

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 5:06-cr-22-Oc-10GRJ

EDDIE RAY KAHN
_____ /

ORDER OF DETENTION PENDING TRIAL

On December 14, 2006 the Court conducted a detention hearing, at the request of the Defendant,¹ to address the Government's motion for detention of Defendant pending trial, pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3142.

Defendant is charged in two counts of a three count indictment with conspiracy to defraud the United States by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in the ascertainment, computation, assessment, and collection of income taxes in violation of 18 U.S.C. § 371 and with knowingly making and presenting and aiding and abetting in the making and presentation of a materially false, fictitious and fraudulent claim for payment against the United States in violation of 18 U.S.C. §§ 287 and 2.

¹ Previously, on November 8, 2006 the Government requested that the Court detain the Defendant on the grounds that the Defendant was a flight risk. After consultation with his counsel the Defendant did not challenge the Government's request for detention but reserved his right to request a detention hearing in the future. Accordingly, the Court entered an order of detention (Doc. 34) expressly reserving the Defendant's right to request a detention hearing. On December 7, 2006 after the Court had conducted a *Faretta* hearing and authorized the Defendant to represent himself in this case the Defendant requested that the Court set a detention hearing to consider the Government's motion for detention and to consider setting conditions of release for Defendant. In order to provide the parties with sufficient time to prepare the Court set the detention hearing for December 14, 2006.

I. Government's Proffer

At the detention hearing, the Government proceeded by proffer and had available two of the agents who were primarily responsible for the underlying investigation in this case.²

Defendant was the founder and leader of a group known as the American Rights Litigators ("ARL") and a successor organization, known as the Guiding Light of God Ministries ("GLGM"). According to the Government, ARL was formed in 1996 and conducted its business from an office in Mount Plymouth, which is located in Lake County, Florida. In or around mid-2003 ARL moved to an office located in Mount Dora, Florida and began operating as GLGM. The Government describes ARL and GLGM as for-profit, commercial enterprises that promoted and sold fraudulent tax schemes that interfered with the administration of the internal revenue laws of the United States.

Mr. Kahn's involvement in legal proceedings in this Court began in December 2003 when the United States filed a civil suit against Defendant - and others - requesting *inter alia* the entry of an order enjoining the Defendant under 26 U.S.C. § 7408 from promoting fraudulent tax schemes and under 26 U.S.C. § 7402(a) from interfering with the administration of the internal revenue laws of the United States.³ On December 29, 2003 this Court entered a Preliminary Injunction enjoining Mr. Kahn, the co-defendants in the Civil Action, and their agents and those in active concert or

² Section 3142(f) states that defendants may "present information by proffer or otherwise." The Government may also proceed by proffer. See, e.g. United States v. Gaviria, 828 F.2d 667, 669 (11th Cir. 1987).

³ See, United States v. Eddie Ray Kahn, et al., case no. 5:03-cv-436-Oc- 10GRJ filed in the Ocala Division of the Middle District of Florida. ("Civil Action").

participation with them, from engaging in certain conduct violative of 26 U.S.C. §§ 6700 and 6701 of the Internal Revenue Code and further requiring the Defendant and others to perform specific acts.⁴ Eventually, on August 12, 2004 the Court entered a Permanent Injunction against Mr. Kahn and the co-defendants in the Civil Action.⁵ Notably, in the Civil Action on August 12, 2004 the Court entered an Order⁶ granting the United States' request to modify a civil contempt sanction against Mr. Kahn because of his failure to comply with the Court's injunctive order resulting in the issuance of a Bench Warrant for the arrest of Mr. Kahn.⁷

While the Civil Action was pending, on February 13, 2004 this Court issued a search warrant for the offices of ARL/GLGM in Mount Dora, Florida.⁸ The search warrant authorized the United States to search and where appropriate to seize various records of ARL/GLGM and of their clients. According to the Government, they seized approximately 259 boxes of records from the Mount Dora offices effectively shutting down the operations of Mr. Kahn's business.

As evidenced by a customs log⁹ submitted to the Court at the hearing, Mr. Kahn, his wife, Kathleen ("Kookie") Kahn and Mr. Kahn's fourteen year old son, shortly

⁴ Civil Action Doc. 29.

