IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
v.	*	**Criminal No.: PWG-11-0661**
PAUL DUNHAM and SANDRA DUNHAM	*	
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MOTION TO REVOKE DETENTION ORDER

The defendants, Paul and Sandra Dunham, by and through counsel, hereby move pursuant to 18 U.S.C. § 3145(b) to revoke the May 29, 2014, Order of Detention issued by Magistrate Judge Jillyn K. Schulze.[1] Mr. and Mrs. Dunham stand before the Court citizens of the United Kingdom who are presumed innocent of the fraud charges pending against them. In this case, there is no presumption of detention, and nearly every factor under the Bail Reform Act weighs strongly in favor of pretrial release. The Dunhams are industrious, upstanding U.K. citizens and legal permanent residents of the United States who have no criminal record, no history of drug or alcohol abuse, and no significant financial resources. What they do have are good friends, Mike Jones and Annie Hallinan of Southern Pines, North Carolina, who are willing to serve as their third-party custodians and post their million dollar home to ensure the Court that the Dunhams will appear for all court appearances.

The United States government has taken the position that the Dunhams are a flight risk, in large part, because they fought extradition to the United States. This stunning position of federal prosecutors flies in the face of justice, the diplomatic understanding between the United States

[1] Through his counsel, Mr. Dunham joins in this motion.

and the United Kingdom, and the due process rights of the citizens of this country and the United Kingdom. No citizen of either country – including Paul and Sandra Dunham – should be deemed a flight risk because she exercised her right to challenge extradition.

BACKGROUND

On December 7, 2011, Paul and Sandra Dunham were charged by Indictment in the District of Maryland with conspiracy, wire fraud, and money laundering. At the time, the Dunhams had been living in England for more than two-and-a-half years, having returned there from the United States after they resigned from their positions at Pace, Inc. in May 2009. The couple left the United States in May 2009, because they had no job and no healthcare and Mr. Dunham was in declining health. Indeed, shortly after their return to the United Kingdom, Mr. Dunham had a stroke for which he sought and received medical care. See Exhibit A (Paul Dunham Medical Records) (under seal).

On November 13, 2012, Mr. and Mrs. Dunham were arrested on a warrant for these charges. They were granted bail and released. The conditions of release were: (i) live and sleep every night at 100 Winding Brook Lane, Collingtree Park, Northampton; (ii) surrender their passports to the police; (iii) report to Northampton Police Station three times a week, on Mondays, Wednesdays, and Fridays, between the hours of 6:00 p.m. and 10:00 p.m.; (iv) provide a surety of £15,000 to the Court; and (v) not apply for any replacement travel documents. The Dunhams complied with every one of those conditions. After a few months, the condition that they report to the police three times a week was lifted, and eventually the reporting requirement was removed entirely.

The Dunhams were promptly advised of their right to challenge extradition, which they

elected to exercise. They were appointed counsel, and through their attorneys, they pursued the legal channels afforded to British citizens who elect to exercise their right to challenge extradition. On April 8, 2013, their petition was denied by the Magistrate Court. They exercised their right to an automatic appeal to the High Court. The High Court dismissed their case on February 19, 2014. They petitioned the Supreme Court to hear their case, but as in the United States, the Supreme Court rarely grants certiorari petitions and the Dunhams' case was no exception. Having found no relief in English courts, they appealed to the European Court, as they were permitted to do, but that court, too, denied them relief. In mid-May 2014, they were notified that they would be extradited later in the week.

On May 15, 2014, the day they were to report to the airport, police found Mr. and Mrs. Dunham at home, in their bedroom, in an apparent haze. This has been reported as an attempted suicide. They were taken to the hospital, evaluated, and released from the hospital the next day. The evaluating physicians determined they were not suicidal. See Exhibit B (medical records) (under seal). They were detained in England and flown to the United States to appear on these charges.

On May 23, 2014, Mr. and Mrs. Dunham appeared in the United States District Court for the District of Maryland in Greenbelt for their initial appearance. Gary E. Proctor was appointed to represented Mr. Dunham. The Office of the Federal Public Defender was appointed to represent Mrs. Dunham. On May 29, 2014, Judge Schulze presided over a hearing on the government's motion for detention pending trial. The Court entered an order of detention based on risk of flight, citing primarily to the couples' efforts to fight extradition, their U.K.

citizenship, and their recent, alleged suicide attempt.[2]

This motion to revoke the detention order followed.

