

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	No. 15-8378MJ
Plaintiff,)	
)	
vs.)	Phoenix, Arizona
)	September 1, 2015
Ahmed Mohammed El Gammal,)	
)	
Defendant.)	

BEFORE: THE HONORABLE BRIDGET S. BADE, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGS

DETENTION HEARING

APPEARANCES:

For the Plaintiff:
U.S. Attorney's Office
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For the Defendant:
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1 THE CLERK: On the record in 15-MJ-8378, U.S.A. versus
2 Ahmed Mohammed El Gammal, before the Court for a continuation
3 of detention hearing.

4 Counsel, please state your appearances.

5 MS. KARLEN: Good morning, Your Honor, Melissa Karlen
6 as well as David Pimsner on behalf of the United States. Here
7 present at counsel table as well is Special Agent Jeffrey
8 Hebert with the Federal Bureau of Investigation.

9 THE COURT: Good morning.

10 MR. PIMSNER: Good morning, Your Honor.

11 MR. MORRISSEY: Good morning, Your Honor, Michael
12 Morrissey on behalf of Mr. El Gammal, who is present.

13 THE COURT: Good morning, Mr. Morrissey.

14 And good morning, Mr. El Gammal.

15 We are continuing the detention hearing which started
16 last week. At the conclusion of that hearing I requested that
17 Pretrial Services conduct an investigation to determine whether
18 Mr. El Gammal's former mother-in-law would be an appropriate
19 third-party custodian, whether her residence would be an
20 appropriate place for him to reside, and whether the residence
21 would be suitable for active GPS location monitoring.

22 Mr. Lara is here. He's also provided a supplemental
23 report.

24 Counsel, did you receive the supplemental report?

25 MS. KARLEN: Yes, Your Honor.

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1 MR. MORRISSEY: Yes, Your Honor.

2 THE COURT: So you know that Pretrial Services is now
3 recommending that Mr. El Gammal be detained. They found that
4 the residence was appropriate for location monitoring, but was
5 not an appropriate residence at which he could reside. It
6 appeared they were concluding that his former mother-in-law
7 would be appropriate as a custodian, but not at that residence.

8 I've received a notebook from the Government with what
9 appear to be translations of e-mails and Facebook posts. I had
10 directed Miss Scheel at last week's hearing to produce that to
11 Mr. Morrissey before today's hearing.

12 Miss Karlen, were those e-mails and Facebook posts
13 produced to defense counsel?

14 MS. KARLEN: Yes, Your Honor.

15 THE COURT: And, Mr. Morrissey, I also have some
16 exhibits that were here on the bench for me this morning that
17 you've submitted, which could have been an e-mail or --

18 MR. MORRISSEY: Yes, Your Honor. It's a single
19 exhibit and it's a series of e-mails.

20 THE COURT: All right. The font is very small.

21 MR. MORRISSEY: It is.

22 Your Honor, the exhibits go to whether or not
23 Mr. El Gammal had any present intention to leave Arizona. And
24 I believe what you'll see is that he was negotiating for a new
25 place to live, was approved for a new place to live, and was

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1 providing -- in the process of providing financial payment for
2 his new place to live.

3 THE COURT: All right. So these three e-mails are
4 addressed to locating a new residence; is that correct?

5 MR. MORRISSEY: Yes.

6 THE COURT: All right. Thank you.

7 All right. Miss Karlen, is there anything the
8 Government would like to add to the record from last week's
9 proceeding?

10 MS. KARLEN: May I have one moment?

11 (Discussion held off the record)

12 MS. KARLEN: Your Honor, we stand on the proffer from
13 last week.

14 THE COURT: Thank you.

15 Mr. Morrissey, is there anything you'd like to add or
16 argue?

17 MR. MORRISSEY: Yes, Your Honor.

18 First, Your Honor, I would like to propose that
19 Miss Dubrow does remain a valid third-party custodian. As the
20 Court indicated, the residence appears suitable for location
21 monitoring. The difficulty identified by Pretrial Services
22 does not refer to Miss Dubrow, but to somebody who was formerly
23 residing in her house and is not currently there. I don't
24 believe that's a valid criterion then to say that the
25 environment is not appropriate for third-party custody.

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1 As to the other individuals residing in the house now,
2 which include Miss Dubrow's son, there is a bit of a dispute
3 with the Government. The Government, I believe, thinks that
4 somebody is out on bond. I don't think that's accurate. I
5 think there is a case that could be filed, but there are no
6 pending charges.

7 Which means there appears to be no bar to
8 Mr. El Gammal residing there. And I would respectfully ask the
9 Court to not follow the conclusion that Miss Dubrow's residence
10 is inappropriate for third party custody.

11 In the event the Court does not agree or -- with my
12 argument and goes with the Pretrial Services' report, I would
13 ask for leave to propose another third-party custodian, if an
14 appropriate one can be identified.

