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7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Case No. 14-cr-087 JAM
11)
12)
Plaintiff,) OPPOSITION TO GOVERNMENT'S
13) MOTION TO REVOKE RELEASE ORDER
v.)
14)
NICHOLAS MICHAEL TEAUSANT,) Date: May 13, 2014
15) Time: 1:30 p.m.
Judge: Honorable John A. Mendez
16)
Defendant.)

17 I. INTRODUCTION

18 On May 7, 2014, Magistrate Judge Allison Claire ordered
19 Nicholas Teausant released from custody with a release package
20 comprised of (1) a \$200,000 bond signed by his grandparents and
21 his mother (docket no. 21); (2) the posting of real estate by
22 family to secure part of that bond¹; (3) the third-party custody
23 of his grandparents (docket no. 22); (4) full home incarceration
24 secured by electronic monitoring; (5) psychiatric treatment; (6)
25 a ban on internet access and computer use; (7) a requirement to
26

27
28 ¹ Nick's parents and grandparents are willing to post any available equity in property to secure Nick's release. The property accepted by the magistrate court has equity and is available for posting.

1 take prescribed medication; and (8) intensive supervision by the
2 pretrial services office with numerous other conditions of
3 release. These conditions are appropriate in light of the
4 charges, Mr. Teausant's history and circumstances, and the
5 circumstances of this offense. The conditions are sufficient to
6 address any concerns about flight risk or danger under 18 U.S.C.
7 § 3141 (the Bail Reform Act).

8 II. THE CIRCUMSTANCES OF THE CURRENT CHARGES AND MR.
9 TEAUSANT'S CHARACTER STRONGLY WEIGH AGAINST ANY CONCERNS
10 ABOUT DANGER OR FLIGHT

11 At the same time Nick Teausant was a supposed jihadist
12 aspiring to join the "Islamic state of . . . crap I forget"
13 (Complaint at 12), he also fancied himself a second degree
14 Freemason and a proud member of the Army National Guard. The
15 difference between these groups is that the Freemasons didn't
16 invite him to their meetings, and the National Guard never put
17 him on a bus to basic training. The paid informant did put him
18 on a train to Canada. That is the crime in this case. The rest
19 was all talk designed to impress the only person who would
20 listen to Nick, a paid informant who was trying to set him up.

21 The government argues the presumption of detention without
22 discussing all of the ways in which the defense has rebutted
23 that presumption: Nick's ties to the community, the support of
24 numerous family members, incredibly stable third party
25 custodians who will supervise his home incarceration, GPS
26 monitoring equipment, the sacrifice of his passport, the lack of
27 any weapons, an isolated location for his home detention,
28 supervised mental health treatment, and no access to the

1 internet in any way. Judge Claire correctly held that all of
2 these conditions are "sufficient to protect the community and to
3 ensure Mr. Teausant's appearance in trial." (Doc. 25 at 10.)

4 Nick Teausant's history shows that he is a lonely,
5 mentally-ill young man with a tremendous desire to be liked, be
6 accepted into a group, and have some significance. While the
7 nature and extent of his illness is still being determined, it
8 is clear that he "presents a minimal risk of danger to the
9 community if released." See Psychological Evaluation, p. 2.² Had
10 his path never crossed with the CI, he would never have the
11 attention he is receiving today. In an FBI interview, Nick's
12 step mother described the degree to which Nick inhabits a
13 "fantasy land" and tells stories constantly with the intent to
14 impress those around him. She characterized him as someone who
15 cares about his family and loves his country. (Disco. 77.)

16 Nick has recently been psychiatrically evaluated at the
17 jail and placed on psychotropic medication. His mental illness
18 appears to have made him a vulnerable and appealing target for
19 the paid confidential informant. Nick is now under psychiatric
20 care, compliant with his treatment, and will remain in treatment
21 on pretrial supervision.

22 The government has attempted to make much of this
23 treatment. Rather than using this against Nick, it should
24 appreciate that he is medicated and compliant. If released on
25 Pretrial Services supervision Nick will be required to attend
26 counseling and stay on whatever medication is prescribed for
27

28 ² The report will be provided to the Court and the government directly.

1 him. The jail's prescription evinces a desire to figure out the
2 root of Nick's mental illness and provide some help for him, a
3 desire the defense shares.