⁵ *Id.* Doc. 116.

⁶ *Id.* Doc. 117.

⁷ *Id.* Doc. 118.

⁸ Doc. 65, part 3.

⁹ Government Ex. 1.

thereafter on March 11, 2004, boarded a “COPA” airlines flight for Panama.¹⁰ After arriving in Panama Mr. Kahn sent an email on March 17, 2004 to the landlords of his Lake County residence advising them that “[K]ookie and I are traveling and will be traveling for quite some time. We had to leave rather unexpectedly because of intense pressure that was being put on us by the Internal Revenue Service.”¹¹ In his email communication to his landlords Mr. Kahn goes on to amplify the reason for his sudden departure from the United States. Mr. Kahn states “[T]he IRS got a judge to force us to stop assisting people with IRS matters. Now they are trying to get a grand jury to indict us for alleged tax crimes.”¹²

Five months after Mr. Kahn fled to Panama with his wife and minor child, this Court issued the Bench Warrant for his arrest. At this juncture Mr. Kahn was aware there was a warrant for his arrest - and as evidenced by his email - he was well aware that criminal proceedings were imminent. As highlighted by the documentation submitted by the Government, Mr. Kahn thereafter initiated legal efforts in Panama to reside there permanently and never to return to the United States. On or around December 1, 2004 Mr. Kahn prepared and signed a document entitled “Declaracion Jurada Sobre Antecedentes Personales” to be submitted to the Panamanian Ministry of

¹⁰ Although the customs log lists Guayaquil, Ecuador as the destination of the flight, Mr. Kahn advised the Court at the hearing that the plane never went to Guayaquil and instead landed in Panama City, Panama. Because this discrepancy is immaterial to the Court’s analysis for purposes of this detention order the Court will assume that the plane flew directly to Panama as Mr. Kahn claims.

¹¹ Government Ex. 2.

¹² *Id.*

Justice Office of Immigration and Naturalization.¹³ This document is an application for a permanent visa from the Panamanian authorities that authorizes foreign citizens, who have a confirmed source of retirement monies or a pension, to reside in Panama. In the application Mr. Kahn represented that he was retired and that he intended to live in Panama “for life.” Additionally, Mr. Kahn represented in the application for a visa that it was “unknown” when he intended to return to his country of origin. Mr. Kahn represented to the Panamanian authorities that he intended to support himself on his “retirement pension.” At the time of Mr. Kahn’s removal from Panama the Government obtained a copy of a letter from a Michael Tarantino, Bishop of an organization named “Divine Extrication Church” located in Reno, Nevada, representing that Mr. Kahn worked for the Divine Extrication Church until June 1, 2004 and that Mr. Kahn took an early retirement, which pays him “a monthly pension in the amount of \$650.00.”¹⁴ The Government contends that this letter was used by Mr. Kahn to falsely obtain the permanent visa from the Panamanian authorities.¹⁵

Although Mr. Kahn continued to reside in Panama with his wife in a rented residence he apparently continued to monitor the proceedings against him in the United

¹³ Government Exhibit 5.

¹⁴ Government Exhibit 6.

¹⁵ Although there was no evidence that the letter was actually submitted to the Panamanian authorities, Mr. Kahn conceded at the hearing that he successfully obtained a pensioner’s visa from the Panamanian authorities and that he resided in Panama for about two and a half years before his arrest in this case. Further, at the initial appearance in this case Mr. Kahn was questioned by the Court under penalty of perjury concerning his income. Mr. Kahn did not mention that he had any income from a monthly pension. Either Mr. Kahn perjured himself before this Court, or if indeed he does not receive a monthly pension of \$650.00 - and he used this information to obtain the Panamanian visa - Mr. Kahn defrauded the Panamanian authorities. In either event this information casts serious doubt on the veracity of Mr. Kahn’s representations to the Court at the detention hearing.

