No. 09-3939

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

SHOLOM RUBASHKIN,

Defendant-Appellant.

On Appeal from the United States District Court for the Northern District of Iowa

STATEMENT OF THE CASE AND MOTION FOR RELEASE PENDING SENTENCING

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INTRODUCTION

The appellant, Sholom M. Rubashkin, is a native-born American who has a wife and ten children. His family has lived with him in Postville, Iowa, since Mr. Rubashkin settled in Postville 18 years ago to be a vice president of a kosher beef and poultry slaughtering plant that his father Aaron Rubashkin established. Mr. Rubashkin became the subject of extraordinary media attention after the Immigration and Customs Enforcement ("ICE") agency of the Department of Homeland Security conducted an immigration raid on the AgriProcessors Postville plant on May 12, 2008, and arrested 389 illegal immigrants at the plant.

Mr. Rubashkin anticipated ever since the May 2008 raid that he would be accused in a federal indictment. He received a "target letter" in May 2008. His attorneys met and corresponded repeatedly with the federal prosecutors while Mr. Rubashkin remained in Postville awaiting the criminal charges that the prosecutors said they were intending to bring. Various employees of AgriProcessors were indicted in the months following the raid. Mr. Rubashkin made no attempt to flee notwithstanding the very public nature of the investigation in which he was targeted and the indictments of AgriProcessors employees. He even traveled to Canada to visit a sick friend and returned to Postville while the filing of formal charges and an arrest were imminent.

Before the May 2008 raid, Mr. Rubashkin had an absolutely clean record, and there is no reason to believe that he would flout the law or attempt to flee from it. In response to the charges filed against him he has always asserted his innocence and declared that he is confident of ultimate vindication after a fair legal process.

The details of the charges filed against Mr. Rubashkin more than 5 months after the raid are described below. Intense public scrutiny and extensive media attention were given to Mr. Rubashkin's arrests. After his initial arrest on an immigration charge on October 30, 2008, Mr. Rubashkin was released on a one-million-dollar bond. One day after indictment on the immigration offense, he was again arrested with extensive publicity on bank fraud charges. The Magistrate Judge ordered him detained. The District Court reversed that decision after more than two months of imprisonment. Mr. Rubashkin complied with great punctiliousness with all conditions of his release. Indeed, on one occasion when his electronic bracelet came loose, it was Mr. Rubashkin who notified the authorities of this fact and had it corrected.

Mr. Rubashkin has been ardently supported in his defense by significant segments of the Orthodox Jewish community. Many visited him before his trial and many attended the court proceedings. Relatives, former employees, and friends are certain enough that he will be remaining in the United States and will not flee that they have offered to post their homes, totaling approximately 8 million dollars

in equity, as security for his presence in court. The Orthodox Jewish community has even offered valuable and sacred Torah Scrolls as security. Mr. Rubashkin has proposed every conceivable restraint that could be imagined short of imprisonment – including not only electronic monitoring but also a 24-hour armed guard – if he can live at home pending sentencing. That will enable him to follow the strict rules of Orthodox Jewish observance and assist his wife and family of ten children, including an autistic son and children aged 12, 8, and 5.

We recognize that the burden imposed by federal law on an accused who has been found guilty and is awaiting sentence is substantial. Section 3143(a) of Title 18 mandates that he must establish "by clear and convincing evidence" that he "is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c)."

No one claims that Mr. Rubashkin poses any danger to the safety of any other person or the community if he is released from prison pending sentencing. The District Judge denied Mr. Rubashkin's request for release on grounds "that Defendant poses a flight risk." The District Court failed to comply with the language of Section 3143(a) that directs a District Court to consider whether the defendant is a "flight risk***" if released "under section 3142(b) or (c)."*** The statute enumerates "any other condition that is reasonably necessary to assure the appearance of the person as required . . . ." The District Judge did not explain why

she rejected the very significant conditions that would "assure the appearance" of Mr. Rubashkin – including the most drastic condition of a 24-hour personal armed guard. Although the armed guard was proposed at the detention hearing in January, the District Judge correctly did not think it necessary at that time. If additional assurance of his appearance is needed at this juncture (although we think it is not), the 24-hour armed guard provides that assurance.

