MAGISTRATE JUDGE TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, vs. DAVID RUSSELL MYRLAND, Defendant.	NO. MJ11-30 DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION FOR RECONSIDERATION OF THE ORDER RELEASING THE DEFENDANT ON CONDITIONS

Defendant, David Myrland, through his counsel of record, Assistant Federal Public Defender Dennis Carroll, submits this response to the Government's motion for reconsideration of this Court's January 25, 2010 order releasing Mr. Myrland with conditions. Mr. Myrland asks this Court to deny the Government's motion to reconsider the prior release order.

I. INTRODUCTION

The Court held a detention hearing in this matter on January 25, 2011, pursuant to the Government's motion for detention under 18 U.S.C. § 3142. The government initially sought detention based on its concerns about risk of flight and the safety of the community. The Government's Motion for Reconsideration appears to be based solely on its concerns with community safety. *See* United States' Motion to Reconsider Magistrate Judge's Decision Re: Bond ("Reconsideration Motion), Dkt. #11, at pp. 1, 8.

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Pretrial Services interviewed Mr. Myrland, spoke to his sister to verify historical information, and also spoke with a Kirkland Police Department officer who has had numerous contacts with Mr. Myrland. According to the Pretrial Services Report, the officer indicated that Mr. Myrland was not a violent or confrontational person during his numerous interactions with law enforcement. Pretrial Services recommended that Mr. Myrland be released on numerous conditions.

This Court found that conditions could be imposed that would reasonably protect the community and insure Mr. Myrland's appearance for future proceedings. The numerous conditions are outlined in the appearance bond which Mr. Myrland signed.

II. THE GOVERNMENT HAS FAILED TO PROVE THAT NO CONDITIONS OF RELEASE WOULD REASONABLY PROTECT THE COMMUNITY.

There are three guiding principles in any determination of custody pending trial. First, "federal law has traditionally provided that a person arrested for a non-capital offense shall be admitted to bail." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (citations omitted). Second, "[o]nly in rare circumstances should release be denied." *Id.* (citations omitted). Third, "[d]oubts regarding the propriety of release should be resolved in favor of the defendant." *Id*. (citations omitted).

"Detention can be ordered . . . only 'in a case that involves' one of the six circumstances listed in §3142(f), and in which the judicial officer finds, after a hearing, that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992). This is not a case where there is a presumption of detention. *See* 18 U.S.C. § 3142(e)(2), (3). Therefore, there is a presumption of release on personal recognizance or an unsecured appearance bond. 18 U.S.C. § 3142(b). If the judicial officer determines that release under subsection (b) will not reasonably assure the appearance of the person or will endanger the safety of

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others or the community, the court "shall order the pretrial release" on the least restrictive statutory conditions available to the court. 18 U.S.C. § 3142(c). From this, it follows that detention can only be ordered where the Government proves that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992). *Accord United States v. Ploof*, 851 F.2d 7 (1st Cir. 1988); *United States v. Himler*, 797 F.2d 156 (3rd Cir. 1986). The Government must prove dangerousness by clear and convincing evidence. 18 U.S.C. § 3142(f)(2). The Bail Reform Act does not require absolute certainty or a guarantee of public safety. Instead, conditions need only "reasonably assure" the safety of the community. *See United States v. O'Brien*, 895 F.2d 810 (1st Cir. 1990).

Mr. Myrland has no prior felony arrests and his few misdemeanor arrests are all for driving related offenses. He has no history of committing any act of violence against another person. He is a long-time Washington resident with substantial ties to this community. It is against this backdrop that the Government asserts that conditions cannot be imposed that would reasonably protect the community.

A. Mr. Myrland's Statements when Arrested.

The Government begins by recounting statements allegedly made by Mr. Myrland to the arresting officers. Notably, the Government has not provided any written statement to the defense nor has it provided any summary of the statement prepared by the case agent(s).

The Government repeats its claim that Mr. Myrland caused others to send threatening communications on his behalf, alleging that Mr. Myrland directed individuals to specific documents on the Internet that should be sent on his behalf. Reconsideration, p. 4, ln. 3-11. These allegedly threatening letters, including the letter from Texas that was sent on Mr. Myrland's behalf, were discussed in the Complaint

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where the investigating agent carefully noted that "the specific letters mentioned in [Myrland's website recordings] do not appear to be the same letters that are the subject of this complaint, which contain direct threats in them (the West Letters)." Complaint, at ¶ 36. Clearly, Mr. Myrland enlisted the support of others in his legal disputes. However, it appears clear that, based on the information provided thus far, specific threats contained in those letters were not authored by Mr. Myrland. While he may have encouraged others to advocate unorthodox legal theories in support of his disputes, he did not tell others to write letters containing specific threats to others. In short, the agent makes clear that the letters that the Government argues as proof of Mr. Myrland's dangerousness were not "ghost-written" by Mr. Myrland.

B. Mr. Myrland's "Legal" Pleadings.

The Government first cites a pleading from *U.S. v. Arant*, CV07-0509RSL, Dkt. #32, baldly claiming that it was authored and filed by Mr. Myrland. *See* Reconsideration, p. 5 ("Defendant posed a series of questions to the Court as to whether he could 'arrest' public officials inside the Courtroom . . . ."). However, Mr. Myrland's name appears nowhere on that document. It was filed and signed by Mr. Arant alone.