States. On March 16, 2005 the Clerk received a document from Mr. Kahn in the Civil Action entitled “Declaration In The Form Of Truth Affidavit Prove Up Your Judgment,” which had attached to it an undated letter from Mr. Kahn directed to Wm. Terrell Hodges, the United States District Judge presiding over the Civil Action.¹⁶ In the letter to Judge Hodges Mr. Kahn states “I do not recognize you, do not know who you are, nor do I understand the intent of your writings, nor will I make a legal determination about what you are stating for I am without the UNITED STATES.”¹⁷ Mr. Kahn concludes in his letter to Judge Hodges that “You are fired from any and all representation of my private affairs ...” Although the meaning of the “Declaration” and purpose of the letter to Judge Hodges is disjointed and confusing it is, nonetheless, evident in the document that Mr. Kahn was well aware the Court had entered an injunction against him and that Mr. Kahn was not going to accept or recognize the authority of this Court to enjoin his activities.

There is also no question that Mr. Kahn was well aware that there was an outstanding bench warrant issued against him as evidenced by another letter Mr. Kahn sent to Judge Hodges, which was filed in the Civil Action. On June 21, 2006 a letter from Mr. Kahn to Judge Hodges, dated May 30, 2006 was filed in the Civil Action in which Mr. Kahn acknowledged that “[I]t has come to my attention that you [Judge Hodges] are alleging that you have a claim against me or on me as you have issued a bench warrant for my arrest.”¹⁸

¹⁶ Civil Action, Doc. 148; Government Exhibit 7.

¹⁷ *Id.* P. 4.

¹⁸ Government Exhibit 8.

On October 12, 2006 the superseding indictment (Doc. 6) in this case was returned in open court and an arrest warrant was issued for the arrest of Mr. Kahn. (Doc. 12.) The Government proffered that an agent with the Federal Bureau of Investigation ("F.B.I."), assigned to the United States embassy in Panama, as an attaché, contacted Mr. Kahn in Panama in October 2006 to discuss Mr. Kahn voluntarily surrendering in the Middle District of Florida to answer the indictment in this case. According to the Government, Mr. Kahn refused to do so unless the United States agreed to a litany of frivolous demands, none of which concerned coordinating Mr. Kahn's affairs in Panama or making arrangements to travel to the United States. Because Mr. Kahn was residing in Panama pursuant to the "Pensioner's Visa" obtained by Mr. Kahn in late 2004, the Panamanian authorities revoked Mr. Kahn's visa after the indictment was brought to their attention and Mr. Kahn was placed on a flight for the United States and then was arrested by United States authorities.

The report prepared by Pretrial Services is sketchy at best in view of the fact that Mr. Kahn refused to be interviewed by Pretrial Services and refused to provide any information that could be verified by Pretrial Services. The Pretrial Report does not disclose any address in the United States for Mr. Kahn and does not disclose any information concerning Mr. Kahn's employment or financial history. The Pretrial Report does disclose, however, that Mr. Kahn previously was convicted in the Northern District of Texas of three counts of willful failure to file tax returns. Mr. Kahn was sentenced on June 17, 1985 to one year imprisonment as to each count which term ran consecutively so that Mr. Kahn was sentenced to a total of three years imprisonment. Mr. Kahn voluntarily surrendered on July 12, 1985 to serve his term of imprisonment.

II. Defendant's Proffer

Defendant, proceeding *pro se*, did not challenge a majority of the information proffered by the Government with regard to when he left the United States for Panama and how long he had stayed in Panama. Instead, the Defendant attempted to explain the reasons he and his wife left the United States and moved to Panama and denied that he refused to voluntarily surrender when he was contacted by the F.B.I. in Panama. The focus of Defendant's proffer to the Court was directed to Defendant's argument that he should be released because he will be unable to access sufficient legal materials to defend himself while in custody.

With regard to Mr. Kahn's sudden move to Panama from Lake County, Florida in March 2004, Mr. Kahn stated that he and his wife left the United States for Panama because he felt he was under pressure from the IRS and that he and his wife were tired of dealing with the pressure. Mr. Kahn advised the Court that he and his wife selected Panama because he had traveled there on several previous occasions and that he and his wife liked the lifestyle in Panama and it was friendly to Americans.

