U.S. Department of Justice

United States Attorney
Eastern District of New York

TM:CMP
F. #2008R01380

271 Cadman Plaza East
Brooklyn, New York 11201

October 2, 2008

VIA FAX

The Honorable Ramon E. Reyes
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Jozef Wolosz, et al.
Magistrate Docket No. 08-877

Dear Magistrate Judge Reyes:

On September 30, 2008, United States Magistrate Judge Marilyn D. Go authorized the arrest of Jozef Wolosz, Robert Dziedziach, Dariusz Lapinski, Rafal Kredens and Maciej Ropelewski based on a criminal complaint charging the defendants with conspiracy to obstruct, influence and impede an official proceeding, in violation of 18 U.S.C. § 1512(k), and conspiracy to engage in conduct to cause bodily injury to other persons with intent to retaliate against those persons for their attendance as witnesses and parties to an official proceeding, in violation of 18 U.S.C. § 1513(f). Wolosz, Dziedziach, Kredens and Ropelewski were arrested yesterday afternoon and evening, and are scheduled to be arraigned before the Court today. Lapinski is currently incarcerated at Rikers Island and the government expects that he will be arraigned before the Court at the time of his release from state custody, which is scheduled for October 11, 2008.

The government respectfully submits this letter in support of its request for a permanent order of detention as to the defendants. The defendants pose a grave risk of obstruction of justice. They also pose a risk of flight and are a danger to the community.

Factual Proffer

The government proffers the following facts concerning the charges at issue and pretrial detention. See United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (the government is entitled to proceed by proffer in a detention hearing); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995) (same); United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986) (same).

I. The Civil Class Action Lawsuit

According to court records, on October 27, 2005, a federal civil complaint captioned Rafal Drej, Pawel Czajka, Michal Gmaj, Leeslaw Maciag, Robert Miezio, Lukasz Olender, Dariusz Sarzynski, Radoslaw Sarzynski, Adam Sobolewski, Pawel Stolarczyk and Jerzy Koprowicz, on behalf of themselves and on behalf of all others similarly situated, v. Keystone Renovations Corp., MCR Restoration Corp., MCR General Contracting, Jozef Wolosz, Bogdon Sarzecki, Adam Radzewicz, Robert Dziedziach, Mara Fox a/k/a Maria Fuks and M. Fox Services, Civil Docket No. 05-5035, was filed in the United States District Court for the Eastern District of New York. The plaintiffs worked as carpenters, masons and laborers for Keystone Renovations Corp. ("Keystone") at construction projects in New York. Defendant Jozef Wolosz is the principal of Keystone, and the class action alleged that Wolosz failed to pay the prevailing wages required under state and federal labor laws. Specifically, the plaintiffs alleged that, after paying the required wages to his employees, Wolosz and his supervisor, defendant Robert Dziedziach, forced the employees to return a portion of those wages to them in cash.

On July 8, 2008, attorneys for the parties in the Drej case informed the court that they had reached a settlement agreement and expected the defendants to begin making payments to the plaintiffs by July 22, 2008. On July 23, 2008, a stipulation of dismissal was filed, and an order dismissing the case was entered on July 24, 2008.

II. The Retaliation Conspiracy

In January 2008, defendant Rafal Kredens called a cooperating witness ("CW") and said that he had a job that would involve inflicting physical harm on certain people, and instructed the CW to call defendant Maciej Ropelewski. At the direction of FBI, the CW called Ropelewski, who told the CW that Ropelewski needed approximately five people hurt badly, perhaps

breaking their legs, because they had taken Ropelewski's boss to court over the payment of wages on a job site.

After these initial contacts, in a consensually recorded meeting on January 17, 2008, the CW met with Ropelewski and Dziedziach, who told the CW, in sum and substance, that 11 people needed to be beaten severely enough to require a three-month stay in the hospital for the victims. There were 11 named plaintiffs in the Drej lawsuit. In later consensually recorded conversations, Dziedziach, on behalf of Wolosz, agreed to pay the CW $25,000 per victim.

In a consensually recorded meeting with the CW on July 10, 2008, Dziedziach said that Wolosz was waiting for the court case to be settled because he did not want the judge to blame Wolosz and the other defendants if the plaintiffs were assaulted during the civil proceedings. Dziedziach told the CW how to carry out the assaults, stating, in sum and substance, "Just give them a fucking beating, legs . . . whatever they can, it would be the best thing. It would be the best punishment, right."

