

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

**WALTER ANDERSON’S SECOND MOTION FOR THE COURT TO IMPOSE
CONDITIONS OF RELEASE**

Defendant Walter Anderson moves this Court to consider the findings it has made respecting Mr. Anderson’s indigency in reconsidering its denial of his request to be released before trial with conditions determined by the Court.¹

¹ Having conferred with the government, the parties jointly propose that the government be given until December 29, 2005 to file an opposition and that the defendant be given until January 5, 2006 to file a reply brief, should one be necessary. Because this motion rests on testimony and evidence already submitted to the Court in prior hearings, the parties would not object to this Court deciding the motion without a hearing. Indeed, Mr. Anderson would like the motion decided as soon as possible and even hopes that the Court could decide the motion before the holidays so that he can spend them with his family. If the Court believes that it would benefit by having argument on the motion, however, counsel for Mr. Anderson and the government would be glad to schedule one after the start of the new year.

INTRODUCTION

This Court has learned a great deal of information about Mr. Anderson in the course of numerous bond hearings and proceedings concerning the substitution of counsel. Among the information the Court has had to consider is the nature of any funds Mr. Anderson may have that could enable him to flee and live as a fugitive. As he has expressed in these proceedings, there are no such funds. Mr. Anderson's indigency should now inform the Court's consideration of condition of release that have been the subject of prior proceedings.

If Mr. Anderson had the resources the government claimed he had, Mr. Anderson would have used those funds to implement the release plan we previously proposed. Indeed, he also would have used those funds to maintain his representation by private counsel. Just as the Court has considered Mr. Anderson's indigency in permitting Chadbourne & Parke LLP to withdraw and in appointing counsel on Mr. Anderson's behalf, the Court should now consider the relevancy of Mr. Anderson's indigency in the bail context because the lack of these funds also means that he cannot flee and live as a fugitive. The lack of funds, therefore, should also change the nature and types of conditions that Mr. Anderson should be subject to in order to secure a release prior to trial. Conditions involving the type of expense that were included in the Nardello-Schwartz plan are no longer possible and, more importantly, are no longer needed.

Mr. Anderson's indigency also aggravates many of the concerns this Court has expressed regarding Mr. Anderson's ability to obtain a fair trial. Mr. Anderson is quite

fortunate to have been assigned two very capable lawyers to assist him in his defense, after he became unable to afford his prior counsel, but Mr. Anderson's case remains quite complicated and his new counsel needs all the opportunities they can have for as much direct and unrestricted access to Mr. Anderson as possible. The work done to date makes clear that Mr. Anderson must be heavily involved in preparing his defense and in working with his lawyers, and that is very difficult to do with him being detained.

ARGUMENT

I. Mr. Anderson Is Not A Flight Risk

Since he last asked the Court to consider his conditions of release, Mr. Anderson's case for being released and his need to be released have both grown stronger. Although the Court previously denied Mr. Anderson's request for bail because "millions of dollars in assets" were unaccounted for and the Court found "that a significant probability exists that Mr. Anderson therefore has control over assets which could facilitate his flight from prosecution," (8/10/05 Order at 9) the Court more recently questioned Mr. Anderson and his counsel regarding his financial situation and held that "the evidence in the record, the sworn testimony heard by the Court, and the simple facts of Mr. Anderson's situation strongly suggest that he is indeed without access to substantial funds at present." (10/26/05 Order at 4.) Indeed, the Court explained: "It is

difficult to imagine that Mr. Anderson, if he truly had the wherewithal to afford counsel and the cost of his proposed release plan, would willingly forego these objectives simply to conceal assets from the Court.” (Id. at 5.)² Just as this new evidence demonstrates that Mr. Anderson does not have the financial resources to afford the legal counsel of his choice or to fund his previously proposed release plan, this same evidence demonstrates that the government’s initial claim that Mr. Anderson had access to millions of dollars with which to flee also is mistaken. The Court’s prior bail determination, which rested in part upon the conclusion that there was a “significant probability” that Mr. Anderson had access to substantial financial resources that could be used to flee, should be reconsidered now that the Court has acknowledged that the more complete record in the case demonstrates that this is not true.³ Based on this better understanding of the facts, we

