

3/10/05

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	
v.)	
)	Criminal No. 05-66 (PLF)
WALTER ANDERSON,)	
)	
aka Mark Roth,)	
)	
Defendant.)	

**DEFENDANT WALTER ANDERSON'S MOTION
TO IMPOSE CONDITIONS OF RELEASE**

Defendant Walter Anderson, pursuant to Rule 46 and 18 U.S.C. §§ 3142 and 3145(b), moves this Court for an Order releasing him before trial with conditions determined by the Court.

I. INTRODUCTION

On March 7, 2005, Magistrate Judge Kay determined that the Defendant, Walter Anderson, did not pose a threat to society if he was released on bail pending trial, but nevertheless denied Mr. Anderson his right to bail because he determined that Mr. Anderson poses a flight risk. Magistrate Judge Kay's order of pretrial detention stands in stark contrast with the recommendation of Pretrial Services, which recommended that Mr. Anderson be released on his personal recognizance. (Ex. 5, 2/28/05 Pretrial Services Agency Report of J. Schumacher at 3.) Mr. Anderson contests the finding that he is a risk of flight. Nevertheless, the law recognizes that courts provide for the release of those

with some potential risk of flight when there are a set of conditions that reasonably provide for a person's future appearance. There is no doubt that such a set of conditions can be crafted for this case. Accordingly, we move this Court pursuant to 18 U.S.C. § 3145(b) to review Magistrate Judge Kay's findings de novo¹ and release Mr. Anderson on bail subject to any conditions the Court believes are necessary to "reasonably assure" Mr. Anderson's appearance at trial. See 18 U.S.C. §3142(c).

¹ This Court consistently has ruled that de novo review applies to a district judge's review of a magistrate's order denying bail under Section 3145(b). See United States v. Karni, 298 F. Supp. 2d 129, 130 (D. D.C. 2004) (Hogan, C.J.) ("The Court notes at the outset that its review of the Magistrate's decision is de novo, and the Court is free to use in its analysis any evidence of a rationale different than what the Magistrate relied upon."); United States v. Hudsperth, 143 F. Supp. 2d 32, 35-36 (D. D.C. 2001) (Kennedy, J.) (same); United States v. Bess, 678 F. Supp. 929, 934 n.3 (D. D.C. 1988) (Robinson, C.J.) (same); see also United States v. Rueben, 974 F.2d 580, 585 (5th Cir. 1992) ("When the district court acts on a motion to revoke or amend a magistrate's pretrial detention order, the district court acts de novo and must make an independent determination of the proper pretrial detention or conditions for release."); United States v. Koenig, 912 F.2d 1190, 1191 (9th Cir. 1990) (same). This de novo standard of review is the same standard that applied under the predecessor to Section 3145(b). See, e.g., United States v. Thibodeaux, 663 F.2d 520, 522 (5th Cir. 1981); Wood v. United States, 391 F.2d 981, 984 (D.C. Cir. 1968). Magistrate Judge Kay anticipated that Your Honor would apply de novo review: "Judge Friedman will have an opportunity to review my decision and modify [it] in any way he sees fit[,] whether or not you should be released." (See 3/3/05 Hrng. at 64.)

II. STATEMENT OF FACTS

A. Mr. Anderson's Personal History Demonstrates He Is Not A Risk Of Flight²

Defendant Walter Anderson is fifty-one years old. He is a highly respected and very successful self-made businessman who grew up in the Washington, D.C. metropolitan area. His only close family -- his mother and step-father -- continue to live in the area.

It is true that his activities in the telecommunications, space exploration, and investment arenas brought his companies and him professional success and financial rewards. Nevertheless, like many people in these volatile industries, in the last few years Mr. Anderson has seen a dramatic decline in his financial well-being. Market changes and the impact of this investigation have resulted in Mr. Anderson having a negative net worth. The government's assertions of tremendous wealth and access to resources stem from another time, and they have not produced, and could not produce, any current information indicating Mr. Anderson's access to the type of funds they argue make him someone who could live abroad with means for some time.