This Court said in *United States v. Welsand*, 993 F.2d 1366, 1367 (8th Cir. 1993), that the correct test for determining "flight risk" for an accused pending sentencing is whether he or she "is not likely to flee ***if released upon suitable conditions.***" (Emphasis added.) Indeed, even an accused who has violated a condition of release may only be denied release if "there is ***no condition or combination of conditions of release*** that will assure that the person will not flee . . . ." (Emphasis added.) This language makes it clear that a District Court is not meeting its statutory obligation if it does not address the adequacy of any condition or combination of conditions that are proposed to assure the defendant's presence.

The conditions of release proposed by Mr. Rubashkin went well beyond even the "clear and convincing evidence" standard. They guaranteed that Mr. Rubashkin could not flee. Compliance with them would indisputably "assure" his appearance. The combination of a personal 24-hour guard and an electronic bracelet, together with financial guarantees totaling nearly 8 million dollars, and

the assurances of a significant community in the United States confirm what has been obvious throughout the proceedings involving Mr. Rubashkin – that he intends to stand and contest in the courts of the United States the charges made against him and accept the result of that battle after a fair proceeding.

STATEMENT OF THE CASE

1. AgriProcessors Is Raided in May 2008

To the accompaniment of massive national publicity, AgriProcessors' Postville plant was raided by ICE on May 12, 2008. *See, e.g.*, NEW YORK TIMES, May 13, 2008: "Hundreds Are Arrested in U.S. Sweep of Meat Plant." The agents arrested 389 illegal aliens employed at the plant.

During the following five-and-one-half months, Mr. Rubashkin received a "target letter," various arrests of AgriProcessors employees were announced, and some employees entered guilty pleas. *United States v. De La Rosa*, 2:08-cr-01313-LRR; *United States v. Guerrero-Espinoza*, 2:08-cr-01314-LRR; *United States v. Althouse*, 2:08-cr-01323-LRR. Mr. Rubashkin remained in Postville during this entire time while his lawyers discussed potential charges with the prosecutors.

2. Sholom Rubashkin Is Arrested and Charged With Immigration Violations

On October 30, 2008, Mr. Rubashkin was arrested on a complaint charging him with immigration-law violations. He was indicted on November 13 in a three-count indictment relating to ***one*** allegedly forged resident alien card. Exhibit 1. On

this charge – involving a single allegedly forged document – filed after Mr. Rubashkin had been residing in Postville during an intensive investigation with no suggestion of flight, conditioning his release on a one-million-dollar bond and an electronic bracelet (Exhibit 2) is extraordinarily severe and unprecedented for such a charge against an individual with a clean record and ample ties to the community.

3. Sholom Rubashkin Is Re-arrested on a Charge of Bank Fraud

On the day following his first indictment, the prosecutors re-arrested Mr. Rubashkin. The complaint alleged that he had committed bank fraud (1) by falsely certifying to AgriProcessor's lending institution that AgriProcessors was in compliance with the loan agreement when, in fact, it hired illegal aliens, and (2) by failing to deposit all checks received by AgriProcessors in the "sweep account" and temporarily using (but subsequently reimbursing) funds received from customers for other AgriProcessor functions in Postville. The complaint acknowledged (in its paragraph 14) that virtually all funds temporarily diverted in this manner were later reimbursed to the "sweep account." Exhibit 3.

There was no proof that the bank was actually misled by this practice, but the prosecution asserted that it was "non-compliance" with the terms of Mr. Rubashkin's release. The prosecutors argued that Mr. Rubashkin should be denied bail pending trial because, *inter alia*, he could flee to Israel because he was Jewish (a specious claim that would justify detention of any Jewish person accused). The

Magistrate Judge accepted the prosecution's argument and denied bail. Mr. Rubashkin was imprisoned for more than two-and-one-half months – from November 14, 2008, to January 28, 2009.

4. The District Judge Reverses the Magistrate's Decision

While Mr. Rubashkin was in prison, the prosecution secured three superseding indictments against him. The Fourth Superseding Indictment, returned on January 15, 2009, escalated the number of counts against Mr. Rubashkin from 12 to 97. The bank fraud allegations increased from 2 to 15, 10 new charges of money laundering were added, and 20 counts under a statute requiring prompt payment to cattle owners (7 U.S.C. § 195) that, to defense counsel's knowledge, has never been enforced criminally against any person. Exhibit 4. The number of charges ballooned because the prosecution charged each of the lender's advances to AgriProcessors under the line of credit as a separate offense and charged each month's report by AgriProcessor to the lender as a separate offense. The money laundering offenses related to the deposits Mr. Rubashkin made of funds received by AgriProcessors to the accounts of a local kosher grocery store and a local religious school, both of which served the Postville community. Not to be outdone, the Iowa Attorney General's Office also announced in September 2008 that it was filing 9311 misdemeanor counts of child-labor violations.