² Additional evidence also demonstrates that Mr. Anderson does not have access to the \$20 million paid years ago to Ms. Sylvia Rubio de Molina’s Swiss bank account. The government has suggested that Ms. Rubio de Molina may just be holding the money for Mr. Anderson -- although the evidence shows she earned this money as compensation for her work. Recent letters from Ms. Rubio de Molina to Mr. Anderson demonstrate that she wants nothing to do with him and will not help him in any way. (See, e.g., Ltr. from C. Hamilton, counsel to Ms. Rubio de Molina, to A. Lowell of 8/8/05 (explaining that they have advised the prosecution and Mr. Anderson that Ms. Rubio de Molina has severed all ties with Mr. Anderson and requesting that we advise him not to contact her).)

³ Mr. Anderson’s counsel argued extensively both at hearings and in written submissions to the Court that Mr. Anderson is not a flight risk given his ties to the community and the fact that he left and returned to the United States on dozens of

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believe it should be clear to the Court that Mr. Anderson does not pose a “serious risk” of flight. 18 U.S.C. § 3142(f)(2)(A).

II. Mr. Anderson’s Release Is Necessary For Him To Prepare His Defense

This change in Mr. Anderson’s circumstances also has made his need for release more acute. Having lost his prior legal team due to his inability to pay, Mr. Anderson now has a smaller legal team to assist him with even less time to prepare for a speedy trial. They will need all the direct and unrestricted access they can have to provide him the representation this Court has appointed them to provide.

Mr. Anderson’s personal involvement in preparing his case is much more essential than in most cases. There is virtually no one else who can explain why Mr.

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occasions, even though he knew he was facing an imminent indictment and had far more substantial financial resources at that time. We also have argued at length that Mr. Anderson’s interest in aliases, false identification and people who have lived underground does not make him a flight risk. Rather than rehash those arguments here, we will instead incorporate them by reference.

We also reiterate that the weight of the evidence is plainly on Mr. Anderson’s side. Even after all this time and the opportunity to review an extensive number of documents, the government has not come forward with any “smoking gun” that demonstrates that any sort of crime has been committed. The evidence clearly shows that the relatively small assets at issue had been given to a charitable entity before they grew substantially in value. Mr. Anderson did not own these assets, he merely managed them for the benefit of the charitable entity and their ultimate beneficiaries. He was not obligated to pay any taxes on this revenue because the money was not his.

Anderson structured the companies he managed in the way he did or describe the transactions those companies engaged in. And while there are plenty of documents that establish a corporate structure or document that a transaction was made, there is very little documentation explaining why those actions were taken. Understanding these highly complex business dealings is at the center of this case and is profoundly important to developing the defense, so it is of the utmost importance that Mr. Anderson's counsel have ready access to him. The very goal the Court was anxious to achieve in making the appointment of counsel will be undermined, potentially jeopardizing Mr. Anderson's right to receive a fair trial, unless the Court fashions some conditions allowing his pretrial release.

Our experience over the past ten months of Mr. Anderson's detention confirms that Mr. Anderson and his counsel will not be able to adequately prepare for trial as long as he is detained before trial. As set out in our Motion for the Court to Vacate the Schedule for Addressing Bail-Related Issues (filed Nov. 18, 2005), it was extremely difficult for Mr. Anderson and his counsel to communicate while he was in CTF. Although the Court had been advised by CTF officials that Mr. Anderson or his counsel could set up an attorney call just by asking, our repeated requests for such calls went unanswered. Mr. Anderson obtained only two such calls before he was put in isolation, and it was after days of paperwork transpired, and he received two more calls after he was put in isolation. Mr. Anderson's counsel had no means of calling him, and Mr. Anderson had only limited access to public phones for calling his attorneys. Mr.