² This brief seeks to summarize material that exists in earlier submissions, and bring to this Court's attention new facts or facts that were not considered by the Magistrate Judge. A copy of the Government's Motion for Detention is attached as Exhibit 1, and Mr. Anderson's Opposition to the Motion for Detention is attached as Exhibit 2. Magistrate Judge Kay's Order is attached as Exhibit 3.

B. Procedural History And History Of The Government's Investigation Of Mr. Anderson Indicate He Is Not A Risk of Flight.

The government's indictment for tax fraud and related offenses did not come as any surprise to Mr. Anderson. The government executed a search warrant for his house three years ago in March 2002, and he has been in frequent contact with the government on numerous occasions ever since. The government has assured him on numerous occasions that it would just be a matter of time until he was indicted, and his own lawyers made sure that he understood the serious consequences that would have. He was so sure of the fact that he was going to be indicted that he had an anticipatory interview with Pretrial Services before he was ever arrested. His attorneys even engaged with government counsel to offer that, should an indictment be returned, they would make arrangements for his self-surrender. In addition, there have been proceedings before this Court (Chief Judge Hogan) related to the investigation in which Mr. Anderson was fully aware of the lengths to which the government was going to investigate his activities.

Despite his awareness of the investigation and effort being made against him, Mr. Anderson took no steps to flee, but instead went about his business. Given the nature of Mr. Anderson's work, he has left and returned home from more than thirty trips abroad since he learned of the government's investigation. Indeed, the government itself provides the Court with this information. (See Gov't Mot. for Detention Ex. 59

(providing a chart of Mr. Anderson's international travel since March 2003).³ In other words, while Mr. Anderson could have followed the example of those to whom the government refers as individuals with incentive or history of flight (e.g., Marc Rich), Mr. Anderson's track record is far different. It is noteworthy that the government arranged his dramatic airport arrest not when he was attempting to leave this country but when he was (as he had done three dozen times before) returning.

During this same time frame, Mr. Anderson had other reasons to flee, but did not. In the course of executing its search warrants, the government discovered that Mr. Anderson was in possession of a small amount of illegal drugs. Although the government obtained those materials during the March 2002 search, the government waited 18-months to process those charges on Christmas Eve, 2003. In that time, he took no steps to flee. Instead, when the case was pressed, he pled guilty to possession of a controlled substance and drug paraphernalia in D.C. Superior Court on April 19, 2004 (No. 11097-03). Mr. Anderson paid a \$1,000 fine, received a suspended prison sentence

³ The Court should note that the government's chart of Mr. Anderson's travel begins in March 2003, roughly a year after Mr. Anderson's house was searched and he recognized that he was under investigation. Mr. Anderson traveled internationally between March 2002 and March 2003, so the actual number of international trips taken by Mr. Anderson since he learned of the government's investigation is even higher than is reported here. We are still trying to determine just how many trips have been taken.

that was suspended in favor of sixty days of supervised probation -- including fourteen days in an electronic monitoring program -- and one year of unsupervised probation.

While Mr. Anderson is not proud of this mistake, he does deserve credit for how he handled himself when confronted with it. He pled guilty and accepted responsibility for his actions, he has not tested positive for illicit drugs since then, he complied with all conditions imposed as a condition of probation and he never missed his appointments with the court or probation. Although Mr. Anderson knew at the time that those charges could be just the tip of the iceberg, as he anticipated the indictment for tax fraud in this case, Mr. Anderson made no effort to flee the country. Instead, he created a record that demonstrates his ability to honor his court dates and comply with court-ordered conditions of release.⁴

In addition, while serving his sentence and probation, Mr. Anderson applied for and received permission to travel abroad. He complied with the conditions of travel and returned without incident.

⁴ Similarly, in civil litigation before Judge Batts and Judge Hogan, Mr. Anderson has made roughly a dozen court-scheduled appearances.

C. The Government Misstated Facts And Evidence Which Created A Misimpression Concerning Mr. Anderson's Risk of Flight.

Mr. Anderson's case and arrest were certainly high profile events in the local and national media. Against this background, the government proffered numerous "facts" that were often completely untrue or misrepresented.⁵ Unfortunately, as this so-called evidence was simply proffered and not cross-examined, it has found its way into the record and sometimes into Magistrate Judge Kay's reasoning. A clearer record would reflect that Mr. Anderson is not the risk argued by the government and certainly not someone for whom conditions of release would not assure future appearances.

