IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	
vs.	)	**Case No. 1:10-cr-00485-LMB**
JEFFREY ALEXANDER STERLING,	)	
Defendant.	)	

DEFENDANT'S OPPOSITION TO GOVERNMENT'S MOTION FOR PRETRIAL DETENTION

COMES NOW Jeffrey Alexander Sterling (hereinafter "Mr. Sterling"), by counsel, and for his Opposition to the Government's Motion for Pretrial Detention, states as follows:

1. Introduction and Standard of Review.

This matter comes before the Court on the United States' Motion for Pretrial Detention. The Bail Reform Act provides that a defendant shall be detained only if a judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the defendant as required for the safety of any other person and the community. 18 U.S.C. § 3142(e). The Court's decision is guided by the factors set forth in 18 U.S.C. § 3142(g). These factors are (1) "the nature and circumstances of the offense charged;" (2) "the weight of the evidence against the person;" (3) "the history and characteristics of the person" including, among other factors, family ties, employment, financial resources, past conduct, criminal history, and whether the person was on release pending trial; and (4) "the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)

In order to obtain a detention order, the Government must demonstrate either (1) by clear and convincing evidence that "no conditions other than detention will reasonably assure the safety of any other person and the community," United States v. Simms, 128 F. App'x 314, 315 (4th Cir. 2005), citing 18 U.S.C. § 3142(f)(2); or (2) by a preponderance of the evidence that detention is necessary to reasonably assure the appearance of the defendant at future court proceedings. United States v. Stewart, 19 F. App'x 46, 48 (4th Cir. 2001)[1]

Consistent with these standards, the Government's motion should be denied. Mr. Sterling has not worked for the CIA for almost a decade during which time he has been subject to almost constant investigation. For most of that time, Mr. Sterling has worked as a fraud investigator for Wellpoint in St. Louis, Missouri working hand in hand with the United States Attorneys and the FBI to uncover and prosecute healthcare fraud. The government provides no evidence of a single instance of when Mr. Sterling, who has pleaded not guilty and is presumed innocent, has allegedly sought to disclose any CIA information to anyone for over six years and cannot just simply rely upon the bare allegations in the Indictment. Simply put, its baseless attack on Mr. Sterling's character does not provide any legal ground for detention.

2. The Charges and Mr. Sterling's Background.

On December 22, 2010, Mr. Sterling was indicted by a grand jury in this district. The Indictment sets forth ten charges. Counts One, Four and Six allege violations of 18 U.S.C. § 793 (d). Counts Two Five and Seven allege violations of 18 U.S.C. § 793 (e). Count Three alleges a violation of 18 U.S.C. § 793 (e). Count Eight alleges a violation of 18 U.S.C. § 1341. Count

[1] Under limited circumstances a rebuttable presumption of detention arises. 18 U.S.C. § 3142(e). None of those circumstances are presented here.

Nine alleges a violation of 18 U.S.C. § 641 and Count Ten alleges a violation of 18 U.S.C. § 1512 (c)(1). Mr. Sterling has entered a plea of not guilty and is presumed innocent.

Mr. Sterling worked for the CIA from 1993-2002. (Indictment ¶ 5) He is an attorney and a member of the Bar of the State of Missouri. (Indictment ¶ 8) For several years, Mr. Sterling, who is African-American, pursued legal claims against the CIA alleging discrimination. (Indictment ¶¶ 20-33) Those claims were dismissed on the state secrets privilege. Then, Mr. Sterling properly requested that the CIA review a book proposal. (Indictment ¶ 25) According to the Indictment, Mr. Sterling met with "Author A" in 2002 which led, in part, to the publication of a news article about Mr. Sterling's legal case. (Indictment ¶ 27) In 2002 and 2003 Mr. Sterling was unhappy that the legal procedures relating to his "memoirs" were bogged down even though those documents contained no classified information. (Indictment ¶ 30) In March of 2003, Mr. Sterling met with staffers of the Senate Select Committee and disclosed classified information related to Human Asset No. 1. (Indictment ¶ 36) In doing so, Mr. Sterling followed all procedures required of him and made proper disclosures to persons entitled to receive that information.[2]

The point of this recitation is to show that Mr. Sterling, even as depicted in the Indictment, is an attorney who employed proper procedures to complain about discrimination at his workplace. He used lawful procedures to seek to have a book published and was rebuffed by

[2] The CIA apparently believes that Mr. Sterling provided false information to the Senate Select Intelligence Committee in 2003. (Indictment ¶ 36) The supposedly false information is not identified in the Indictment but the defense can certainly posit that the CIA remains angry at Mr. Sterling for making proper disclosures to Congress about the "operation" that the CIA did not want made. This is, of course, the flipside of the revenge motive that the Government assigns to Mr. Sterling.

the CIA. The book was never published. Mr. Sterling made proper and lawful disclosures to the Senate Select Committee on Intelligence that obviously angered his former bosses at the CIA. At all of these times, Mr. Sterling took the route allowed by and provided by the law. These actions belie the depiction in the Indictment and the Motion for Detention of Mr. Sterling conspiring with a journalist to undermine the interests of the United States and to have people exposed and killed.

