

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

UNITED STATES OF AMERICA)	
)	
v.)	No. 12 CR 723
)	No. 13 CR 703
)	Judge Sharon Johnson Coleman
)	
)	No. 15 CR 487
)	Judge Robert M. Dow Jr.
ADEL DAOUD.)	

**DEFENDANT’S EMERGENCY MOTION TO MODIFY
CONDITIONS OF PRETRIAL DETENTION TO PERMIT
HIS TEMPORARY RELEASE IN THE CUSTODY OF THE
UNITED STATES MARSHAL FOR PSYCHIATRIC TREATMENT**

Defendant, **ADEL DAOUD**, by and through his attorneys, **THOMAS ANTHONY DURKIN, ROBIN V. WATERS**, and **JOSHUA G. HERMAN**, pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3142, and in particular 18 U.S.C. § 3142(i), as well as 18 U.S.C. § 4241, *et seq.*, and the Due Process, Effective Assistance of Counsel, and Excessive Bail clauses of the Fifth, Sixth and Eight Amendments to the Constitution of the United States, respectfully moves this Court to modify the conditions of Mr. Daoud’s pretrial detention to permit his temporary release in the custody of the United States Marshal, for the purpose of obtaining the appropriate psychiatric and psychological treatment, on the grounds said release and treatment is necessary to insure Mr. Daoud remains mentally competent to stand trial on November 26, 2018, to prevent the further deterioration of his mental condition, and to assist in the preparation of his defense at trial.

In support of this Motion, Defendant, through counsel, shows to the Court the following:

1. Just when it appeared that this tortuously vexed case was finally on track for trial on November 26, 2018, over six years after Mr. Daoud’s arrest, things have again become absurd

in large part due to the Metropolitan Correctional Center's ("MCC") bureaucratic regime and a fundamental disregard or disagreement with the orders of this Court.

2. As this Court is aware, Mr. Daoud was arrested on September 14, 2012, and he has been in custody continuously since the date of his arrest—a jarring five years and eight months of pretrial detention, including months long stints spent in isolation in the Special Housing Unit ("SHU") of the MCC.

3. On December 7, 2015, undersigned counsel filed Counsels' Emergency Motion for an Evidentiary Hearing to Determine the Mental Competency of the Defendant. (Dkt. #188). This motion described the serious concerns of defense counsel that Mr. Daoud may suffer from a mental disease or defect rendering him unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. The motion and exhibits attached thereto detailed: (1) Mr. Daoud's bizarre and erratic outbursts in Court; (2) Mr. Daoud's letters sent to the Court against advice of counsel; (3) psychologist Dr. Diana S. Goldstein's neuropsychological testing indicating significant elevations in Paranoia, Mania, and Schizophrenia; (4) psychiatrist Dr. Stephen N. Xenakis' opinion that Mr. Daoud had demonstrated "bizarre and paranoid thinking," was mentally decompensating while detained in isolation in the SHU at the MCC, and likely was suffering from a mental disease or defect rendering him incompetent to stand trial; and, (5) undersigned counsels' declarations representing the serious and good faith belief that Mr. Daoud was unable to assist in the preparation of his defense and may have been suffering from a mental disease or defect. *See* Dkt. #188.

4. The Court granted the motion (Dkt. #197), and on August 18-19, 2016, an evidentiary hearing was held to determine Mr. Daoud's competency to stand trial. At the hearing, the government presented the testimony of Dr. Richard L. DeMier, a Bureau of Prisons forensic

psychologist, who opined that Mr. Daoud did not suffer from a mental disease or defect and was, therefore, competent to stand trial. (*See* Dr. DeMier Report, p. 20-23; TR. p. 6-147). The defense presented the testimony of psychiatrist Dr. Stephen N. Xenakis, who opined that Mr. Daoud suffers from delusional disorder, and was not competent to stand trial. (*See* Dr. Xenakis Report, p. 6-8; TR. p.148-271). Mr. Daoud also testified at the hearing, describing his beliefs in the Illuminati and alien reptiles, his cell mate's suicide at the MCC, his experiences of seeing things that were not there, and his personal view that he was competent to stand trial. TR. p. 273-303.