One straw argument is that Mr. Anderson has all the financial means necessary to live abroad without being subject to arrest and extradition. Putting aside how few high-profile sought after defendants are successful with this attempt to escape, there is no basis for the government's assertion. Past wealth does not indicate current assets, especially

⁵ In addition to misrepresenting the facts relevant to this case, the government misrepresented the facts surrounding Mr. Anderson's misdemeanor prosecution. Ms. Menzer advised Magistrate Judge Kay that "the Government seized a large quantity of drugs." (2/28/05 Hrng. at 31.) Mr. Moustakas -- Mr. Anderson's counsel in that proceeding -- had to correct the government because "the Judge said this was a minuscule quantity of drugs. There were two pills of Ecstasy, there was .020 grams of cocaine, barely a measurable amount." (*Id.* at 47.) Obviously, it would be unlikely for any judge to place a defendant on probation and two weeks of house arrest for possession of "large quantities of drugs." The government has been willing to engage in excess and hyperbole to achieve a pre-trial detention result which is not supported in a careful review of the actual evidence.

for people like Mr. Anderson who made their money in telecommunications before that bubble burst. And, even if Mr. Anderson had access to the vast amounts the government alleges, this does not distinguish him from dozens of current corporate defendants with vast amounts of wealth who have been released with conditions (see Ex. 4).

At the March 7 hearing, an Assistant U.S. Attorney held up what she claimed to be a safety deposit key that was confiscated when Mr. Anderson was arrested. With that key, she made the argument that he had access to vast amounts of resources to flee and live abroad. That unfair inference cannot stand. Whether the key is to a safe deposit box or not, (1) such boxes contain precious papers as often as they ever contain money and (2) that box is somewhere that is now out of the reach of Mr. Anderson who would not have access to it or anything else depending on the conditions imposed by the Court. Indeed, the government has the key.

There was much said about so-called “aliases” and certainly that is a dramatic allegation in a bond hearing. Yet, the government again puts forward the information without telling the whole story. That Mr. Anderson dropped his father’s name in high school or used a different name to bill utilities (that he paid) or as a telephone listing (in lieu of paying extra for an unlisted phone number) decades before he was under investigation or even established the businesses alleged to be improper in the indictment hardly is probative of any issue in this hearing. It makes for good headlines but not proper evidence of a risk of flight.

The government's arguments concerning passports also underscores the problem with the record in this case. At the March 28 hearing the A.U.S.A. proffered that Mr. Anderson has "many United States passports," but failed to advise the Court that there was only one valid U.S. passport and the rest were his previous obviously cancelled and unusable passports (which most people keep around). If it was not on such an important issue, it would be almost comical that the government could actually make the argument that a person's continued possession of expired and cancelled passports in addition to their current one was something nefarious. With respect to Mr. Anderson's application for a new passport after his was seized in 2002, his application is accurate as to what it says. Judge Kay stated as much but noted that more than absolute truth was required of someone who was under government investigation. That premise is not so, but even if it was, has no bearing on the issue of flight or conditions to prevent it because the most important issue is the actual history of his conduct using that replacement passport -- he used it for a business meeting a few days after the seizure and he continued to return to the U.S. each and every time.

The government also makes much of the fact that it discovered a passport issued by "British Guiana" with Mr. Anderson's picture that appears to have been used for travel. This "passport" could not fool a customs agent anywhere in the world because "British Guiana" is not even a real country (it became Guyana in 1966), and the stamps in the back of the passport are from fictitious places. The document is a so-called "camouflage passport" that anyone can purchase off the internet. Whether or not it is an

effective technique to deter kidnapping or terrorism, lots of people use these dummy passports (see Opp'n to Mot. for Detention at 11-12 & Ex. 5 (Decl. of Simon Stern describing the documents and attaching internet materials on ordering camouflage passports)), and Mr. Anderson's possession of one has equally benign inferences as those the government proffered.