15 Regarding the substance of the Government's proffer, I
16 would note that the Facebook posts provided to the Court relate
17 as far back as 2013. They also go as far back as a year ago.
18 And at best the inferences to be drawn from them are that
19 Mr. El Gammal had strong feelings about the situation in Egypt,
20 which has no bearing on the basis for detaining him for these
21 charges, which refer to whether or not he gave support or
22 advice to an individual traveling from Turkey to Syria.

23 There is not a shred of evidence in the Government's
24 proffer that indicates that Mr. El Gammal knew that the
25 individual was anywhere other than Turkey. And that's not a

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1 crime.

2 So I do not believe that the proffer or any argument
3 made by the Government supports the argument that danger has
4 been proven by up to a clear and convincing standard.

5 Clearly there is political talk in the proffer, but
6 that is not illegal. And there is no discussion in the proffer
7 that would link Mr. El Gammal with these charges in a manner of
8 supporting danger.

9 And they do at one point discuss whether Mr. El Gammal
10 might himself travel to Turkey, which is also not illegal. And
11 that is why the defense exhibit rebuts that. It's quite clear
12 from the defense exhibit that he had no present plans to leave
13 Arizona, that he had already paid a deposit and had a new
14 residence that he was moving to.

15 And I would also note that if he is released, he could
16 complete that transaction, and he is -- would have a place to
17 live.

18 So for all those reasons, I would ask that the Court
19 allow release of Mr. El Gammal.

20 THE COURT: Thank you, Mr. Morrissey.

21 MR. PIMSNER: Your Honor, if I may address only the
22 Watkins residence. If the Court is interested in -- is
23 inclined to release him to the Watkins residence, I'd have some
24 additional information I can rebut for the record.

25 THE COURT: About Miss Dubrow's residence?

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1 MR. PIMSNER: Yes.

2 THE COURT: Please go --

3 MR. PIMSNER: Leading up to May 20th, Christian
4 Dubrow, who is currently in Maricopa County Jail, he's been
5 found guilty of dealing marijuana out of that residence. He
6 did at least three hand-to-hand marijuana sales from that
7 residence.

8 The police did a search warrant at that house on May
9 20th of 2015. They found numerous quantities of marijuana and
10 drug paraphernalia. At least three, possibly four handguns,
11 including a sawed-off shotgun. There were marijuana plants
12 growing in the back yard. There was marijuana in multiple
13 rooms.

14 And we believe -- and then Robert Dubrow who currently
15 lives there, was arrested. He was originally released on bond.
16 That bond may have been exonerated. But it's our belief he has
17 charges pending from the May 20th, 2015 search warrant.

18 So we don't believe that's an appropriate location for
19 Pretrial to have to monitor Mr. El Gammal.

20 And lastly, it's our understanding through further
21 investigation by the FBI that Miss Dubrow is not
22 Mr. El Gammal's former or ex-mother-in-law, she is the former
23 mother-in-law of Mr. El Gammal's ex-wife, who -- from a
24 previous marriage. So that relationship is attenuated.

25 THE COURT: Miss Karlen, Mr. Pimsner, I'm going to ask

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1 one or the other of you to speak, it's not really fair to have
2 you both speak.

3 Mr. Morrissey, was there anything else that you would
4 like to add?

5 MR. MORRISSEY: Only that the statement that charges
6 are pending sounds like there's a present intent to bring
7 charges against the son. I would proffer that the reality is,
8 no one has made that commitment. They did the search warrant.
9 There's a statute of limitations. The State has a certain
10 amount of time with which to bring that. They still haven't
11 declined the case, but there is no case.

12 And, therefore, I don't believe that the statements
13 about the environment hold up in any way in terms of it being
14 an inappropriate environment.

15 THE COURT: All right. Thank you, Mr. Morrissey.

16 Thank you, Mr. Pimsner, Miss Karlen.

17 Counsel agreed at the initiation of this hearing last
18 week that this is a case in which the presumption applies.
19 That means this is a case in which the statutory presumption
20 that the defendant poses a risk of flight and a danger to the
21 community applies. That is a rebuttable presumption.

22 Mr. Morrissey has previously argued that that
23 presumption can be rebutted by Mr. El Gammal's long residence
24 in the Phoenix community. He has resided here for
25 approximately ten years. And also by his history of employment

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1 where he's been self-employed in a business for approximately
2 ten years. And he proffered information last week that he
3 conducts his business from a warehouse that he leases here in
4 Phoenix.

5 The information presented at the conclusion of the
6 hearing last week was that Mr. El Gammal was changing his
7 residence. The residence at which he has been living was no
8 longer going to be his residence, and so instead of
9 investigating whether that residence would be appropriate as a
10 possible place for him to reside for GPS location monitoring
11 and for a third-party custodian, defense requests and the Court
12 directed Pretrial Services to instead investigate a different
13 residence, that of Miss Dubrow.

14 This is the second investigation that Pretrial
15 Services conducted to determine if there was an appropriate
16 third-party custodian. The first proposed custodian was found
17 not to be suitable.

