

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 15-mj-978 (HB)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ABDIRIZAK WARSAME,)
)
 Defendant.)

ORDER OF DETENTION

This matter came before the Court on December 22, 2015, for a preliminary and detention hearing. The defendant was present along with his counsel, Robert Sicoli, Esq. The United States was represented by Assistant United States Attorney Andrew Winter. The government called Special Agent Daniel Higgins of the Federal Bureau of Investigation as a witness. The Court found that probable cause exists to bind the matter over to the District Court for further proceedings.

At this hearing, the Court had before it a United States Probation and Pretrial Services report recommending detention finding that defendant presented a risk of non-appearance and a risk to the safety of the community. After consideration of the pretrial services report, the evidence presented during the hearing, the record before the Court, the arguments of counsel, and the factors listed in 18 U.S.C. § 3142(g), the Court concludes by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the defendant is released pending trial. The Court further concludes by a preponderance of the evidence that no condition or combination of conditions of release will reasonably

assure the appearance of the defendant as required at future Court proceedings. Accordingly, the Court grants the Government's motion for detention.

FINDINGS OF FACT

1. The defendant is presently charged in a one-count complaint with Conspiracy to Provide Material Support to a Designated Foreign Terrorist Organization, in violation of 18 U.S.C. § 2339B, which carries a statutory maximum sentence of 15 years imprisonment.

2. As alleged in the complaint, the charge involves allegations that Defendant was party to an agreement to provide material support to the designated foreign terrorist organization known as the Islamic State in Iraq and the Levant (ISIL). The evidence presented established that Defendant attended meetings in the spring of 2014 at which he and co-conspirators viewed ISIL propaganda and plotted travel to Syria with the goal of joining the terrorist organization. Defendant is also alleged to have (a) made attempts to obtain an expedited passport in April of 2014 for the purpose of travel to Syria; (b) provided money to a co-conspirator for the purchase of an expedited passport to facilitate that co-conspirator's travel to Syria; (c) obtained and relayed contact information for a then-current ISIL fighter to a co-conspirator who was enroute to Syria for the purposes of joining ISIL; and (d) actively encouraged a co-conspirator to travel to Syria to wage jihad, insisting that the co-conspirator would be an inspiration to other like-minded individuals.

3. The evidence presented further established that in April of 2015, Defendant, in a recorded conversation, spoke with co-conspirators and a CHS about his affinity for

rocket-propelled grenades (RPGs) and his ability to make a homemade rocket capable of hitting an airplane at 2000 feet. Evidence established that Defendant had earlier employment as a baggage handler at an international airport.

4. The pretrial services report indicates that Defendant has a limited employment history, substance abuse issues, a recent failure to appear in state court, and ties to a foreign county.

CONCLUSIONS OF LAW

Based upon the foregoing, the Court makes the following conclusions of law:

1. The charge in the complaint against the defendant, Conspiring to Provide Material Support to a Designated Foreign Terrorist Organization (ISIL) is supported by probable cause.

2. In this case, the defendant is charged with violating 18 U.S.C. § 2339B(a)(1). Accordingly, there is a rebuttable presumption that “no condition or combination of conditions will reasonably assure the appearance of the defendant as required or the safety of the community.” 18 U.S.C. § 3142(e)(3)(C).

3. In a rebuttable presumption case, the defendant has the “burden of production...to rebut that presumption by coming forward with evidence he does not pose a danger to the community or a risk of flight.” *United States v. Abad*, 350 F.3d 793, 797 (8th Cir. 2003)(quoting *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001)). Here, Defendant has come forward with rebuttal evidence in the form of some family ties.

However, “the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court.” *Id.*

4. In determining if release conditions exist that will reasonably assure the appearance of a defendant at trial and the safety of the community, the Court considers the following: (1) the nature and circumstances of the crime; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant, including mental condition, family ties, employment, community ties, and past conduct; and (4) the seriousness of the danger to the community or to an individual. See 18 U.S.C. § 3142(g).

5. The Court has considered these factors, the facts in the affidavit attached to the complaint, the testimony, and the information provided in the Probation and Pretrial Services report. After considering the factors set forth at Title 18, United States Code, Section 3142(g), the Court finds by a preponderance of the evidence, that no condition or combination of conditions.

6. Based on the facts in the affidavit attached to the complaint, the testimony, and the information provided in the Probation and Pretrial Services report, and based on ISIL’s designation by the Secretary of State, continuously since October of 2004, as a Foreign Terrorist Organization, the Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any person or the community if the defendant were released pending trial.

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The motion of the United States for detention of the defendant is GRANTED;

2. The defendant is committed to the custody of the Attorney General for confinement in a correctional facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

3. The defendant shall be afforded reasonable opportunity to consult privately with counsel; and

4. Upon Order of the Court or request by the United States Attorney, the person in charge of the corrections facility in which the defendant is confined shall deliver the defendant to the United States Marshal for the purpose of appearance in connection with further court proceedings.

Dated: December 23, 2015

s/Becky R. Thorson

Becky R. Thorson

United States Magistrate Judge