As to the allegation that Mr. Anderson is more likely to be able to flee because he supposedly has girlfriends all over the world, including Spain, Brazil, Taiwan, China and Indonesia (see 3/3/2005 Hrng. at 10-11), these are again facts with more sensationalism that support. It is true that Mr. Anderson has dated women who have lived or still live abroad, but the notion that he is some sort of James Bond character who has women around the world willing to break the law for him is pure fiction. There is no reason to slander these women by suggesting that any of them would be willing to commit crimes on Mr. Anderson's behalf or harbor him as a fugitive. Indeed, the woman in Spain the government and Judge Kay spoke of most is someone Mr. Anderson dated years ago, and she is a lawyer there and subject to the rules of her country's bar. Similarly, the so-called Indonesian girlfriend hardly offers safe refuge in a distant land as she resides here in the United States. While the government's embellishments make for a more interesting story, the Court should not base its ruling on such invention.

Again, and more importantly, virtually all of the executives and others who have been given release conditions have had numerous contacts, business associates, businesses, property, and/or relatives abroad. This has not prevented courts from

properly applying the standards for crafting conditions to address a person's familiarity with foreign countries (e.g., passport forfeiture, travel restrictions, ban from using planes, etc.). Buried in the sensational inferences from half facts, the Court must not lose sight of the fact that bail is the norm in all but the rarest of cases.

II. THE GOVERNMENT HAS FAILED TO SATISFY ITS BURDEN THAT PRETRIAL DETENTION IS WARRANTED

Consistent with the traditional presumption of innocence and the Eighth Amendment, the Bail Reform Act of 1984 provides that a defendant should be released pending trial on personal recognizance or "subject to the least restrictive further condition, or combination of conditions, that . . . will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(c)(1)(B). As a general rule, courts should refuse to release defendants on bail "[o]nly in rare circumstances." United States v. Motamedi, 767 F.2d 1403, 1405 (9th Cir. 1985) (Kennedy, J.), and "only for the strongest of reasons." Id. at 1407. Any "[d]oubts regarding the propriety of release should be resolved in favor of the defendant." Id. at 1405.

Your Honor is well aware that there is "a strong presumption against detention." United States v. Gloster, 969 F. Supp. 92, 96 (D. D.C. 1997) (Friedman, J.). Indeed, this Court has explained: "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Id. (quoting United States v. Salerno,

481 U.S. 739, 755 (1987)); see also United States v. Singleton, 182 F.3d 7, 9 (D.C. Cir. 1999) (“Detention until trial is relatively difficult to impose.”).

Magistrate Judge Kay appropriately recognized that Mr. Anderson does not pose any threat to society,⁶ but nevertheless denied him bail as a flight risk based largely on the concern that Mr. Anderson’s extensive experience as a world traveler would give him an opportunity to flee. More is required to justify denying bail. It is not enough for the government to prove by a preponderance of the evidence that Mr. Anderson is a flight risk. The government “must prove by a preponderance of the evidence that the defendant poses a ‘serious’ flight risk.” See United States v. Jamal, 285 F. Supp. 2d 1221, 1228 (D. Az. 2003) (quoting 18 U.S.C. § 3142(f)(2)(A) (“a serious risk that such person will flee”)). Moreover, the “[m]ere opportunity for flight is not sufficient grounds for pretrial detention.” United States v. Himler, 797 F.2d 156, 161 (3d Cir. 1986); see id. at 160 (“[I]t is reasonable to interpret the statute as authorizing detention only upon proof of a likelihood of flight . . .”). Rather, “[t]hat preponderance must, of course, go to the ultimate issue: that no combination of conditions--either those set out in the Bail Reform Act itself or any others that the magistrate or judge might find useful--can ‘reasonably’

⁶ Because Magistrate Judge Kay rejected the contention that Mr. Anderson poses any sort of danger to the community, those arguments are not repeated here. (See Opp’n to Govt’s Mot. for Detention filed with Magistrate Judge Kay at pages 16-33.)

assure that the defendant will appear for trial.” United States v. Xulam, 84 F.3d 441, 442 (D.C. Cir. 1996). In this case, there is no reason to believe that Mr. Anderson is a “serious” flight risk or that the Court is incapable of fashioning a set of conditions that would “reasonably” assure Mr. Anderson’s appearance at trial.

