LAW OFFICES
ARTHUR JAY WEISS & ASSOCIATES, P.C.

30445 NORTHWESTERN HIGHWAY, SUITE 330
FARMINGTON HILLS, MICHIGAN 48334-3102

TELEPHONE (248) 855-5888
FACSIMILE (248) 855-5872

June 2, 2010

Mr. Leonard Green, Clerk
United States Court of Appeals
for the Sixth Circuit
540 Potter Stewart US Courthouse Building
Cincinnati, Ohio 45202-3988

RE: United States -vs- Stone et al
Case No 10-1618

Dear Mr Green:

Pursuant to your request of May 26 2010, please accept this as the "letter brief" submitted on behalf of Defendant-Appellee Thomas William Piatek on the issue of "why [he]....is not dangerous and does not pose a risk to society if released."

I.

In deciding whether pretrial detention is warranted, the District Court opined "[t]he law requires reasonable assurance but does not demand absolute certainty[.]" (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders page 6) (Citations omitted). The government, in their Brief on Appeal, did not quarrel with this proposition.

Judge Roberts' position is consistent with the recognition "Congress envisioned the pretrial detention of only a fraction of accused individuals awaiting trial...[and equating 'reasonably assure' with 'guarantee' would] virtually mandate[] the detention of almost every pretrial defendant: no safeguard can 'guarantee' the avoidance of the statutory concerns." United States v Orta 760 F 2d 887, 891-892 (8th Cir en banc 1985). Accord: United States v Phillips, 732 F Supp 255, 266 (D Mass 1990) ("if the statute were interpreted as requiring a guarantee against any harm, pretrial preventive detention would become the norm rather than the exception because such guarantees could be made in almost no Mr.

cases"); United States v Gray, 651 F Supp 432, 437 (WD Ark 1987) (The judicial officer cannot require more than an objectively reasonable assurance of community safety…." [Citation omitted]). See also, United States v Cruz, 363 F Supp 2d 40, 47 (D PR 2005); United States v Ridinger, 623 F Supp 1386, 1393 (D Mo 1985).

Moreover, "not only did Congress intend that very few persons would be held in prison pending trial, Congress specifically made more difficult the government's burden of proof [by codifying a "clear and convincing evidence" standard] necessary to show that an accused should be held in jail pending trial." United States v Gray, supra, 651 F Supp at 437.

> Though allowing pretrial detention, the statue is structured so that every other form of release, including release on conditions…, must be considered first. United States v Orta, 760 F 2d 887, 892 (8th Cir 1985). Only as a last resort should pretrial detention be invoked. United States v Cox, 635 F Supp 1047, 1050 (D Kan 1986).

II.

In their Brief on Appeal, the government repeatedly referenced the "defendants" (e g, Brief pages 9-10), but completely neglected to articulate what it is about THOMAS WILLIAM PIATEK, in juxtaposition to the factors mandated by 18 USC § 3142 (g), which caused it to complain "[t]he district court failed to properly apply the factors set forth in 18 USC 3142" (Brief page 9).

They also criticized "[t]he district court [for] fail[ing] to correctly assess the nature and seriousness of the danger posed by the defendants' release" (Brief page 9). However, there is absence of precisely what is the "danger posed by [THOMAS PIATEK's] release."

> The presumptions of dangerousness provided by the statute are designed to predict, albeit not completely reliable, the types of circumstances in which pretrial release of a defendant will be dangerous to the community. A finding of dangerousness, however, must ultimately be based on the evidence regarding the particular defendant before the court, and not on evidence regarding types of circumstances, or groups or types of defendants who are like the individual defendant before the court in some way other than those identified in the statute....[T]he fact finding function of the court in a pretrial detention decision must be focused on one individual --the defendant--and the court must view that defendant as an individual.
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> The imperative that the court view each defendant as an individual is...a fundamental premise implicit in the Bill of Rights.This imperative is also explicit in the congressional mandates of section 3142. For example, in making the determination with respect to dangerousness, the court is directed to consider "the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 USC § 3142 (g) (4) (emphasis added). Similarly, the statute directs the court to consider "the weight of the evidence against the person" and "the history and characteristics of the person." 18 USC § 3142 (g) (3)-(4) (emphasis added). United States v Phillips, supra, 732 F Supp at 264 (Emphasis added).

