

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
)
) *Plaintiff,*)
)
) v.)
)
) ROBERT ALLEN SOLOWAY,)
)
) *Defendant.*)

NO. CR07-187MJP

DEFENDANT'S RESPONSE TO
GOVERNMENT'S MOTION FOR
DETENTION

I. INTRODUCTION.

Robert Allen Soloway ("Robert" herein), was arrested on May 30, 2007. He is charged in a multiple count indictment, alleging violations of 18 U.S.C. §§1341, 1343, 1037(a)(2), 1028A, and 1956. None of the offenses alleged in the indictment raises a rebuttable presumption that Soloway, who has no prior criminal history, is a risk of flight or a danger to the community. See 18 U.S.C. §§3142(e) and 3142(f)(1).

II. ARGUMENT.

A. ROBERT SHOULD BE RELEASED ON HIS PERSONAL RECOGNIZANCE, SUBJECT TO REASONABLE CONDITIONS.

18 U.S.C. §3142(b) provides, in relevant part, as follows:

1 The judicial officer *shall* order the release of the person on
2 personal recognizance, or upon an unsecured property
3 appearance bond in an amount specified by the Court . . .
4 unless the judicial officer determines that such release will
5 not reasonably assure the appearance of the person as
6 required or will endanger the safety of any other person or
7 the community. (emphasis supplied)

8 Pursuant to 18 U.S.C. §3142(c), if the Court determines that the release described in
9 §3142(b) will not reasonably assure the appearance of the person as required or will
10 endanger the safety of any person or the community, the Court *shall* order the release of
11 the individual subject to the least restrictive further condition or combination of conditions
12 that will reasonably assure the appearance of the person and the safety of the community.

13 The Ninth Circuit holds that in evaluating the government's motion for detention

14 . . . we bear in mind that federal law has traditionally
15 provided that a person arrested for a non-capital offense shall
16 be admitted to bail [citations omitted]. Only in rare
17 circumstances should release be denied. [Citations omitted.]
18 Doubts regarding the propriety of release should be resolved
19 in favor of the defendant. [Citations omitted.]

20 Release pending trial is governed by the Bail Reform Act of
21 1984 which, like its predecessor, the Bail Reform Act of
22 1966 [citation omitted], mandates release of a person facing
23 trial under the least restrictive condition or combination of
24 conditions that will reasonably assure the appearance of the
25 person as required. [Citations omitted.] The Fifth and
26 Eighth Amendments' prohibitions of deprivation of liberty
27 without due process and of excessive bail require careful
28 review of pretrial detention orders to ensure that the
statutory mandate has been respected.

United States v. Motamedi, 767 F.2d 1403, 1405 (9th Cir. 1985).

29 In determining whether there are conditions of release that will reasonably assure
30 the appearance of the person as required, the court is directed by the statute to take into
31 account the available information concerning the factors set forth in 18 U.S.C. § 3142(g).

1 These factors are discussed below. Factual representations are made by proffer, pursuant
2 to 18 U.S.C. § 3142(f).

3
4 **1. NATURE OF THE OFFENSE CHARGED, 18 U.S.C. 3142 (g)(1).**

5 The court is directed to take into account the nature and circumstances of the
6 offense charged, including whether the offense is a crime of violence, a Federal crime of
7 terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or
8 destructive device. The offenses charged in the indictment do not include any of the
9 factors enumerated in 18 U.S.C. §3142((g)(1).

10 The legislative history clearly establishes that the drastic remedy of detention is to
11 be reserved to extreme cases.

12
13 There is a small but identifiable group of particularly
14 dangerous defendants as to whom neither the imposition of
15 stringent release conditions or the prospect of release can
16 reasonably assure the safety of the community or other
17 persons. It is with respect to this limited group of offenders
18 that the courts must be given the power to detain release
19 pending trial.

20 *Senate Report No. 225, 98th Cong., 1st Sess. 6-7 (1983) printed in 1984 U.S. Code Cong.*
21 *and Ad. News 3182, 3189 (emphasis supplied). "The wide range of release conditions*
22 *available ensures, as Congress intended, that very few defendants will be subject to pretrial*
23 *detention." *United States v. Orta*, 760 F.2d 887 (8th Cir. 1985) (emphasis supplied).*

24
25 **2. WEIGHT OF THE EVIDENCE AGAINST THE DEFENDANT, 18 U.S.C. 3142 (g)(2).**

26 "The weight of the evidence is the least important of the various factors." *United*
27 *States v. Motamedi*, 767 F.2d at 408. Even if the evidence is "strong," that is not
28 sufficient to sustain a detention order.