According to Mr. Kahn, his wife, his fourteen year old son and Mr. Kahn left the United States on March 11, 2004 from Miami International Airport and flew directly to Panama. In Panama Mr. Kahn and his wife rented an apartment and Mr. Kahn earned some monies from trading commodities. Mr. Kahn did not disclose the frequency of his trading, whether he did so electronically or the amount of income earned from this activity. Although Mr. Kahn's fourteen year old son accompanied him and his wife to Panama, Mr. Kahn eventually sent his son back to the United States to live with his

son's grandparents in Colorado because the schools in Panama were inadequate. However, Mr. Kahn advised that his son frequently visited with Mr. Kahn and his wife in Panama. From March 11, 2004 - the date Mr. Kahn arrived in Panama - to the date of his arrest in October 2006, Mr. Kahn never returned to the United States.

Conspicuously absent from Mr. Kahn's proffer was any information disputing the Government's proffer that he left the United States suddenly¹⁹ after the search warrant was executed on the offices of ARL/GLGM in Mount Dora in February 2004. Mr. Kahn did not dispute that after his arrival in Panama he emailed his landlords in Lake County, Florida to advise them of the reason for his sudden departure or that he believed the Government was in the process of attempting to charge him with "tax crimes." Indeed, the clear import of Mr. Kahn's comments to the Court was that his decision to leave the United States was a direct result of the pressure he was feeling after the search warrant was executed.

Mr. Kahn told the Court that the Panamanian authorities never had a problem with him during the entire two and a half year time period he and his wife resided there until he was contacted by the F.B.I. in October 2006. Again, conspicuously absent from Mr. Kahn's proffer to the Court was any mention of the representation he made in the

¹⁹ The Government also presented to the Court at the hearing a copy of a newspaper article from the Gainesville Sun, dated October 26, 2006 in which it was reported that "[O]n the same day the feds raided the ministries office in Mount Dora, 14 miles to the east, Kahn and his wife, Kathleen "Kookie" Kahn, quickly packed up their belongings and left their tan home on five rural acres." The article further reported that "[T]hey were gone almost overnight, neighbor Dana Warner said. They left behind a computer dumped in their pond." Government Exhibit 3. At the hearing Mr. Kahn objected to the article as hearsay. Although hearsay evidence may be used at a detention hearing, the Court has accorded this article with only very limited weight and only as confirmation that the Kahns left their home suddenly. In the absence of other evidence corroborating that the Defendant dumped his computer in a pond the Court accords this evidence very little weight..

Panamanian visa application in which he represented that he intended to remain in Panama for life to live on his retirement income.

With regard to the circumstances surrounding his arrest and the revocation of his visa by Panamanian authorities, Mr. Kahn submitted a copy of letter dated October 25, 2006, titled "Offer of Conditional Acceptance,"²⁰ which he says was given to the F.B.I. agent in Panama by his Panamanian attorney. Although the letter is not addressed to any person - and appears to be a self-serving memorandum prepared by Mr. Kahn - even if this letter was formally delivered in response to the Government's request that Mr. Kahn self-surrender, the letter does not evidence a serious intent to self-surrender because the conditions or demands in the letter are unrealistic, facially frivolous and have nothing whatsoever to do with coordinating Mr. Kahn's surrender. Instead, the letter demands that the Government produce a litany of documents the substance of which Mr. Kahn would be well aware of - such as "[A] copy of the documents that verify the time, place, and date that [Mr. Kahn] was either Naturalized or Born as United States ... citizen," - or documents that can be characterized as "nonsense" - such as "[A] copy of the letter signed by the Under Secretary for Enforcement of the United States Treasury verifying that his office has investigated [Mr. Kahn] and that the Asst. U.S. Attorney should seek an Indictment against [Mr. Kahn]." Notably, rather than providing any evidence that Mr. Kahn was willing to self surrender, the "Offer of Conditional Acceptance" confirms that the Government offered Mr. Kahn an opportunity to voluntarily surrender but that Mr. Kahn would not. Mr. Kahn's letter confirms exactly

²⁰ Defendant's Exhibit 1.

