

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 REPLY
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO REOPEN
DETENTION PROCEEDINGS**

INTRODUCTION

Defendant Thomas Joseph Petters submits this Reply Memorandum and requests that the Court order Mr. Petters be released from detention pending trial.

REPLY

I. The Government Prematurely Declares Victory

There is a certain prematurity to the Government's claims, that as a matter of course Mr. Petters is guilty, that the trial will be non-event, procedural, daily episodes of their show witnesses. [Gov't Response at 14-15; 10/7-8/2008 Tr. at 93-94; 10/31/2008 Tr. at 104.]

Yet in every acquittal that has occurred in federal court, the same puffery appears. The opening statement announces overwhelming guilt, the Government's witnesses intimate hooligan tendencies, and the jury ultimately says no. With head down the Government takes the elevator to the sixth floor and wonders why the rejection. Such introspection rarely lasts long before the calling out of guilt on the next case, and the

next, until and when Tom Petters appears and he is next in their myopic and singular view.

What is missing, then, from the Government's brief is a list of cases they have lost, where the defendant has been left wasting away in the Sherburne County jail, waiting to hear the jury's affirmative voice. What is also missing is a list of apology letters written by the United States to defendants who have walked free. The missive is never written, for there is another man to accuse, another headline.

The Government's claims for detention fail as a matter of law. That Mr. Petters' "colleagues and associates" have pled guilty to certain crimes, [Response Br. at 14], is of no import here. The law in this circuit is that a jury "must not consider [such] guilty pleas as any evidence of [the] defendant's guilt." Eighth Circuit Manual of Model Jury Instructions—Criminal, Instruction No. 2.19, at 56 (2007).

What the Government also omits is that these "co-defendants" will likely not testify. We ask the Government to stand up and announce which co-defendant will be sworn and then subjected to cross examination. In other cases, these kind of witnesses have not even been subpoenaed.

The fact that Mr. Petters' family will pledge assets is consistent with the presumption of innocence, theirs of him and his own.

II. The Government Relies On A Flawed Receiver's Report

The Government opines that Mr. Petters concealed assets, based upon the Receiver's special report, dated January 22, 2009. By design, the Government filed its Response the very next day, January 23, 2009.

The Receiver's special report carries scant weight, though. A legal opinion depends first upon what the parties contend and a resolution thereof. Mr. Petters was not asked about money, nor where it went. The report leaves out, still, a key distinction: the money was transferred before any order was in place. Approximately \$15,000.00 was used to make payroll, an amount the Receiver would have authorized. The bulk of the balance went to pay for the expenses of Mr. Petters' children, ages 1 and 3. The Receiver is selling the mother's home. A couple of hundred went to the jail in Elk River, so that Mr. Petters would make telephone calls the Government can listen to, and then give to the Receiver.

III. The Government Fails To Propose Tenable Trial Preparation Arrangements

The Government lauds the jail in Elk River without ever visiting first. They say the documents have been produced but most have not been. Their position is, in the end, a bit on the precious side: we've seen the documents, and because we have you don't need to. Or he'll flee. We can't say where but we know that he will.

The unsuitability of the Sherburne County facility is discussed in our opening brief. None of what we've argued has been refuted. Nor have the cases we cited been distinguished, which hold that an excessive delay is the cause for release.

CONCLUSION

The Government has detained Mr. Petters for nearly four months; yet discovery is not complete, there is no evidence of flight preparations, and the Government is only now contemplating proper arrangements for Mr. Petters to assist in his own defense. Trial is four months away; and the defense must now prepare in earnest with the assistance of Mr. Petters. Fairness requires Mr. Petters' release to prepare for trial.

Dated: January 27, 2009

s/Jon M. Hopeman

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