5. On August 25, 2016, the Court issued a written opinion finding that the government had not met its burden to demonstrate Mr. Daoud was competent to stand trial, and ordered that Mr. Daoud be immediately placed in a secure psychiatric treatment facility for treatment and competency restoration. (Dkt. #216). In making its finding, the Court noted Mr. Daoud's "sincere and escalating" beliefs in the Illuminati, Freemasons and lizard people; his belief in the likelihood that the government will execute him regardless of the outcome of the proceedings; the equivocal nature of Dr. DeMier's testimony; Dr. Xenakis' opinion that Mr. Daoud suffers from delusional disorder;¹ the Court's own observations indicating Mr. Daoud's deteriorating mental state; Mr. Daoud's the lengthy incarceration in isolation; and, Mr. Daoud's trauma from witnessing his cellmate's attempted and successful suicide. *Id.*

6. From the fall of 2016, to early 2018, Mr. Daoud underwent competency restoration in the Bureau of Prisons ("BOP") including the administration of psychotropic medication, at BOP facilities in Springfield, Missouri, and in Butner, North Carolina. On September 26, 2017, the Acting Warden of FMC Butner, M.K. Lewis, sent a certificate of restoration of Mr. Daoud's competency and forensic evaluation to the Court explaining its finding of competency. In the

¹ The Court noted in its opinion that "[t]he district court has discretion to choose one expert's opinion over a competing expert's opinion." (Dkt. #216, p.3).

forensic evaluation dated September 22, 2017, FMC Butner forensic psychologist Dr. Gillespie Wadsworth concluded that Mr. Daoud suffered from Other Specified Schizophrenia Spectrum and Other Psychotic Disorder. (Dr. Wadsworth Report, p.23). Dr. Wadsworth further concluded Mr. Daoud's symptoms were in remission following sustained treatment with psychotropic medication, and that he had regained competency. *Id.* at 23. Dr. Wadsworth explained that her conclusion regarding Mr. Daoud's competency should be considered "guarded," because "his competency can be attributed to psychotropic medication and *he may decompensate if treatment is discontinued* or if mental health symptoms worsen over time." *Id.* (emphasis added).

7. On March 12, 2018, the Court held a second evidentiary hearing to determine whether Mr. Daoud had attained competency to stand trial. (Dkt. #246). At the hearing, the government presented Dr. Wadsworth's report and the certificate of restoration of competency. Defense counsel did not object to Dr. Wadsworth's report, and presented the testimony of Dr. Stephen N. Xenakis, which was consistent with that of Dr. Wadsworth. Dr. Xenakis testified that in his opinion, Mr. Daoud had regained competency, and that *Mr. Daoud's competency was dependent upon the continuation of his medications*. At the conclusion of the hearing, the Court found by a preponderance of the evidence that Mr. Daoud was competent to stand trial—reiterating in its order that *both experts had agreed Mr. Daoud's competency is dependent upon medication*. See Dkt. #246.

8. At that time, Mr. Daoud was prescribed the medications Aripiprazole and Cogentin by an FMC Butner psychiatrist. Aripiprazole is the generic form of the name-brand drug Abilify, an anti-psychotic medication commonly used to treat individuals with schizophrenia and bipolar disorder. Mr. Daoud was prescribed 300mg Intra-muscular injections of Aripiprazole, to be administered once every four weeks. Cogentin is a medication designed to counteract certain side

effects of Aripiprozole.

9. Mr. Daoud's course of treatment unraveled after he arrived at the MCC from FMC Butner. While counsel had first suspected that mere bureaucratic impediments had hampered the continuity of Mr. Daoud's care, it is now abundantly clear that the MCC medical staff disagree with the Court's competency rulings, as well as with the findings and course of treatment urged by both Dr. Wadsworth at FMC Butner and Dr. Xenakis. The MCC's antipathy is laid bare by the attached Clinical Intervention, Clinical Contact sheet authored by Dr. Jason Dana, in which he provides his opinion that "at no time during the entirety of his detention at the MCC has [Mr. Daoud] manifest symptoms of delusion;" that "[Mr. Daoud] has not revealed any thought process even remotely suggestive of delusional ideation;" and, save for Mr. Daoud's mention of "ancient alien reptiles in the legal system carrying out a conspiracy to incarcerate Muslims as part of the war on Islam," "[n]o other symptoms of psychosis have been noted at any time." (Exhibit A, p.1).² Dr. Dana further commented that after Mr. Daoud returned to the MCC from his period of hospitalization for restoration of competency, it was his opinion there were "no changes to his demeanor or mental status"; and, that "[d]espite the lack of general change to his presentation, [Mr. Daoud] was adjudicated competent with the caveat he remain medication compliant." *Id.*