what the Government proffered to the Court regarding its offer to Mr. Kahn to surrender voluntarily and Mr. Kahn's refusal to do so. The letter recounts that "[H]e [the F.B.I. agent] stated that he was calling to give me a chance to go back to the US voluntarily and stand trial. [the F.B.I. agent] said that if I [Mr. Kahn] did not take that option, he would come and arrest me and take me to the US forcibly." According to the letter, Mr. Kahn told the F.B.I. agent "[t]hat I could not do that ..." and instead Mr. Kahn told the agent he would have to meet him at the office of Mr. Kahn's lawyer and that the United States would have to meet his conditions in the letter before he surrendered. No meeting took place and Mr. Kahn confirmed that the Panamanian authorities revoked his visa and took him into custody whereupon he was placed on a commercial flight bound to the United States where Mr. Kahn was arrested.

Mr. Kahn proffered to the Court that if he was released on conditions he would reside with his wife at the residence of J.R. Williamson in Ft. Lauderdale, Florida, which is the location where Mr. Kahn's wife has been residing after her visa was revoked and she was forced to leave Panama. According to Mr. Kahn, J.R. Williamson is a long time family friend. Mr. Kahn did not provide any further information as to the exact address of the residence or any details concerning Mr. Williamson. However, in rebuttal the Government advised the Court that J.R. Williamson was involved with ARL/GLGM and was one of the individuals present when the search warrant was executed on the offices in Mount Dora. Further, the Government advised the Court that J.R. Williamson is a convicted felon, having been previously convicted of a drug felony crime. Mr. Kahn did not proffer any information to dispute this information concerning Mr. Williamson.

Mr. Kahn advised the Court that he would not flee if released and that he

intended to vigorously defend the charges against him. The primary reason voiced by Mr. Kahn at the hearing in support of his request to be released concerned his ability to access a law library. The Court reminded Mr. Kahn that previously at the *Faretta* hearing the Court several times advised him that one of the most material disadvantages of representing himself was that he would not have the same access to a law library and would not have the same access to legal materials that a lawyer would have.

III. Findings

On the basis of the foregoing proffers provided at the detention hearing and the other information appearing of record, I find that no condition or combination of conditions of release will reasonably assure the appearance of Defendant pending trial.²¹ The following constitutes my written findings and reasons for detention, as required by 18 U.S.C. § 3142(i)(1).

A. Legal Analysis

The Bail Reform Act of 1984 allows the court to detain a person pending trial if the Government shows that no conditions of release “will 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). Thus, either a showing of the defendant’s likelihood to flee or dangerousness to others requires detention.²²

As part of the analysis of whether the Defendant should be released, the Court

²¹ The finding regarding flight risk is based upon a preponderance of the evidence, see United States v. Medina, 775 F.2d 1398 (11th Cir. 1985).

²² See, United States v. King, 849 F.2d 485, 488 (11th Cir. 1988).

must consider all reasonable, less-restrictive alternatives to detention and should consider the factors listed in § 3142(g).

B. Particularized Findings

In this case, I find that the United States has established based upon a preponderance of the evidence that the Defendant is a risk of flight. Further, having considered the proffers by the Government and by the Defendant and having considered the following factors, the Court concludes that there are no conditions or combination of conditions that the Court could impose that would assure the Defendant would not flee if released. An examination of the factors listed in 18 U.S.C. § 3142(g) makes this conclusion apparent.

Nature and Circumstances of Offense. Defendant is charged with conspiracy to defraud the United States and with knowingly making a false claim for payment to the United States. Each offense carries a maximum sentence of five years and thus Defendant is facing a maximum sentence in this case, if convicted, of ten years imprisonment.

The charges against Mr. Kahn do not stand in isolation. As discussed in detail above, Mr. Kahn has been the target of legal proceedings with the Government in the Civil Action since December 2003. The Civil Action resulted in a finding of civil contempt against Mr. Kahn and the issuance of Bench Warrant, which is still remains outstanding. Moreover, Mr. Kahn has been aware that the Government was going to bring criminal proceedings against him since at least February of 2004, when the Government executed a search warrant at the offices of ARL/GLGM and seized most of its records.