Since 2004, and up until the date he was arrested, Mr. Sterling was working as a healthcare fraud investigator in St. Louis, Missouri for Wellpoint. In that job, Mr. Sterling was charged with uncovering over-billing schemes related to Medicare and healthcare fraud in general and saved his employer and taxpayers approximately $50 million dollars in the last year alone. Since 2004, he has worked closely with the United States Attorneys Offices across the country including the Southern District of Florida and the Western District of Texas. In that role, Mr. Sterling has presented statements to United States District Judges detailing fraud schemes and has been a model citizen. He has no criminal record whatsoever and is married to his wife Holly, who is a social worker. He lives modestly outside of Saint Louis, Missouri in O'Fallon. He owns his own home with his wife though it is mortgaged. Mr. Sterling is a graduate of Washington University in Saint Louis earning his JD in 1992.

3. The Baseless Threat of Danger to the Community.

In the Government's Motion for Detention, the Government pretends that it has prevailed at trial and posits that detention is needed as Mr. Sterling will continue to make disclosures of classified information and will even risk the lives of CIA agents. These claims would be laughable if they were not so serious. Even taking the allegations in the Indictment as true, the

last time that Mr. Sterling contacted "Author A" was in 2005 and the Government, which presumably has been investigating this case for over six years, does not even provide the Court with a single statement or email from Mr. Sterling to "Author A" that mentions any of the classified information apparently at issue in this case. It fails to provide the Court any intercepted phone call, intercepted letter, intercepted email, a confession, or any direct evidence that Mr. Sterling ever provided any classified information to anyone outside of legal circles. And, it fails to produce any evidence that Mr. Sterling has ever sought to contact any author or anyone else about any classified matter for over six years. It proffers no evidence, because there is none, that he has ever threatened to out any agent or employee of the CIA much less have someone killed.[3]

In the face of this evidentiary void, and after leaving this allegedly deadly threat to national security on the street for over six years, the Government claims that he must be detained so that he will not leak again or have a government agent killed. It goes so far as to argue that Mr. Sterling will have Human Asset No. 1 killed and expose all of his former colleagues. (Motion at page 5-7) This claim is preposterous and without foundation. Had the government, which cannot even bring itself to publicly identify "Author A," actually been concerned about Human Asset No. 1, it would not have brought this prosecution, thereby risking the need to call

[3] Until the Court, at the arraignment, noted the hypocrisy of leaving Mr. Sterling in the general jail population while simultaneously claiming he was a risk of disclosure, Mr. Sterling was in the general population in the detention facility in Alexandria and Saint Louis. The same analysis applies to the Government's request that Mr. Sterling be denied the use of the internet or the telephone. Mr. Sterling needs to find a job and communicate with counsel. There is no basis for any of the restrictions described in footnote 3 of the Government's Motion which are patently designed, in the light most favorable to the CIA, to isolate Mr. Sterling from counsel and the workforce.

him or her to testify in this case. Certainly that witness may be called either by the United States or the defense, as testimony may be required to support or rebut any of the alleged "false statements" that Mr. Sterling allegedly made to the United States Congress as well as to support or rebut any of the other allegedly secret matters at issue in this case. Further, as the Government must understand, CIA employees, Congressional employees and even Members of Congress, and all others who have exculpatory information or who could have themselves been the source of the alleged disclosure at issue in this case will be potential witnesses for the defense which will use all proper means to learn that information as well as to learn the identifies of all other persons who had contemporaneous knowledge of the alleged classified information at issue. Again, if the Government believed these people to be at risk, it would not have brought this prosecution.