4 If the government knew Nick beyond selected posts and
5 chats, they would know he is not a threat to anyone. His
6 family, who will be in the courtroom, do know Nick. His mother
7 will be present and can tell the court of their loving
8 relationship and how she knows Nick would never harm her. His
9 grandmother and his grandfather, a retired fire captain, will be
10 present in court and able to tell of their plans to keep Nick in
11 line. Nick's dad is in the process of relocating to Lodi from
12 the Midwest to be closer to Nick. They all love him and, now
13 that his mental health issues have been discovered, they will
14 work to keep him in counseling and on track. They are all
15 willing to put themselves and their savings on the line to make
16 sure Nick follows all the rules set by the Court.

17 In theory this could be a violent offense. In reality,
18 Nick couldn't provide material support to a pup tent. He is 20
19 years old. He is a student at San Joaquin Delta Community
20 College. He does not own car and has no driver's license. He
21 has no criminal history. He has a GED. Although he attempted
22 to join the U.S. National Guard, it is in the process of
23 discharging him because he could not meet the minimum academic
24 requirement of 15 credits. Accordingly, he never went to basic
25 training, and has no military training of any kind. (Complaint
26 p. 18). He does not own any gun. (Complaint p. 13). When
27 directly asked by the Confidential Informant, Nick told him that
28

1 he had no items from military that could assist "brothers"
2 overseas. (Complaint p. 18).

3 Despite his lack of any military training, Nick told the CI
4 that he had "trained in marksmanship, mapping and physical
5 agility" and could "run for two days straight by mentally
6 separating himself from his body." (Complaint p. 17). The
7 complaint is full of fanciful details like this. At one point
8 Nick gave the CI a "book with notes inside regarding battle
9 tactics for invading a city and setting up a command point."
10 (Complaint p. 19.) In a footnote the complaint indicates,
11 "Review of these notes reveals them to be *very limited*." The
12 book is a standard one issued to recruits by the National Guard.

13 In early October 2013, the FBI paid informant began to pay
14 attention to Nick. Around this time, the content of his social
15 media posts changed and he began to focus more on Islam,
16 interspersed with photographs of family and food and items
17 reposted from others. Nick's social media shows the shallowness
18 of his interest. As he told the CI, "I want to fight in Syria
19 but do not know how to get there." (Complaint p. 8). Nick
20 Teausant was never going to make it to Syria, he was never going
21 to find anyone who would take him in to fight, he was never
22 going to provide any support to anyone. As he told the CI in
23 one of the only unredacted parts of the transcript, "I'll be the
24 pawn. You just figure out the brainy stuff." (Discovery p. 423).

25 Nick is a classic product of the social media era.
26 Everything is posted on the internet through one of his many
27 social media accounts. For example, Nick would post under the
28 name "Assad Teausant bigolsmurf" with comments like "LOL" and

1 "Ha Ha": "I would love to join Allah's army but I don't even
2 know how to start." This supposedly dangerous terrorist even
3 posted about his FBI-instigated train ride on social media,
4 enabling his step-mother to follow his travels to Washington
5 State.



6
7 *Nick's Facebook post en route to the*
8 *border on the day of his arrest.*

9
10 Along the way, she notified the authorities out of concern for
11 Nick: because "she pictured him 'getting abused and killed by
12 terrorists'" (Disco. 77.)

13 Similarly, Nick had little to no understanding of the
14 geopolitical issues on which he commented: For example, with
15 respect to ISIS (the "Islamic State of Iraq and Syria," which
16 the indictment claims is a terrorist group), Nick said he was
17 interested in the "Islamic state of um crap . . . I forget."
18 (Complaint p. 12.) He also told the CI that he was "[k]eeping
19 up on the Al Sham Levant pages" - a group that does not exist.

20 It was the CI who took Nick to buy an Amtrak ticket, which
21 proved a challenge for him to do by himself. (Complaint p. 20.)
22 The complaint details Nick's multiple failed efforts to navigate
23 the process. (Complaint pp 20-21).

24 Three days before supposedly committing the offense in this
25 case, Nick was interviewed by the local news about a minor
26 controversy at Delta Community College. Amazingly, as
27 documented by the local news, while Nick was basking in the
28 adulation he received from the CI and his handlers, he was also

1 speaking convincingly to News10 about his love for America, his
2 appreciation for the military, the challenges of his own service
3 (a myth), and his family's long history of military service
4 (also myths).

