

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
v.) Criminal No. 22-mj-6269-MPK
)
JOSEPH A. PADILLA,)
Defendant)

**Motion To Modify Pretrial Release Conditions
and Request for Hearing**

Now comes the Defendant, Joseph A. Padilla, by and through undersigned counsel, and hereby moves the Court for an order removing home detention as a condition of release, which would fulfill the Court’s duty to impose the “least restrictive conditions” necessary to “reasonably assure” Mr. Padilla’s presence in Court as required. 18 U.S.C.A. § 3142(c)(1)(B); *see also United States v. Simone*, 317 F. Supp. 2d 38, 42 (D. Mass. 2004) (“Similarly, only reasonable assurances, rather than a guarantee, are required with regard to the risk of flight”). As detailed *infra*, given all of the other conditions of release, including participation in the Location Monitoring Program and the posting of a personal residence valued in excess of \$5,000,000.00, and that Mr. Padilla has already unquestionably demonstrated he possesses the “ability to act in his own, enlightened, self-interest,” *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991), as exemplified by two cross-country trips with meticulous adherence to his conditions of release, the defense respectfully submits the condition of home detention is unnecessary to “reasonably assure” the appearance of Mr. Padilla, an individual with zero criminal history, with two children and a fiancée who love, support and depend upon him, with a large, extended family that also lives in his community, and who has hired private

counsel to defend himself in the government’s forthcoming case. It is by no means benign, however, as one of the many lessons to emerge from the COVID pandemic is that the prolonged isolation caused by home detention can have a debilitating effect on an individual’s mental and emotional well-being. Finally, as set forth in greater detail below, the position advanced by the government during the “meet and confer” process set forth by our Local Rules—that removing the condition of home detention creates an intolerable risk that Mr. Padilla could flee prosecution by cutting off his electronic monitoring bracelet and driving across a nearby Mexican border—lacks grounding in any objective facts, is contradicted by the known facts, and, ultimately, violates the very design and purpose of the Bail Reform Act.

Request for Oral Argument

Pursuant to Local Rule 7.1(d), Mr. Padilla respectfully requests a hearing in this matter.

Local Rule 7.1(a)(2) Certification

The parties have conferred and the government will oppose this motion.

Grounds and Reasons

As further grounds and reasons in support of the present motion, the defendant respectfully submits the following:

1. Mr. Padilla was arrested on August 25, 2022, at the San Diego International Airport, pursuant to the complaint filed in this matter. *See United States v. Joseph Padilla*, United States District Court for the District of Southern California, Case No. 22-mj-03090-MSB, Dkt. Entry Dated August 25, 2022. The government orally moved for detention, *see id.*, and Mr. Padilla, an alleged first-time offender charged with

a financial crime, was held in custody until September 2, 2022, *id.* at Dkt. Entry 9, when he was released on the following conditions, with the government's agreement: (1) travel restricted to San Diego County and Imperial County, (2) travel expanded within the State of California at the discretion of Pretrial Services, (3) an appearance bond in the amount of \$1,000,000.00, co-signed by a financially responsible person and secured by \$200,000.00 in cash, (4) surrender of his passport, (5) no entering Mexico, (6) participation in the Location Monitoring Program, (7) home detention, and (8) a property bond to be executed in this District. *See Id.* at Dkt. Entry 8.

2. Mr. Padilla appeared voluntarily in this Court on September 9, 2022. The Court released Mr. Padilla on the same conditions imposed in California, with the added condition that Mr. Padilla be permitted to travel to New York to meet with counsel. *See* Dkt. Entry Dated September 9, 2022.

3. Mr. Padilla's local (CA) supervising U.S. Pretrial Services Officer has confirmed to counsel that Mr. Padilla has since complied with every condition of release imposed upon him. His long-time partner and fiancée with whom he resides, Ashley Robinson, co-signed the California bond and posted \$200,000.00 in cash to secure that bond. Mr. Padilla has executed an additional \$1,000,000.00 appearance bond in this District, Dkt. Entry 13, executed a deed and mortgage in favor of the United States, executed an escrow agreement, recorded the mortgage in the appropriate registry of deeds, Dkt. Entry 19, and forwarded the original deed to the Clerk's Office pursuant to the escrow agreement. The personal residence posted by Mr. Padilla, and now encumbered by the mortgage in favor of the United States (with a deed to the United

States held in escrow by the Clerk’s Office), is valued by Zillow in excess of \$5,000,000.00.