Courts have rejected similar arguments for detention in the past. For example, in United States v. Fisher, 618 F. Supp. 536 (E.D. Pa. 1985), aff'd without opinion, 782 F. 2d 1032 (3rd Cir.), cert denied 479 U.S. 868 (1986), the District Judge was asked to detain a drug defendant on the grounds that he was a threat to the community based upon allegations of crimes that were then only three years old, as compared to the time that has passed in this case. In language applicable to this case, the Court denied the detention motion and stated:

> Finally, the conduct of which the defendant has been indicted occurred in 1982. In spite of the fact that the Government now vigorously contends that Fisher will be a menace to the community, the Government nevertheless let him roam at large, allegedly reaping his profits and poisoning the neighborhood of 29th and York Streets, Philadelphia, with a flood of destructive narcotics. There may be some explanation for this inaction, but aside from the unsworn statement of counsel, none was offered. All of the foregoing glaring deficiencies in the Government's proof seem to indicate that the Government treats deprivation of liberty

> as an automatic sequela of an indictment and that the deprivation of an individual's liberty is not a very serious thing. I disagree with the Government and I find that its evidence falls far short of the clear and convincing standard rightly demanded by the Act.

Id at 538.

This Court should similarly dispose of the Government's baseless claim that Mr. Sterling, if released, poses any threat to the community or any particular witnesses.

4. Mr. Sterling will Appear at all Proceedings and Normal Conditions will Assure his Appearance.

The Government provides no argument that Mr. Sterling will not appear for all proceedings in this case if released on bail. Indeed, Mr. Sterling fully intends to defend this case and will agree to the normal bail conditions imposed upon persons, like him, who are charged with non-violent offenses and who have no criminal record. That would, of course, include the execution of a suitable unsecured bond, surrender of his passport, reasonable restrictions on travel and the usual conditions requiring reporting to pre-trial services[4]. He will agree to abide by the law and not contact any of his former colleagues at the CIA.

The Court does not need to look far to see that similar restrictions have been imposed in similar recent cases. For example, in United States v. Thomas A. Drake, Crim. No. 1:10-cr-00181-RDB-1, (U.S.D.C. Md.), Mr. Drake is charged with multiple violations of 18 U.S.C. § 793(e) as well as obstruction of justice and making a false statement. Mr. Welch is counsel in that case. As the Court can see from the Indictment, which is attached hereto as Exhibit A, Mr. Drake's alleged leaks occurred in 2006 and 2007 while he was employed at the NSA. Mr. Drake

[4] Mr. Sterling does not have any real estate assets that can be pledged. His wife will co-execute an unsecured bond as fixed by the court.

was released on his own recognizance and surrendered his passport. The release order, signed by the Honorable Richard D. Bennett, is also attached hereto as Exhibit B.

And, in United States v. Stephen Jin-Woo Kim, Crim No. 1:10-cr-00255-CKK-1 (U.S.D.C. D.C), Mr. Kim was also charged with a violation of 18 U.S.C. § 793(d) as well as making a false statement. The allegations against Mr. Kim stem from actions taken in 2009. The Indictment in Mr. Kim's case is filed herewith as Exhibit C. Mr. Kim was released with reasonable restrictions and apparently a cash bond was posted against unidentified real estate. The release order, signed by the Honorable Colleen Kollar-Kotelly, is also attached hereto as Exhibit D.

5. Conclusion.

There is no doubt that Mr. Sterling was indicted for serious charges. That fact, however, does not justify his detention under the Bail Reform Act. Counsel in this case will depend significantly upon Mr. Sterling to read and interpret the discovery, whether in the SCIF or otherwise, to help them defend this case. Mr. Sterling has the right to assist in the defense of this case and that right is best vitiated by allowing him to be free, with reasonable conditions, to assist his counsel. He will appear for all pretrial proceedings in this case and for trial and defend himself and there is no lawful basis for his pretrial detention.

JEFFERY ALEXANDER STERLING
By Counsel

By: /s/ Edward B. MacMahon, Jr.
Edward B. MacMahon, Jr.
VSB No. 25432
Law Office of Edward B. MacMahon, Jr.
P.O. Box 25
107 East Washington Street
Middleburg, VA 20118
(540) 687-3902
(540) 687-6366
ebmjr@verizon.net

1307 New Hampshire Ave., N.W.
Second Floor
Washington, DC 20036
(202) 775-1307
Counsel for Defendant Jeffrey A. Sterling

CERTIFICATE OF SERVICE

I hereby certify that I caused an electronic copy of the *Defendant's Opposition to Government's Motion for Pretrial Detention* to be served via ECF upon James L. Trump, Attorney for the United States of America.

By: /s/ Edward B. MacMahon, Jr.
Edward B. MacMahon, Jr.
VSB No. 25432
Law Office of Edward B. MacMahon, Jr.
P.O. Box 25
107 East Washington Street
Middleburg, VA 20118
(540) 687-3902
(540) 687-6366
ebmjr@verizon.net

1307 New Hampshire Ave., NW
Second Floor
Washington, DC 20036
(202) 775-1307
Counsel for Defendant Jeffrey A. Sterling