obtain visas to work and live in the United States. Nothing about his work taught him how to sneak through borders or evade the numerous restrictions on international travel that currently exist. Defendant has no passport and no ability to obtain one. Furthermore, in light of the publicity his case has already received, there is absolutely no chance that Defendant would be able to get on a plane bound for another country without detection by the FBI, CIA, TSA or Pretrial Services. Defendant's prior work in the immigration business has no bearing on his supposed ability to evade capture while fleeing.

IV. CONCLUSION

Defendant submits that the conditions proposed by Pretrial Services, as well as the posting of property valued at nearly $1 million, along with home detention with electronic monitoring are more than sufficient to reasonably assure Defendant's appearance in court. Defendant's family, including a wife and two children, all live in Chicago. It simply cannot be said that Defendant would flee, losing all contact with loved ones, and subjecting them to police scrutiny. As the Seventh Circuit has explained:

> "A person who cares deeply about spouse and children may be more likely to appear for trial than one who has no family. Refraining from flight keeps the family together longer. Even an imprisoned person can see his family more frequently than does one on the lam."
>
> *Torres*, 929 F.2d at 291-2.

Here, Defendant's incentive is not to flee and live his life away from his family and in ignominy. Rather, Defendant wants only to clear his and his family's name by contesting the government's allegations in court. Defendant respectfully requests, therefore, that this Court

revoke the Magistrate Judge's detention order, and order him released pending trial subject to any conditions deemed appropriate.

Respectfully submitted,

s/Patrick W. Blegen
PATRICK W. BLEGEN, Attorney for Defendant, Tahawwur Rana.

BLEGEN & GARVEY
53 West Jackson Boulevard, Suite 1437
Chicago, Illinois 60604
(312) 957-0100

CERTIFICATE OF SERVICE

I hereby certify that foregoing Motion for Revocation of Magistrate Judge's Detention Order was served on December 30, 2009, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

s/ Patrick W. Blegen
PATRICK W. BLEGEN
BLEGEN & GARVEY
53 West Jackson Boulevard, Suite 1437
Chicago, Illinois 60604
(312) 957-0100