Performance of this individualized-assessment of THOMAS WILLIAM PIATEK for "dangerousness" reveals he has no prior criminal convictions (R 91: Transcript pages 38-19, 44), no evidence he articulated[1] and/or

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[1] Although Mr Piatek was "present" on or about February 6 2010 (R 91: Transcript pages 24-25), the lack of "evidence that [he] took [any] steps towards acting on [the sentiments others articulated] between their utterance...and his

advocated violence (Government's Appendix pages 38-53), the government's acknowledgement he did not have a "leadership role" in Hutaree (Brief, page 5) and no indication he has or would engage in "ongoing criminal activity," which are all factors indicative of a lack of "dangerousness" for purposes of pretrial release. See, e g, United States v Delker, 757 F 2d 1390, 1400 (3d Cir 1985); United States v Acevedo-Ramos, 755 F 2d 203, 205 (1st Cir 1985); United States v Jeffries, 687 F Supp 1114, 1116 (MD Ga 1988); United States v Knight, 636 F Supp 1463-1467-1568 (SD Fla 1986).

III.

A review of "[t]he legislative history of the Bail Reform Act [demonstrates] that one of the major purposes of the Act was to prevent pretrial recidivism..." United States v Lepere, 599 F Supp 1322, 1325 (D Mass 1985).

> Congressional history demonstrates that the purpose of the expanded detention provisions is to authorize detention "where there is a strong possibility that a person will commit additional crimes if released." HR Rep at 7, US Code Cong & Admin News 3189. The statutory "safety of the community" language "refers to the danger that the defendant might engage in criminal activity to the detriment of the community" in which continued [criminal conduct] is of particular concern. HR Rep 12-13, US Code Cong & Admin News at 3195-96. United States v Cox, supra, 635 F Supp at 1054.

Within this framework, the government has failed to mention, let alone establish, how the District Court's decision, premised upon an individualized-assessment of THOMAS PIATEK (R 137: Order Granting Defendants' Motions

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arrest [nearly two (2)] months later" is indicative of his lack of dangerousness. United States v Demmler, 523 F Supp 2d 77, 682 (SD Ohio 2007).

for Revocation of Detention Orders, pages 28-19) constitutes error. Simply proffering generalized, conclusionary assertions of purported danger "does not comply with the mandate," United States v Ridinger, supra, 623 F Supp at 1394, of satisfying "the clear and convincing evidence requirement [which] rightly places a heavy burden upon the government before this radical interference with freedom is imposed" United States v Fisher, 618 F Supp 536, 537 (ED Pa 1985).

In other words, the government has failed to prove "there is a strong possibility that [Mr Piatek] will commit additional crimes if released." HR Rep at 7, US Code Cong & Admin News at 3189, quoted in United States v Cox, supra, 635 F Supp at 1054.

IV.

The mere possession—in his residence, not on his person—of weapons (R 91: Transcript pages 29-37) by THOMAS PIATEK "does not establish a risk to the community." United States v Lepere, supra, 599 F Supp at 1325 n 4. The record (R 91: Transcript; R 157: Transcript; R 158: Transcript) is barren of any evidence demonstrating Mr Piatek actually perpetrated the offenses merely "contemplated"[2] by the indictment or utilized the now-seized-and-under-sole-governmental-control (R 91: Transcript pages 44-45) Weapons he had lawfully possessed (R 91: Transcript pages 78, 86, 92-93, 120) and which he had accumulated over a period of twenty (20) years (R 158: Transcript page 122) as a hobby (R 91: Transcript page 93). Significantly, the government has not demonstrated by "clear and convincing evidence" your Appellee would employ "weapons....if released pending trial.' United States v Phillips, supra, 732 F Supp at 269.

> If the possession of guns...could be said to constitute clear and convincing evidence sufficient to support the entry of a detention order on grounds of

[2] See footnote 1, supra.

dangerousness, a very large number of persons accused of violations of that statute would be subject to pretrial detention as a matter of course.

Such a conclusion is contrary to the legislative history of the 1984 Bail Reform Act, 18 USC §§ 3141-3150, which states that "there is a small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of release can reasonably assure the safety for the community or other persons. It is with respect to this limited group of offenders that the courts must be given the power to deny release pending trial." (S Rep No 225, 98th Cong, 1st Sess 6-7 (1983), reprinted in 1984 US Code Cong & Ad News 3182, 3189.

The number of defendants that carry and collect guns...cannot fairly said to be a "limited group of offenders." United States v Ridinger, supra, 623 F Supp at 1392-1393 (Emphasis added). Accord: United States v Jeffries, supra, 679 F Supp, at 118 ("In cases which as this one, where there has been no evidence of defendant's use of violence to carry out the alleged criminal activities for which he has been indicted, this court finds that the evidence regarding weapons...to be of minimal relevance").