10. As the Court is now aware, Mr. Daoud appears to have begun refusing his Aripiprozole injections sometime in April or early May. This appears to have resulted, at least in part, from the MCC's inability to provide him with Cogentin, which counteracts the side effects of Aripiprozole. Counsel have learned that the MCC medical staff apparently took the position that it was Mr. Daoud's responsibility to ask for the Cogentin—and if he did not ask for it, it would not be provided. According to Dr. Xenakis, this is not the clinically appropriate manner in which

² Counsel raised this suspicion regarding the MCC medical staff, with the Court during the May 30, 2018, status conference, and made reference to this report. However it was not filed at that time.

to administer Cogentin. At a minimum, the medication should be offered when it is prescribed.³

11. After learning Mr. Daoud had begun to refuse the 300mg injections of Aripiprazole due to its side effects, counsel consulted with Dr. Xenakis. Dr. Xenakis indicated that it was his recommendation, as would be the clinically appropriate practice, to lower the dosage to 200mg. Counsel so informed the Court at the May 30, 2018 status hearing, and represented that Mr. Daoud had agreed that he would take the 200mg dose recommended by Dr. Xenakis. Mr. Daoud was sworn on the record at the hearing and agreed under oath that he would accept the 200mg dose.

12. After the May 30, 2018 court appearance, Mr. Daoud met with both the MCC psychologist Dr. Jason Dana, and with the MCC psychiatrist Dr. Dees. Dr. Dana apparently informed Mr. Daoud during the meeting that he did not believe that Mr. Daoud suffered from a mental illness. In his meeting with Dr. Dees, Mr. Daoud appears to have been posed questions regarding his criminal case, including whether he felt badly about why he was in pretrial custody, as well as his views on Americans. Mr. Daoud also appears to have been asked by Dr. Dees about the presence of any hallucinations. Mr. Daoud informed Dr. Dees that he had last experienced an auditory hallucination while at FMC Butner. However, Dr. Dees nonetheless concluded that Mr. Daoud does not suffer from a mental disease or defect. Moreover, it now appears that the staff will not agree to reduce the dosage to 200mg Aripiprazole, because they do not believe there is anything wrong with him. How this explains their prior willingness to administer the 300mg injections is an answer only the MCC doctors can explain. Whether they should be forced to do so under the pain of contempt of this Court's order finding Mr. Daoud competent only while medication compliant is, perhaps, a question better left to the Court.

13. Counsel have conferred with AUSA Barry Jonas, who related that he spoke by

³ This also begs the question of why someone like Mr. Daoud, who does not think he has a mental illness, might be treated like a rational actor.

phone with Dr. Dana. Dr. Dana apparently informed AUSA Jonas that it was his preliminary assessment that Mr. Daoud does not suffer from delusional disorder, and that continued medication would likely be unethical.

14. In that counsel are aware that the MCC prohibits private doctors from treating patient/detainees while detained in the MCC, it appears nothing short of temporary release to a private psychiatrist's office for care and treatment will ensure that Mr. Daoud can continue to be medication compliant consistent with this Court's order and competency findings.

15. On June 8, 2018, undersigned counsel conferred with Dr. Garey Malek, a psychiatrist with a private practice located in Chicago, Illinois, with whom they have worked in the past.⁴ Dr. Malek has agreed to review Mr. Daoud's most recent forensic evaluation, and to meet with Mr. Daoud in person on Thursday, June 14, 2018, at 2:00 p.m. in his office at 151 N. Michigan in Chicago. Dr. Malek has confirmed that after personally evaluating Mr. Daoud, if he agrees with the findings of Dr. Wadsworth and Dr. Xenakis, he will administer the 200mg dose recommended by Dr. Xenakis, and will also provide Mr. Daoud with the Cogentin the MCC has been unable or unwilling to provide.

16. 18 U.S.C. § 3142(i) provides for the temporary release of a person to the custody of the United States Marshal, or another appropriate person, if the Court determines such release to be necessary for the preparation of the person's defense, or for another compelling reason. Under these unique circumstances, Mr. Daoud's temporary release is warranted under both prongs of this statute, as set forth below.

