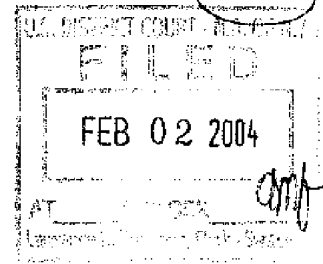


ORIGINAL



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

vs.

2003-cr-64

RAFIL DHAFIR,

Defendant.

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Minutes of Motion for Bail held on January 27,
2004, at 10:35 a.m., held at the United States District
Courthouse, 100 South Clinton Street, Syracuse, New York, THE
HONORABLE NORMAN A. MORDUE, Presiding.

A P P E A R A N C E S

For Government: UNITED STATES ATTORNEY'S OFFICE
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1 counsel in this matter.

2 So Mr. Cannick, you have a motion before me
3 this morning.

4 MR. CANNICK: Yes, your Honor.

5 THE COURT: Please proceed.

6 MR. CANNICK: Thank you, your Honor.

7 First of all, I'd like to thank the Court for
8 the opportunity to come and amplify what I've put forth in
9 our bail motion. It's not my intention to reiterate every
10 point in my papers nor address every response item that was
11 mentioned by the Government, but I would like to highlight
12 certain aspects of my application and hopefully save enough
13 time so that I could respond to some of the Government's
14 points when they get up.

15 Your Honor, the Government in their papers
16 made reference to repatriation -- repatriation order that the
17 Court handed down last year and said that inasmuch as
18 Dr. Dhafir has not responded to that order, then certainly he
19 would not adhere to any mandates with respect to bail. Your
20 Honor, the matter is very simple. The doctor cannot turn
21 over what's not there. Before that bail hearing last year
22 the monies that were in the accounts in Jordan had been
23 seized by the Jordanian authorities and those monies were
24 taken from the account, and it's a situation wherein once we
25 learned that and once we obtained the documentation after

1 that, we turned it all over to the Government, and it was my
2 understanding that the Government's interpreters would read
3 those documents as well as I had interpreters read them and
4 interpret them for me. The Government in their papers
5 indicated that, well, we do not know the authenticity of the
6 documents. Well, it is what it is. I have to accept it.
7 I'm sure, given the relationship that the Government has with
8 the Jordanian authorities as well as having a correspondent
9 bank, Chase Bank, they were in a far better position to check
10 out the authenticity than I would. However, I think what's
11 really important here, your Honor, is that there is nothing
12 in those papers that suggests that the documents were not
13 authentic. What's being asked in the papers is to create a
14 notion that in some way these documents are not authentic.
15 The documents are authentic. We got them from the source of
16 the -- the holder of the account and we turned them over to
17 the Government as soon as we got them, and what those
18 documents say to us, your Honor, and what I think it would
19 say to the Court if the Court had them is that the monies
20 that were in those accounts were taken long before the bail
21 hearing before your Honor early last year and it was taken by
22 the Jordanian authorities and a receipt was given to the
23 individual who had the account and we submitted and turned
24 that all over to the Government. Now I think that what the
25 Court should also be mindful of is that there was some

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1 reference in the Government's papers saying, well, the monies
2 that were in the account were far less than what was in a
3 ledger that Dr. Dhafir had in September of 2002. I think the
4 Government took great pride and delight in stating that
5 Dr. Dhafir at the time of his arrest was surprised. Well,
6 you can't have it both ways. If he was surprised by his
7 arrest, then certainly he was not in a position or not to
8 have knowledge that a arrest would be imminent and then he
9 would go about depleting the funds in those accounts. Now I
10 think what the record will show from Help the Needy and the
11 bank accounts would show that historically every year, near
12 the end of November through the beginning of January and
13 February, those accounts were substantially depleted because
14 of the animal sacrifices, the purchase of animals to be
15 sacrificed and given to the poor, so I think that when you
16 look at the accounts and you look at them from a historical
17 perspective, it shows that every year those accounts were
18 substantially decreased because of that purpose.

19 There was an article or at least an argument
20 in the Government's papers with respect to the proximity of
21 the doctor to the Canadian border, and in our bail package,
22 we said that we would propose that the doctor report twice
23 per week to pretrial services, make three calls per day to
24 pretrial services, and that would be morning, noon and in the
25 evening. And the other aspect of our bail application with

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1 respect to monitoring and reporting is that we suggested that
2 the doctor be monitored by an off-duty law enforcement
3 personnel or private duty security firm and that he would
4 have to make contact with that firm at least every six hours
5 during the course of the night so that there would be
6 knowledge as to his whereabouts and he is to be where he's
7 supposed to be.