V.

On "the critical question [of whether] there [are] any conditions of release that will reasonably assure the safety of the community[]...Congress has made answering this question...by specifying four factors [18 USC § 3142 (g)] particularly relevant...to the determination of dangerousness," United States v Phillips, supra, 732 F Supp at 267.

Nature and seriousness of offense

We, as was the District Court (R 137: Order Granting Defendants' Motions

for Revocation of Detention Orders page 5), are cognizant of the offenses alleged in the indictment (R 4: Indictment). However, this must be tempered with the recognition the nature of the offense cannot transform the Bail Reform Act into creating an irrebuttable presumption of detainment simply premised upon the allegations contained in an indictment. See, e g, United States v Salerno, 481 US 739, 750-751, 107 S Ct 2095, 95 L Ed 2d 67 (1987).

Surely the simple recognition of Hutaree membership cannot justify pretrial detention inasmuch as "[t]he Government proffered that there are approximately 25 Hutaree members who were not [even] indicted" (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, page 21; R157; Transcript, pages 22, 41, 90-92). Although THOMAS PIATEK was not designated by the government as being "an integral part of the Hutaree leadership structure" (Brief, page 5), it is significant to observe the prosecution voluntarily (R 162: Stipulated Order; R 165: Stipulated Order) released two (2) defendants who they identified not only as being "an integral part of the Hutaree leadership structure" (Brief, page 5), but who also "expressed a desire to kill law enforcement officers" (Brief, page 5).[3]

With due respect, the government has, as the same relates to your Appellee, engaged in the impermissible scenario of simply "com[ing] before the...court, present[ing] its indictment, and thereby [desiring to] send the defendant off to jail..." United States v Hurtado, 779 F 2d 1467, 1478 (11th Cir 1985); see also,
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[3] An examination of the Government's Appendix clearly reveals as to the two (2) conversations they apparently deem significant, Mr Piatek was not even present (Pages 38-53; R157: Transcript 11-13, 24), let alone expressed any similarly-situated-sentiments. In fact, the FBI "case-agent" stated the government was unaware of "what portions of the Hutaree dogma" your Appellee "adopt[ed]" and "d[id]n't adopt" (R 157; Transcript, page 90).

United States v Hazime, supra, 762 F 2d 34,35 (6th Cir 1985). See also, United States v Eischeid, 315 F Supp 2d 1033, 1036-1037 (D Ariz 2003).

Weight of evidence

At the detention hearing originally conducted in this cause, proofs were presented indicating Mr Piatek was a member of Hutaree (R 91: Transcript, pages 17-22), although membership in this entity neither violated the law (R 91: Transcript, pages 41-42) nor was illegal (R 91: Transcript, pages 54, 64). With due respect, mere "[m]embership in [an organization]...cannot properly be the end of the inquiry with regard to dangerous or flight." See generally, United States v DiGiacomo, 746 F Supp 1176, 1182 (D Mass 1990); see also, United States v Patriarca, 948 F Supp 789, 795 (D Mass 1991).

Similarly, while it appears your Appellee attended various "training" exercises (R 91: Transcript, pages 19-23), no specifics were introduced demonstrating what, if anything, THOMAS PIATEK participated in while present (R 91: Transcript, pages 57-59;, in fact, nothing was established other than he "played army" (R 91: Transcript, pages 79-88).[4]

In addition, while it was alleged Mr Piatek was present when another defendant articulated a "manifesto"[5] (R 91: Transcript, pages 24-25), no proofs

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[4] The government acknowledged the firearm training was not per se illegal (R 157: Transcript 17). Moreover, the prosecution could not articulate what activities, if any, Mr Piatek participated in while at these sessions (R 157: Transcript 11-13, 86-90). Significantly, no prosecutorial demonstration could be provided indicating any differences between the activities of your Appellee at these "sessions" and those of the non-indicated twenty-five (25) members who also attended and participated (R 157: Transcript, pages 86-92).

