

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

UNITED STATES OF AMERICA,	:	
	:	CRIMINAL NO. 2:08-cr-1324
Plaintiff,	:	
	:	
vs.	:	
	:	DEFENDANT RUBASHKIN'S
SHOLOM RUBASHKIN,	:	MOTION FOR EXTENSION
	:	OF TIME TO FILE APPEAL
Defendant.	:	OF ORDER OF DETENTION

COMES NOW, Defendant, Sholom Rubashkin, by his counsel F. Montgomery Brown, and pursuant to LCrR 5 of the Local Rules, hereby moves for extension of time to file an appeal of the Order of Detention entered on November 20, 2008, and in support thereof states:

1. That the Honorable Magistrate Judge Jon S. Scoles, entered an Order of detention of the Defendant on November 20, 2008, which is applicable to the following criminal case numbers: 08-mj-00363, 08-mj-00381, and 2:08-cr-1324.
2. The partner of Defendant's counsel has orally and promptly arranged for the preparation of a transcript of the record before Magistrate Scoles. Paul D. Scott was advised on November 26, 2008 that the transcript would be complete the following week. As of midnight on November 26, 2008, Defendant's counsel has not yet received the transcript from the detention hearing.
3. That LCrR 5 of the Local Rules requires, subject to "excuse for good cause shown", that a defendant may appeal from an order of detention issued by a magistrate judge by filing a motion pursuant to 18 U.S.C. Section 3145(a) or (b) within 10 days after the detention order has been filed.

4. Defendant is the process of determining whether appeal of the detention order shall be taken, and proffers the following as good cause for extension of time to file any such appeal:

- a. That Defendant's counsel has not yet received the transcript of the November 19, 2008 proceedings and transmitted that transcript to interested persons who seek input and potential representation in this matter.
- b. Defendant's local counsel, the undersigned, has been advised by family representatives of Defendant that they are in the process of assembling additional lawyers to assist in the representation of Defendant, including matters relating to appeal or reconsideration of the Order of Detention issued on November 20, 2008.
- c. The process of this "team" assembly is delayed by various considerations including monetary considerations, Defendant's detention and inability to communicate with prospective counsel from his confines in the Dubuque County Jail.
- d. Local Counsel has advised interested parties that such arrangements must be made promptly.
- e. The assembly of any such "team" may alter local counsel's roles and responsibilities in the representation of Defendant, including matters relating to appeal of an Order of Detention or motion for reconsideration.
- f. Defendant's local counsel has been contacted by several of these prospective lawyers who seek opportunity to review the transcript of the proceedings at the hearing on detention which took place on November 19, 2008.

- g. In the meantime, Attorney Baruch Weiss, who appeared on behalf of Defendant at the Detention Hearing by special appearance, is accumulating additional information to support any such appeal to District Judge Linda Reade and/or reconsideration motion before Magistrate Judge Scoles. This information includes information relating to the “risk of flight” criteria that was the subject matter of the Order of Detention.
- h. That this is a complex case involving not only a myriad of “facts” in dispute, and known and unknown witnesses, but perhaps tens of thousands of pages of documents which counsel for Defendant will have to review and discuss with the Defendant. Defendant’s detention has and will continue to make effective representation of the Defendant more difficult and time consuming. Accordingly, the issue of detention and response thereto, is a matter of significant concern to Defendant, his present counsel, prospective counsel, and his family.
- i. That Defendant is in the process of determining whether a Motion for Recusal under 18 U.S.C. Section 455(a) is appropriate in the above-entitled matter. Additional grounds supporting such motion are under investigation. Baruch Weiss is presently performing research as to whether such motion is waived if appeal is taken to the district court on the matter of detention. Additional time is needed to determine whether an appeal of the issue of detention to the Hon. Chief Judge Linda Reade constitutes a waiver of any right on the part of the Defendant to seek recusal of Judge Reade
- j. That the 10 day period since November 20, 2008 has been interrupted by the

Thanksgiving Holiday on November 27, 2008.

- k. That in addition to visiting Defendant the Dubuque County Jail twice since November 20, 2008 and appearing for arraignment on November 26, 2008, has been preparing for a trial in Osceola, Iowa which begins on December 1, 2008- State v. Isreal Lozano-Molina, Clarke County No. FECR012299.
5. That extension of time to December 19, 2008 will not prejudice the government.
6. That Defendant's counsel has sent an email to counsel for the government regarding their position on extension of the deadline for filing any appeal to the district court of the Order of Detention and will advise as to their position when received.

WHEREFORE, Defendant hereby submits that good cause exists to extend the time for filing an appeal to the district court seeking review and modification of the November 20, 2008 Order of Detention, and respectfully requests that an Order be entered extending the deadline to December 19, 2008.

Respectfully,

s/F. Montgomery Brown
F. MONTGOMERY BROWN AT001209
BROWN & SCOTT, P.L.C.
1001 Office Park Road, Suite 108
West Des Moines, Iowa 50265
Telephone: (515) 225-0101
Facsimile: (515) 225-3737
Hskrfan@brownscoff.com
ATTORNEY FOR DEFENDANT

Original filed.

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CERTIFICATE OF SERVICE

I hereby certify that on 30th Day of November, 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:

Peter Deegan
AUSA
4200 C Street, SW
Cedar Rapids, IA 52404
Peter.deegan@usdoj.gov

Mark Brown
attybrown@aol.com

Rapheal Scheetz
scheetzlaw@aol.com