

UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

CASE NO. 1:11 cr 494

v.

HON. Claude M. Hilton

MOHAMAD ANAS HAITHAM SOUEID,

Defendant.

DEFENSE RESPONSE TO GOVERNMENT MOTION FOR
REVOCATION OF RELEASE ORDER AND REVIEW OF DETENTION

Mr. Mohamad Anas Haitham Soueid, by and through his attorneys, moves this honorable court to deny the Government's motion for revocation of the release order.

On October 17 and 18, 2011, a hearing was held pursuant to 18 U.S.C. §3142 to determine whether Mr. Soueid should be detained to await trial or released. Magistrate Judge T. Rawles Jones presided over the hearing. After listening and considering evidence over a two day period, Magistrate Judge Jones determined that, at best, the Government's could prove that Mr. Soueid is low level operative of the Syrian government. *Recording of day 2 of detention hearing, magistrate Judge Jones Findings on the Record.*

Magistrate Judge Jones's findings were based on the testimony of a number of witnesses and a review of several documents over the course of two days. The witnesses who testified included Ms. Iyman Soueid, Mr. Soueid's wife; Mr. Haitham Soueid, Mr. Soueid's fifteen year old son; Ms. Rasha Ellass, Mr. Soueid's cousin; and FBI Agent Evancheck; Mr. Fitzpatrick proffered testimonial evidence to which the defense conceded that the Government could

produce such testimony through certain of its witnesses. Finally, Magistrate Judge Jones considered a number of Government and Defense exhibits.

The Government argues that Judge Jones' order to release Mr. Soueid should be revoked because the order to release was contrary to the evidence presented. In requesting this court to reverse Magistrate Judge Jones, the government engages in a speculative exercise of possibilities that is entirely divorced from the reality of the evidence presented at the hearing, including its own evidence.

a. The Government engaged in deception to make Mr. Soueid appear dangerous and a flight risk.

1. *Lawfully owned weapons and incidental possession of a friend's flak jacket and helmet.*

The Government began its case for detention by attempting to sow fear through the display of a menacing looking AK-47 assault rifle and a flak jacket and Kevlar helmet that were seized from Mr. Soueid's home. Those items were prominently displayed in the court room behind counsel's table. The Government also proffered that Mr. Soueid owns two other weapons and lots of ammunition. The Government failed to disclose to Judge Jones that the flak vest and helmet were recovered from a box in Mr. Soueid's basement with a U.S. Postal Service label that clearly indicated that the equipment was sent back from Iraq from a Mr. Al-Muhajer who uses the Soueid's address as his home address while he is deployed in Iraq as a contractor in support of the U.S. Armed Forces.¹

Based on the apparently extensive recordings of conversations between Mr. Soueid and others, the defense has a good faith reason to believe and allege that the Government knew that Mr. Al-Muhajer was using the Soueid residence as his home address and that the flak vest and helmet were sent back by him for keeping because he no longer needed them in Iraq. In any

¹ This is the same type of employment that Mr. Soueid pursued and which the Government refers to in its pleading.

case, the shipping label on the box clearly indicated the package had been shipped from Iraq by Mr. Al-Muhajer and the date that it was shipped. The FBI examined the box and label and took a photo of the label on the box when they searched the Soueid residence. They also questioned Mrs. Soueid about the box and the items within it. She explained that the box and its contents belonged to Mr. Al Muhajer.

In attempting to persuade the court into believing that Mr. Soueid is dangerous, Government counsel held up the AK-47 for scrutiny as he argued about its potentially dangerous uses. He failed to disclose, however, that the weapon is lawfully registered and that it had not been modified. When questioned by Judge Jones if the weapon had been modified to turn it into an automatic weapon, counsel for the Government hesitated. Clearly Government counsel and the FBI knew the answer because if the weapon had been unlawfully modified, Mr. Soueid would have been charged with unlawfully modifying the weapon. Government counsel finally provided Judge Jones an answer. The AK-47 had not been modified and it is legally registered.