Indeed, the charges in this case concern allegations that Mr. Kahn engaged in and submitted false claims against the United States, an issue highly relevant to the Court's assessment of whether Mr. Kahn's naked promises that he would not flee are reliable. And because the Civil Action is relevant in time to this case and concerns similar claims against Mr. Kahn for engaging in fraudulent conduct, the Court has given serious consideration to Mr. Kahn's conduct in the Civil Action.

In the Civil Action Mr. Kahn not only ignored and failed to comply with the Court's injunctive order - resulting in a finding of civil contempt - but also directly flouted and challenged the Court's jurisdiction over him and the Court's authority to restrict his activities. Nothing is more telling of Mr. Kahn's disdain for the Court's authority than the self-serving and defiant letters sent to Judge Hodges during the pendency of the Civil Action - written while Mr. Kahn was in Panama - in which Mr. Kahn openly declared to Judge Hodges "I do not recognize you ... for I am without the UNITED STATES." Mr. Kahn's pattern and history of openly defying the lawful authority of this Court, speaks volumes about the likelihood of Mr. Kahn following the directives of this Court with regard to conditions of release and conditions of bond. Accordingly, this factor weighs heavily against Defendant.

Weight of the Evidence. Defendant is entitled, of course, to the presumption of innocence. See 18 U.S.C. § 3142(j). Neither the Defendant nor the Government highlighted in any detail the evidence in this case.²³ Mr. Kahn stated in summary fashion that the more he examines the Government's case the weaker he believes it is. The

²³ The Court notes that of the four factors, the weight of the evidence against the defendant is least important. See, United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991).

Government, on the other hand, without getting into the specifics of their case has highlighted that the evidence in this case is voluminous consisting of at least seven banker's boxes of documents. While this information does not inform the Court as to the strength or weakness of the Government's case, this information does establish that Mr. Kahn is fully committed to defending the charges vigorously and the Government's case will be complex. This may result in a lengthy trial and prolonged pretrial detention. However, the probable length of pretrial detention is not a proper consideration by the Court in the determination of whether a defendant should be released.²⁴

Accordingly, on balance and based upon the information presented to the Court at the hearing, this factor is neutral and neither supports release nor supports detention.

History and Personal Characteristics of the Defendant. The Court is to take into consideration a wide variety of factors concerning the history and characteristics of the defendant, including the defendant's character, physical and mental condition, family ties, employment, community ties, past conduct, drug or alcohol abuse, and criminal history. See 18 U.S. C. § 3142(g)(3)(A). The majority of these factors weigh against the Defendant. Defendant has not presented any recent employment history, and other than the Defendant's alleged involvement with ARL/GLGM since at least 1996, the Defendant has not presented any evidence of employment. Obviously, at this juncture the Defendant is prohibited from continuing to engage in the tax schemes and conduct this Court enjoined in the Civil Action. Moreover, while the Defendant mentioned that he had engaged in "commodities trading" while in Panama the

²⁴ See, e.g. United States v. Quartermaine, 913 F.2d 910, 917 (11th Cir. 1990).

Defendant has not provided any details of this activity. The Court also assumes that Mr. Kahn would not be licensed to engage in trading as a broker because of his previous criminal conviction for willful failure to file tax returns in 1985.

Concerning the Defendant's residence and community ties, the Defendant did not present any evidence of meaningful ties to anywhere in the United States. Nor did he present any information to pretrial services that could be verified as to the Defendant's family or community ties to anywhere in the United States. Although the Defendant advised the Court that his fourteen year old son lives in Colorado with grandparents, the Defendant readily admitted that during the time Mr. Kahn was in Panama his son visited with him and his wife. Further, the Court was not provided with any information that was verified as to the address where his son resides or any other information concerning the Defendant's ties to his son. Thus, the presence of Defendant's minor son in the United States does not appear to be an incentive for Mr. Kahn to reside in this country.