ARGUMENT

I. The Court Reviews The Detention Order De Novo.

When acting on a motion to revoke a magistrate judge's detention order under 18 U.S.C. § 3145(b), the district court reviews the order of detention de novo and makes an independent determination whether release on conditions is appropriate. United States v. Williams, 753 F.2d 329, 333 (4th Cir. 1985).

II. There is No Presumption of Detention.

In this case, the Dunhams are charged with conspiracy, wire fraud, and money laundering. None of these charges triggers a presumption of detention under 18 U.S.C. §§ 3142(e)(3) & (f)(1). Thus, there is no presumption that they be detained pending trial in this case.

III. Conditions of Release Can Be Set to Reasonably Assure the Dunhams' Appearance.

The government moved for detention based on risk of flight, not danger to the community. Thus, the government must establish that no conditions of release could reasonably assure the Dunhams' appearance. It cannot meet that standard.

As the Court is well aware, the Bail Reform Act provides four factors that must be considered when determining whether pretrial release conditions can be set: (1) the nature and circumstances of the offense, including whether the offense is a federal crime of terrorism; (2) the weight of the evidence against the defendants; (3) the history and characteristics of the

[2] The transcript for the detention hearing has been ordered, but as of the time of this filing, it had not yet been received by counsel.

defendants, including the defendants' character, physical and mental condition, family and community ties, employment, financial resources, past criminal conduct, and history relating to drug or alcohol abuse; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendants' release. See 18 U.S.C. § 3142(g).

(A) The Nature and Circumstances of the Offense.

The Dunhams are charged with conspiracy, wire fraud, and money laundering of funds from their former employer, Pace USA and Pace Europe, during an eight-year period from 2002 to 2009. The essence of the charges is that Mr. and Mrs. Dunham used company credit cards for personal expenses, such as groceries and household items, and submitted those expenses for reimbursement as business expenses. The Indictment generally alleges loss in the amount of $1.4 million, but the itemized monetary amounts alleged in the 32 overt acts are relatively small. They range from a $198 grocery bill allegedly submitted by Mrs. Dunham to a $12,597 reimbursement submission by Mr. Dunham for air travel. Of the 32 overt acts, only eight overt acts involve Mrs. Dunham. Seven of those eight are for grocery bills in 2004 and 2005 that total $2,256 and average $322.[3]

The charges against Mr. and Mrs. Dunham do not involve a particularly complicated or extensive fraudulent scheme, such as a Ponzi scheme or insider trading scam. It is not alleged that they stole another person's identification. Nor is it alleged that they obstructed or attempted to obstruct justice. The charges are relatively simple fraud charges that will be hotly contested at trial. Thus, the nature and circumstances of the alleged offense weigh strongly in favor of

[3] The eighth overt act relating to Mrs. Dunham is a reimbursement submission for air travel for her husband in the amount of $1,230. As the government concedes, Mrs. Dunham's alleged involvement and culpability is significantly less than that of her husband.

pretrial release.

(B) The Weight of the Evidence.

At the detention hearing, the government proffered its evidence and referred to the Indictment. It did not present evidence or testimony. The evidence proffered by the government suggests that its case rests largely on business expense submissions, which are certainly subject to interpretation, as well as the testimony of a few Pace employees who will testify regarding their recollection of events and conversations that date back five to ten years. The Dunhams vehemently dispute the fraud charges, and they look forward to defending themselves at trial.

(C) The History and Characteristics of the Defendants.

(i) Past Criminal Conduct.

Mr. and Mrs. Dunham are both 58 years old, and they have no criminal history. They have never previously been charged with a crime.

(ii) Financial Resources.

Mr. and Mrs. Dunham have no financial resources to speak of. In April 2012, they filed for bankruptcy. After a rigorous investigation into their assets, the bankruptcy court determined they had none and discharged their debts. Currently, their only source of income is a yearly pension in the amount of approximately $18,000 for Mr. Dunham and approximately $9,000 for Mrs. Dunham. They have no savings. They have no equity in their home in England. They simply do not have the financial resources to flee.

(iii) Defendants' Character.

Mr. and Mrs. Dunham have been married for more than 35 years. They have led exemplary lives as hard-working parents and grandparents. They have established an extensive

network of friends and professional acquaintances. Their friends and family believe they have strong morals and good character. Proposed third-party custodians, Mike Jones and Annie Hallinan, believe so strongly in their friends' good character and integrity that they are willing to post their home as a surety.

(iv) History Relating to Drug or Alcohol Abuse.

Mr. and Mrs. Dunham have no history of drug or alcohol abuse.

(v) Employment History.