1 Evidence that defendant committed the narcotics offense with
2 which he is charged, even if very compelling, cannot by
3 itself satisfy the requirement of § 3142(f) that a
4 determination "that no condition or combination of
5 conditions will reasonably assure the safety of any other
6 person in the community" be supported by clear and
7 convincing evidence. Indeed, to find otherwise would also
8 violate the specific directive of § 3142(g), which provides
9 that certain factors -- including the history and characteristics
10 of the defendant -- be considered by the court in determining
11 whether a particular defendant be detained.

12 *United States v. Moore*, 607 F.Supp. 489, 498 (N.D.Cal. 1985) (emphasis supplied).

13 **3. HISTORY AND CHARACTERISTICS OF THE PERSON, 18 U.S.C. § 3142(g)(3).**

14 Robert has resided in Seattle since January, 2004. The rent on his apartment is
15 paid up for the next six months, and that would be his primary residence should the Court
16 order his release. However, should it become necessary, his parents have informed
17 Pretrial Services that Robert is welcome to reside with them in Palm Desert, California.

18 Although Robert suffers from Tourette disorder, anxiety, and depression, these
19 physical and mental conditions will not interfere with his ability to appear for future court
20 appearances. Indeed, given the difficulty in obtaining proper medical care and medication
21 at the Federal Detention Center, Robert will be in much better physical and mental health
22 if he is released. He has no history of drug or alcohol abuse, nor does he have any
23 criminal history.

24 **B. THE GOVERNMENT'S EVIDENCE DOES NOT ESTABLISH THAT ROBERT IS A
25 FLIGHT RISK.**

26 The government's detention motion alleges that there is a "serious risk" that Robert
27 will flee if released. The government's motion is long on unsupported conjecture, and
28 woefully short on facts that would support this unfounded allegation. The government
must prove that a defendant would flee "by a clear preponderance of the evidence."

**DEFENDANT'S RESPONSE TO
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1 *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985).

2 **C. THE GOVERNMENT MUST PROVE THAT ROBERT IS A DANGER TO THE COMMUNITY**
3 **BY CLEAR AND CONVINCING EVIDENCE.**

4 The government's detention motion also alleges that there are no conditions of
5 release for Robert that will reasonably assure the safety of any other person in the
6 community. Congress noted in the passing of the Bill Reform Act that pretrial detention
7 should be reserved for that "small but identifiable group of particularly dangerous
8 defendants as to whom neither the imposition of stringent release conditions nor the
9 prospect of revocation of release can reasonably assure the safety of the community or
10 other persons." 1984 Code Cong. and Ad. News at 3182, 3189.

12 Where the government requests that an individual is to be held without bail due to
13 that person's dangerousness to the community, the government must prove by clear and
14 convincing evidence that the defendant is one of those rare individuals who pose such a
15 danger to the community that they must be detained. *See, United States v. Motamedi*,
16 *supra*; *United States v. Walker*, 808 F.2d 1309, 1310 (9th Cir. 1986). In fashioning
17 conditions to assure the safety of the community, the courts are not to attempt to guarantee
18 the safety of others in the community. *United States v. Orta*, 760 F.2d 887, 891 (8th Cir.
19 1985). Rather the courts are to consider what will reasonably assure such safety. The
20 circumstances of the present case do not provide clear and convincing evidence of
21 dangerousness.
22
23

24 **III. CONCLUSION.**

25 For all of the reasons hereinabove set forth, there are conditions that will
26 reasonably assure Mr. Soloway's appearance at all future hearings in this case, and that
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28 **DEFENDANT'S RESPONSE TO
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1 will also assure the safety of the community. Accordingly, we concur with Pretrial
2 Services' recommendation for release, and further concur with the conditions they have
3 recommended.

4 DATED this 12th day of June, 2007.

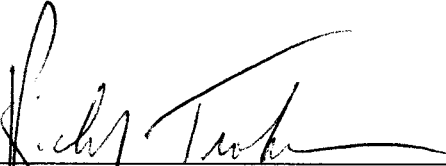
6 RICHARD J. TROBERMAN, P.S.

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8 By: 

9 RICHARD J. TROBERMAN
10 WSB #6379
11 Attorney for Defendant
12 Robert Allen Soloway

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2007, I electronically filed the foregoing "Defendant's Response to Government's Motion for Detention" with the Clerk of Court, using the CM/ECF system which will send notification of such filing to the attorneys of record in this case.



RICHARD J. TROBERMAN

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