2. Finances, old bank accounts and financial help from relatives.

A. Old Saudi Bank Account.

The Government's next attempt at obfuscation of the evidence was related to an overseas account that was allegedly maintained in Saudi Arabia. Mr. Soueid had been employed in Saudi Arabia in the past. He had an account there but closed it or long ago abandoned it. But not unlike the rest of society, over nearly five decades of life, he had collected the papers and personal artifacts that invariably come to represent the lives we live. Among those papers were his old Saudi bank account records. Despite knowing that the account is closed, Government counsel attempted to build a case against Mr. Soueid by suggesting that the former account in Saudi Arabia was somehow useful to Mr. Soueid if he decided to flee. In a world where most

banking is done almost exclusively over the internet and where accounts are accessible anywhere in the world so long as one has internet access, it is not clear how that evidence was at all relevant or even worthy of presentation especially when the account is closed or abandoned. Nonetheless, the Government advanced an argument that an account overseas was somehow indicative of likelihood of flight.

B. Financial assistance from a relative.

One of the Government's central arguments in this case is Mr. Soueid's alleged access to money because he requested and received a loan from his aunt in the amount of \$160,000.² *See Defense Exhibit 1, Promissory Note.* The Government made much of the fact that the loan was made in two transfers of \$80,000 each. It is unclear, however, why two transfers of \$80,000 are so probative of criminal conduct. The transfers were facilitated by two legitimate banking institutions. And clearly, the transactions were lawful, legitimate and reported to the appropriate government agencies and underwent the due diligence normally applied to transactions of this sort. If the transfers were in any way of questionable legitimacy or Mr. Soueid had somehow attempted to shield them from the reporting requirements imposed by the law, the Government would have brought forth appropriate charges.

In its pleading, the Government raises questions as to the location of the transferred funds. The answer to that question was provided by Mr. Soueid to pretrial services. Mr. Soueid told his pretrial services officer that he purchased four vehicles which he intended to use for his livery services company, 'Washington Transportation and VIP Services. *See Defense Exhibit 2, Home page of washingtonTVS.com; see also washingtonTVS.com.* The vehicles for the business were purchased by "Auto By Good Guys," the very business concern to whom the funds were transferred. "Autos By Good Guys" is a business owned by a friend of Mr. Soueid. "Autos By

² Mr. Soueid actually borrowed \$200,000 from his aunt.

Good Guys” is a licensed automobile dealer authorized to buy and sell automobiles. Mr. Soueid requested from his friend to purchase several luxury automobiles for use in his livery service. To pay for the vehicles, Mr. Soueid requested a loan from his aunt and asked her to send it directly to “Autos By Good Guys.” When “Autos by Good Guys” received the money, it was used to purchase a Lincoln Town Car, a Chevy Tahoe, a Mercedes Benz and a Hummer. All four vehicles were paid for in full and were to be used in the livery business. Two of the cars, the Audi and the Mercedes, were sold because they were not black in color and turned out not to be well suited for use as livery vehicles. Mr. Soueid used some of the transferred funds for personal expenses such as rent and other home and family obligations.

The next piece of financial evidence offered at the hearing by the Government is information regarding an alleged payment from the Syrian Embassy to Mr. Soueid. FBI agent Evancheck testified that Mr. Soueid visited the Syrian Embassy one day and that the next day he deposited \$4000 into a Citibank account all in \$100 dollar bills.³ The Government presented no other evidence of the supposed payment but made arguments that the deposit was clearly money received from the Syrian Government. On cross examination, Mr. Evancheck did admit that right before the \$4000 deposit was made, Mr. Soueid received a Western Union wire transfer in the amount of \$4000.⁴ The wire transfer was from Mr. Samir Rihawi. Mr. Rihawi is Mrs. Soueid’s brother. Mr. Rihawi works and lives in Qatar. Mrs. Soueid called him and asked him for some assistance because they were in a financially difficult position. Mr. Rihawi wired his sister \$4000 using Western Union. Mr. Soueid received the wire transfer which was in forty

³ Defense counsel does not have the benefit of a transcript and most rely on memory and available notes. Agent Evancheck may have testified that the deposit was made a couple of days later.