On January 26 and 27, 2009, Judge Reade held an evidentiary hearing on Mr. Rubashkin's motion to review the Magistrate Judge's detention order and release him pending trial. At the conclusion of the hearing, she granted Mr. Rubashkin's motion and stated her reasons in a written Order dated January 28, 2009. Exhibit 5.

Judge Reade vacated the Magistrate Judge's decision, citing the following factors (Exhibit 5, pp. 11-13): (a) **Mr. Rubashkin's family and residence –** Married with ten children and has lived in Postville for more than 15 years. (b) **Mr. Rubashkin's ties to Postville –** Involvement with "local religious and educational institutions" that he "either founded or was instrumental in [their] development." (c) **Community support for Mr. Rubashkin –** Received hundreds of letters and pledges of support. Had history of leadership and charity. Many persons "pledged the equity in their homes as security for his release." The Judge noted that "such community support for a defendant is . . . unprecedented in this court." (d) **Mr. Rubashkin's history of respect for the law –** No criminal record or substance abuse problem. (e) **Compliance with all court appearances –** Present at all scheduled court appearances.

Although Judge Reade found that Mr. Rubashkin had "the incentive and means to flee" and determined that he "poses a flight risk," the Court rejected unjustified speculative hypotheses of preparation for flight that the prosecution

urged the Court to draw from circumstances of Mr. Rubashkin's arrest. The Court held that if he fled "he would forsake and disgrace his friends and family and betray their considerable trust in him." He would thereby "presumably cut all ties to Postville and his religious community" and "disgrace himself and forever sully his family name." Exhibit 5, p. 14.

The Court also explicitly rejected the prosecution's assertion that there was a risk that Mr. Rubashkin would flee to Israel. The Court said – with emphasis in the original – "there is **absolutely no evidence** Defendant has any ties to Israel or has made any preparations to flee to Israel." The Court rejected the prosecution's reliance on Israel's "Law of Return," saying that it "plays no part in the [Court's] analysis." Exhibit 5, p. 14.

Judge Reade determined in January 2009 that "a substantial security bond, active GPS electronic monitoring, travel restrictions and surrender of the passports and birth certificates of Defendant, Mrs. Rubashkin and their minor children should reasonably assure Defendant's presence." He was released on these terms. Exhibit 6. He adhered punctiliously to these terms throughout his release pending trial.

5. Mr. Rubashkin Is Found Guilty on 86 Counts

The District Court thereafter severed the immigration-law charges from the bank-fraud charges (Exhibit 7), and granted a defense motion for a change of

venue to a nearby federal court, although rejecting the defense request that the case be tried in Chicago, Illinois, or Minneapolis, Minnesota (Exhibit 8). Over defense objection that there would be prejudicial "spillover" of immigration-law violations in a bank-fraud trial, the Court directed that the bank-fraud case be tried first. Mr. Rubashkin was tried in Sioux Falls, S.D., between October 13 and November 12, 2009, on the bank-fraud charges (Counts 73-163 of the Seventh Superseding Indictment), He was found guilty by the jury on 86 of the 91 counts after the jury heard evidence of the immigration-law violations for more than two trial days, and the District Judge denied repeated motions for a mistrial. The Court immediately remanded him after the jury's verdict on the prosecution's motion.

The prosecution then moved to dismiss the immigration charges – Counts 1-72 of the Seventh Superseding Indictment. On November 19, 2009, the District Court granted the prosecution's unopposed motion.