18 At Mr. Morrissey's request Pretrial Services
19 considered Miss Dubrow, and Pretrial Services has concluded
20 that her residence is not an appropriate location at which to
21 provide supervision and for Mr. El Gammal to reside because of
22 criminal activity at the residence.

23 The Pretrial Services' report indicates the sale of
24 marijuana to an undercover officer by a family member of
25 Miss Dubrow at that residence. There's also some indication

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1 that that family member could return to reside at that
2 residence.

3 Although Mr. El Gammal has factors that weigh in favor
4 of release, including that he is a naturalized citizen, that he
5 has resided in this area for some time, and that he has stable
6 employment, and that his criminal history is minimal -- it
7 appears primarily related to some driving offenses and some
8 issues that could be related to domestic disputes that are
9 quite dated from 1998 and 1999. So he doesn't have a current
10 or continuing criminal history.

11 Balanced against that are other factors in the
12 detention statute, which specifically include the charges
13 against the defendant, and list that the Court should consider
14 whether one of the charges is a federal crime of terrorism.
15 The charges against this defendant are very serious. So
16 serious, in fact, that they are sufficient for the statutory
17 presumption of detention of flight and danger to apply.

18 Although the information about his history and
19 characteristics weighs in his favor, that also cuts against him
20 in that he has dual citizenship, strong family ties in Egypt,
21 friends in Turkey. And the Government has presented in the
22 exhibits e-mails and Facebook posts to substantiate their
23 proffer from last week that he has communicated with what
24 appears to be a family member in Egypt about sending large sums
25 of money there. The Pretrial Services' report indicates he has

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1 approximately \$90,000 in his bank account.

2 Also that he's communicated with the U.S. citizen who
3 has left the United States and is basically the factual
4 predicate for the offenses now pending against Mr. El Gammal.

5 And the communications lead the Court to conclude that
6 the discussion relates to Mr. El Gammal leaving the country and
7 moving to where that other individual's residing, which from
8 the evidence presented is now in Syria.

9 The communication's coded, but not particularly
10 difficult coding. It refers to a job in a parking lot. That's
11 language that this individual used in other messages. It
12 appears fairly obvious from reading the communications that the
13 discussion is about leaving the United States and going to the
14 Middle East, at least to Turkey and perhaps into Syria.

15 The other concern is that this is a Rule 5 proceeding.
16 The defendant is facing charges out of an Indictment from the
17 Southern District of New York. That means if he were released
18 here he'd be on courtesy supervision in this District, but he
19 would be required to travel to the Southern District of
20 New York for court appearances, to meet with his attorney,
21 perhaps for some other reasons. That travel is a significant
22 distance across the United States, either by a vehicle or an
23 airplane. Even on GPS monitoring, because he would be
24 authorized to travel at various points, it would be extremely
25 difficult if not impossible for Pretrial Services to really

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1 keep track of him, even with GPS monitoring, to make sure that
2 he wouldn't flee.

3 He has the resources to flee. He has contacts in
4 another country to where he could flee. And he has every
5 incentive to flee. He's facing very significant charges with a
6 maximum sentence of ten years.

7 So the Court finds for all these reasons that he has
8 not rebutted the presumption of flight. And also based on the
9 nature of the charges and the discussions in the e-mails and
10 the Facebook texts, that the Government has proposed that he
11 also poses a danger to the community.

12 Although there was information about him belonging
13 to -- defendant offered that he belongs to a shooting club to
14 explain the ammunition in his home, and an argument that owning
15 a drone plane is innocuous, there's also discussion in the
16 e-mails about using that plane to load bombs on it, and that it
17 could be dropped on Gaza.

18 All of this information suggests a mindset that poses
19 a very significant and serious danger to the community and to
20 others.

21 So for these reasons I'm going to order that he be
22 detained and transported to the Southern District of New York.

23 Counsel, is there anything else that we need to
24 address this morning?

25 MR. PIMSNER: Yes, Your Honor.

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1 May I have one moment with counsel?

2 THE COURT: Certainly.

3 (Discussion held off the record.)

4 MR. PIMSNER: Your Honor, we do have one request, that
5 the exhibits that we filed as part of this hearing, or
6 proffered for this hearing, that they be kept under seal for
7 reasons that if I may approach.

8 THE COURT: Certainly.

9 MR. PIMSNER: I have a motion.

10 THE COURT: Thank you, Mr. Pimsner.

11 MR. MORRISSEY: Your Honor, the defense has no
12 objection to the motion to seal.

13 THE COURT: All right. The exhibits will be filed and
14 maintained under seal.

15 Is there anything else that we need to address this
16 morning?

17 MR. PIMSNER: No, Your Honor. Thank you.

18 THE COURT: All right. Thank you then.

19 The hearing is adjourned.

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C E R T I F I C A T E

I, CANDY L. POTTER, court-approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

DATED at Phoenix, Arizona, this 18th day of
September, 2015.

s/Candy L. Potter
Candy L. Potter