⁴ It is clear from the evidence presented by the Government that Mr. Soueid has been under consistent, comprehensive and invasive surveillance. Government counsel indicated that some of the evidence obtained was through the use of FISA. Mr. Soueid’s finances, contacts, movements, relationships, and personal life have been thoroughly investigated. Accordingly, there is no reason to believe that the Government was not aware of these facts.

\$100 bills. He deposited the money into the Citibank account which they used to pay their bills and other financial obligations. Despite knowledge of the \$4000 wire transfer through Western Union as Mr. Evancheck admitted on cross examination, the Government chose to omit that very important fact and presented baseless testimony suggesting that the money came from the Syrian Embassy, clearly with the intent to mislead Magistrate Judge Jones as to the source of the funds.

C. Deceptive claims about aliases.

One of the unfortunate facts of life for an Arab person in attempting to write ones name using the English script is the lack of letters that translate sounds with precision. The Arabic language unlike the English has no vowels. See http://en.wikipedia.org/wiki/Arabic_alphabet, as it appeared on October 26, 2011. Additionally, not all English consonants have Arabic equivalents nor do all Arabic Consonants have English equivalents. Accordingly, Arabs are always challenged to find the correct sequence of English consents and vowels that phonetically sound Arab names correctly. A 100% accurate result is rarely achieved, leaving Arabs with Arab names settling for *almost* correct anglicized pronunciations of their names.

Mr. Soueid's name, like most other Arabic words, cannot be transliterated into English and must be spelled out phonetically. Such a challenge with transliterating and phonetically writing Arab names is not uncommon. In the recent case of *U.S. v. Abdulmutalib*, in the Eastern District of Michigan, it was widely known that despite Mr. Abdulmutalib's name being on a no-fly list, he still made it onto a plane where he attempted to set off a bomb. The failure to prevent him from boarding the plane was a result of phonetic transliteration of his name. Mr. Abdulmutalib clearly did not know that he was on a no-fly list and would not have known how a DHS employee decided to transliterate his name. Variances in the anglicized writings of Arab

names are rarely intentional and never relevant so long as the phonetic sound is near to its Arabic sound.

In Mr. Soueid's case, the Government is attempting to peddle an argument about aliases intended to make Mr. Soueid appear to be deceptive, dangerous and a flight risk. Mr. Soueid's name in Arabic is spelled and written as so: "محمد أنس هيثم سويد" It is read from right to left. The script representing the Arabic name above was prepared using Google translator by simply typing the words Mohamad Anas Haitham Soueid. Interestingly, however, every variety of the words "Mohamad," Haitham and Soueid" also resulted in the same Arabic words being produced by the Google translator. For example, the words "Swid" "swayd" "swyd" "suwaid" "swaid," <http://translate.google.com/> as it translated on October 24, 2011, all resulted in the Arabic word سويد being produced which is the Arabic word that spells out Mr. Soueid's name. The variances for "Mohamad" were likewise numerous.⁵ The example is provided to demonstrate how the attempt to phonetically spell non-English words could result in a number of different written versions of the word. Yet, the name does not change. Mr. Soueid's name appears correctly, in Arabic, on every document proffered by the Government as evidence of alleged deception. The fact that the Syrian Embassy issued a passport that spelled Mr. Soueid's name in a different way than the one the Government would like to have is no evidence of deception but a linguistic nuance divorced from any suggestion of criminal conduct or intent. Additionally, Mr. Soueid's Syrian passport is in Arabic and French, not English. Accordingly, the minor variances appear to be a function of linguistic differences in pronunciation between French and English.

⁵ The matter of phonetic spelling of Arabic names has become so widely known and understood in the U.S. that it hardly merits vigorous argument. Nonetheless some further examples are merited to defeat the Government's allegations of aliases. As further demonstration of this issue, I will use the name of the former Libyan leader Qadhafi. We have all become accustomed to seeing five or six variations on Ghadafi's name. Yet no one would argue that Qaddafi-kaddafi-ghaddfi-qadhafi-gaddafi was using aliases. The word "Ghadhaffi" has only one Arabic spelling.

