

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
NO. 3:06-CR-0074-2-BRITT

UNITED STATES OF AMERICA

v.

HOWELL WAY WOLTZ and
VERNICE CHAITAN WOLTZ,

Defendants.

**REPLY TO GOVERNMENT’S
OPPOSITION TO MOTION FOR
RECONSIDERATION OF DETENTION
OF DEFENDANTS HOWELL WAY
WOLTZ AND VERNICE CHAITAN
WOLTZ**

Defendants Howell Way Woltz and Vernice Chaitan Woltz (“Mr. and Mrs. Woltz”), through their undersigned counsel, respectfully submit this Reply to the Government’s Opposition to Motion for Reconsideration of Detention.

Introduction

In its opposition to Mr. and Mrs. Woltz’s Motion for Reconsideration of Detention, the Government focuses its attention on statements that the Woltzes—or others, for that matter—may have made in the past, and not on the real issue underlying their detention: whether today there are conditions that will *reasonably* assure their appearances at the trial of this matter. The question before the Court is not what the Woltzes may have *said in the past*, or what the evidence may show *happened in the past*, but rather what the *reality is today*.

In other words, it does not matter what the Woltzes told “pretrial services” or “friends and associates” regarding their alleged residency in the Bahamas if in reality they are not, and never were, Bahamian residents and therefore cannot freely travel to and from the Bahamas.¹ It

¹ Mr. and Mrs. Woltz dispute the Government’s characterization of their statements to Pretrial Services. According to Mr. Woltz, he was asked where he lived, and not where he was a permanent resident. This is an important distinction, as it is much more difficult to travel to and from the Bahamas if you are not a permanent resident.

does not matter what the Woltzes may have said in the past about their financial resources and their ability to “move money around the globe” if in reality their assets are frozen and their businesses shut down.² It does not matter if the Government was previously told that the Woltzes cannot be extradited for tax crimes if in reality they can be extradited for perjury, obstruction, and money laundering, all of which are alleged against Mr. and Mrs. Woltz. Finally, it does not matter if Mr. Woltz “knows how to fly” if in reality he has no access to a plane, no pilot’s license, and no medical clearance to fly.

Regardless of what Mr. and Mrs. Woltz may have said or done in the past, the reality is that they are not flight risks *today*, and even if they did try to flee, they could be extradited. Most importantly, however, there are a number of conditions, including electronic monitoring, that would reasonably assure their appearances at trial.

Argument

I. Mr. and Mrs. Woltz Were Not Aware of All Material Information Presented at the Detention Hearing

It is simply not true, as the Government contends, that all of the information presented in Mr. and Mrs. Woltz’ Motion for Reconsideration was known to Mr. and Mrs. Woltz at the time of their detention hearing. At the time of the detention hearings, the Woltzes’ attorneys were not aware of nor privy to the vast majority of the evidence presented by the Government. Mr. and Mrs. Woltz were not aware that their assets had been frozen and their businesses shut down. They were not aware that the Government had seized all of their business records and files. They were certainly not aware of Bahamian extradition law.

Moreover, neither Mr. nor Mrs. Woltz had met with their attorneys for any substantial amount of time prior to the detention hearings to discuss their case and their bases for objecting

² It is curious that the Government even relies on this point, as it is hardly incriminating that someone running a foreign business would maintain money in foreign bank accounts.

to detention. As the Government is well aware, the detention hearings followed shortly after the Woltzes' previous attorneys made their initial appearances in the case. Accordingly, it would have been impossible for them to respond to every piece of evidence the Government presented or clarify every detail at the hearings.

Furthermore, and as the Government will surely confirm if asked, both Mr. and Mrs. Woltz began "cooperating" with the Government shortly after they were indicted. Accordingly, there was less incentive for their attorneys to challenge the Government's position on bond for fear of undermining any plea agreement that might be reached.

Finally, there is a basic fairness issue in play here. Even if all the material information was known to Mr. and Mrs. Woltz at the time of the hearings, the bottom line is that this information was not presented to the Court nor placed in the record, for whatever reason. The Government does not deny—nor can it—that there was material information not presented to the Court at either of the previous detention hearings, *e.g.*, the relevant extradition laws of the Bahamas pertaining to perjury, obstruction, and money laundering,³ the true facts concerning Mr. and Mrs. Woltz's "residency" in the Bahamas, and Mr. Woltz's present inability to fly a plane, among other things. For these reasons alone, the Woltzes should be permitted to reappear before this Court to show why they are not flight risks.

II. Mr. and Mrs. Woltz Need Not Challenge Every Finding of this Court to Prove they are Not Flight Risks

The Government enumerates eleven "findings" of this Court at the detention hearing, and argues that Mr. and Mrs. Woltz's Motion for Reconsideration should be denied because it does not address each of these findings. This argument misses the point, however. Whether the

³ It is puzzling that the Government contends in a footnote that the possibility of extradition of Mr. and Mrs. Woltz, if they did flee, is "unhelpful" to the detention issue, as it was a primary argument made by the Government at the detention hearings.