Also during the July 10, 2008 meeting, Dziedziach told the CW that they had previously paid defendant Dariusz Lapinski $15,000 to intimidate the plaintiffs. Dziedziach was unsatisfied with Lapinski's efforts, stating, "They paid him $15,000. . . . He only scared one guy's girlfriend or poured something on her back. . . . But he took $15,000. And the fuck disappeared, in the thin air." In another consensually recorded meeting, on July 21, 2008, Dziedziach added the plaintiffs' lawyer to the list of intended victims, asking the CW, in sum and substance, "Can you beat up the attorney? The one who is in charge of this case. . . . the same attorney who fucked this up."

The CW met Wolosz on September 12, 2008 in an effort to collect some of the money that he had been promised. During this consensually recorded meeting, Wolosz told the CW to "collect" $15,000 from Lapinski. Wolosz also promised to pay the CW an additional $7,000. Wolosz assured the CW that the job was not finished, stating, "I would like to have a contact with you. Because I am going to need you. . . . I have to rebuild my company again. I have to be back in business. I have to have some money, so the situation doesn't repeat itself. And those people who fucking did this to me, I will fucking get them, one by one." Wolosz also confirmed his interest in retaliating against the plaintiffs' lawyer. In a consensually recorded meeting on September 18, 2008, Wolosz paid $5,000 to the CW, and promised to pay the remaining $2,000 he owed the CW in the next week or two. Wolosz said that he was not yet ready to provide

the CW with the names of the intended victims, but would give the CW that information when he had the necessary money.

III. Violent Obstruction

According to documents filed by the plaintiffs in the Drei case, shortly after the lawsuit was filed, one of the plaintiffs who had been employed by Wolosz at Keystone ("John Doe") began receiving calls from an unidentified male ("UM"), urging him to settle the case. On or about May 3, 2006, a male assailant fitting the description of Lapinski threw acid on the back of John Doe's girlfriend ("Jane Doe") as she walked to her job in Brooklyn, causing first and second degree burns. Shortly after this incident, UM called John Doe again and warned him to settle the case quickly. Jane Doe also received a call from an unidentified male, who warned her, in sum and substance, that the acid attack was just the beginning, and told her to make sure that John Doe withdrew his lawsuit and settled the case out of court. Medical records, police reports and an eyewitness corroborate the acid attack on Jane Doe.

Analysis

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., federal courts must order a defendant's pre-trial detention upon determining that "no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community[.]" 18 U.S.C. § 3142(e). A finding of dangerousness must be supported by clear and convincing evidence. See United States v. Rodriguez, 950 F.2d 85, 88 (2d Cir. 1991); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985). A finding of risk of flight must be supported by a preponderance of the evidence. See Chimurenga, 760 F.2d at 405.

The Bail Reform Act lists the following four factors as relevant to the determination of whether detention is appropriate: (1) the nature and circumstances of the crimes charged, (2) the history and characteristics of the defendant, (3) the seriousness of the danger posed by the defendant's release, and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g). The factual proffer above shows the strong evidence of the the defendants' guilt, and an analysis of the three remaining factors demonstrates that detention is appropriate in this case.

I. Nature and Circumstances of the Crimes Charged

The defendants are charged with conspiring to corruptly obstruct an official proceeding in violation of Title 18, United States Code, Section 1512, and orchestrating the violent retaliation against civil plaintiffs in violation of Title 18, United States Code, Section 1513. The latter is a crime of violence, which is defined under Title 18, United States Code, Section 3156(a)(4) as "(A) an offense that has [as] an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; (B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

Moreover, the defendants are charged with a crime of violence in furtherance of the obstruction of justice, which, in itself, is a crucial factor in bail determinations under the Bail Reform Act. See 18 U.S.C. § 3142(f)(2) (the Court may require a detention hearing if there is a serious risk that the defendants will flee or "obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness."). This combination of violence and obstruction demands that the defendants be permanently detained. In addition, each defendant faces a potential sentence of 20 years' imprisonment on each charge. These penalties give the defendants a significant incentive to flee. See United States v. Dodge, 846 F. Supp. 181, 184-85 (D. Conn. 1994) (possibility of a "severe sentence" heightens the risk of flight).

II. History and Characteristics of the Defendants

The defendants have demonstrated a history of violence and retribution, and their individual characteristics indicate that they pose a substantial risk of flight. Each defendant was born in Poland and appears to maintain ties there. The government has obtained the following preliminary information on the defendants' immigration status:

- Maciej Ropelewski is a Polish citizen who appears to be in the United States on an expired visa. In a consensually recorded conversation with the CW last week, Ropelewski said that he plans to go to Poland on Monday, October 6, 2008. In other conversations, he has told the CW that he plans to move back to Poland permanently.