Until recently, Mr. and Mrs. Dunham worked their entire adult lives. Mr. Dunham is a mechanical engineer. He worked for two electrical companies in the 1980s before William Siegel, the former owner of Pace, Inc., invited him to work for Pace and establish the company, Pace Europe. Mr. Dunham agreed and worked for Pace for more than 20 years. He eventually became a shareholder in the company. He resigned in May 2009 and returned to the U.K. In England, Mr. Dunham suffered from significant health problems, allowing him to work only sporadically. Due to his poor health, he was not working in the months preceding extradition.

Mrs. Dunham also has worked her entire adulthood. She worked for a department store before her son was born, and after a few years, she returned to work for a radio and television company for several years. After her husband accepted a job with Pace, she, too, began to work for Pace. Mrs. Dunham worked for Pace Europe for more than 20 years. When the couple returned to England in 2009, she worked as a book keeper and accountant. She was working for Midshires Electrical & Lighting in Northampton until she and her husband were extradited last month.

(vi) Physical and Mental Condition.

Mr. Dunham suffers from myriad health problems, which have been communicated to the Court and the U.S. Marshals. Since his detention at the Chesapeake Detention Facility, Mr. Dunham has not been provided his medications consistently. He has a cell mate even though a medical professional instructed that he have a single cell. He has no choice but to eat the high-fat, high-sodium diet provided by the jail, even though doctors have instructed that he receive a low-fat, low-sodium diet. Mr. Dunham's medical conditions are significant, and they weigh in favor of his release pending trial. He will receive far better medical treatment and a more appropriate diet in the community than he is currently receiving in confinement.

Mr. and Mrs. Dunham are mentally stable. The government has argued that they are a flight risk because they attempted suicide before they were extradited. Regardless of whether their actions are deemed a suicide attempt, they are not suicidal now. They have been evaluated by medical professionals in England and the United States. Professionals in both countries determined they were not suicidal. See Exhibits B & C (medical records) (under seal). In any event, to the extent Mr. and Mrs. Dunham need mental health treatment to cope with these stressful circumstances, they will receive far better treatment in the community than they will if they are detained at CDF.

At the detention hearing, the government represented to the Court that there is Fourth Circuit law that a suicide attempt indicates a risk of flight. The government did not provide a case cite to the Court or defense counsel. After the hearing, counsel searched for the Fourth Circuit law to which the government alluded, but was unable to find any case law supporting the government's claim that under Fourth Circuit law an attempted suicide is an indicator of flight

for detention purposes. When counsel asked the government for a case cite, the government responded that the Fourth Circuit case to which it referred is Tug Raven v. Traxler, 419 F.2d 536 (4th Cir. 1969). The government acknowledged to counsel that the 45-year-old case precedes the enactment of the Bail Reform Act, and it also conceded that there are no other Fourth Circuit cases on point, but it nonetheless claims that Tug Raven supports its position. The government is incorrect. Tug Raven involved a wrongful death lawsuit by the widow of a deceased seaman who died on a barge that caught fire. One of the eyewitnesses to the fire committed suicide after the investigation revealed he might be partially responsible for the fire and the seaman's death. In assessing the credibility of the witness's pre-death testimony, the Court stated that "flight after the commission of a criminal act constitutes circumstantial evidence of guilt and suicide is a form of flight." Tug Raven, 419 F.2d at 543. The narrow evidentiary holding in the 1969 Tug Raven case has no relevance to the present-day questions of pretrial release generally or to the Dunhams' circumstances specifically.[4]

Even if the Dunhams were suicidal, and the record does not support that claim, the Court should not detain them because of their suicidal state. As the U.S. Air Force Court of Criminal Appeals aptly stated:

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[4] The government also acknowledged that there is limited precedent outside of the Fourth Circuit to support its position, and it cited to an unpublished 2001 opinion from the Northern District of Illinois, United States v. Hanhardt, 173 F. Supp. 2d 801 (N.D. Ill. Nov. 13, 2001). Hanhardt is irrelevant and distinguishable. The defendant in that case attempted suicide while on pretrial release and as a result failed to appear for his guilty plea. The Court found that he had violated his conditions of release by attempting suicide. The defendant subsequently pled guilty and requested release pending sentencing. The Court denied that request because he had violated his release conditions and there was a presumption of detention.

> There is a fundamental difference between how we treat an accused who is a threat to himself and an accused who is either a threat to flee the jurisdiction to avoid prosecution or to commit other serious offenses. The latter we put in pretrial confinement. The former we refer to mental health practitioners for evaluation and treatment . . . We do not put an accused in pretrial confinement solely to protect against the risk that an accused might kill himself.