[5] "This so-called speech...speaks of reclaiming America, not overthrowing the United States Government" (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, page 14). It is significant to

were introduced establishing what, if any acknowledgement, encouragement or awareness your Appellee displayed in response thereto (R 91: Transcript, pages 58, 66, 88, 96). The government admitted membership in Hutaree could not be equated with approval and/or adoption of all alleged facets of its doctrinal beliefs (R 91: Transcript, pages 41-42, 48-49).[6]

Although search warrants were executed (R 91: Transcript, pages 27, 29, 37), wherein weapons and ammunition were seized (R 91: Transcript, pages 29-37), it appears the firearms were all "registered and legitimate"[7] (R 91: Transcript,

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recognize the concept of "tak[ing back] our country" is current-mainstream-ideology (R 158: Transcript 121). Apparently the government deemed this "speech" so unimportant it did not include same in its appendix.

[6] The "case agent" buttressed this contention (R 157: Transcript, page 90). We respectfully deem it significant while THOMAS PIATEK did not advocate violence (Government's Appendix, pages 38-53), at least three (3) of the four (4) defendants "voluntarily released" did: "Sickles expressed a desire to detonate an IED outside the Huron, Ohio Police Department;...Sickles left another militia group because "They weren't doing enough"...Tina Stone was ready and willing to use a rifle to intervene in a traffic stop involving another Hutaree member...Ward referred to the Prosecutor's Office in his home county and local law enforcement as his "enemies" and...Ward told an FBI employee that she would "hear about [her former employer] in the news and maybe even read about it" (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, pages 22-23)

[7] This should be compared to one (1) of the defendants "voluntarily released" by the government (R 162: Stipulated Order) who had a firearm which was "not the legal length" (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, page 23); (Brief, page 22).

pages 78, 86, 92-93), for which he enjoyed a state-issued-permit/license (R 91: Transcript, page 120) and the government could not specifically articulate any criminality associated therewith (R 91: Transcript, pages 42-45). Also, since these material are now in the possession of law enforcement (R 91: Transcript, pages 44-45), Mr Piatek has no access to same (R 91: Transcript, Pages, 44-45).

Similarly, the mere possession these items, which was a hobby of your Appellee (R 91: Transcript, page 93), having been accumulated over a twenty (20) year period (R 158: Trancript , page 122).was described by various individual as never being misused or utilized for any illegal purposes (R 91: Transcript, pages 86, 92-93)[8]

<u>Character, condition, family-community ties</u>

Nothing was presented demonstrating THOMAS PIATEK had any physical or mental conditions,[9] which is "an indicator that he would stay" and not flee, <u>United States</u> v <u>Birges</u>, 523 F Supp 472, 476 (D Nev 1981).

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[8] Unlike your Appellee, three (3) of the defendant's "voluntarily released" by the government (R 162: Stipulated Order; R169: Stipulated Order; R 165: Stipulated Order) are accused in Count Five with a "second" charge of 18 USC §924 (c) (1) of carrying, using and possession of a firearm during and in relation to a crime of violence (R 4: Indictment), and one (1) of these "released" defendants (R 162: Stipulated Order—again unlike Mr Piatek—is also charged in Count Three, with teaching/demonstrating use of explosive materials, 18 USC § 842 (p) (2) (R 4: Indictment).

[9] This should be evaluated with recognition one (1) of the voluntarily release defendants (R 165: Stipulated Order) has a history of ADHD (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, page 29) and the mother of another (R 163: Stipulated Order) described him "as delusional…." (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, page 30).

He has four (4) siblings (R 91: Transcript, page 16), a daughter (R 91: Transcript, page 80) and two (2) grandchildren (R 91: Transcript, page 80). He is the primary caregiver for his "special needs" brother (R 91: Transcript, pages 77-80, 85, 91), with whom he owns a family residence[10] (R 91: Transcript, pages 117-118). He is friendly with his neighbors (R 91: Transcript, page 80, 84-85, 89, 91) and assists the community cub/boy-scout-endeavors (R 91: Transcript, page 76) and participates in Fourth of July Parade (R 91: Transcript, pages 76). He is a member of the Fraternal Order of Police ("FOP") (R 91: Transcript, page 78) and was described as "would not hurt anyone" (R 91: Transcript, page 91).

Mr. Piatek is employed with same job for approximately seventeen (17) years[11] (R 91: Transcript, page 118) as a truck driver with a commercial driver's license ("CDL") and goes to "work every day" (R 91: Transcript, page 85). There is no history of substance abuse (R 91: Transcript, page 119).[12]

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[10] This residence, which Mr Piatek's family "has owned since the 1950s" (R 158: Transcript, page 124), has "no mortgage" (R 158: Transcript, page 124), is valued at one hundred sixty thousand dollars ($160,000) (R 158: Transcript, page 124) and your Appellee has offered to place this residence as collateral for pretrial release (R 158: Transcript, page 124).