Mr. Soueid's name on the passport appears exactly correctly in Arabic. If the Syrian Embassy, as the Government alleges, sought to assist Mr. Soueid in obtaining a different alias, they could have provided him with an entirely new identity. The suggestion that a slight deviation in the anglicization of non-English name means that the person holding the name is being deceptive and is operating under an alias is disingenuous and misguided.

Mr. Soueid has no control over how the Syrian Government anglicized his name. It is reasonable to presume that, like most Governments, the Syrians also rely on Syrian Governmental documents such as birth certificates and marriage certificates to grant passports. Mr. Soueid applied for his passport and the Syrian Embassy issued a passport in his correct Arabic name but with a variation from his U.S. Government documents of the Anglicized version of that name.

The problem in going from Arabic to English is not limited to the Syrian government and its agencies. The U.S. Government has demonstrated a serious deficit in its ability to translate recorded conversations from Arabic into English. *See Defense Exhibit 3, Government translation of recorded conversation between Mr. and Mrs. Soueid.* Specifically, on page 3 of the Government's translation, a paragraph reads "God Damn you-you- I will deal with you later" In fact, only the word "you" was uttered in that statement. The rest is a fabrication. The U.S. Government translator appears to have taken extensive liberties with a playful conversation between a husband and wife and twisted it into a sinister warning that has no basis in fact. This is not a mere error through the use of an alternate acceptable meaning for the words. It is manufactured. The words "God Damn you-you- I will deal with you later" appear nowhere in that paragraph. *C.f. Defense Exhibit 4, Defense translation of the recorded between Mr. and*

Mrs. Soueid. Particularly noteworthy in the Government's document, is the cover of the Government translation which states "VERBATIM TRANSLATION."

The erroneous translation is not a matter of mere transliteration or phonetic writing of a name, it is an outright fabrication of language that was never uttered by Mr. Soueid. Within the same paragraph, the translator takes even graver liberties with the truth. The translator writes "you are talking to me over the phone- and this phone belongs to Intelligence agency – I am not supposed to be talking on it." The translator missed a clear announcement of the words "over there," the non possessive "telephone" and then "the intelligence service/agency" rather than "this phone belongs to the Intelligence Agency." To a listener fluent in Arabic, the speaker clearly indicates that he was not free to speak on the telephone because the intelligence service monitors phone calls. And that statement fits contextually within the tone, volume, and playfulness of the back and forth dialogue between husband and wife who defiantly and jocularly states "Me, the intelligence service knows me...I am not afraid of the intelligence service." Anyone aware of Syrian language, culture and life in Syria understands that Syrians constantly assume their calls are being monitored. Syrian culture is rife with humor about the Mukhabarat listening in on conversations. Such cultural aspects of Syrian life are commonly known and should be understood by anyone undertaking to translate a Syrian dialect conversation into English. The errors and fabrications in the Government translation are troubling, twist the meaning and portray a conversation that is disconnected from reality.

The defense' challenge of the translation is based on the defense' own translation. The Defense recognizes that that Court, at this juncture, may not be able to divine which of the two is the more accurate translation. The defense, unfortunately, also cannot provide the Court with anything more than assurances that the defense' version was prepared by a more qualified

translator who is a native Arabic speaker familiar with the Syrian dialect.⁶ It was then quality checked by another native Arabic speaker familiar with the Syrian dialect and finally reviewed by counsel for the defendant who is also a fluent Arabic speaker and familiar with the Levant dialect.⁷ Both translators relied on by the defense are Ph.D. students in the Arabic studies program at Georgetown University and both also work as Arabic language Teacher Assistants in the Arabic studies program. Finally, the methodology used by the defense is more trustworthy. The defense translator transcribed the recording verbatim into Arabic then translated the text. By doing so, the translation becomes capable of being quality checked and reviewed for accuracy.

b. Mr. Soueid has no criminal history or history of violence and does not pose a threat.