8 Now what has happened as a result -- and I'm
9 going to digress for a moment -- we offered a name of a
10 Charles Jones, a state trooper, and I guess I have real
11 consternation here because we offered that name because we
12 wanted to offer an individual who the Government would have
13 absolutely no question about. We wanted to offer someone who
14 was currently in law enforcement, who can never be argued to
15 be a friend or an associate or any way related with the
16 defense, so we offered someone who we thought to be wholly
17 objective. However, I received a telephone call about two
18 weeks ago from an internal affairs division regarding my
19 suggesting the name Charles Jones. I didn't say he was going
20 to take it; I said that we offered that name. And apparently
21 what has happened is that law enforcement now has taken to
22 investigate Mr. Jones. We didn't submit his name to be a
23 target of an investigation; we submitted his name because we
24 thought he would be an objective source. And I think what
25 you can do, your Honor, is that you can remove the name; the

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1 name really is not dispositive here. But the concept that we
2 were trying to put forth is that we wanted someone who would
3 be wholly objective and that the Government can never come
4 and claim to this Court or to anybody and say, well, you
5 know, we don't approve this person because we think this
6 person would have a leaning towards Dr. Dhafir and would
7 assist him getting a head start out of the jurisdiction. So
8 I just wanted to digress and at least give the Court an idea
9 as to why we went that direction, but it's not a matter of
10 Charles Jones. We could in fact go to a private duty
11 security firm to monitor Dr. Dhafir, but we offered his name
12 only because we thought he would be considered to be far more
13 objective.

14 Your Honor, the other aspect that we didn't
15 include in our bail application but we're prepared to do it
16 because the Government says, well, if you were to have this
17 person who would be responsible for receiving these phone
18 calls from the Government -- from Dr. Dhafir on six-hour
19 intervals, the only thing this would do is give Dr. Dhafir a
20 six-hour head start. Well, what we would propose, your
21 Honor -- and I thought that given the monitoring that we
22 wouldn't need this, but we proposed electronic monitoring.
23 We don't have a problem with that. We don't have a problem
24 with home detention and electronic monitoring, but it's just
25 been my experience that every time that we propose something

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1 like that in a case of this nature, the Government starts to
2 say, well, electronic monitoring doesn't work. Well, you
3 can't have it both ways either, because many situations they
4 come to court and agree and accept a package where electronic
5 monitoring is being offered and in some situations they come
6 and argue just the contrary, and we now offer that as a part
7 of our bail package.

8 Part of the Government's argument was, well,
9 there are properties here, your Honor, in the defense
10 package, but when you take a real close look at those
11 properties, what you have is commercial properties as opposed
12 to residence. Well, my position, your Honor, is, what does
13 it matter? What we aim to do by offering the properties is
14 to support a bond of \$2 million. We aim to give the Court
15 properties that were wholly unencumbered and properties that
16 would get us as close to that number and as quickly as
17 possible. What was cited significantly by the Government is,
18 well, the doctor's brother did not put up his residence.
19 Well, the commercial property that he puts up -- that he put
20 up is almost twice the value of the residence. The
21 commercial property that he put up is in excess of \$800,000.
22 So we put up that piece of property that had a greater value
23 and had no encumbrance. So you can't have it both ways. If
24 we had put up residences and we didn't put up that piece of
25 property, then the argument would be put forth to your Honor,

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1 well, what about this piece of property of significant value?
2 He didn't put that up. Your Honor, we put up properties that
3 would get us close to that \$2 million. In fact, the
4 properties that we put up exceeds \$2 million and we have
5 properties that are not encumbered.

6 There was also an argument by the Government
7 that, well, this bail package does not contain any cash.
8 It's been my experience from practicing in federal courts
9 around this country that that's rare, it's a rare court that
10 accepts cash, and the Government is generally not in
11 agreement to cash because they're saying, well, there's
12 really nothing at stake but cash, but if it's someone's
13 property, be it commercial or residence, then there's a
14 greater stake interest. So there was never any consideration
15 on our part to proffer cash as part of our package. These
16 properties that were put up, we're confident, based from
17 speaking to people who actually pledged them, that the
18 Government has done their due diligence, investigated the
19 properties, know that the ownership is intact, know that the
20 value's intact. Based on our conversation with people who
21 pledged these properties, the majority of them have been
22 contacted or at least know that the Government has done their
23 investigation.

