

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
No. 08-CR-364 (RHK/AJB)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

**DEFENDANT’S MOTION TO
MODIFY THE CONDITIONS OF
INCARCERATION AND FOR
INQUIRY OF MEDDLING**

Defendant Thomas Joseph Petters, by and through his undersigned attorneys, consistent with 18 U.S.C. 3145(b), moves this Court for an Order changing his incarceration, and for an inquiry of the Government as to why he is held under restrictive conditions that have not been shared by anyone else in his circumstances, ever.

Our grounds are these:

1. In his Detention Order of January 28, 2009, Judge Kyle was impressed by the Government’s representation “that it has made special arrangements with the Sherburne County Jail, where Defendant is currently being housed, to permit his counsel to meet with him seven days per week, from 8:00 a.m. until 10:00 p.m., with certain limited exceptions (meal times, a one-hour jail headcount, etc.). The Jail also has set up a dedicated conference room for defense counsel to meet with him, into which a laptop computer may be brought. In addition, Defendant is permitted to retain documents in his cell overnight.” Id. at 6.

2. The Court's language paraphrased the "Government's Response in Opposition to Defendant's Second Appeal from the Order of Detention," at page 10. Which in turn mimicked a letter the United States sent to counsel. Little did Judge Kyle know that the Government's proposed conditions are enjoyed by almost every inmate housed at Sherburne County Jail.

3. The Government's representations as to Mr. Petters' custodial status have rung hollow, and the Court's trust in their assurances was misplaced, sadly so.

4. As of last week, Mr. Petters, arrested for a non-violent crime, and who has had nary an internal complaint filed against him, has now been placed in administrative segregation. He is in a pod with roughly ten high level sex offenders. Unlike the typical prisoner in Sherburne County, including sex offenders, Mr. Petters is cuffed and chained every moment he moves out of his cell; cuffed, too, for video visits with his children. His children see him with his hands cuffed to his waist, a chain connecting his feet. And he is not permitted to exercise privileges that the rapists receive, a class of prisoner commonly at risk for retribution.

5. But more galling yet is that during attorney-client conferences, Mr. Petters remains cuffed – hands and feet – despite our requests that he be allowed to sit freely in the little cement room, a room, by the way, which has never been "dedicated" to our defense (contra to the Government's assurances), a room that is available on a first-come, first-served basis.

6. Counsel has asked the County Jail staff why Mr. Petters ought to be cuffed. There is no discernable answer, other than to say he has been classified. Who did that, we ask? I can't tell you. How do we find out? I can't say. And so on.

7. The amorphous doesn't dictate a life. The source of the change in his incarceration – from a non-cuffed status to cuffed, from open to restricted to segregated status – is rooted somewhere, determined by someone, and this Court, in its supervisory authority, should at least find out. Deferring to local authorities and to their silence in the face of our inquiries would be bizarre and Kafka-esque, satisfying only to the status quo. Indeed that approach would symbolically render the federal courts to an afterthought. We hope this Magistrate will not be tempted to become, on his own volition, a footnote. This jail receives millions of dollars to hold federal inmates. From time to time, it ought to answer a Court's knowing question. You might as well start with the Assistant United States Attorney who assured Judge Kyle that Mr. Petters would be treated well. He'll already be at the podium. "Has your office meddled?" should be the first inquiry. "Did you ask for these restrictions?" "Does your office approve of them?" "Why didn't you tell Judge Kyle Mr. Petters would be treated like this?"

8. In your undersigned's experience, only inmates who have been disciplined, or who are considered dangerous, are cuffed when conferring with counsel. Both conditions are missing here, obviously. Mr. Petters has been a model prisoner.

9. Not only do we request an inquiry of the Government as to the reasons for the recent changes, we ask the United States Marshall to treat Mr. Petters like anyone else housed at Sherburne County.

10. In Mr. Petters' case, this Court is paying good money for a deplorable service. In the face of being ignored, most customers would go somewhere else.

Dated: February 25, 2009

s/ Jon M. Hopeman

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