Nonetheless, it does appear that for a number of years Mr. Myrland has espoused unconventional interpretations of Washington law wherein he believes that citizens can effectuate the arrest of public officials for felony offenses. As noted by the Government, similar pleadings were filed in different cases, including a February 12, 2008 "Motion for Remand" where the authors stated, in part, "Plaintiffs will be in contact soon with the FBI and county authorities to confirm that their arrest of felons such as the Defendants' and their personal judges have the WA legislature's blessings."[1] While clearly indicating that they seek some sort of approval for their actions,

[1] *Myrland et al. v. Pahl et al.*, No. 08-17 RAJ, Dkt. # 7, at p. 4.

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Mr. Myrland and Mr. Arant also go on at length about the supposed authority to arrest felons under state law. Similar assertions were made by Mr. Myrland in various pleadings that he has filed as far back as 2005.

The Government notes that Mr. Myrland was investigated by the U.S. Marshal's service for the inflammatory statements in his legal pleadings. The report from the November 17, 2005 investigation is attached as Exhibit 1. The Government correctly notes that Mr. Myrland denied having any intention of committing an act of violence against any federal officials. Indeed, according the Report, Mr. Myrland "was unequivocal in his denial of any suggestion that he would act violent" and his actions would be limited to the "legal process." The Marshals noted:

> Throughout the course of the interview, MYRLAND remained calm and spoke courteously to the DUSMs. MYRLAND did not become animated or raise his voice, but appeared to be deliberately speaking loudly enough for the other patrons in the restaurant to hear. MYRLAND appared to enjoy the attention directed toward him.

Exhibit 1 at p. 3. Notably, this report of Mr. Myrland's demeanor is similar to that given by the Kirkland police officer in the report prepared by Pretrial Services.

It is clear that Mr. Myrland has espoused his unorthodox theories for a number of years. It is also clear that he has never acted on these theories, nor does the Government have any information that Mr. Myrland, or any of his alleged associates, has ever tried to "arrest" a government official. Instead, it appears that Mr. Myrland has been content for many years to simply disseminate his "arrest" theories, without acting upon them, as a means of seeking attention from the courts.

Finally, the Government lists a number of bullet points in support of its motion for reconsideration. Each point will be taken in order.

Mr. Myrland has been charged with, not convicted of, a crime of violence for which the maximum punishment is five years. He believes that there are significant First Amendment issues to be raised in his defense. *See e.g. Brandenburg v. Ohio*, 395

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U.S. 444, 447-49 (1969) (per curiam) (holding that First Amendment protects "mere advocacy" of use of force or violation of law, but not "incitement to imminent lawless action"). While his statements to the agents indicate that he holds eccentric beliefs, there is no indication that he has any plans to actually implement an "arrest" of a government official. Indeed, despite a history of espousing this "arrest" theory for many years, he has never acted on it and has conducted himself peacefully in the community.

As explained at the detention hearing, Mr. Myrland did not possess the firearms that were seized from his landlord's rooms. He does not have any firearms and is willing to be subject to searches of his person and property. When ordered by the King County Superior Court, he relinquished possession of the handgun that was seized and then returned to him by the Kirkland Police Department. The Government complains that the "whereabouts of the gun are unknown." Most importantly, Mr. Myrland did not possess it when his home was searched.[2]

The Government argues that Mr. Myrland's "non-standard" views on the law and his association with others who share these views warrants detention. First, Mr. Myrland's political beliefs should not be used as a basis to detain him. Mr. Myrland, despite years of espousing odd legal beliefs, and despite living in Western Washington for more than 50 years, has very limited criminal history. In short, he has, for the most part, abided by the laws and norms of society.

Finally, the Government lists a number of factors that were considered at the initial detention hearing which do not relate to dangerousness in any way. Mr. Myrland admits that he occasionally uses marijuana, but he would comply with any condition prohibiting its use and he would comply with UA testing. This factor does nothing to

[2]Mr. Myrland reports to counsel that he pawned the gun at the Yuppie Pawn Shop in Totem Lake.

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tip the scale toward detention. The Government repeats the misleading statement that Mr. Myrland "has a history of failures to appear." According to Pretrial Services, he has had two warrants. One warrant was issued in 1998 for a DWLS 3 case in which $200 bail was imposed, and Mr. Myrland posted the bail soon after the warrant was issued and then made his appearances without necessitating an arrest. The second warrant was issued last year for another driving related offense. At that time, Mr. Myrland was making all of his court appearances in King County Superior Court for charges arising from the same conduct charged herein.

The Appearance Bond conditions which Mr. Myrland signed and agreed to follow, allow Pretrial Services to effectively monitor Mr. Myrland. The bond conditions allow for UA testing, financial monitoring, Internet monitoring, as well as mental health and substance abuse evaluation and treatment. These conditions are comprehensive and would provide more than reasonable assurance that the community would be protected upon his release.

III. CONCLUSION

For the reasons stated above, Mr. Myrland respectfully requests that the Court deny the Government's motion to reconsider.

DATED this 1st day of February, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have emailed the document to the following non CM/ECF participants:

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