A. The Charges Against Mr. Anderson And His Personal History And Characteristics Do Not Warrant Pretrial Detention.

The Court is well aware of 18 U.S.C. § 3142(g)’s four factors in determining whether any conditions will reasonably assure the defendant’s presence at trial: (1) the nature and circumstances of the offense, particularly where the offense involves a crime of violence or narcotics; (2) the weight of evidence supporting the charges;⁸ (3) the history and characteristics of the defendant, and (4) the nature and seriousness of danger posed to any person or to the community if the defendant is released. 18 U.S.C. § 3142(g). Magistrate Judge Kay concluded that the only factors “relevant to this case are

⁷ At the hearings, Judge Kay suggested that counsel could not “guarantee” that Mr. Anderson would be present at trial. Of course, no case can include a guarantee which is why the law speaks to “reasonable” assurance.

⁸ Because it is inappropriate to require the defendant to mount a full defense prior to trial, “the weight of the evidence is the least important of the various factors.” Motamedi, 767 F.2d at 1408 (citing United States v. Alston, 420 F.2d 176, 179 (D.C. Cir. 1969)). In this case, the government has offered little more than a proffer as to what the evidence will be.

the nature of the pending charges and the history and characteristics of the defendant.”

(Order at 3.)

1. Magistrate Judge Kay’s Treatment Of The Nature Of The Charges Does Not Accurately Reflect The Case

Magistrate Judge Kay acknowledged that tax fraud is not a particularly dangerous crime, but placed heavy weight on the fact that Mr. Anderson could face a lengthy prison sentence if convicted. For some reason, Judge Kay adopted the media’s (and DOJ press release) approach of taking the number of counts and multiplying by the maximum penalty for each to conclude that Mr. Anderson faced “83 years in prison,” and then concluding that was enough to create a flight risk. This Court knows that an 83 year sentence is not really possible and that this was not the means to accurately depict the penalty that Mr. Anderson actually faces either under the Sentencing Guidelines or especially now that the guidelines are used in advisory capacity only under the Supreme Court’s recent decision in United States v. Booker, 125 S. Ct. 738 (2005).

To be sure, Mr. Anderson is facing a lengthy prison sentence, but that fact is hardly unique to him. There are many offenders in the federal system that face what could be tantamount to equal or even greater sentences (especially pre-Booker) who routinely are released under various conditions, including personal recognizance. The chart attached as Exhibit 4 identifies numerous white collar defendants, like Mr. Anderson, who were charged with committing financial crimes and who were considered very intelligent and well-traveled, but who were released subject to conditions set by the

courts. Some of the defendants have more apparent means than Mr. Anderson; many have assets and businesses abroad; some had immediate access to the coast of the United States; some had private jets and yachts. They all were released. There is no reason to treat Mr. Anderson any differently based on this factor. Indeed, there is concern that the government's request for harsher treatment -- pre-trial detention -- has more to do with the government's tradition of finding a high-profile tax case before the April 15 filing deadline than any real consideration of the factors that make Mr. Anderson any different from dozens of individuals accused of tax and other white collar violations who are released with conditions.

2. Magistrate Judge Kay's Treatment Of Mr. Anderson's History And Characteristics Also Did Not Take Full Account Of The Full Record

Magistrate Judge Kay unfairly discounted the importance of Mr. Anderson's compliance with prior court orders and his repeated return to the United States to face an indictment. On the one hand, Magistrate Judge Kay acknowledged that these factors should receive significant weight:

There is indication that [Mr. Anderson] has both complied with all prior orders of the courts and that he had prior knowledge of an investigation against him, and a possible indictment, and returned several times to the United States regardless. As Magistrate Judge Facciola has said, "there can be no better evidence bearing on whether the defendant will appear when required than whether he has appeared when required in the past." United States v. Battle, 59 F. Supp. 2d 17 ([D. D.C.] 1999). Further, when a criminal defendant has not fled the jurisdiction with knowledge of a likely indictment, "there is no greater risk that he will flee

[post-indictment]” than pre-indictment. United States v. Motamedi, 767 F.2d 1403, 1408 (9th Cir. 1985).