4. The position advanced by the government during the “meet and confer” process set forth by our Local Rules—that removing the condition of home detention creates an intolerable risk that Mr. Padilla could flee prosecution by cutting off his electronic monitoring bracelet and driving across a nearby Mexican border—lacks grounding in any objective facts, is contradicted by the known facts, and, ultimately, violates the very design and purpose of the Bail Reform Act.¹

5. First, Mr. Padilla has already been permitted to leave his home and travel freely across the country on two separate occasions. As noted, Mr. Padilla traveled to Boston for his initial appearance, and he likewise traveled to New York City on September 21, 2022, to meet with counsel. Notably, both of these travel events occurred *before* Mr. Padilla even posted his personal residence to secure his appearance bond. *See, e.g.*, Dkt. Entries 13, 19. Each time, Mr. Padilla complied with every condition imposed upon him by U.S. Probation, and he returned to his residence as required.

6. These two cross-country excursions conclusively answer the government’s hypothetical, nightmare postulation that, freed of home detention, there exists an intolerable risk that Mr. Padilla will drive to the Mexico border, cut off his electronic monitoring bracelet, and flee into Mexico. Mr. Padilla has already been permitted to drive to and from numerous international airports in close proximity to hundreds of miles of international borders between the United States and Mexico and Canada. Indeed, the

¹ The government will no doubt recite numerous alleged facts in its opposition it believes creates a serious risk of flight in this case, as it has done during the “meet and confer” process. The defense will address any such arguments in a reply pleading.

San Diego International Airport is substantially closer to the Mexican border than Mr. Padilla's residence in Carlsbad, California, yet the current conditions of release permit him to travel to that airport to facilitate his travel to both New York and Massachusetts. He likewise has been permitted to enter multiple international airports with ready access to a bevy of international flights. Given this demonstrable record, the defense respectfully submits there is simply no objective basis to conclude that removing the condition of home detention somehow elevates Mr. Padilla to an uncontrollable risk of flight.

7. The fact of the matter is that, by every objective measure, Mr. Padilla is fully prepared to abide by this Court's orders and properly defend himself in this case. He has hired experienced, private counsel to represent him in this matter at considerable personal expense, he has posted his family home and \$200,000.00 in cash to secure his appearance in Court as required, and he has rejected the government's overtures for a more expedient resolution of this matter through cooperation. Indeed, if home detention actually represented the one remaining condition of release preventing Mr. Padilla from fleeing (which is apparently the government contention here), he could have easily walked partly down the path of cooperation to secure the government's consent for a modification of his conditions of release, which is routinely provided to other cooperators in this area of prosecution. *See, e.g., United States v. Roger Knox*, Case No. 18-cr-10385-NMG.² Instead, Mr. Padilla has chosen to assert his constitutional right to

² In *United States v. Roger Knox*, Case No. 18-cr-10385-NMG, the defendant, a British citizen who operated an asset management company in Switzerland, is alleged to have "directed" trading in a "pump-and-dump" scheme that generated approximately \$164 million in fraud proceeds. Dkt. 44 at p.2. The Court allowed the government's original motion to detain, sustaining its position that no conditions could reasonably assure Mr. Knox's appearance in court. Dkt. 23. When Mr. Knox moved to reopen the detention, the government vociferously objected, arguing *inter alia* that extradition from countries such as the United Kingdom and Switzerland "is difficult." Dkt. 44 at p.4, n.1. A plea agreement was filed in that

challenge the government accusations in this case, and the government’s insistence on home detention seems punitive in nature, rather than grounded in objective facts.

8. The government’s insistence on home detention also contravenes the design and purpose of the Bail Reform Act. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 747 (1987). Congress carefully designed the Bail Reform Act to comport with this vitally important constitutional norm. First, it requires only “reasonable assurances,” not guarantees, as to risk of flight. *See, e.g., United States v. Simone*, 317 F. Supp. 2d 38, 42 (D. Mass. 2004) (“Similarly, only reasonable assurances, rather than a guarantee, are required with regard to the risk of flight”). Second, and importantly here, the Act explicitly provides that the judicial officer “shall” order pretrial release subject “to the *least restrictive* further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required....” 18 U.S.C.A. § 3142(c)(1)(B) (emphasis added). The government’s insistence on home detention as a condition of release, particularly considering Mr. Padilla’s existing travel record and his ongoing need and ability to travel across the country to attend court proceedings and meet with counsel, is squarely at odds with these fundamental elements of the Bail Reform Act.

