

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CR. NO. 16-20552

HONORABLE ARTHUR J. TARNOW

SEBASTIAN GREGERSON,

Defendant.

_____ /

**MOTION TO REVOKE
ORDER OF PRETRIAL DETENTION**

NOW COMES the Defendant, SEBASTIAN GREGERSON, through his attorney, DAVID C. THOLEN, of the Federal Defender Office, Detroit, Michigan, and moves this Honorable Court, pursuant to 18 U.S.C. §3145, to grant this Motion and issue an Order revoking the Order of Detention Pending Trial. Defendant files a supporting Brief and further states:

1. Defendant was charged by Indictment with Unregistered Possession of a Destructive Device, 26 U.S.C. 5861(d); and Unlicensed Receipt of Explosive Materials, 18 U.S.C. 842(a)(3)(A).
2. On August 1, 2016, Defendant appeared on a Criminal Complaint and was ordered temporarily detained. A detention hearing was scheduled for August 4, 2016.
3. On August 2, 2016, the Government filed additional proffer information under seal to support its request for detention.
4. On August 4, 2016, Defendant with Counsel appeared for a detention

hearing. At the conclusion of the hearing, Magistrate-Judge Majzoub ordered Defendant detained on grounds of being a danger to the community.

5. On December 1, 2016, the Government filed a First Superseding Indictment which added two significant charges: Count One - Receipt of Explosive Materials With Intent To Harm, 18 U.S.C. 844 (d); and Count Four - Unregistered Possession of a Destructive Device, 26 U.S.C. 5861 (d).

6. Despite these new charges, the Government has informed Counsel that it does not have any evidence of Defendant having any specific plan to harm any individual person, group of people, or to damage any property. Instead, the Government is relying on general inflammatory statements that Defendant allegedly made to the Undercover Source to support the new charges.

7. Counsel believes that there are suitable bond conditions, such as home confinement with an electronic tether, that would assure Defendant's presence at future court dates and reasonably protect the community if Defendant were released on bond.

8. Defendant has a viable residence with his wife and two children in Detroit, Michigan.

9. Defendant has a suitable alternative address with his mother and father near Ann Arbor, Michigan.

10. Counsel has sought concurrence in this motion but the Government does not concur in this motion.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an Order revoking the Order of Detention Pending Trial and setting conditions of release on bond.

Respectfully submitted,

FEDERAL DEFENDER OFFICE

/s/ David C. Tholen

Attorney for Defendant

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Detroit, MI 48226

(313) 967-5542

E-mail: david_tholenb@fd.org

P43836

Dated: December 15, 2016

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CR. NO. 16-20552

HONORABLE ARTHUR J. TARNOW

SEBASTIAN GREGERSON,

Defendant.

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**BRIEF IN SUPPORT OF
MOTION TO REVOKE
ORDER OF DETENTION PENDING TRIAL**

ISSUE PRESENTED

**WHETHER THE COURT SHOULD REVOKE THE ORDER
OF DETENTION PENDING TRIAL AND RELEASE
DEFENDANT ON BOND?**

I.

BACKGROUND

Defendant is charged by Indictment with Unregistered Possession of a Destructive Device, 26 U.S.C. 5861(d); and Unlicensed Receipt of Explosive Materials, 18 U.S.C. 842(a)(3)(A).

On August 1, 2016, Defendant appeared on a Criminal Complaint and was ordered temporarily detained. A detention hearing was scheduled for August 4, 2016. On August 2, 2016, the Government filed additional proffer information under seal to support its request for detention. On August 4, 2016, Defendant with Counsel appeared for a detention hearing. At the conclusion of the hearing, Magistrate-Judge Majzoub ordered Defendant detained on grounds of being a danger to the community.

On December 1, 2016, the Government filed a First Superseding Indictment which added two significant charges: Count One - Receipt of Explosive Materials With Intent To Harm, 18 U.S.C. 844 (d); and Count Four - Unregistered Possession of a Destructive Device, 26 U.S.C. 5861 (d).

Despite these new charges, the Government has informed Counsel that it does not have any evidence that Defendant had any specific plan to harm any individual person, group of people, or to damage any property. Instead, the Government is relying on general inflammatory statements that Defendant allegedly made to the Undercover Source to support the new charges.

Counsel believes that there are suitable bond conditions, such as home confinement with an electronic tether, that would assure Defendant's presence at future court dates and reasonably protect the community if Defendant were released on bond.