Anderson also was blocked from calling his attorneys collect after his telephone bill grew, and the block on his calls to his attorneys was not lifted even after the balance was paid down. And when using those phones, Mr. Anderson had to stand and the conversations took place in loud public areas that did not afford any privacy. This made it extremely difficult for Mr. Anderson's attorneys to discuss day-to-day developments in his case with him or to ask even simple follow-up questions concerning documents or events that had transpired.⁴

Visiting Mr. Anderson at CTF on a daily basis also was impractical because it was such a time-intensive process. The round-trip commute time was at least an hour, and clearing security each way and the wait to see Mr. Anderson often took more than an additional hour. On some occasions, Mr. Anderson's counsel would have to wait more

⁴ As we explained in our Motion for the Court to Vacate the Schedule for Addressing Bail-Related Issues (filed Nov. 18, 2005), Mr. Anderson's counsel believed the situation with Mr. Anderson's phone access was solved when Mr. Anderson began calling us regularly in the morning and afternoon. Unbeknownst to us, Mr. Anderson was calling us with a contraband cell phone, which was confiscated and led to disciplinary action against him. Subsequently, Mr. Anderson has advised us that he had to use the contraband cell phone because he was being denied his telephone access to counsel by CTF and he did not want to be railroaded into an unjust conviction because he was denied access to his legal counsel. Although we do not condone Mr. Anderson's use of the contraband cell phone, it is true that Mr. Anderson and his counsel were prevented from adequately communicating by phone until that point in time. As Mr. Anderson no longer has access to a cell phone and his constant involvement will be all the more important in getting his trial counsel ready for trial, the defense is seriously concerned that its ability to prepare for trial will be greatly hampered.

than two hours just to see him. Meetings with Mr. Anderson often were inefficient because he did not have access to his computer files and could only review a limited number of paper documents at a time,⁵ so Mr. Anderson was unable to appropriately prepare for our meetings in advance.⁶ Mr. Anderson's ability to prepare also was

⁵ CTF did not honor the library schedule that exists on paper, preventing Mr. Anderson from gaining access to the library computers, which were the only computers available to him. Moreover, the few computers in the library are in great demand and difficult to obtain access to even when the library is open. Because the computer equipment is dated though, Mr. Anderson was not able to read many of his files that were created using more modern software, even when he could use those computers.

⁶ CTF has raised a variety of other objections to Mr. Anderson's conduct while at CTF, but again the driving force behind Mr. Anderson's conduct was the misfeasance of CTF officials. For example, Mr. Anderson often must use the mail for his business, legal and professional matters, but the CTF commissary rarely had stamps. Mr. Anderson's friends and family would mail stamps to him, but they would be stolen by whoever opened his mail at CTF. Mr. Anderson's girlfriend then began folding a piece of paper over the back of cards that were sent to him, forming a pocket in which stamps were enclosed, so that they would not be found and stolen. While CTF describes this as smuggling, it was stamps (not firearms) that were being delivered and stamps Mr. Anderson was entitled to use in effectuating his First Amendment and Sixth Amendment rights. Again, the only reason the stamps had to be delivered in this manner was to prevent the stamps from being stolen by whoever was opening his mail.

CTF also objects that Mr. Anderson was communicating with his girlfriend through a numerical code. Mr. Anderson and his girlfriend have advised us that their messages to one another merely communicated what most people in a relationship would consider private, such as their feelings for each other and their concerns for the future. The government surely has cracked this relatively simple code. No one appears to suggest that the content of anything said in these messages had any implication for the security of the prison.

compromised by serious respiratory illness and CTF's refusal to provide him with medical care until after numerous calls had to be made on his behalf, but which nevertheless took eight weeks for medication to be made available, and the fact that temperatures within the prison were well over 100 degrees throughout much of the Summer because the air conditioning went out and was not repaired for several weeks. (See Ltr. from W. Anderson to D. Paul, CTF of 8/3/05 (explaining, in a letter Mr. Paul never answered, that he has not been allowed the legal calls Mr. Paul advised Judge Friedman he would receive, and complaining that he had been denied medical care and about the high temperatures) (Ex. A).) See also Colbert I. King, A Searing Portrait of Abuse, Wash. Post at A25 (Nov. 26, 2005) (explaining how an Inspector General's report of an inmate's death after just one week in custody "documents incompetence, neglect and dishonesty" at CTF).

Now that Mr. Anderson has been transferred to the D.C. Jail it appears that many of these problems have been transferred with him. Mr. Anderson's counsel spent nearly an hour-and-a-half waiting for Mr. Anderson at the D.C. Jail even after clearing security and obtaining a room in the attorney-client visiting area. Mr. Anderson had been deprived of his legal papers, which clearly essential in preparation for his defense, reading materials and even basic toiletries, such as a tooth brush and a towel, for the previous 36-hours. Given the complexity of this case and the need for extensive interaction between Mr. Anderson and his counsel, it is doubtful that any penal facility

would provide Mr. Anderson and his counsel the ability to prepare for trial in a timely manner.