(Order at 4.) Of course, Mr. Anderson not only did not flee the country, he safely left the country and returned on more than thirty occasions after learning he was the target of a grand jury investigation.

But despite stating that there “can be no better evidence” than this, Magistrate Judge Kay reversed course and denied bail based on lesser evidence -- “the pending charges in the indictment, the potential consequences of a conviction and his ability to decamp and assume different identities and resist extradition.” (Order at 4-5.) As Magistrate Judge Kay seemed to recognize, however, Mr. Anderson was aware of the “pending charges in the indictment” and was aware of the “potential consequences of a conviction,” especially after the affidavit in support of the search warrant was unsealed and he met with Pretrial Services before his arrest. Consequently, it is difficult to justify giving these factors more weight post-indictment than pre-indictment. Indeed, that is the point of the language Magistrate Judge Kay quoted from then-Judge Kennedy’s opinion in Motamedi that there is “no greater risk” post-indictment than pre-indictment in circumstances like these. Because Mr. Anderson returned to the country on more than thirty occasions after he recognized he would be facing these serious charges, there is no reason to believe he would flee the country now.

Magistrate Judge Kay gives too little weight to Mr. Anderson’s history of compliance with court orders relating to his misdemeanor conviction because the penalty

here is potentially much higher. While it is true that the penalty for the drug offenses was much lighter than the potential penalties in this case, Magistrate Judge Kay erred in looking at them separately. Mr. Anderson learned of a likelihood that he would be prosecuted for tax fraud and the drug offenses at the same time -- when the government executed the search warrant on his home and office in March 2002. From his vantage point at the time, Mr. Anderson was facing a cumulative punishment for the drug offense and for the tax fraud, but he still did not flee. In addition, Mr. Anderson had more resources with which to flee at that time than he does now. This case is unusual in that the government waited more than a year-and-a-half to prosecute him on the drug charges and nearly three years to prosecute him from tax fraud, but that is immaterial to the fact that Mr. Anderson did not flee when he saw both sets of charges coming at once.

The other factors identified by Magistrate Judge Kay concerning an ability to assume different identities and resist extradition do not relate to whether Mr. Anderson is likely to flee, but only to whether he would have the opportunity to flee successfully. They do not get the government over the hurdle of establishing a serious likelihood of flight. Moreover, whatever risk these factors pose can be mitigated through the conditions imposed by this Court, including the loss of his passport, monitoring, waiver of extradition, all of which have been ordered in cases around the country.

3. Mr. Anderson's Interest In Aliases Was Misrepresented

One aspect of Magistrate Judge Kay's opinion that warrant's additional attention is Mr. Anderson's history of using aliases and books concerning the use of different

identities. To begin with, as explained above, the truth about these allegations are different than the impression the government has given. Mr. Anderson has used other names at least since he was in high school and the government can show that he used them on utility bills that he paid and in phone books, but it can not show that Mr. Anderson ever used a fake passport or other documents to travel under as an alias or that his quirky use of names had anything to do with this investigation.

The government selected some books seized in Mr. Anderson's house to argue risk of flight. It failed to inform the Court that a list of his full library (which they admitted consisted of "boxes") would better demonstrate Mr. Anderson's intense interest in protecting his privacy in this information age. Again, selective interpretation of some facts supported the government's pre-trial detention goal but do not accurately present the record.

While we appreciate that Mr. Anderson's near obsession with privacy and possession of things, like the camouflage passport, are unusual, they contribute more to the atmospherics of the case than they do the substance. These facts are like the existence of wealth, the ability to speak foreign languages, and having been a world traveler. The facts go to whether a defendant has the opportunity to flee, but not to whether they defendant intends to flee. Of course, the "[m]ere opportunity for flight is not sufficient grounds for pretrial detention." Himler, 797 F.2d at 161.