6. After an Evidentiary Hearing, Release Pending Sentencing Is Denied

On November 18, 2009, the court below held an evidentiary hearing on the prosecution's "Request for Detention." A full transcript of the hearing is attached as Exhibit 9. On November 20, 2009, Judge Reade granted the prosecution's motion and detained Mr. Rubashkin pending sentencing (Exhibit 10). She summarized the evidence presented at the hearing, which included (1) testimony of the United States Probation Officer who testified that Mr. Rubashkin had complied

without fail with all terms of release and had "alerted her immediately" when his monitoring ankle bracelet had "become dislodged from his ankle . . . to allow for its expedient repair," (2) testimony of Mr. Rubashkin about his religious obligation to comply with the court's rulings and his teaching in Postville during his pretrial release, (3) evidence of extraordinary support from the Orthodox Jewish community, including "over one thousand letters and e-mails of support written by members of his community who vouch for [Mr. Rubashkin's] willingness to cooperate with the law" and offers from 43 individuals willing to pledge the equity in their homes for his bail, and (4) testimony from a rabbi who heads his legal defense committee that Mr. Rubashkin is now so visible in the Jewish community that "there is nowhere Defendant could hide." Exhibit 10, pp. 3-4.

Mr. Rubashkin's counsel also presented a report from Global Security Services that is prepared to provide 24-hour armed guard surveillance at Mr. Rubashkin's expense. Exhibit 11. This proposal had been made at the January 2009 detention hearing, but the District Judge had found such additional safeguard to be unnecessary at that time.

Judge Reade acknowledged in her Order (1) "the overwhelming support that Defendant's community has provided during the trial and the instant proceeding," (2) "that Defendant took great pains to comply with the terms of his pretrial

release," and (3) "that Defendant has shown he is committed to his family and to his community."

Nonetheless, the District Court found that the prosecution's evidence for detention is "compelling" because of Mr. Rubashkin's "actions prior to and during the pendency of the instant action" and his "powerful incentive to flee due to the jury's return of the Verdicts." She ordered that he be detained pending sentencing.

Neither the District Court's Order of November 20, 2009, nor the Order of December 3, 2009, denying reconsideration (Exhibit 12), discussed the adequacy of conditions of release to "assure the appearance of [Mr. Rubashkin] as required."

ARGUMENT

Sholom Rubashkin is not John Dillinger, although he has been treated as if he were. He has been a law-abiding businessman who, according to the prosecution's dismissed allegations, knew that employees at his meat-processing plant were illegal aliens and, according to the jury's verdict, participated in conduct that misrepresented to his single lender the true value of the security for his business loan. He is surely entitled to the due process that federal law affords in contesting these charges, but his treatment by the prosecution and the District Court has been reminiscent of Lewis Carroll's Queen of Hearts: "Sentence first, verdict afterwards."

The Bail Reform Act of 1984 authorizes imprisonment of a defendant who is not a danger to the community prior to a final judgment only if there are no conditions of release that provide adequate assurance that such a defendant will appear as required. The Act shifts the burden of proof after a defendant's trial to assure that the defendant will serve his sentence if the conviction is affirmed, but the basic constitutional principle that a defendant should remain free and not be punished without due process of law remains in effect.

The District Court's decision to imprison Mr. Rubashkin before he is sentenced and before this Court has had an opportunity to review the fairness of his trial was erroneous (1) because the Court failed to consider the sufficiency of the conditions that will assure Mr. Rubashkin's presence for all future proceedings and for service of any sentence that is lawfully imposed, and (2) because the Court's finding that Mr. Rubashkin is a flight risk was not supported by credible evidence and was clearly erroneous.

Moreover, incarceration in prison rather than effective arrest at his home imposes severe hardship on Mr. Rubashkin because of the stringent demands of the religious observance of Orthodox Judaism that severely limit one's diet and prescribe prayer and other rituals. Nor is a prison term a foregone conclusion. There are very substantial reasons to challenge on appeal a trial in which evidence of immigration-law violations – which the District Judge said presented a "real and

concrete danger" to a fair trial on the bank-fraud allegations – were presented to a jury selected from a vicinity of highly inflammatory publicity. Defense evidence was also improperly excluded and instructions to the jury were erroneous.

I.