17. In determining whether a defendant is entitled to relief under § 3142(i), the court need not revisit or reverse its detention finding that a defendant poses a risk of flight, or is a danger

⁴ Dr. Xenakis is currently out of the country.

to the community. *See United States v. Birbragher*, 2008 WL 1883504, *2 (N.D.Iowa, 2008)(describing that the district court need not revisit its detention finding because the only issue for purposes of a motion under § 3142(i) is whether there is a compelling reason that warrants release). *See also United States v. Scarpa*, 815 F.Supp. 88, 91-93 (E.D.NY. 1993)(finding temporary release to a private hospital warranted despite the district court’s determination of the defendant’s dangerousness).⁵

18. There are two sufficient and independent bases under § 3142(i) that more than justify Mr. Daoud’s temporary release from the MCC to the custody of the US Marshal to be treated by Dr. Malek. First, Mr. Daoud’s release is “necessary for the preparation of his defense.” § 3142(i). In its August 25, 2016, competency finding, the court found that Mr. Daoud’s assertion of “fanciful or delusional” positions to counsel and to the Court indicated that “he cannot fully participate in his defense.” (Dkt. #216, p.3). Therefore, its March 12, 2018, finding that Mr. Daoud is competent while medication compliant, by extension, indicates that Mr. Daoud cannot fully participate in his defense when he is not taking his medication. Accordingly, the necessity of Mr. Daoud’s release for appropriate psychiatric treatment is firmly grounded in Mr. Daoud’s Sixth Amendment right to counsel, as well as the Due Process provisions of the Fifth Amendment. *See Falcon v. Bureau of Prisons*, 52 F.3d 137, 139 (7th Cir. 1995)(describing that § 3142(i) is designed to protect a defendant’s Sixth Amendment right to counsel).

19. Secondly, and importantly, the stability of Mr. Daoud’s mental condition is a very

⁵ In *Scarpa*, the district court elegantly and forcefully articulated its reasoning: “Even a presumptively innocent defendant who is legitimately found, pursuant to the Bail Reform Act of 1984, 18 U.S.C. *et seq.*, to pose a danger to the community cannot be incarcerated indefinitely pending trial.... Overriding principles of our system of justice require the conditional release of defendant despite his proven dangerous propensities. We do not punish those who have not been proven guilty. When we do punish, we do not act cruelly. Continued incarceration of this terminally ill defendant threatens both of these fundamental characteristics of our democracy. The fact that defendant may have been a cruel and vicious murderer without compassion for his victims does not permit the law to descend to his alleged level of depravity.” *Scarpa*, 815 F.Supp. at 91-93.

compelling reason that justifies his temporary release so that he can obtain access to appropriate psychiatric care and medication. It is increasingly clear that the Mr. Daoud's mental condition will not remain stable if he is under the exclusive care of the MCC, whose staff apparently disbelieve that Mr. Daoud needs to be medicated. This compelling reason, unto itself, justifies the grant of this motion. Moreover, in cases where defendants' motions for release for medical reasons were denied, such motions often appear to be denied because the jailer is able to provide sufficient care, such that release to a private medical provider is not necessary. *See e.g., Birbragher*, 2008 WL 1883504 at *2 (“[I]n the instant case the United States Marshal and [the jail] are ready, willing and able to provide defendant with appropriate medical care. As such defendant has not presented a compelling reason for temporary release.”). Obviously, that is not the care here in light of the belligerence of the MCC's medical staff.

20. For all of these reasons, the Court should grant Defendant's motion and permit his temporary release from the MCC to the custody of the US Marshal for transport to Dr. Garey Malek's office at 151 N. Michigan Avenue, Suite 815, on Thursday, June 14, 2018, and for any other future appointments deemed necessary by Dr. Malek.

Respectfully submitted,

/s/Thomas Anthony Durkin
THOMAS ANTHONY DURKIN,

/s/Robin V. Waters
ROBIN V. WATERS,

/s/Joshua G. Herman
JOSHUA G. HERMAN,
Attorneys for Defendant.

DURKIN & ROBERTS

2446 North Clark
Chicago, Illinois 60614
(312) 913-9300
tdurkin@durkinroberts.com
rwaters@durkinroberts.com

LAW OFFICE OF JOSHUA G. HERMAN

53 West Jackson Blvd., Suite 1650
Chicago, IL 60604
(312) 909-0434
jherman@joshhermanlaw.com

CERTIFICATE OF SERVICE

Thomas Anthony Durkin, Attorney at Law, hereby certifies that the foregoing Defendant's Emergency Motion to Modify the Conditions of Pretrial Detention to Permit His Temporary Release to the Custody of the United States Marshal for Psychiatric Treatment, was served on June 10, 2018, 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/ Thomas Anthony Durkin

THOMAS ANTHONY DURKIN

2446 N. Clark St.

Chicago, IL 60614

(312) 913-9300

tdurkin@durkinroberts.com