In arguing that Mr. Soueid should be detained because he poses a threat to members of the community, the Government offers alleged statements made by Mr. Soueid in which he expresses an opinion regarding what should happen to protestors. The Government further alleges that Mr. Soueid owns weapons and is capable of obtaining weapons. To be sure, Mr. Soueid is a resident of the Commonwealth of Virginia. Virginia allows its residents to purchase and keep certain types of weapons so long as they are registered. Mr. Soueid's lawful possession of weapons along with the evidence proffered by the Government, even when considered in a light most favorable to the Government, does not overcome the evidence presented by Mr. Soueid at the detention hearing of Mr. Soueid's peaceable and law abiding character along with his community contacts.

⁶ Although the defense translator is familiar with the Syrian dialect, he took no liberties with the translation and translated the recording verbatim.

⁷ Counsel for Defendant-Haytham Faraj- is a former U.S. Marine Corps officer certified as a Foreign Area Officer for the Middle East and N. Africa and is a native Arabic speaker rated at the highest level of language fluency that is tested by the Defense Language Institute.

1. Community contacts

Mr. Soueid presented the testimony of Ms. Cynthia Liss, a neighbor and friend; Ms. Rasha Ellass, his cousin; Mrs. Iyman Soueid, his wife; Mr. Haitham Soueid, his son; and Defense Exhibit 1 containing 5 letters from people that know Mr. Soueid. The evidence revealed that Mr. Soueid has never committed a crime. He is a law abiding citizen with a history void of any misconduct or a reputation or character that would give rise to an inference that he would engage in misconduct or violence.

Mr. Soueid has a strong relationship with his wife and children. His entire life centers on his life. Their well being and welfare are his primary interests and provide a focal point to focus his efforts to ensure their happiness and health. Family and community contacts play an important role in the court's consideration of a defendant's prospective conduct if released, and rightly so. Families and communities have traditionally played a fundamental role in policing their members, rehabilitating their members and aiding their members. Our courts have given such relationships substantial weight when considering release. In *U.S. v. Medina*, the Defendant was detained following an accusation of sex assault on a child. The defendant challenged his detention and presented substantial evidence of family and community contacts. The court released finding "the Defendant has extensive family ties and strong ties to the local Cherokee community, all of which indicates he is not a serious flight risk." *United States v. Medina*, 2011 U.S. Dist. LEXIS 100165 (W.D.N.C. Sept. 6, 2011). The Court in *Medina* recognized the prophylactic effect family and community have on defendants in preventing further misconduct and ensuring obedience to conditions imposed by the Court.

Such contacts should not be undervalued. The sense of belonging is an essential human need and an elemental motivator for good. Young men and women sign up for service in the

Armed Forces to go fight and possibly die for family, community and nation. Parents often express a willingness to sacrifice all to keep children safe. Even animals often demonstrate a visceral, frequently aggressive, and sometimes deadly response to threats against their offspring, grouping or territory. Mr. Soueid and his family have presented substantial evidence that binds this family together. It is inconceivable that Mr. Soueid would risk greater punitive exposure or the loss of his family by committing any criminal act or by fleeing to avoid trial.

Mr. Soueid is an American. His family roots in the United States date back to the late 1800s, to his great-grandmother. His home and family are in America. His children are Americans and were born in the United States. This is the only home they knew. Fifteen year old Haitham Soueid testified that he does not like Syria and could not live in Syria. His brother feels the same way. He also testified that he and his twin brother who is a diabetic have a very strong relationship with their father and could not imagine their father abandoning them to run away. Haitham Soueid also testified about how their father decided to sympathetically diet with his diabetic son, fifteen year old Aseel so that his son would not feel alone and to influence the entire family to change its dietary habits to conform to his son's. The strength of the bond between father and sons is probative, relevant and material to the analysis regarding not only Mr. Soueid's risk of flight but his propensity to commit an act of violence. Even assuming *arguendo*, as the Government would have this court believe, that Mr. Soueid committed every offense alleged in the indictment, the prospect of greater punitive exposure as a result of violence against another which would limit his future prospects for being in his children's lives and his wife's life would certainly curb any desire to commit an act of violence. The potential consequences of an act of violence would be so substantial for a man who has so much to lose that the numerical possibilities of him committing a violent act become de minimis.