United States v. Doane, 54 M.J. 978, 982-83 (2001).

(vii) Family, Community Ties, and the Proposed Third-Party Custodians.

Mr. and Mrs. Dunham are citizens of the United Kingdom and permanent residents of the United States.[5] They lived in the United States for nearly 20 years from the early 1990s to 2009. Although they do not own property in this country or have family here, their good friends, Mike Jones and Annie Hallinan, who live in Southern Pines, North Carolina, are willing to serve as third-party custodians. The Dunhams have known Mr. Jones and Mrs. Hallinan for more than twenty years. Mr. Dunham and Mr. Jones met through professional channels in 1991, and they introduced their wives to each other. The couples have been close friends ever since. They have traveled the world together. They have spent holidays with each other. They have stayed in each other's homes on countless occasions. The attached pictures and narrative offer a glimpse into their shared history and close friendship. See Exhibit D.[6]

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[5] Pretrial Services confirmed with USCIS that Mr. Dunham is a lawful permanent resident. Mrs. Dunham is also a lawful permanent resident, but apparently Pretrial was unable to confirm her residency status. Counsel expects to present evidence of her status at the hearing. In any event, Mrs. Dunham is in the country legally, and her U.K. citizenship should not prevent her release pending trial.

[6] The United States Marshal Service provided the U.K. passports of each of the Dunhams to their counsel at the initial appearance. In the event that the Court orders the Dunhams released, counsel will promptly surrender their passports to the Clerk's office, thereby further alleviating any flight concerns.

Mr. Jones and Mrs. Hallinan are ideal third-party custodians. They were present at the detention hearing, and they will attend the June 19 hearing on this motion. Despite being given only a few days' notice, the proposed third-party custodians secured a hotel room and drove approximately ten (10) hours each way, on a holiday weekend, to show their support for the Dunhams at the detention hearing. Mr. Jones co-owns a company. His wife is retired. They live alone in Southern Pines, North Carolina. Their home is valued at more than $1.5 million.[7] Mr. Jones and Mrs. Hallinan have approximately $1.3 million worth of equity in the home. They have indicated that they would not post their home for anyone other than Paul and Sandra Dunham.

(D) The Nature and Seriousness of the Danger to Any Person or the Community if Released.

Mr. and Mrs. Dunham pose no danger to the community. Not even the government has argued they would present a danger if released.

(E) The Dunhams Did Not Flee the United States to Avoid U.S. Courts.

The Dunhams left the United States in May 2009. They did so because they had resigned from their positions at Pace. With no income or healthcare coverage, they needed to return to the United Kingdom, because Mr. Dunham's health was in rapid decline. Indeed, a few days after they arrived in the United Kingdom, he had a stroke for which he sought medical treatment. See Exhibit A (under seal).

At the detention hearing, the government claimed that Mr. and Mrs. Dunham fled the United States because they sought to avoid defending a civil lawsuit relating to the monetary

[7] Mr. Jones and Mrs. Hallinan are having their home appraised this week and should have an updated appraisal for the Court before the June 19 hearing.

dispute between them and Pace. That is completely incorrect. When they left in May 2009, no civil lawsuit had been filed. They did not learn about a civil lawsuit filed in North Carolina until November 2009. When they were served with the complaint in England, they submitted a response to the North Carolina court and responded to other filings. Mr. Dunham was in regular communication with Pace attorneys. He did not have money to hire an attorney. He called the North Carolina court to inquire if an attorney could be appointed for him, and he was advised that he was not entitled to the appointment of counsel in civil cases. He nonetheless remained in communication with the Court and Pace attorneys. The government makes much of the fact that Mr. and Mrs. Dunham did not appear for their depositions that were noticed in the U.K. There are myriad reasons why they did not appear, including they did not have counsel to represent them at the depositions. Regardless of whether they appeared for their depositions, they were always reachable. Pace and its attorneys knew where they lived. They knew their email addresses. Mr. and Mrs. Dunham never avoided service of process. The suggestion that they are a flight risk because they did not spend money to hire American lawyers, did not fly across the Atlantic to appear for civil proceedings in North Carolina, and did not appear for a deposition without counsel is patently unfair. Mr. and Mrs. Dunham did their best to communicate with the North Carolina court, and in fact, Mr. Dunham requested a postponement in the trial date for health reasons. The North Carolina court denied his request at a hearing on the morning of the trial and then proceeded to conduct a trial without them.[8]

After Pace obtained a civil judgment against them in North Carolina, the company sought