THE PROPOSED CONDITIONS OF RELEASE IGNORED BY THE DISTRICT COURT VIRTUALLY GUARANTEE MR. RUBASHKIN'S "APPEARANCE AS REQUIRED" PURSUANT TO SECTION 3142(c) EVEN IF HE WERE A "FLIGHT RISK"

The District Judge granted the prosecution's motion to imprison Mr. Rubashkin pending sentencing because she found that he "poses a flight risk" and his evidence to the contrary did not "rise to the 'clear and convincing' level necessary to show that he is 'not likely to flee [. . .] if released under [§] 3142(b) or (c).'" See Exhibit 11, p. 5. For reasons stated at pp. 18-20, *infra*, the finding that Mr. Rubashkin was a "flight risk" was clearly erroneous. Moreover, even assuming *arguendo* that Mr. Rubashkin is a "flight risk," the proposed conditions of release are more than adequate to assure his presence by a "clear and convincing standard."

A. Whether the Defendant Is a "Flight Risk" Is Not the Only Consideration in Determining a Request for Detention Pending Sentencing.

In *United States v. Maull*, 773 F.2d 1479, 1486-1488 (8th Cir. 1985), this Court, sitting *en banc*, articulated the standards that govern applications for release

on bail under the Bail Reform Act. The Court's majority opinion distinguished between the factors (a) that relate "to the individual characteristics of the defendant and the nature and seriousness of the danger to any person or the community that would be posed by the person's release" and (b) those that relate to "the analysis of the conditions of release of section 3142(c)(2)(A)-(N)." The former, said this Court, "involve primarily factual issues" that this Court must review under a "clearly erroneous" standard whereas the latter "involve legal or judgmental assessments which are based on factual findings" that are "independently reviewed." The "conditions of release" proposed to the District Court and again to this Court – which are "independently reviewed" here -- would assure Mr. Rubashkin's presence as required, and this Court should accordingly release Mr. Rubashkin pending his sentencing on the same conditions that governed his release pending trial or on additional conditions.

The obligation of a District Court and a Court of Appeals to impose "the least restrictive further condition, or combination of conditions, that will reasonably assure the appearance of the person as required" is explicitly prescribed in Section 3142(c)(1)(B). And Section 3143(a), which governs release pending sentencing, incorporates Section 3142(c). This Court held in *United States v. Welsand*, 993 F.2d 1366 (8th Cir. 1993), that a District Court considering whether to release a defendant pending sentencing under Section 3143(a) should appraise

the sufficiency of the conditions specified in Section 3142(c)(1)(B), which include "any other condition that is reasonably necessary." *See also United States v. Spilotro*, 786 F.2d 808 (8th Cir. 1986); *United States v. Orta*, 760 F.2d 887, 891-892 (8th Cir. 1985) (*en banc*) (judicial officer has duty to determine conditions that will "reasonably assure" appearance); *United States v. O'Brien*, 895 F.2d 810 (1st Cir. 1990) (electronic bracelet and posting home as security sufficient to reasonably assure presence of narcotics defendant who was a flight risk).

A Court may not, therefore, deny release pending sentencing simply on a finding that the defendant is a "flight risk," as the District Court did in this case. Even assuming *arguendo* that the defendant is a "flight risk," the Court must consider whether any condition or conditions would achieve the result contemplated by Section 3142(c) – to "assure the appearance of the person as required."

B. The 24-Hour-Guard, Electronic Monitoring, Forfeiture of Valued Religious Scrolls, and $8 Million in Property Posted by 43 Individuals Will Guarantee Mr. Rubashkin's Appearance.

Given his meticulous – indeed, religious -- adherence to the conditions of release heretofore imposed, the conditions of release that governed Mr. Rubashkin's release pending his trial are demonstrably adequate to assure his presence throughout the remainder of this proceeding. No specific reason has been

stated by the prosecution for concluding that these conditions are now inadequate, and the District Court never addressed the sufficiency of these conditions. These pre-existing conditions are augmented by the following (also proffered below):

(1) 24-Hour Armed Guard – Global Security Services of Davenport, Iowa, submitted a letter proposal for an armed guard to be stationed 24 hours a day at Mr. Rubashkin's home, where a camera system would also cover the exterior of the house. Exhibit 11. Mr. Rubashkin would be arrested and held by the armed guard if he ever tried to leave his home without prior authorization. Payment for the service would be made far enough in advance that the service could not lapse without ample advance notice to the prosecution. Exhibit 11.

(2) Forfeiture of Valued Torah Scrolls – Torah scrolls have been offered as security by seven rabbis. Exhibit 13. This is an extraordinary sign of confidence by the community in Mr. Rubashkin's promise to appear as required. See Exhibit 9, p. 35.