9. Mr. Padilla is now 53 years old, is a U.S. citizen, and has no criminal history. He does not suffer from any drug or alcohol dependency issues that would cloud his judgment or decision-making. He has strong family ties, with two children, ages 19

case on September 16, 2019. A Rule 11 hearing was held on January 13, 2020. Less than 3 months later, on March 31, 2020, the parties filed a joint motion for Mr. Knox’s release, which remains unavailable on the public docket. Dkt. 110. Conditions of release were entered on April 2, 2020, which likewise are not available on the public docket. Dkt. 114.

(Joseph Jr.) and 23 (Olivia), and a fiancée who very much depend on him for love and support. He also has a large extended family—with two brothers and a sister, 10 nieces and nephews, and numerous aunts and uncles all living in San Bernardino County, approximately an hour from Mr. Padilla’s residence. In short, Mr. Padilla is a mature, intelligent adult who clearly possesses the intellect, demeanor and capacity to obey the orders of this Court, as he has done meticulously to date. Or, as the First Circuit described it in *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991), Mr. Padilla possesses the “ability to act in his own, enlightened, self-interest.” *See also United States v. Patriarca*, 776 F. Supp. 593, 598 (D. Mass. 1991) (“I am not necessarily relying on Mr. Patriarca’s good faith. I am, however, to a certain extent, as I will describe in detail, relying on his ability to discern what is in his best interest and to conform his conduct to that”). Amongst all of the other catastrophic events that would cascade from cutting off an electronic monitor and surreptitiously slipping across the Mexican border to somehow live a torturous life on the run from the very long-arm of the United States Department of Justice apparatus, Mr. Padilla understands that he would be subject to prosecution if he fled, which he now knows carries a maximum penalty of up to fifteen additional years of imprisonment. 18 U.S.C. §3146(b)(1)(A)(1).

10. Here, the defense respectfully submits that electronic monitoring, two bonds each in the amount of \$1,000,000.00, the posting of \$200,000.00 in cash, and the posting of Mr. Padilla’s personal residence, which is valued by Zillow in excess of \$5,000,000.00 and serves as a home for his two children and fiancée, more than satisfies the “reasonable assurance” standard of the Bail Reform Act for a U.S. citizen charged with a financial crime, with no criminal history, no drug or alcohol impairments, and who

enjoys an extremely strong bond with two children who love and depend upon him, not to mention a fiancée and a large, extended family.³

11. The condition of home detention is not only unnecessary, but it can be harmful and counterproductive. In the wake of the COVID pandemic, it can no longer be seriously debated that a prolonged period of home detention can have a serious, debilitating impact on an individual's mental health. *See, e.g.*, "Forced Social Isolation and Mental Health: A Study on 1,006 Italians Under COVID-19 Lockdown," <https://www.frontiersin.org/articles/10.3389/fpsyg.2021.663799/full> (last viewed October 24, 2022) ("It is known that brief forms of social disconnections can induce negative emotions (such as anger and sadness), and decreases satisfaction of basic psychological needs (*e.g.*, self-esteem) and cognitive abilities. On the other side, prolonged social disconnection experience have been linked with an increased risk of depression, suicidal thoughts, and risk of early mortality") (citations to studies omitted). After two months of home detention, Mr. Padilla is already experiencing the emotional impact inflicted by social disconnections and isolation.

12. Finally, publicly available statistics overwhelmingly demonstrate that nearly everyone released pending trial in the federal system appears in court as required. For example, according to statistics from the Administrative Office of the United States Courts, in 2019, 99% of released federal defendants nationwide appeared for court as required. *See* AO Table H-15 (Dec. 31, 2019), archived at <https://perma.cc/LYG4-AX4H> (showing a nationwide failure-to-appear rate of 1.2% and a rearrest rate of 1.9%). And, most importantly, whatever the national average, Mr. Padilla has already demonstrated

³ Mr. Padilla's son lives at the residence when not at his college, University of California at Irvine, and his daughter lives at the residence while also spending time at her mother's home.

that he is able and willing to abide by conditions imposed by this Court—having twice traveled to and from the West Coast.

Wherefore, for all of the foregoing reasons, Mr. Padilla respectfully requests an order removing home detention as a condition of release in this matter.

Respectfully submitted,
JOSEPH A. PADILLA,
By his Attorney,

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Dated: October 28, 2022

Certificate of Service

I, Robert M. Goldstein, hereby certify that on this date, October 28, 2022, a copy of the foregoing document has been served via the Electronic Court Filing system on all registered participants, including Assistant U.S. Attorney James R. Drabick.

/s/ Robert M. Goldstein
Robert M. Goldstein