Moreover, with regard to the Defendant's ties to his wife, she is presently residing with J.R. Williamson in Ft. Lauderdale, Florida. This is the residence where the Defendant advised the Court he would reside if released. Notably, however, the Government proffered without challenge by Mr. Kahn that J.R. Williamson was involved previously with ARL/GLGM and Mr. Williamson is a convicted felon, having previously been convicted of a felony drug offense. Thus, Mr. Kahn's suggestion that he would live with his wife and J.R. Williamson in Ft. Lauderdale, Florida if he was released is not an acceptable condition and certainly does nothing to establish Mr. Kahn's connection with the United States.

The most significant factor developed at the hearing with regard to the Defendant's history and personal characteristics is the fact that the Defendant fled the United States for refuge in Panama when he was faced with the initial stages of the criminal investigation that led to the criminal charges in this case. The information presented to the Court at the detention hearing more than sufficiently established that the Defendant's knowing decision to leave the United States was directly related to the "pressures" placed upon him by the IRS. The Defendant admitted that when he left his rented residence in Lake County, Florida he did not even have time to clean the home and that his departure was sudden and precipitous. The email from the Defendant to his landlords - transmitted just one week after his arrival in Panama in March 2004 - underscores that the Defendant fled the United States to avoid facing the criminal charges Mr. Kahn well knew were in the process of being brought against him.

In short, the information offered at the detention hearing clearly established that Mr. Kahn fled the United States to avoid the imminent criminal charges that were going to be brought against him and that Mr. Kahn never seriously intended to return to the United States. Mr. Kahn applied for and received a visa from the Panamanian authorities based upon the representation that he intended to live there for life and that it was "unknown" when he would return to the United States. All of this information convincingly establishes that Mr. Kahn had few if any ties, financial or otherwise, sufficient to deter him from leaving the United States. And nothing further was presented by Mr. Kahn at the hearing to suggest that there are any additional incentives today that would assure he would stay in the United States, if released.

Lastly, with regard to Mr. Kahn's personal characteristics, the Court has taken

into account Mr. Kahn's history of noncompliance with the Court's directives in the Civil Action and, as explained above, Mr. Kahn's demonstrated pattern of defying the authority of the judicial officers of this Court to restrict Mr. Kahn's activities. As the Court stated on the record at the hearing, Mr. Kahn has offered no information or other evidence - other than his naked promise - to suggest that he would comply with, or even recognize as legally enforceable against him, an order of this Court setting conditions of release.

Nature and Seriousness of the Danger to the Community. The Government did not argue that Mr. Kahn was a danger to the community and did not offer any evidence that Mr. Kahn was continuing to engage in prohibited activities related to marketing the tax schemes previously enjoined by this Court. Thus, the Court assumes that if Mr. Kahn was released - and assuming he did not continue to engage in the activities prohibited by this Court - he would not be a danger to the community.

This factor, however, when measured against the compelling evidence of Defendant's flight from the United States to Panama and in view of the complete lack of ties of the Defendant to the United States, is simply insufficient for the Court to conclude that there are conditions of release the Court could impose that would be sufficient to assure that Mr. Kahn would not be a risk of flight.

IV. Conclusion

Based on the foregoing, I am satisfied that no condition or combination of conditions will reasonably assure the appearance of Defendant should he be released

pending trial.²⁵

Accordingly, it is **ORDERED AND ADJUDGED** that:

Defendant is committed to the custody of the Attorney General, or his designated representative, for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States, or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

DONE AND ORDERED at Ocala, Florida this 18th day of December, 2006.



GARY R. JONES
United States Magistrate Judge

Copies to:
U.S. Attorney
United States Marshal
Pretrial Services (Orlando)
Pro Se Defendant
Standby Counsel, Michael Nielsen, Esq.
Counsel of Record

²⁵ While the Court has considered the condition of restricting Defendant's movement through the use of an electronic monitor, the Court concludes that this condition would not be sufficient to prevent the Defendant from fleeing either this jurisdiction or the United States in view of the Defendant's prior experience in fleeing to Panama. Moreover, because the Defendant refused to provide pretrial services with any information concerning his financial history, and there was no explanation offered by Defendant as to how he was able to reside in Panama for two and one half years with no source of income, the Court has no way of ascertaining whether the Defendant has available the financial means to evade prosecution in this case by fleeing.