

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

UNITED STATES OF AMERICA,	:	Case No. CR 08-cr-1324 (LRR)
v.	:	DEFENDANT RUBASHKIN'S
SHOLOM RUBASHKIN,	:	BRIEF IN SUPPORT OF
Defendant.	:	MOTION REQUESTING
	:	RECONSIDERATION
	:	RE: ORDER ON BAIL PENDING
	:	SENTENCING
	:	

I. INTRODUCTION

Defendant Rubashkin respectfully requests the Court reconsider its ruling on the government's "Request for Detention". *See* Clerk's Nos. 748 (Order) and 737 (Motion for Detention).

II. ARGUMENT

Defendant Rubashkin has demonstrated clear and convincing evidence he "is not likely to flee if released upon suitable conditions." *United States v. Welsand*, 993 F.2d 1366, 1367 (8th Cir. 1993).

- **Evidence Presented at Hearing on Magistrate's Order Pretrial Detention.** At the hearing on the Magistrate's Order of Pretrial Detention, Defendant Rubashkin presented evidence through Leah Rubashkin, Amy Dickell, Rabbi Zwiebel, Brad Utter, and Joe Shochet. *See* Clerk's No. 202. Numerous exhibits were also admitted into evidence. *See* Clerk's No. 193. Based on that evidence, Defendant Rubashkin was ordered to be released pending trial. *See* Clerk's No. 193.
- **Conditions of Release.** Defendant Rubashkin was ordered released, however, subject to conditions of release. *See* Clerk's Nos. 199, 203. Defendant Rubashkin has no valid

driver's license. *See* Clerk's No. 193 (Exhibit U). Defendant Rubashkin has surrendered his birth certificate. *See* Clerk's No. 203. Defendant Rubashkin has no passport. *Id.*

Defendant's wife and his children under 18 have surrendered their birth certificates. *Id.* A commercial security bond of \$500,000 was executed to ensure Defendant Rubashkin's appearance at court proceedings. *Id.* Defendant Rubashkin was constantly subject to GPS monitoring per an ankle device. *Id.* Defendant Rubashkin was not permitted to leave Allamakee County, unless he received permission from his probation officer. *Id.*

- **Conditions Not Imposed Upon Release Pending Trial.** The Court did not order Defendant Rubashkin was subject to curfew, home detention, or home incarceration. *Id.* Moreover, the Court declined to subject Defendant Rubashkin to 24-hour armed surveillance, notwithstanding Defendant Rubashkin's offer to pay for the same. *Compare id. with* Clerk's No 193 (Exhibits Q, Q-1, and Q-2) (capability and willingness of Global Security Services to provide 24-hour armed guard and camera surveillance of Defendant Rubashkin).
- **Defendant Rubashkin's Unfailing Compliance with Conditions of Release.** From the end of January to the middle of September, Defendant Rubashkin complied with all the conditions of release imposed by the Court. *See* Clerk's No. 748 (Testimony of Lindsey Skelton). Defendant Rubashkin even immediately alerted his probation officer when his GPS ankle bracelet became dislodged from his ankle. *Id.*
- **Conviction on 86 Counts.** On November 12, 2009, Defendant Rubashkin was convicted of 86 of the 91 counts he faced. *See* Clerk's No. 734. The Government's only new "evidence" militating toward detention is the law's general assumption that conviction increases likelihood of flight. *See id.* at 4-5 (articulating pre-release conduct). In other

words, the Government argues that because Defendant Rubashkin was convicted on 86 counts, he is less likely to face the consequences of the jury's verdict. The Government has not pointed to any specific evidence on this point and, in fact, the contrary is true.

- **Unprecedented Support from Community Subsequent Conviction.** Even after Defendant Rubashkin's arrest, he has always had inextricable ties to his family, the community of Postville, and the larger Jewish community generally. *See e.g.* Clerk's No. 199 at 12 ("He is married and has ten children with his wife. He has lived in Postville, Iowa, for fifteen years. Defendant's ties to Postville remain strong. . . . Defendant's involvement in the community extends beyond Agriprocessors, Inc. to local religious and educational institutions. Defendant either founded or was instrumental in the development of such institutions. Hundreds of letters and pledges of support are strong evidence of Defendant's involvement in Postville and his larger faith community. He has a history of leadership and charity. To attest to their support for Defendant and their firm beliefs that Defendant is not a flight risk, many persons have written the court and pledged the equity in their homes as security for his release. Such community support for a defendant is, to the undersigned's knowledge, unprecedented in this court."). But now, subsequent the conviction, the community support for Defendant Rubashkin is stronger than ever. *See* Clerk's No. 748 at 4 ("Defendant also presented *over one thousand letters and e-mails of support* written by members of his community who vouch for Defendant's willingness to cooperate with the law.") (emphasis supplied). In fact, 43 individuals have pledged the equity in their homes for Defendant's bail – totaling nearly \$8,000,000. *See id.* Additionally, sacred religious scrolls of nearly \$500,000 were offered.