The D.C. Circuit has rejected the notion that a defendant who is determined enough could flee the country successfully is the basis for pretrial detention. In United

States v. Xulam, 84 F.3d 441 (D.C. Cir. 1996), the D.C. Circuit rejected the government's contention that the defendant -- an immigrant from Turkey who was charged with falsifying information on a passport and who had only been in the country for three years -- should be denied bail because nothing could stop him if he decided to flee. The D.C. Circuit explained: "That, of course, is true of every defendant released on conditions; it is also not the standard authorized by law for determining whether pretrial detention is appropriate. Section 3142 speaks of conditions that will 'reasonably' assure appearance, not guarantee it." Id. at 444.

Similarly, the Third Circuit has rejected the notion that people with expertise in changing their identities should be denied bail for that reason alone. In United States v. Himler, 797 F.2d 156 (3d Cir. 1986), the defendant was charged with falsifying an identification document, an international driver's license, and he had a history of committing such offenses in the past. Nevertheless, the Third Circuit explained:

While it is true that the defendant stands accused of an unlawful deceit, there is, of course, no per se presumption of flight where the crime charged involves the production of fraudulent identification. The defendant's past convictions do indicate a propensity over a period of time to engage in similar unlawful deceits. The purpose of a Section 3142(e) risk of flight determination, however, is not to detain habitual criminals or deceitful persons; it is to secure the appearance of the accused for trial. As the government concedes, the record indicates that the defendant when previously accused of similar crimes and not detained always appeared in court as described.

Id. at 161.

At best, the government's evidence suggests that Mr. Anderson -- like the defendant in Himler -- has the ability to change his identity and flee the country. Like the defendant in Himler, however, Mr. Anderson should not be denied bail because there is no indication that he intends to flee. See id. at 162 ("He is clearly capable of obtaining false identification, but there is no direct evidence to suggest that he would flee from prosecution in the future."). To the contrary, if past is prologue, Mr. Anderson will continue to make all of his court appearances and comply with whatever conditions the Court imposes upon his release. This was the conclusion in Himler as well.

B. Mr. Anderson Has Compelling Reasons Not To Flee

While the government likes to point to the fact that much of Mr. Anderson's business and many of his friends are overseas to suggest that he has no reason to stay in the United States, the fact remains that Mr. Anderson was raised in the Washington, D.C. area and he has always returned here. But if there truly is nothing keeping him here, the government's claim begs the question why has Mr. Anderson returned to Washington, D.C. from abroad on more than thirty occasions since he learned that he would be facing these charges? The answer is that Mr. Anderson has more at stake in leaving than either the government or Magistrate Judge Kay realized.

Magistrate Judge Kay wrote that "Mr. Anderson has limited or no ties to either this jurisdiction or indeed the United States," and suggests his analysis may be different if Mr. Anderson "had a wife and children in the area." (Order at 4.; see 3/3/05 Hrng. at 62). The fact that Mr. Anderson has no wife and no children should not be misinterpreted to

mean that Mr. Anderson has no family or other ties to the area. To the contrary, Mr. Anderson's only family -- his mother and step-father -- live here, in the Washington area. He has helped provide for them when he has been able to do so. They have shown up to all court appearances, and they are close to their son.

It is a cruel position for the government to assert that Mr. Anderson is less connected to his aging parents, who are certainly staying in this area and who he might never see again at the last period of their lives if he fled, than he would be if he had a wife or children that he could more readily ask to leave with him. Moreover, this is where Mr. Anderson grew up. This is where his friends are and where he built his reputation. These are the reasons that Mr. Anderson repeatedly has returned to Washington, D.C.

Similarly, the government has overlooked the serious consequences that would befall Mr. Anderson if he were to flee. Mr. Anderson recognizes that flight would not result in some game where he could alternate between being himself and adopting a new identity for a short while. It would mean living as a fugitive, walking away from his reputation, his businesses, the organizations he has founded and the causes he cares about. He understands that the United States would come looking for him and would enlist its allies around the world in that effort. Living in hiding would mean that he would likely never see his family or many of his friends again. And given the notoriety of his case, Mr. Anderson is undoubtedly well aware that it would be quite difficult to hide.

III. LESS RESTRICTIVE CONDITIONS WOULD "REASONABLY ASSURE THE APPEARANCE OF THE PERSON AS REQUIRED AND THE SAFETY OF ANY OTHER PERSON AND THE COMMUNITY."