2. *The totality of the Evidence clearly establishes that Mr. Soueid poses no risk to the community.*

Mr. Soueid has no criminal record. Even if all the Government's allegations are accepted at face value, Mr. Soueid would still not pose a risk to anyone. Mr. Soueid has no history of violence. While it is true that he possesses firearms, such possession is no indicator of a capacity for violence. We live in a nation where the right to bear arms is enshrined in the constitution. Mr. Soueid simply exercised that right. If as the Government alleges Mr. Soueid does indeed pose a threat, the FBI was aware of that potential on August 3rd when they interviewed him. Agent Evancheck testified that he believed Mr. Soueid posed a threat before August 3rd, and that he was convinced of that belief by August 3rd. Agent Evancheck also testified that based on the evidence known to him before the interview, and as a result of the interview, he had sufficient evidence to arrest Mr. Soueid on August 3rd. Yet, during the August 3rd interview when agent Evancheck was asked by Mr. Soueid whether he should continue to carry a firearm because he feared for his family's safety, agent Evancheck testified that he told him it is your right. Agent Evancheck's advice to Mr. Soueid betrays the Government's argument. If Mr. Soueid was dangerous on August 3rd, why did the FBI not arrest him? Why did agent Evancheck not recommend that Mr. Soueid discontinue carrying a firearm? If agent Evancheck's position is that he had no authority to order him not to carry, he certainly cannot argue that he did not have a moral and legal duty to recommend that he not carry. A recommendation would not stand a lack of authority challenge. Such a recommendation would have been advisable because if, as the Government maintains, Mr. Soueid poses a danger to the community, the Government had a duty to protect the community by removing the means or implement with which Mr. Soueid would have undertaken to commit a violent act.

Agent Evancheck did not act because he did not believe that Mr. Soueid posed a danger. If he did harbor such a belief, it certainly did not raise to a high enough level to trigger protective actions by agent Evancheck. And agent Evancheck was correct not to believe that Mr. Soueid posed a threat. The FBI had watched Mr. Soueid and perhaps been inside his home pursuant to a FISA warrant. They had listened to his conversations and were aware that he is not a criminal or someone with a propensity to commit a crime. They had observed him with his children and his wife. They understood that he was not a threat.

c. The Government's allegations fail to meet the burden necessary to demonstrate a likelihood of flight.

1. *Alleged deception in the purchase of the Beretta*

The Government relies in its argument for detention on allegations that Mr. Soueid was deliberately deceptive by providing false information to a gun dealer and to a Customs agent regarding the nature of his trip to Syria. Mr. Soueid did not intentionally provide the gun dealer any false information. He provided the gun dealer his driver's license which had his old address. He had not received his new driver's license yet which was issued on July 8, 2011, and mailed some time after that. Mr. Soueid provided his license to the range operator as a form of identification to enter and use the range. He did not have his new driver's license yet. The new driver's license arrived by mail at Mr. Soueid's home about a week after the date of issue.

On July 11, 2011, at the range, Mr. Soueid only had his old driver's license. He provided that license as a form of identification to enter the range facility. Such an act is not an act of deception. It is a common benign everyday occurrence. If Mr. Soueid is guilty of anything it is procrastination in that he waited so long to change the address information and get a new license.

While using the firing range, the weapons dealer and owner of the facility offered Mr. Soueid the opportunity to shoot a Beretta pistol. Mr. Soueid fired it and liked it. The dealer

offered to sell it for a price that was attractive to Mr. Soueid. Mr. Soueid agreed to purchase it.

The dealer then completed the registration papers and placed them in front of Mr. Soueid to sign.

Mr. Soueid had purchased firearms before and was familiar with the process. Because of his familiarity with the papers, he simply signed his acknowledgement. No intent to deceive or to misrepresent can be read into that act.