Woltzes should be released turns on whether there is a condition or set of conditions that will reasonably assure their appearances at trial—nothing more, and nothing less. It is certainly possible that Mr. and Mrs. Woltz can demonstrate the existence of such conditions without tediously addressing every point and piece of evidence raised at the detention hearings. Mr. and Mrs. Woltz believe that their arguments in their Motion for Reconsideration do indeed demonstrate that the Government has mischaracterized their flight risk, and that there are conditions of release that will reasonably assure their appearances at trial.

Moreover, many of the Court's original findings which the Government claims were not addressed in the Woltzes' Motion for Reconsideration went to the sufficiency and weight of the evidence, something the Woltzes *did* address.⁴ As Mr. and Mrs. Woltz set forth in their Motion for Reconsideration, the Government cannot seriously contend that the Court's findings as to the *weight* of the evidence are material to the detention issue, because the same quantity of evidence exists against Mr. and Mrs. Woltz's co-defendants, who were not detained. For example, the Government points to the Court's findings regarding the existence of offshore bank accounts, the alleged hiding of assets, and the substantial amount of prison time that Mr. and Mrs. Woltz would face if convicted.⁵ These findings apply equally to co-defendants Graves and Currin, yet the Government never argued for their detention. Therefore, these findings are not dispositive to the real issue: whether this Court can fashion a condition or set of conditions of release that would reasonably assure Mr. and Mrs. Woltz's appearance at trial.

III. The Woltzes' Ability to Flee is Severely Limited Since they Are Not Permanent Residents of the Bahamas

⁴ Nothing in Mr. and Mrs. Woltz's Motion for Reconsideration or in this Reply should be viewed as a concession that the weight of the evidence against them is strong. Instead, the Woltzes simply contend that the alleged strength of the evidence is immaterial for purposes of bond.

⁵ In fact, Mrs. Woltz, who has been detained for the last nine months, may very well have served a substantial portion, if not the entirety, of the sentence she would receive if convicted on this Indictment.

The Government continues to cite boasting emails from Mr. Woltz in support of its contention that Mr. and Mrs. Woltz live in the Bahamas and could simply fly out of the country if released. As explained above, however, what Mr. Woltz said in the past does not correspond to the reality today, which is that the Woltzes are U.S. residents and lack the means to flee if released. In addition, it is curious that the Government has never taken the relatively simple step of inquiring with the Bahamian Immigration Department to determine Mr. and Mrs. Woltz's residency status, despite its own admission that it has been in contact with the Bahamian authorities at various stages in its investigation of Mr. and Mrs. Woltz. For example, the Government was able to obtain a search warrant in the Bahamas with the assistance of Bahamian authorities, was able to inform Bahamian regulators of its investigation of the Woltzes; and it was able to inquire as to the possibility of extradition from the Bahamas. It did not, however, inquire as to whether the Woltzes were *in fact* permanent residents of the Bahamas. If the Government had made this simple inquiry, it would have learned the truth—that Mr. and Mrs. Woltz *applied* for residency, but that they have never been granted permanent resident status.

IV. The Government's "Watchdog" Claim Should be Rejected

The Government continues to claim that Mr. Woltz had arranged for a "watchdog" to remove him from the country in the event of trouble, and continues to rely on an unnamed "confidential informant" for this contention. It was plainly impossible for the Woltzes to "know" any material information relating to this claim at the time of the detention hearing when the very person who is making this allegation is a "confidential" source, is not available for cross-examination, and presumably will never appear in Court to explain his or her claims.⁶ This

⁶ For all the Woltzes know, the "confidential informant" could be an indicted individual himself or herself, who is cooperating with the Government in an effort to reduce his or her sentence.

part of the Government's argument should be summarily rejected as irrelevant, unascertainable, and "bizarre," as the Court has already recognized.

IV. The Government's Argument that the Woltzes Could Easily Regain Access to their Frozen Accounts and Companies is Implausible

The Government contends that the Woltzes could simply revive their businesses and "disappear with their offshore credit cards" to "Panama, Hong Kong, or Singapore" if they are released. Government's Opp'n at 8. The Court should reject this argument, as the Woltzes' financial and business difficulties are far from "temporary," as the Government suggests. Indeed, the Government knows full well that all of the so-called "temporary" problems the Woltzes are experiencing are a direct result of this case and of the Government's ongoing criminal investigations. In fact, the Government freely admits that it has been in contact with the various governmental and regulatory bodies of the countries in which the Sterling Companies operate. Thus, the Government's argument that the complete shutdown of the Woltzes' business operations—which is in large measure the result of the Government's own actions—is a "current hiccup" that could be remedied by the Woltzes, suddenly giving them access to substantial funds and resources, is not credible.

Conclusion

Mr. and Mrs. Woltz again respectfully request that this Court consider the needs of their children and the needs of Mr. and Mrs. Woltz to assist in their own defense, and grant their release pending trial subject to conditions that will reasonably assure their further appearances in this matter. In light of the upcoming holidays, Mr. and Mrs. Woltz further respectfully request that this Court grant a hearing on this matter as soon as it deems appropriate.

This the 22nd day of December, 2006.

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CERTIFICATE OF SERVICE

This is to certify that I caused a copy of the foregoing Motion for Reconsideration of Detention of Defendants to be filed for electronic service on the following individual(s):

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This the 22nd day of December, 2006.

s/ Matthew J. Hoefling