(3) $8 Million in Friends' Property – Family, friends, and associates are ready to provide their homes as security for Mr. Rubashkin's appearance. Exhibit 14. He will, of course, add his home's equity if the Court determines that this form of security is required to assure his presence.

II.

THE DISTRICT COURT'S FINDING THAT MR. RUBASHKIN WAS A "FLIGHT RISK" WAS CLEARLY ERRONEOUS

The record made in two detention hearings established that Mr. Rubashkin was a long-time resident of Postville with a large family that has lived there with him for many years. He founded Jewish institutions in this home and has strong ties to the community. He has never tried to flee from any legal difficulty. Compare *United States v. Kisling*, 334 F.3d 734 (8th Cir. 2003) ("Kisling had attenuated community ties and a history of fleeing his legal troubles"); *United States v. Jacob*, 767 F.2d 505, 508 (8th Cir. 1985). He has no history of engaging in any violent conduct. Compare *United States v. Orta*, 760 F.2d 887, 889 n. 7 (8th Cir. 1985).

The District Judge actually made many findings that support the conclusion that Mr. Rubashkin is **not** a flight risk. Her general statement criticizing "[d]efendant's actions prior to and during the pendency of the instant action" failed to find any ***specific*** fact that would support the conclusion that there is any real danger that Mr. Rubashkin is planning to flee or can flee. The alleged assistance he gave to two individuals who left the United States and traveled to Israel was explained by Mr. Rubashkin at the detention hearing (Exhibit 9, pp. 29-34). Moreover, this evidence – basically double hearsay – did not reflect in any way on whether Mr. Rubashkin himself was a "flight risk." In addition to the extraordinary

shame he would bring to his community and his supporters if he would flee, his attachment to his family (and his autistic son, see Exhibit 9, pp. 26-28) are significant ties that will keep him at his home in Postville. And he was, according to his Probation Officer's testimony (Exhibit 9, pp. 4-7), exceedingly scrupulous in adhering to every minutia of his pre-trial release. He even alerted her when his electronic bracelet malfunctioned!

The grounds that have justified findings in reported cases that defendants are "flight risks" involve either (a) ties to a foreign country (*e.g., United States v. Abad*, 350 F.3d 793, 799 (8th Cir. 2003) (foreign citizen with no children); *United States v. Jamal*, 326 F. Supp. 2d 1006 (D. Ariz. 2003)("concrete, ongoing, business interests in Lebanon and the Middle East" and minimal assets in the United States); *United States v. Ruiz-Corral*, 338 F. Supp. 2d 1195, 1198 (D. Colo. 2004) ("significant family ties to Mexico")); *United States v. Vergara*, 612 F. Supp. 2d 36 (D.D.C. 2009) ("not a United States citizen, has extensive foreign ties"), or (b) a history of flouting the law or of avoiding arrest (*e.g., United States v. Braiske*, 2009 WL 3616246 (N.D. Iowa Nov. 22009); *United States v. Scales*, 344 F. Supp. 2d 213, 216 (D. Me. 2004) ("history of violating State-imposed conditions of release or defaulting on appearance requirements")). We have found no reported case in which a defendant who, like Sholom Rubashkin, had no ties to a foreign

country and had no history of evading the law was held to be a "flight risk" and detained pending sentencing.

On the other hand, courts have released defendants over government objection prior to conviction on far more aggravated circumstances and greater likelihood of flight than is presented by the record of this case. And the conditions of release in these other reported cases have been equal to, or less extreme, than have been proposed by Mr. Rubashkin. *See, e.g., United States v. Madoff*, 586 F. Supp. 2d 240 (S.D.N.Y. 2009); *United States v. Dreier*, 596 F. Supp. 2d 831 (S.D.N.Y. 2009); *United States v. Chavez-Rivas*, 536 F. Supp. 2d 962 (E.D. Wis. 2008); *United States v. Demmler*, 523 F. Supp. 2d 677 (S.D. Ohio 2007).

CONCLUSION

For the foregoing reasons, this Court should reverse the detention order of the District Court and should order the release of Mr. Rubashkin pending sentencing on the same conditions as governed his release pending his trial. Alternatively, the Court should add to the pretrial conditions one or more of the conditions proffered by Mr. Rubashkin.

Dated: December 23, 2009

Respectfully submitted,

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