24 The Government has attached a very detailed
25 history of Dr. Dhafir's travels dating back to -- I think

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1 maybe as far back as 1995. Your Honor, you know because
2 there are calendars and there are indications with little
3 planes on dates that the doctor traveled and the locations
4 where he traveled, and I think what's the import behind that
5 is that, well, he's traveled extensively, and I think what
6 the Government wished the Court to extrapolate from that,
7 well, if he's traveled extensively, then he has contacts and
8 those contacts supposedly would afford him a financial
9 network. I think that's a tremendous stretch, a tremendous
10 leap. I don't think that you can get that from the fact that
11 someone's traveled to Pittsburgh and other parts of the
12 United States, as well as foreign countries, that there are
13 financial networks that are available to an individual. I
14 think that if that's being the case, then given my travels,
15 that could be said that I have financial people that would be
16 contacts for me in those cities and areas that I've visited,
17 and I don't think that's the case. I think it calls for rank
18 speculation, your Honor, that there is a financial network
19 that's available to the doctor just because he's traveled to
20 certain areas.

21 The Government said in their response that,
22 well, I've raised a number of Sixth Amendment issues and they
23 have no place -- they're to be of no consideration with
24 respect to the statute in terms of seeking bail. I only
25 point out that the statute, Bail Reform Act favors a bail,

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1 and I think that any time you have any statute, that statute
2 cannot be read unto itself. I think you always have to
3 consider the Constitution as it impacts upon the
4 circumstances, and here I'm not going to go over all of those
5 items that we raised with respect to the jail conditions, but
6 I just want to point out that when the Government said that
7 they have no control nor influence -- nor influence over the
8 conditions that Dr. Dhafir finds himself under, I just want
9 to tell the Court that in my conversations -- and in fact, I
10 didn't initiate the conversation. A Sergeant Pawlina at the
11 Justice Center called me in one day and shared a letter that
12 I had sent to him and told me that one of the people who was
13 a part of my defense team would no longer be afforded access,
14 and I asked him, well, how did you come to that conclusion?
15 And he told me that he was instructed by the Government to
16 not allow this person in. The Government maintains that they
17 offered -- gave no such instruction, but for some reason
18 Pawlina finds himself under that belief, that it was the
19 Government who told him that these people who were part of
20 the defense team prior to my getting involved with this case
21 should no longer have access. In fact, I asked Pawlina, why
22 did you share my letter that I sent to you with the
23 Government? And then I further asked him, do you think that
24 the Government should unilaterally dictate who should be a
25 part of my defense team? Maybe they should just decide that

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1 I shouldn't be here as well. But I'm not saying that the
2 Government is being disingenuous, I'm saying that Pawlina
3 somehow finds himself under the impression that he was in
4 fact directed by the Government. And I think that whenever
5 you have an argument such as this or any argument before the
6 Court, you have to consider the Constitution.

7 Your Honor, I'm going to wrap up this part and
8 maybe hopefully the Court will afford me an opportunity to
9 respond to any argument the Government makes, but I just want
10 to state again that the bail that we're proposing here is
11 \$2 million, \$2 million supported by hard equity. It requires
12 personal reporting to pretrial services twice per week,
13 electronic monitoring, telephone reporting to pretrial
14 services three times per day, morning, noon and evening.
15 During the evening hours Dr. Dhafir would have to report and
16 make contact with an entity, be it a private security firm or
17 a -- an investigator, someone, he would have to make contact
18 with to make them aware that he is where he's supposed to be.
19 He would surrender his passport. I think that's not an issue
20 because that's been taken. And his travel, your Honor, would
21 be restricted to the Eastern, Northern and Southern Districts
22 of New York, and in order to come to my office, maybe as he
23 travels down the highways, that might take him --

24 THE COURT: Through Pennsylvania, Scranton.

25 MR. CANNICK: Right. Your Honor, we believe

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1 that the bail package is a substantial one, given the nature
2 of the charges here. I think the Court should not lose sight
3 that the charges are basically white collar offenses. It's
4 my experience -- and I don't know of any case that's ever
5 been had in the Second Circuit wherein someone charged with a
6 white collar offense from the outset was denied bail. I
7 think that when you had a situation here in this district, an
8 individual was given bail, the doctor was given bail, and
9 because of his conduct subsequent and the Government found
10 out about that conduct, then that bail was taken away from
11 him. We only ask for the same thing. Those individuals
12 that's on trial throughout the State of New York in federal
13 jurisdictions now and throughout this country on white collar
14 cases, the amounts of monies that's involved far exceeds
15 what's here. I mean, there's no comparison. And they all
16 have bail. We bring that to the Court's attention because
17 historically, bail has been afforded, and we ask the Court to
18 grant a bail here. Thank you.

19 THE COURT: Thank you, sir.

20 MR. GREEN: Your Honor, the defendant has
21 raised a number of issues in support of his motion for
22 release. We would simply note that a number of those issues
23 are totally irrelevant to the factors the Court is to
24 consider in deciding potential for release and also that many
25 of the issues raised just now in support of that motion had