[8] There has been no suggestion – nor could there be – that the Dunhams fled the United States to avoid criminal charges. Indeed, the criminal charges were not filed against them until two-and-a-half years later in December 2011.

to enforce it in the U.K. Mr. and Mrs. Dunham hired an attorney to represent them. After winning in a lower court initially, the Dunhams lost on appeal, and the judgment against them was reinstated, although the amount was reduced dramatically. Nevertheless, they were ordered to pay Pace approximately $500,000 or file for bankruptcy within 30 days. Their only option was bankruptcy. At no point during the civil dispute with Pace in the U.K. did the Dunhams fail to appear at a court hearing or otherwise fail to comply with the judicial process.[9]

IV. The Dunhams' Exercise of Their Right to Challenge Extradition Cannot Be Held Against Them or Deemed a Flight Risk Factor.

The government argued, and Judge Schulze agreed, that the Dunhams pose a flight risk because they fought extradition to the United States. This position is clearly untenable. The exercise of a due process right, such as challenging extradition, cannot and should not be used as a basis for detention. "A person who believes that pending criminal charges in a foreign jurisdiction are bogus has every right to contest removal without being automatically branded as a flight risk." United States v. Ramnath, 533 F. Supp. 2d 662, 670 (E.D. Tex. 2008). See also United States v. Fowlie, 24 F.3d 1070 (9th Cir. 1994) ("Opposing extradition bears no resemblance to [actual fleeing, hiding or concealment]. The underlying reasoning of our cases [regarding flight risk], moreover, cannot be extended to encompass the act of contesting

[9] At the detention hearing, the government suggested that the Dunhams were in such a hurry to leave the United States that they left a Jaguar in their driveway in North Carolina. If the government had done any investigation into that situation, it would have learned that Mr. and Mrs. Dunham were surrendering the car to the bank because they could no longer make the payments. The collection company that was supposed to retrieve the car was unable to enter their gated community. The Dunhams rescheduled a pickup date, which was after their departure, and gave the keys to friends who handed them over to the collection company. The government also claims that the Dunhams were in such a rush to leave that they left their clothes in their house. The Dunhams planned to return to their home after Mr. Dunham received the medical care he needed. There is simply no evidence that they "fled" the United States to avoid U.S. courts.

extradition.").

The position of the United States government in this case stands at complete odds with the position of other U.S. government officials, namely those at the American Embassy in London. According to the U.S. Embassy website: "The U.S. also respects all due process rights that a suspect may want to exercise in the U.K. or European courts to challenge his extradition to the U.S., and we guarantee the right to a fair and speedy trial in the U.S. Courts." See Exhibit E (emphasis added). Thus far, the Dunhams have not been afforded the respect that the United States government promised them upon extradition. Mr. and Mrs. Dunham had a right to challenge their extradition, and they chose to exercise it. That right must be respected not only by the U.S. Embassy in London but by the U.S. Government on U.S. soil.

Mr. and Mrs. Dunham are not the only British citizens to lose an extradition battle. In fact, several British citizens have been extradited recently after challenging extradition, and they were released pending trial. See Exhibit F (Release Order in United States v. Ian Norris, 03-632, E.D. Pa.); Exhibit G (Release Order in United States v. David Bermingham, 02-CR-597, S.D. Tex.); Exhibit H (Release Order in United States v. Christopher Harold Tappin, 07-cr-249, W.D. Tex.). Another British citizen, Jeremy Crook, who did not fight extradition, also was released pending trial. See Exhibit I (Release Order in United States v. Jeremy Reeve Crook, 04-cr-2605 S.D. Cal.). Mr. and Mrs. Dunham have far fewer financial resources than these defendants. There is no reason why they should be detained pending trial because they fought extradition, when other British citizens who also lost the extradition battle were released pending trial.

CONCLUSION

For the reasons stated herein and additional reasons that will be presented at the June 19 hearing, Paul and Sandra Dunham respectfully request that the Court revoke the Order of Detention and release the defendants pending trial.[10]

Respectfully submitted,

JAMES WYDA
Federal Public Defender

/S/

DEBORAH L. BOARDMAN, #28655
Assistant Federal Public Defender
Office of the Federal Public Defender
100 South Charles Street
Tower II, 9th Floor
Baltimore, Maryland 21201
Phone: 410-962-3962
Fax: 410-962-0872
Email: deborah_boardman@fd.org

[10] The defendants reserve the right to submit additional evidence and information to the Court in support of this motion and will do so by June 12, the Court-imposed deadline.