III. Adequate Conditions Exist That “Reasonably Assure” Mr. Anderson’s Presence At Trial

Mr. Anderson’s case is not much different from other tax cases, where bail is routinely granted. Indeed, the government rarely can satisfy the difficult burden of proving “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”). Ample measure can be taken here to ensure Mr. Anderson’s presence at trial. There are some unique circumstances in this case, but they should not lead to a final conclusion that no conditions will suffice.

Before the situation over funds affected Mr. Anderson’s ability to implement the Nardello-Schwartz, this Court was indeed contemplating a set of conditions to meet the legal standard of reasonably assuring Mr. Anderson’s presence at trial. Even though such expensive measures are not possible, there remain conditions of release that address the standards in the law.

Among these are that the Court: (1) release Mr. Anderson into the custody of his mother; (2) place Mr. Anderson on house arrest in his mother's home at all times, except to attend his proceedings before this Court or other trips (e.g. to meet with counsel, to review documents) that the Court specifically approves; and (3) require that Mr. Anderson be placed in the High-Intensity Supervision Program⁷ where he will be subject to electronic monitoring and other checks. As in the past, (4) Mr. Anderson's parents -- Mr. and Mrs. Heinle -- will post their home as bond, as will Mr. Anderson's cousins, Judy and Tom Lallier; and his friends, Jim Kenefick and Robert Werb. Each of the people posting their home is willing to agree not to be compensated in any manner if their home is seized and, given Mr. Anderson's current financial situation, none could reasonably expect any money to be available as compensation. They are among the people that know Mr. Anderson the best and whom Mr. Anderson cares about most. This Court should take comfort in the faith they place in him and understand that Mr. Anderson would not do anything to put them in harm's way.

Releasing Mr. Anderson into his mother's custody and placing him on house arrest at her home, except when he is needed in Court, would go a long way to ensuring

⁷ Jeremy Schumacher at Pretrial Services has evaluated Mr. Anderson's eligibility to participate in the High-Intensity Supervision Program by staying at his parent's home, and advises us that the home is suitable and that Mr. Anderson qualifies for placement in the program.

Mr. Anderson's presence at trial. By placing Mr. Anderson in Pretrial Service's High-Intensity Supervision Program, Mr. Anderson also would be subject to electronic monitoring and other safeguards to ensure that he remains in the home. In addition, Mr. Anderson's new counsel have assured us that working with Mr. Anderson from his parent's home would greatly facilitate their preparations for the case.

As a further deterrent against flight, Mr. Anderson's elderly parents have agreed to post their home as bond, as have other friends and family. The equity in these homes amounts to a substantial bond:

Name	Relationship	Equity Value of Home
Beverly & Glenn Heinle	Parents	\$500,000
Judy & Tom Lallier	Cousin	\$250,000
Jim Kenefick	Friend	\$300,000
Robert Werb	Friend	<u>\$650,000</u>
		\$1,700,000 Total

A person's home, of course, means more to them than just the equity it holds. The fact that so many people are willing to place the very place where they live at risk for Mr. Anderson to obtain his freedom demonstrates that the people who know him best have every reason to believe that he will appear for trial. Mr. Anderson's friends and family mean the world to him, and these friends and family mean all the more to him

because they are standing by his side at his time of need. Mr. Anderson would never betray them by costing them their homes.

Mr. Anderson is a fighter and he is very anxious to repair his character and vindicate himself at trial. Mr. Anderson always has intended to stay and fight these charges. When he had several million dollars in the bank and knew that indictments were imminent, he left and returned to the United States on more than forty occasions. Now that he has no money, and assuming that the Court accepts the homes of his friends and family as bond, there is even less reason to believe that Mr. Anderson would be a flight risk. These conditions are more than adequate to reasonably assure Mr. Anderson's presence at trial, and go well beyond what typically is required in tax cases.

Dated: December 15, 2005

Respectfully submitted,

/s/
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