When Mr. Soueid entered the range facility that day, he harbored no intent to purchase a firearm. Once he agreed to purchase the Beretta, he had no reason to think about the currency of the information on the driver's license which the dealer already had. When the paperwork was completed he did what most people do when presented with document that is familiar. He signed. Mr. Soueid's lack of intent to deceive is clearly evidenced by his conduct a few days later when he went to obtain a concealed carrying permit. A few days after purchasing the firearm, Mr. Soueid went to the Sheriff's office to complete an application for a concealed carrying permit. At that point he had his new driver's license and provided that information to the Sheriff. He did not provide the old license which he still possessed and was not required to return to the DMV.

The argument that providing a former address is indicative of deception undertaken by an intelligence officer unravels when juxtaposed against his later actions to obtain a permit. The argument of deception is also undermined by considering what a driver's license is. The old and new licenses carry the same numbers and the same name. On the day he purchased the pistol - July 11, 2011- the Virginia DMV had Mr. Soueid's accurate information in its database. Any check as a result of any traffic stop or a check by law enforcement for any reason would have revealed Mr. Soueid's correct home address. Moreover, on the day of the purchase, Mr. Soueid would have had no motive to provide a different address. He was eligible to purchase and

transport the weapon. And on August 3, 2011, he readily volunteered to the FBI that he possessed firearms and that he had a permit to carry. He even asked Agent Evancheck if he should carry a firearm because he was concerned about being followed and his home being under surveillance by non-governmental agents, to which Agent Evancheck replied that he could.

2. *Mr. Soueid did not seek to obtain a fraudulent passport but was encouraged and counseled to do so by a paid Government informant.*

The FBI used a paid informant to try and entrap Mr. Soueid. Early this year a man by the name of Mohamad As-Sayyid⁸, [hereinafter "MA" or "paid informant"]. MA, a man of Syrian descent, befriended Mr. Soueid and skillfully won Mr. Soueid's trust. MA visited Mr. Soueid's family at home, borrowed large sums of money by playing on Mr. Soueid's sympathies regarding MA's wife and daughter who were still in the country of Columbia. MA would tell tales of his South American connections, his former work for the drug cartels and his ability to get illicit things done. MA frequently discussed with Mr. Soueid the Syrian opposition to try and elicit negative responses to be used against Mr. Soueid. On numerous occasions MA would go to Mr. Soueid and express anger or outrage at the Syrian opposition. MA suggested that he and Mr. Soueid engage in actions against the opposition. On every occasion, Mr. Soueid considered the recommendations ridiculous or counseled MA to turn his energies to other matters, such as making money.

Following the FBI's interview on August 3rd, MA began to counsel and encourage Mr. Soueid to flee the U.S. He told him that he could get him across the border to Mexico through the tunnel networks that MA was familiar with from his smuggling days. Mr. Soueid took the

⁸ MA also uses several other aliases which were used when he operated as a drug smuggler in Syria and South America.

suggestions amusingly. MA was aggressive and unrelenting in encouraging Mr. Soueid to flee the FBI. Despite MA's best efforts to get Mr. Soueid to flee, Mr. Soueid refused.

MA's failures to get Mr. Soueid to act on his recommendations to flee led him to undertake a deceitful act to satisfy his FBI handlers. In early September of this year Mr. Soueid asked MA, who is a limousine driver, to pick up some passport photos that Mr. Soueid had taken for his Syrian passport application. MA picked up the four photos and delivered them to Mr. Soueid. Mr. Soueid needed only two. MA then asked Mr. Soueid if he could keep two of the photos as "souvenirs" of his friend. Mr. Soueid said sure. MA took and delivered those two photos to the FBI claiming that Mr. Soueid asked him to get him a fraudulent passport. The entire allegation regarding false passports is the creation of the FBI's informant, a man of questionable repute with a checkered criminal history. It is uncertain whether MA has a history of drug dealing and smuggling in Columbia and Mexico or merely made the stories up to try and entrap Mr. Soueid. MA did admit to smuggling while in Syria and to involvement in the drug trade there. In either case, it is obvious that Mr. Soueid has no contacts in South America and has no reason to flee to South America.