5 Responding to the claim that a man had been showing up at
6 the campus in military dress although he had never served,
7 Teasant told the news, "Until you've gone in through basic
8 training, had a drill sergeant yelling at you, doing pushups,
9 until you've put blood, sweat, tears, missed your family, missed
10 your girlfriend . . . until you've done that, you have no
11 business to be wearing that uniform." Video at
12 [http://www.news10.net/story/news/local/stockton/2014/03/17/video](http://www.news10.net/story/news/local/stockton/2014/03/17/video-nicholas-teasant-california-al-qaida-terrorism-suspect/6542359/)
13 [-nicholas-teasant-california-al-qaida-terrorism-](http://www.news10.net/story/news/local/stockton/2014/03/17/video-nicholas-teasant-california-al-qaida-terrorism-suspect/6542359/)
14 [suspect/6542359/](http://www.news10.net/story/news/local/stockton/2014/03/17/video-nicholas-teasant-california-al-qaida-terrorism-suspect/6542359/) ; Gartenstein-Ross, "The Lies American
15 Jihadists Tell Themselves" Foreign Policy available at
16 [http://www.foreignpolicy.com/articles/2014/03/21/the_lies_american](http://www.foreignpolicy.com/articles/2014/03/21/the_lies_american_jihadists_tell_themselves_teasant)
17 [an_jihadists_tell_themselves_teasant](http://www.foreignpolicy.com/articles/2014/03/21/the_lies_american_jihadists_tell_themselves_teasant).

18 The government points to two other random blatherings to
19 paint Nick a danger. Neither has any substance. Nick's child
20 means the world to him, as is evident in this picture he posted
21 online.



One of countless photos depicting Nick's love for his infant daughter.

1 In fact, Nick's on-line postings were full of loving and proud
2 photos of his daughter. As noted by his ex-girlfriend and the
3 mother of his daughter in an FBI interview, Nick was both
4 involved in his daughter's life and strongly pro-American. She
5 never overheard him make express any anti-American sentiments.
6 (Disco. 73.)

7 His statements about his mother were equally ridiculous -
8 Nick didn't have a gun and loves his mother deeply. See Exhibit
9 A (online post dated 2/25/14 showing Nick's mom holding his
10 daughter). She has no fear of him and supports his release.
11 The government informant preyed on Nick's love for his family
12 and his child by promising him that they would be taken care of
13 in his absence. There is absolutely no danger from him and
14 never was.
15

16 The government attempts to dramatize and inflate Nick's
17 nonsense into menace. At the same time, the government unfairly
18 minimizes this profound family love and support. The court
19 should not be swayed by these tactics. Instead the court should
20 allow this 20-year-old to go home to the family who loves him,
21 who are here for him, and who will insure he receives the
22 counseling and treatment he needs.
23

24 III. THE GOVERNMENT'S CONCERNS DO NOT RISE TO THE LEVEL OF
25 CLEAR AND CONVINCING EVIDENCE OF DANGER

26 "In our society liberty is the norm, and detention prior to
27 trial or without trial is the carefully limited exception."
28 United States v. Salerno, 481 U.S. 739, 755 (1987).

1 Accordingly, the Bail Reform Act provides that a defendant must
2 be released on his personal recognizance or an unsecured
3 personal bond "unless the judicial officer determines that such
4 release will not reasonably assure the appearance of the person
5 as required or will endanger the safety of any other person or
6 the community." 18 U.S.C. § 3142(b); accord United States v.
7 Xulam, 84 F.3d 441, 442 (D.C. Cir. 1996).

8 Under circumstances in which a personal recognizance bond
9 is insufficient, the officer must choose "the least restrictive
10 further condition, or combination of conditions, that such
11 judicial officer determines will reasonably assure the
12 appearance of the person as required and the safety of any other
13 person and the community." § 3142(c)(1)(B). see, e.g., United
14 States v. Infelise, 934 F.2d 103, 105 (7th Cir. 1991) (under
15 § 3142(e) defendants on racketeering charges were entitled to
16 consideration of electronic ankle monitoring as a lesser
17 restrictive condition) (Posner, J.). In other words, the Court
18 must consider all reasonable less restrictive alternatives to
19 detention. See § 3142(e).

