

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES,

V.
STEWART NOZETTE,
Defendant.

Case No. 1:09-CR-276-JR

DEFENDANT’S OPPOSITION TO MOTION FOR PRETRIAL DETENTION

Comes now Defendant, Stewart Nozette, by counsel, and states as follows:

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.

United States v. Salerno, 481 U.S. 739, 755 (1987).

Even for defendants of preeminent infamy and resources, “in most cases, release is the presumptive state... only a limited group of offenders... should be denied bail pending trial.” *United States v. Madoff*, 586 F. Supp. 2d 240, 247 (S.D.N.Y. 2009).

Defendant does not present an inordinate risk of flight – he is charged only with an “attempt” to treat with a foreign intelligence service. Never having actually dealt with a foreign intelligence service, he lacks any demonstrable connection to the resources presumably available to such an entity for moving people covertly between countries. Neither does he have any demonstrable assets overseas to assist his flight. Moreover, his only travel document, his passport, is in the possession of his counsel on the related case against him before this Court. Presumably, said counsel could be ordered to convey the passport to the Court. Finally, the Government’s claim notwithstanding, he is unlikely to find support in any foreign embassy. The Israeli Embassy turned away Jonathan Pollard

when he sought refuge there – and, unlike Defendant, he had actually spied for Israel. *United States v. Pollard*, 959 F. 2d 1011, 1016 (D.C. Cir. 1992).

Defendant’s extensive ties to this community are longstanding. His wife, a lawyer of 17 years’ federal service, and he have resided for years in the home they own in Chevy Chase, MD.

Defendant’s practical potential to create danger to the community is also very limited. Defendant is not accused, nor has he ever been, of an act of violence. His arrest has illustrated the extent to which his movements have been surveilled by the Government. Thus illuminated, he would be very unlikely to seek contact with any foreign intelligence service - particularly as he lacks any contact within a foreign intelligence service.

In fact, this Court can choose from a range of conditions, any selection of which would easily equal or exceed the “least restrictive condition, or combination of conditions... [necessary] reasonably [to] assure the appearance of the person as required and the safety of any other person and the community...” 18 U.S.C. Sec. 3142(c)(B).

Defendant’s wife can be designated his third party custodian.

Defendant can post a substantial bond secured by his home.

Defendant can be subjected to electronic monitoring and confinement to his home.

Defendant’s home can be cleared of any electronic devices beyond those necessary for monitoring.

Conclusion

Pretrial confinement is unjustified. Additionally, particularly at Defendant's current location several hours from the metro area, it imposes an unwarranted and impermissible impediment to the development of his defense.

Respectfully submitted,

_____/s/_____
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Certificate of Service

I hereby certify that the foregoing was filed with the Clerk by CM/ECF this 28 Oct, 2009 with resultant electronic service to CM/ECF user:

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