Even assuming that the government could demonstrate that Mr. Anderson is a serious flight risk or poses some danger to the community, the government must also demonstrate by a preponderance of evidence "that no condition or combination of conditions of release will reasonably assure [the defendant's] appearance at trial." United States v. Simpkins, 826 F.2d 94, 94-95 (D.C. Cir. 1987). As the D.C. Circuit has explained, "Section 3142 speaks of conditions that will, 'reasonably' assure appearance, not guarantee it." Xulam, 84 F.3d at 444; see also United States v. Alston, 420 F.2d 176, 178 (D.C. Cir. 1969) ("The law requires reasonable assurance but does not demand absolute certainty").

Thus, if this Court concludes that he poses a flight risk, Mr. Anderson understands that courts have imposed various conditions or combinations of conditions that are calibrated to assure his appearance. Among these are restriction on leaving his own house and business, restrictions on his leaving the District of Columbia, forfeiting a passport⁹, ~~electronic monitoring~~, a procedure to call into Pretrial Services, ~~restrictions on~~

⁹ Cf. Xulam, 84 F.3d at 443 ("On a more practical level, the government has taken away all his passports and travel documents, so it is unlikely he could go far even if he wished to."). This, as we have indicated, is all the more true after September 11, 2001.

~~his contacting people abroad~~, restrictions on his access to property, waivers of extradition, and individuals close to him posting their property as bond. (See Opp'n to Gov't Mot for Detention at 33-36 (addressing the types of conditions that have been imposed by courts in other cases).)

IV. PRETRIAL DETENTION WOULD SERIOUSLY IMPAIR MR. ANDERSON'S ABILITY TO ASSIST COUNSEL IN PREPARING HIS DEFENSE.

In addition to the statutory factors discussed above, a number of courts have recognized that detention may seriously impair a defendant's ability to prepare adequately for his defense. (See Opp'n to Gov's Mot. for Detention at 36-38.) In this case, detention of Mr. Anderson pending trial would irreparably impede his new counsels' efforts to defend Mr. Anderson against the extensive and complex charges made in the indictment. The government has represented that it has collected approximately ninety boxes of materials that relate to a vast number of financial transactions and complicated business arrangements over a period of at least ten years. Mr. Anderson is uniquely placed to assist counsel in understanding these transactions. Indeed, the government repeatedly has asserted to defense counsel that Mr. Anderson is the person who has the best understanding of the transactions at issue in this case. Mr. Anderson's presence during the preparation of his defense will be indispensable, and any pre-trial detention would seriously impair his ability to present a defense.

Given the complexity of this case, which the government claims goes back more than 20 years, involves numerous companies and transactions around the world, and a

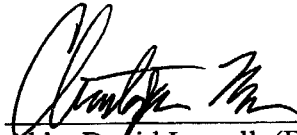
great deal of documents, it would be next to impossible to prepare for trial with Mr. Anderson in prison. Already, counsel have run into problems just finding our client as the government has moved him from facility to facility without disclosing his whereabouts. In fact, Mr. Anderson and his lead counsel had a critical planning session cut short yesterday after spending less than half an hour together by U.S. Marshals who terminated the meeting so that they could move Mr. Anderson to an undisclosed facility. We now have learned that, after terminating Mr. Anderson's meeting with counsel, the Marshals held Mr. Anderson at the same facility for between two and three hours before transporting him. There was no reason for the interruption to begin with and it was exacerbated by the misinformation given counsel. Not only did the Marshals misstate their departure, Pretrial Services stated that Mr. Anderson had been transferred to D.C., when in fact he was still in Montgomery County. Even while at the Detention Center, Mr. Anderson and counsel had to exchange documents one at a time through a narrow slit in the cell. This will be no way to prepare for a trial in such a complicated, document-heavy case.

V. CONCLUSION

For the foregoing reasons, Walter Anderson respectfully requests that this Court grant his Motion to Impose Conditions of Release and release him from custody pending trial subject to the least restrictive conditions the Court deems appropriate.

Dated: March 10, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2005, copies of the foregoing

Motion to Impose Conditions of Release were served by hand-delivery to:

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