[11] This is hardly the "sporadic employment history[y]" (Brief, page 24) alleged by the government. Nonetheless, it should be compared to the "seasonal employment" of one (1) of the "voluntarily released" defendants (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, page 25) and the unemployed status of the other three (3) "voluntarily released" defendants (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, pages 26, 29-30).

[12] This should be analyzed in connection with the substantial substance abuse of one (1) of the "voluntarily released" defendants (R 137: Order Granting Defendants' Motions for revocation of Detention Orders, page 29.

Your Appellee has no prior convictions.[13] However, about twenty (20) years ago, there was a minor "traffic matter" (R 91: Transcript, pages 16, 38-39), which was dismissed after "supervision" (R 91: Transcript, page 44). "There is nothing in his criminal history indicative of his failure to abide by prior conditions of supervision." United States v Vasconcellos, 519 F Supp 2d 311, 3319 (ND NY 2007). Again, "[t]his is an indication the defendant would stay, rather than flee." United States v Birges, supra, 523 F Supp at 476.

While admittedly Mr Piatek's family and community relationship[14] exist in Indiana and not within this District, the term "community" within 18 § 3142 (g) (3) (A) "embraces both the community in which the charges were brought and also a community in the United States to which the defendant has ties." United States v Townsend, 897 F 2d 989, 995 (9th Cir 1990); United States v Garcia, 801 F Supp 258, 263 (SD Iowa 1992) (Emphasis added).[15]

Danger to person or community

The government did not articulate any identifiable danger to anyone if Mr Piatek was released. Whatever firearms he lawfully possessed (R 91: Transcript,

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[13] This should be compared to the criminal histories of three (3) of the "voluntarily released" defendants (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders, pages 26-27, 29-31).

[14] In light of these family, community, employment and civic "ties" in existence for a period spanning his entire life, the government's allegation Mr Piatek has "limited…ties to the community" (Brief, page 25) is inaccurate.

[15] The government complained "the defendants [would] be released back to the locations where the planning, training and stockpiling of weapons took place" (Brief, page 25). Our initial response to this assertion is query why they then "stipulated" to release four (4) defendants to said "locations." More specifically, as the same relates to Mr Piatek, it should be recognized his requested release would be to a locale over two hundred (200) miles from the "complained" of location.

pages 78, 86, 92-93, 120) are now in possession of law enforcement (R 91: Transcript, pages 44-45). The individuals who did testify stated the weapons were never misused or utilized for any illegal purposes (R 91: Transcript, pages 86, 92-93). Your Appellee was also described as "would not hurt anyone" (R 91: Transcript, page 91).

The District Court opined Mr Piatek "as 'a down-to-earth person,' someone who would 'help anybody,' someone who does not engage in 'aggressive' behavior or 'any kind of violence,' someone who 'goes to work every day,' and someone who would 'probably be the first one to render aid [if there was somebody hurt]." (R 137: Order Granting Defendants' Motions for Revocation of Detention Orders page 29). Significantly, the government did not criticize these crucial factual determinations.

VI.

The testimony presented by your Appellee (R 91: Transcript pages 40-97) clearly was sufficient to rebut the statutory presumption of dangerousness, United States v Hare, 873 F 2d 796, 798-799 (5th Cir 1989); United States v Fortna, 769 F 2d 243, 251 (5th Cir 1985); United States v Gourley, 936 F Supp 412, 416 (SD Tex 1996); United States v Jeffries, supra, 679 F Supp at 117.

However, the government did not then satisfy its ultimate burden of persuasion, pursuant to 18 USC § 3142 (f), of proving by clear and convincing evidence the twenty-seven (27) conditions mandated by Judge Roberts would not "reasonably assure the safety of the community," see, e g, United States v Dominguez, 783 F 2d 702, 705-708 (7th Cir 1986); United States v Dreier, 596 F Sup 2d 831, 833-835 (SD NY 2009); United States v Lopez, 827 F Supp 1107, 1110-1111 (D NJ 1993); United States v Demmler, supra, 523 F Supp at 680-684.

Respectfully submitted,

/s/Arthur Jay Weiss
ARTHUR JAY WEISS (P 25225)
Attorney for Defendant-Appellee PIATEK
30445 Northwestern Highway
Suite 330
Farmington Hills, Michigan 48334-3102
(248)855-5888
arthurweiss@ajweisslaw.com