

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

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UNITED STATES OF AMERICA,	:	
	:	CRIMINAL NO. 2:08-cr-1324
Plaintiff,	:	
	:	
vs.	:	
	:	DEFENDANT RUBASHKIN'S
SHOLOM RUBASHKIN,	:	MOTION TO THE CHIEF DISTRICT
	:	JUDGE FOR REVOCATION OR
	:	MODIFICATION OF DETENTION
Defendant.	:	ORDER (HEARING REQUESTED)

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Pursuant to Local Criminal Rule 5(a) and 18 U.S.C. Section 3145(b) and 3142(c), Sholom Rubashkin, the Defendant, by his counsel F. Montgomery Brown and Guy R. Cook, file this motion for reconsideration of the Order of Detention (Doc. 17 08-mj-381) and revocation of pre-trial release (Doc.16 08-mj-363)(hereinafter "Detention Order") entered on November 20, 2008, by John Stuart Scoles, United States Magistrate Judge, and in support thereof states:

1. Defendant was named as a defendant in the above matter by Superseding Indictment returned on November 13, 2008 in which Defendant was joined with the previously indicted Defendant Karina Freund. This indictment charged Defendant Rubashkin with Harboring Undocumented Aliens for Profit (Count 1), Aiding and Abetting Document Fraud (Count 2), one count of Aiding and Abetting Aggravated Identity Theft (Count 3).
2. Defendant is charged in the Second Superseding Indictment filed on November 20, 2008 with Conspiracy to Harbor Undocumented Aliens for Profit (Count 1), Harboring Undocumented Aliens for Profit (Count 2), Conspiracy to Commit Document Fraud (Count 3), Aiding and Abetting Document Fraud (Count 4), Aiding and Abetting Aggravated

Identity Theft (Counts 5-10) and Bank Fraud (Counts 11-12).

3. When Sholom Rubashkin was originally arrested in Postville, Iowa on October 30, 2008, on criminal immigration charges (08-mj-363), he was released by the Magistrate Judge Scoles on bail terms including electronic monitoring \$1,000,000.00 appearance bond, secured in part by Brooklyn, New York real estate owned by Sholom and Feige Duchman. See *United States v. Sholom Rubashkin*, No. 08-MJ-00381 (JSS), Detention Order at 3 (Nov. 20, 2008); Order Setting Conditions of Release (Doc.8 08-mj-363); Status Report Re: Posting of Surety Bond (Doc.11 08-mj-363).
4. On November 14, 2008, he was arrested again (08-mj-381), this time on bank fraud charges. *Id.* at 6. These charges are set forth in Counts 11-12 of the Second Superseding Indictment.
5. The bank fraud accusations closely parallel the allegations raised in the civil suit entitled *First Bank Business Capital, Inc. v. Agriprocessors, Inc. et al*, filed on October 30, 2008, in Northern District No. 2:08-cv-01035-LRR. Sholom incorporates by reference the Civil Docket entries contained in 2:08-cv-01035-LRR. The Plaintiff served Sholom Rubashkin at his residence on November 2, 2008 with the Summons and Complaint. In the suit, Plaintiff seeks to foreclose on a \$1,000,000.00 personal guaranty purportedly executed by Sholom as part of Agriprocessors' financing.
6. Although Sholom received a copy of the complaint on November 2, 2008 detailing the "bank fraud" accusations raised in the civil suit, he knew of their substance (and presumably forthcoming interest by the U.S. Attorney's Office), according to the government, as early as October 23, 2008 when the issue was discussed in Postville with First Bank's representative Philip Lykens. ( Doc. 18 Transcript of Detention Hearing pp.

12-13) In fact, the Government's proffer on this point was essentially that Sholom made direct admissions to Lykens. The government further proffered that Sholom would have been aware of First Bank's receivership moves as early as October 29, 2008. (Doc. 18 Transcript of Detention Hearing pp. 14).

7. Sholom returned from Toronto, Canada on October 28, 2008. (Government's Detention hearing Exhibits 26, 27)
8. Although Sholom was cognizant of the "bank fraud" accusations, between October 29, 2008 and November 14, 2008, he did not flee.
9. After Sholom was arrested at his home in Postville on November 14, 2008, the government sought to detain him, claiming that he was both a risk of flight and a danger to the community. Both the government and the Defendant made proffers and tendered the Court exhibits. The following morning, Defendant's counsel tendered to the Court by email as a supplement to Exhibit 4A, without objection by the government, the written pledge (with appraisal attached) as additional surety property owned by Jack Lefkowitz at 5119 14<sup>th</sup> Street, Brooklyn, New York having claimed value in excess of \$4,000,000.00.
10. After holding a detention hearing on November 19, this Court issued a written Detention Order on November 20, 2008, rejecting the government's contention that Sholom was a danger to the community, but detaining Sholom as a risk of flight to Israel. (Doc. 17).
11. The transcript of the Detention Hearing (Doc. 18, and all exhibits entered into evidence, including the "Lefkowitz" pledge, are incorporated fully by reference.
12. On December 5, 2008, Sholom filed a request to Magistrate Judge Scoles for Reconsideration of the Order of Detention pursuant to LCrR 5(c) and 18 U.S.C. Section 3142(f). (Doc.132). This Motion and all attachments thereto are incorporated fully by



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Original filed.

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CERTIFICATE OF SERVICE

I hereby certify that on 8thh Day of December, 2008, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following:

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