Defendant has a viable residence with his wife and two children in Detroit, Michigan. The existence of that residence has been verified by the Government's pole camera surveillance conducted on that residence, the Undercover Source visiting the residence, and the Government's execution of a federal search warrant at that residence after Defendant's arrest. Defendant's wife is willing to be a 3d party custodian for Defendant if he is granted bond to that address.

In addition, Defendant has a suitable alternative address with his mother and father near Ann Arbor, Michigan. Defendant's father is willing to be a 3d party custodian for Defendant if he is granted bond to the alternative address.

Defendant submits that he understands the importance of following his bond conditions and that he will follow any conditions set by the Court if granted release on bond.

Defendant respectfully requests this Court to reevaluate the appropriateness of bond in his case in light of the lack of danger and flight risk that Defendant poses in the instant case. Defendant believes that his family ties, potential employment, and stable bond address with an operable telephone warrant his release on bond pending trial.

II.

DEFENDANT IS ENTITLED TO BE RELEASED ON BOND BECAUSE HE DOES NOT POSE A DANGER TO THE COMMUNITY OR RISK OF FLIGHT

Defendant should be released on bond pending the outcome of his trial because alternatives to incarceration exist which will insure his appearance at future court dates and provide adequate protection to the community. In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. United States v. Salerno, 107 S. Ct. 2095, 2105 (1987). Congress envisioned the pretrial detention of only a fraction of accused individuals awaiting trial. United States v. Orta, 760 F.2d 887, 891 (8th Cir. 1985). 18 U.S.C. 3142 governs pre-trial detention and mandates the release of a defendant pending trial as long as conditions can be set that will reasonably assure the appearance of the defendant as required in the court and the safety of the community. United States v. Henry, ___ F. Supp.2d ___, 2001 wl 1680254 (E.D. Mich 2001). In considering whether any conditions of release could reasonably assure a defendant's appearance and the safety of the community, the Court considers various factors, including: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug; (2) the weight of the evidence against the defendant; (3) the defendant's personal history and characteristics, including employment, local connections, and history of appearing at court proceedings; (4) whether the offense was committed while on release, probation or parole for another offense; and (5) the nature and seriousness of

defendant's threat to the community if released. Id. Citing 18 U.S.C. 3142(g). The structure of the statute mandates every form of release be considered before detention may be imposed. Orta, at 892.

The facts of the present case suggest Defendant would be an appropriate a candidate for bond. With respect to the nature and circumstances of the offense and the weight of the evidence against Defendant, much of the Government's arguments for detention were based upon the nature, number, and type of weapons Defendant had purchased which were located at his residence at the time of the search. Counsel notes that the grenades, which form the basis of Counts One, Two, and Three, were only momentarily "possessed" by Defendant before he was arrested at the controlled sale. Furthermore, all of the firearms and ammunition which were recovered from his residence were purchased legally, under his valid name, and are corroborated by sales records in the Government's possession. Finally, all of Defendant's firearms and ammunition have been seized by the Government and removed from his residence. The Government has effectively removed Defendant's access to items which could arguably endanger the community.

Defendant's personal history and characteristics weigh in favor of his release on bond. Defendant is a 30 years old married man, and has two young sons. He has no prior criminal convictions or arrests. He is a high school graduate and was attending college courses at Henry Ford Community College before his arrest. He has a consistent employment history and was employed at Target at the time of his arrest. Defendant has strong family ties to this

district through his wife, children, and parents. If released, Defendant is confident that he can find employment. Defendant has been already been detained for 4 ½ months. He understands that if granted bond, any bond violations would only exacerbate his situation and subject him to enhanced penalties in this matter.

III.

CONCLUSION

For all of the foregoing reasons, Defendant respectfully requests this Honorable Court to revoke the order of detention and grant him bond with a condition of home detention with the electronic tether.

Respectfully submitted,

FEDERAL DEFENDER OFFICE

/s/ David C. Tholen

Attorney for Defendant

613 Abbott, 5th Floor

Detroit, MI 48226

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E-mail: david_tholenb@fd.org

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CERTIFICATE OF SERVICE

I certify that on December 15, 2016, I filed the foregoing paper with the Clerk of the Court and using the ECF system which will send notification of such filing to the following:

Cathleen Corken
Assistant U.S. Attorney
United States Attorney's Office
211 W. Fort, Ste. 2001
Detroit, MI 48226

/s/ David C. Tholen
Attorney for Defendant