

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
No. 08-MJ-364

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

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**DEFENDANT’S RESPONSE IN  
OPPOSITION TO MOTION FOR  
DETENTION PENDING TRIAL**

Defendant Thomas Joseph Petters, pursuant to 18 U.S.C. § 3142 and the Federal Rules of Criminal Procedure, hereby submits the following response in opposition to the Government’s motion for detention pending trial.

1. Plaintiff United States of America (the “Government”) has conducted a sweeping investigation of Mr. Petters, including but not limited to searches and seizures at his businesses and personal residence. More recently, the Government has caused Mr. Petters to be arrested and detained, has filed a criminal complaint against Mr. Petters, and has filed a motion to detain Mr. Petters pending trial. [Docket Nos. 26, 27.]

2. The complaint alleges that Mr. Petters engaged in conspiracy, mail and wire fraud, money laundering, and obstruction of justice in violation of 18 U.S.C. §§ 371, 1341, 1343, 1956, 1957, 1512. The affidavit attached to the complaint explains the Government’s theory—that Mr. Petters allegedly engaged in a scheme to defraud investors. [Docket No. 26.]

3. Mr. Petters is 51 years old. He has two young sons living in Minnesota, ages 3 and 1. His significant other (the mother of his young sons) lives in Minnesota. He has a 22-year-old daughter who resides in Florida. His parents, brothers, and sisters all live in Minnesota.

4. Mr. Petters has no criminal record.

5. Mr. Petters owns valuable assets in Minnesota and throughout the United States. In particular, he owns residences in Minnesota and Florida valued in the millions of dollars. He owns many other assets in the United States. As of December 2007, the value of his assets was estimated at over \$1 billion.

6. The Government recently sought and obtained a temporary restraining order (“TRO”). This Court, the Honorable Ann D. Montgomery, issued the TRO, which restrains Mr. Petters’ assets. The Court unsealed the TRO and related filings on October 6, 2008. United States v. Thomas Joseph Petters, et al., No. 08-CV-5348 (ADM/JSM).

7. Mr. Petters has been aware of the Government’s investigation since September 24, 2008. Through the undersigned counsel, Mr. Petters has cooperated with the Government.

8. Mr. Petters resigned his positions with a number of business entities. He relinquished his shareholder rights in certain entities, giving a third party authority to vote his shares by proxy. As of October 6, 2008, he stipulated to the transition of certain entities into receivership. Because of Mr. Petters’ voluntary actions and cooperation, creditors of these business entities are in a better position to be repaid.

9. At the Government's request, on September 27, 2008, Mr. Petters voluntarily surrendered his passport to the undersigned counsel. The undersigned turned the passport over to the Government on September 29, 2008.

10. Prior to the instant charges, Mr. Petters had planned a trip to his Florida residence. The evidence will show that Mr. Petters had made a plan to reside in Florida while assisting his attorneys with this case. Specifically, the evidence will show: the trip to Florida had been long-planned; Mr. Petters had arranged for his two young sons and their mother to reside with him at his Florida residence; Mr. Petters had arranged to communicate with his attorneys from his Florida residence.

11. The Government's motion for pretrial detention is governed by 18 U.S.C. § 3142. In order to prevail, the Government must show that "no condition or combination of conditions will reasonably assure the appearance of [the defendant] as required and the safety of any other person and the community." *Id.* § 3142(e). The Government bears the burden of proof by clear and convincing evidence. United States v. Abad, 350 F.3d 793, 797 (8th Cir. 2003). Section 3142 "continues to favor release over pretrial detention." United States v. Goodsell, No. 07-CR-225, 2007 WL 2746838 (D. Minn. Sept. 19, 2007) (quoting United States v. Orta, 760 F.2d 887, 890 (8th Cir. 1985)).

12. Mr. Petters is not accused of a crime of violence. Further, although the Government contends that Mr. Petters has contacted witnesses, the Government does not appear to claim that Mr. Petters attempted to intimidate witnesses or influence testimony. Mr. Petters has relinquished control of the above-referenced business entities, and his assets have been restrained. Thus, Mr. Petters does not pose a risk to the safety of any

person or to the community. United States v. Karni, 298 F. Supp. 2d 129, 132 (D.D.C. 2004) (finding pretrial detention inappropriate where there was insufficient evidence of danger to the community; defendant was accused of nonviolent offense and there was no evidence suggesting a risk of violence).

13. The Government will be unable to show that Mr. Petters presents a risk of flight. Mr. Petters has extensive ties to Minnesota and to the United States. His two young sons, his significant other, and most of his family members live in Minnesota. He owns valuable assets in Minnesota and throughout the United States. He is an established business person with extensive ties to the community. The defense believes that the Government's evidence of flight risk will prove dubious. In short, there is insufficient evidence to suggest that Mr. Petters poses a flight risk within the meaning of 18 U.S.C. § 3142.

14. To the extent that there are any doubts about the matter, pretrial detention constitutes an extreme measure which is not warranted under the circumstances. There are many options available to the Court which are far less onerous, and which will permit Mr. Petters to assist his counsel. For example, the Court may require that Mr. Petters submit to electronic monitoring and/or home detention. See Karni, 298 F. Supp. 2d at 133.

15. It is impossible for the undersigned counsel to fully and properly prepare for a complex white collar criminal trial with Mr. Petters in custody at Sherburne County Jail. The jailers insist on reviewing all documents brought into the facility. No computers or cellular telephones are permitted. Attorneys are permitted to visit clients

for no more than two or three hours at a time. Attorneys are not permitted to listen to tapes or recordings with their clients. In short, all of the essential preparations necessary to defend Mr. Petters are not permitted at Sherburne County Jail.

For the foregoing reasons, Mr. Petters requests that the Court deny the Government's motion for pretrial detention.

Dated: October 6, 2008

**s/ Eric J. Riensche**

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