20 Moreover, conditions set upon release are intended to be
21 preventative and not punitive in nature. United States v.
22 Salerno, 481 U.S. 739, 747 (1987) (evaluating the legislative
23 history of § 3142). In sum, the Bail Reform Act does not modify
24 or limit the presumption of innocence. See 18 U.S.C. § 3142(j).

25 Importantly, the government must prove potential danger by
26 clear and convincing evidence. It failed to do this before the
27 magistrate judge, and it fails before Your Honor because there
28 is no evidence that Mr. Teausant poses a danger to anyone.

1 The government bases its danger arguments solely on the
2 nature of the charges and heavily redacted conversations with a
3 paid government informant, such as that in Exhibit B attached
4 hereto. Nicholas Teausant is charged by indictment with one
5 count of violating 18 U.S.C. § 2339B(a)(1) for allegedly
6 attempting to provide "material support" to a supposed terrorist
7 group in Syria by getting on a train in San Joaquin County. The
8 complaint and discovery in this case make it clear that a paid
9 confidential informant groomed Mr. Teausant for months, giving
10 him attention, feeding him information, and suggesting further
11 action, before Mr. Teausant boarded that train.

12 "A judicial officer is directed by statute to consider: (1)
13 the nature and seriousness of the offense charged; (2) the
14 weight of the evidence against the defendant; (3) the
15 defendant's character, physical and mental condition, family and
16 community ties, past conduct, history relating to drug or
17 alcohol abuse, and criminal history; and (4) the nature and
18 seriousness of the danger to any person or the community that
19 would be posed by the defendant's release." United States v.
20 Cardenas, 784 F.2d 937, 938-939 (9th Cir. 1986). Although it
21 requires consideration of the charged offense, the Bail Reform
22 Act also mandates, "Nothing in this section shall be construed
23 as modifying or limiting the presumption of innocence." 18
24 U.S.C. § 3142(j). "The weight of the evidence is the least
25 important of these various factors, however, and the statute
26 neither requires nor permits a pretrial determination that the
27 person is guilty." Cardenas, 784 F.2d at 939. "The nature of
28 the offense and the evidence of guilt is relevant *only in terms*

1 of the likelihood that the person will fail to appear or will
2 pose a danger to the community." Id.

3 The nature of the charged offense does not require Mr.
4 Teausant's detention here. "Material support" is a broad term,
5 and here the only "material support" that is alleged is Nick's
6 person, which was never going to make it abroad and would have
7 been of no help even if he had. Nick is charged with attempting
8 to give support, but never actually participated in anything
9 illegal or dangerous. He did not provide money, intelligence,
10 or action to any illegal organization.

11 Others charged with this offense and related offenses have
12 been released on pretrial supervision. In United States v. Umer
13 Hayat, Cr. S. 05-240-GEB (E.D. Cal.)(First Lodi Terrorism Case),
14 the government argued that Mr. Hayat posed "a significant risk
15 of flight and danger to the community. Defendant Umer Hayat
16 allegedly paid for his son's airline ticket to Pakistan with
17 knowledge that his son wished to train at a jihadist camp,
18 traveled to Pakistan, toured jihadist camps, was aware that his
19 son attended a jihadist camp, returned to the United States, and
20 then lied to the FBI not only about his conduct, but also about
21 his son's conduct." (Docket Entry 76). Mr. Hayat was ordered
22 released on pretrial supervision by Magistrate Judge Gregory G.
23 Hollows. (D.E. 56). This order was affirmed by District Judge
24 Garland E. Burrell, Jr. (D.E. 79).

25 In United States v. Weiner & Jenson, Cr. S 06-35-MCE (E.D.
26 Cal.) (Earth Liberation Front Eco-Terrorism Case), the
27 government argued that ELF was a "recognized eco-terrorist
28 group" comprised of "cells" of "environmental extremists" who

1 "have been known to use arson and/or explosives to damage or
2 destroy." "Past targets include . . . car dealerships, housing
3 developments, United States Forest Service facilities and
4 engaged in genetic engineering." (D.E. 1). Lauren Weiner was
5 released on pretrial supervision despite government argument and
6 allegation that she was an ELF member who conspired to
7 maliciously destroy buildings by fire and an explosive, and that
8 she possessed the ingredients for an explosive. (D.E. 15).
9 Zachary Jenson was released on conditions even after his guilty
10 plea to conspiring to target and blow up commercial and
11 government facilities. (D.E. 106).