- Darius Lapinski is a Polish citizen who appears to be in the United States illegally, and Immigration and Customs Enforcement has lodged an immigration detainer on Lapinski.

- Rafal Kredens has no immigration status in the United States.

- Robert Dziedziach is a legal permanent resident of the United States but travels to Poland and has close family ties there.

- Jozef Wolosz has been a United States citizen since approximately 2006, but was born in Poland and is believed to maintain close family ties there.

III. Seriousness of the Danger Posed by Defendants' Release

The defendants' history of violent, obstructive conduct poses an extremely serious danger to the community. The Second Circuit has addressed the issue of pre-trial detention in assuring the safety of the community against a defendant who has engaged in obstructive conduct. In United States v. LaFontaine, 210 F.3d 125 (2d Cir. 2000), the district court revoked the defendant's bail based on evidence that LaFontaine had sought to influence witnesses while released on bond. The defendant appealed, arguing that in the context of a non-violent, white-collar case, elaborate release conditions, including home detention, electronic monitoring, phone tap and relocation to a different state would assure the safety of the community. Id. at 135. The Second Circuit upheld the lower court's revocation of bail. The court ruled that "we have held that a record of violence or dangerousness [in the sense of violence or threats aimed against witnesses] is not necessary to support pre-trial detention." Id. (citing Ferranti, 66 F.3d 540, 543 (2d Cir. 1995) and United States v. Rodriguez, 950 F.2d 85, 89 (2d Cir. 1991)). The court noted that in United States v. Gotti, 794 F.2d 773, 779 & n.9 (2d Cir. 1991), the court held that a "single incident of witness tampering constituted a 'threat to the integrity of the trial process, rather than more generally a danger to the community,' and was sufficient to revoke bail." LaFontaine, 210 F.3d at 134 (quoting Gotti, 794 F.2d at 779 n.5).

The LaFontaine court further observed that, as in Gotti, "pre-trial detention was even more justified in cases of violations related to the trial process (such as witness tampering) than in cases where the defendant's past criminality

was said to support a finding of general dangerousness." LaFontaine, 210 F.3d at 134.

In contrast to LaFontaine, the defendants here have used violent means to obstruct justice, going so far as to have acid thrown at the companion of a plaintiff in the Drej case. As recently as two weeks ago, Wolosz was vowing to "get them, one by one," even plotting violent retribution against the plaintiffs' lawyer. This conduct is relevant in the Court's detention determination regardless of whether the defendants obstructed justice in the instant case or their prior civil lawsuit. See also United States v. Agnello, 101 F. Supp. 2d 108 (E.D.N.Y. 2000) (reversing magistrate judge and ordering detention based, in part, on evidence that the defendant attempted to obstruct justice in a prior case).

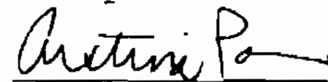
Finally, the Second Circuit has repeatedly stated that even elaborate conditions of home detention cannot substitute for incarceration where the defendant is violent or cannot be trusted to comply with the conditions of release. See United States v. Millan, 4 F.3d 1038, 1048-49 (2d Cir. 1993) (home detention and electronic surveillance can be circumvented); United States v. Orena, 986 F.2d 628, 632 (2d Cir. 1993) ("home detention and electronic monitoring at best 'elaborately replicate a detention facility without the confidence of security such a facility instills'") (quoting United States v. Gotti, 776 F. Supp. 666, 672 (E.D.N.Y. 1991)); see also United States v. Tortora, 922 F.2d 880, 886-87 (1st Cir. 1990) (elaborate conditions dependent upon good faith compliance were insufficient where defendant's violent history provided no basis for believing that good faith would be forthcoming). Electronic monitoring of the defendants could not prevent them from directing others to threaten victims and witnesses. Given these defendants' history of violent obstructive conduct, there is simply no condition or combination of conditions that would "reasonably assure the safety of any other person and the community." 18 U.S.C. § 3142(e).

Conclusion

For the reasons cited above and as will be discussed at the arraignment, the government respectfully requests that the Court enter permanent orders of detention with respect to defendants Jozef Wolosz, Robert Dziedziach, Rafal Kredens and Maciej Ropelewski today, and enter a permanent order of detention with respect to Dariusz Lapinski when he is arraigned after his release from state custody.

Respectfully submitted,

BENTON J. CAMPBELL
United States Attorney

By: 
Cristina M. Posa
Assistant U.S. Attorney
(718) 254-6668