- **Nature of Convictions.** The jury has convicted Defendant Rubashkin of non-violent crimes. The Government presented evidence Defendant paid back monies the jury has deemed were unlawfully borrowed with interest. Defendant Rubashkin's motive, according to the Government, was to enable his father's plant to survive. The number of counts of convictions is high, but the allegations are not – nor have they ever been – something Defendant Rubashkin would run from.
- **Court's Finding Defendant Rubashkin Poses a Flight Risk.** The Court found Defendant Rubashkin poses a flight risk subsequent conviction. *See* Clerk's No. 748 at 5. In fact, the Court notes it has always deemed Defendant Rubashkin a flight risk. *See id.* (noting the Court's determination in Clerk's No. 199).
- **The Issue is Whether Suitable Conditions Will Ensure Defendant's Appearance at Court Proceedings.** For the purposes of this analysis, whether the Court finds Defendant Rubashkin poses a flight risk is not dispositive. Stated differently, the ultimate inquiry is – notwithstanding the law's presumption that a convicted defendant poses a flight risk – whether suitable conditions will ensure Defendant Rubashkin's appearance at sentencing or any other court proceeding. *Welsand*, 993 F.2d at 1367.
- **The Magnitude of the Trial in the Jewish Community Ensures Defendant Rubashkin's Appearance.** Defendant Rubashkin and Rabbi Hecht each testified as to the exposure of this trial and the conviction among the Jewish community. “[T]o flee, Defendant Rubashkin would essentially abandon and betray his family and community.” *See* Clerk's No. 748 at 4. Indeed, flight betrays Defendant Rubashkin's core principles. Assuming, *arguendo*, Defendant Rubashkin does pose a flight risk:

(1) conditions prevent him from leaving the county of Allamakee;

- (2) he has no travel documents or other means of identification;
- (3) he would have nowhere to hide, as no friend would condone his flight;
- (4) he has a GPS ankle devise tracking his movement.

- **The Substantial Legal Issues on Appeal Ensure Defendant Rubashkin's**

Appearance. There are substantial matters for appeal as set forth in Defendant Rubashkin's Rule 29(a) Motion for Judgment of Acquittal and Combined Rule 29(c) Motion for Judgment of Acquittal and Motion for New Trial. *See* Clerk's Nos. 721 and 747. Defendant Rubashkin believes strongly in the propriety of these legal challenges and testified he would not jeopardize these legal challenges through flight.

- **A Continuation of the Pretrial Conditions Ensures Defendant Rubashkin's**

Appearance by Clear and Convincing Evidence. Defendant Rubashkin would respectfully submit a continuation of the prior conditions will ensure Defendant's appearance at sentencing or any other court proceeding.

- **Even if the Court Should Find a Continuation of the Pretrial Conditions Does Not Ensure Appearance, Additional Conditions Are Available to Ensure the Same by**

Clear and Convincing Evidence. Defendant Rubashkin would respectfully submit a continuation of the prior conditions *with additional conditions* will ensure Defendant's appearance at sentencing or any other court proceeding. On November 18, 2009, Defendant Rubashkin presented evidence that individuals stood ready and willing to post-equity in their homes which totaled nearly \$8,000,000. Additionally, sacred religious scrolls of nearly \$500,000 were offered; the significance of the same in the Jewish religion, however, is priceless. Additionally, Defendant Rubashkin has requested the Court consider evidence presented at pretrial detention hearing. *See* Clerk's Nos. 193 and

203 at 2-3. Conditions such as curfew, home detention, or home incarceration may be ordered. Moreover, the Court may now subject Defendant Rubashkin to 24-hour armed surveillance and order Defendant Rubashkin to pay for the same. *See* Clerk's No 193 (Exhibits Q, Q-1, and Q-2) (capability and willingness of Global Security Services to provide 24-hour armed guard and camera surveillance of Defendant Rubashkin).

Defendant Rubashkin would submit the additional conditions which the Court may impose will – together with the pretrial conditions – ensure, by clear and convincing evidence, Defendant Rubashkin's appearance at future court proceedings.

III. CONCLUSION

In short, Defendant Rubashkin respectfully requests the Court reconsider its ruling on the Government's motion seeking detention pending sentencing to analyze whether the imposition of additional conditions ensures Defendant Rubashkin's appearance at sentencing or any other court proceeding.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on **November 23, 2009**, by CM/ECF.

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