3. Open availability of video recordings of demonstrations undermines aggravation arguments.

The gravamen of the charged offenses alleges that Mr. Soueid sought to secure video recordings of demonstrators opposed to the Syrian Government for use by the Syrian Government in retaliating against the demonstrators. In an age where just about every noteworthy public act is captured on video and rebroadcast through the use of social media web site such as YOUTUBE, and Facebook, it tests logic and common sense as to why the Syrian government would need Mr. Soueid to send them videos of demonstrations. A short search for

...videos of anti-Syrian government demonstrations resulted in dozens of videos from all over the U.S. *See Defense Exhibit 5, a list of links to videos of anti-Syrian government demonstrations.* Live coverage and video recordings of demonstrations have also been prominently broadcast by Arab satellite channels such as Al-Jazeera and Al-Arabiya. Accordingly, even if the government could secure a conviction, the evidence in aggravation is not very aggravating in light of the abundance of videos on the internet that Mr. Soueid is accused of sending to the Syrian government.

4. *The likely punitive stakes of a conviction do not outweigh the loss of family and community in case of flight.*

The main offense of which Mr. Soueid has been accused, 18 U.S.C. §951, is not covered by the Sentencing Guidelines. Research into sentences in recent cases involving similar facts and charges -18 U.S.C. §371, §951 and §1001- revealed sentences ranging from probation in the case of *U.S. v. Kadish Ben Ami*, S.D.N.Y., to up to 78 months. In the cases of *U.S. Shemami*, E.D.MI.; *U.S. v. Latchin*, N.D. IL.; *U.S. v. William Shaoul Benjamin*, C.D.CA.; *U.S. v. Hamama*, E.D. MI., the sentences were all under four years and as low as one year in cases where the Government could not secure a conviction on the conspiracy and the 951 charge. Accordingly the consequences of flight far outweigh a conviction on the charges.

d. Mrs. Soueid never testified that Congressman Kucinich was on the same delegation to Syria

During the course of the detention hearing a question arose as to whether Congressman Kucinich was on the same delegation as Mr. Soueid that visited President Assad. Mrs. Soueid was asked and pressed regarding her knowledge as to whether Congressman Kucinich was a member of the delegation. She testified that she did not know.

Evidence

To the extent that this brief refers to evidence that is not appended to this pleading or is not already part of the record, the defense proffers that the evidence supporting arguments in this pleading will be presented at the hearing

Standard of Review

The defense agrees with the Government's articulation of the standard of review.

Conclusion

Mr. Soueid's lack of criminal history, strong community contacts, his adoration for his family and the close relationship with his boys and wife along with the conditions imposed by Magistrate Judge Jones categorically rebut the Government's evidence in support of their argument that Mr. Soueid poses a danger or that he is a flight risk. In considering whether the presumption arising from an allegation of serious offense has been rebutted, "the Court must take into account the information available regarding (1) the nature and circumstances of the offense; (2) the weight of the evidence against the person (3) the history and characteristics of the person including - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release" *United States v. Medina*, 2011 U.S. Dist. LEXIS 100165 (W.D.N.C. Sept. 6, 2011). (citing 18 U.S.C. 3142(g)).

Considering the evidence in support of the factors to be considered by a the Court and the conditions for release imposed on Mr. Soueid, there is little doubt that release would not result in flight or a threat of danger to any member of the community. Mr. Soueid's offenses after the Governments best efforts in a two day hearing were summarized by Judge Jones as "at best a case of a low level operative."

Mr. Soueid respectfully requests that this court deny the Government's motion to revoke the release order and order it executed upon the conditions imposed by Magistrate Judge Jones.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2011, I electronically filed the foregoing paper with the Clerk of Court using the ECF system which will send notification of such filing to the following: Mr. Dennis Fitzpatrick, Assistant U.S. Attorney at dennis.fitzpatrick@usdoj.gov; Mr. W. Neil Hammerstrom, Jr., Assistant U.S. Attorney, at neil.hammerstrom@usdoj.gov; and Mr. Brandon L. Van Grack, Trial Attorney at Brandon.van.grack@usdoj.gov.

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Dated: October 27, 2011