12 In United States v. Harrison Jack et al., Cr. S. 07-266-KJM
13 (E.D. Cal.)(Hmong Insurrection Case), the government argued:

14 Defendants conspired to overthrow Laos by violent
15 means, including murder, assaults on both military and
16 civilian officials of Laos and destruction of
17 buildings and property of Laos. [Conspirators] engaged
18 in extensive fundraising activities for the purpose of
19 acquiring substantial financial assets which could be
used to purchase military arms, materiel, and
munitions, such as AK-47 and M-16 automatic rifles,
Stinger missiles, LAW rockets, AT-4 anti-tank rockets,
Claymore mines, C-4 explosives, night vision goggles,
[etc.]. (D.E. 3).

20 All thirteen defendants were ordered released on pretrial
21 supervision.

22 Similarly, in United States v. Mazloum, 06-00719-JGC (N.D.
23 Ohio), the Court released a defendant charged in a conspiracy to
24 kill, kidnap, maim, or injure victims, and provide material
25 support to terrorists. The government argued that the defendant
26 actively involved himself in a secret training program,
27 attempted to recruit his own brother into the conspiracy, and
28

1 participated in training sessions where he served as a trainer.
2 He was released.

3 In United States v. Tarek Mehanna, 09-10017-GAO (D. Mass),
4 the government argued:

5 MEHANNA lied to the FBI in order to protect the
6 activities of a friend and associate who was then
7 fighting with, and receiving training from, Al Qa'ida.
8 MEHANNA's false statements obstructed an investigation
9 of, and involved and were intended to promote, a
10 federal crime of terrorism as defined in Title 18,
11 United States Code, Section 2332b(g)(5). MEHANNA
12 should be detained because he is a risk of flight, and
13 poses a risk that he will further obstruct justice, or
14 threaten or intimidate prospective witnesses, or
15 attempt to do so. MEHANNA has previously stated an
16 intention to emigrate from the United States, and seek
17 employment and residence in the Middle East, for the
18 foreseeable future. On November 8, 2008, he was
19 arrested as he attempted to fulfill that goal, that
20 is, he was arrested as he attempted to board a flight
21 at Logan Airport, to begin a one-way flight to Saudi
22 Arabia. D.E. 6

23 The Court released Mehanna on pretrial supervision. (D.E.
24 17). In United States v. Reaz Qadir Khan, 12-659-MO (D.
25 Oregon), the government argued:

26 Khan with others to provide material support and
27 resources and to conceal and disguise the nature
28 location of such material support and resources,
knowing and intending that they were to be used in
preparation for and in carrying out a conspiracy to
kill, maim, or kidnap persons or damage property in a
foreign country. . . . Khan provided . . . advice
intended to assist . . . efforts to travel undetected
from the Maldives and train to commit violent jihad;
Khan provided . . . financial assistance so that [a
co-conspirator] could attend a training camp in
preparation for an attack such as the May 27, 2009
attack in Lahore, Pakistan.

29 The Court released Khan on pretrial supervision. (D.E. 8).
30 That release order was upheld following government appeal
31 at D.E. 14. In United States v. Salah and Ashqar, 03-978
32 (N.D. Ill.), the government argued:

1 Both defendants were "organizers and leaders" who
2 "intended to promote a federal crime of terrorism."
3 The "intentionally selected their victims" based on
4 religion and they attempted to obstruct justice.
5 Further, "a victim sustained permanent injury and a
6 dangerous weapon was used." (D.E. 159).

7 The Court released both defendants on pretrial supervision.
8 (D.E. 221). Likewise, the defendants in two additional
9 material support to terrorist cases, United States v. Ali
10 Asad Chandia, 05-401-CMH (E.D. Va.) and United States v.
11 Ali Al-Timimi, 04-358-LMB (E.D. Va.), were both released
12 pretrial. (D.E. 10 and 4, respectively).

13 It is clear that at most the charge provides a rebuttal
14 presumption that Mr. Teausant clearly rebuts based on his ties
15 to the community, his extensive family support, his lack of
16 criminal history or history of non-appearance, and the
17 particular circumstances of this case.

18 DATED: May 12, 2014

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