

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA)	
)	No. 05 CR 691
v.)	
)	Hon. Amy J. St. Eve
ANTOIN REZKO, et al.)	

**DEFENDANT’S RESPONSE TO MOTION FOR
ISSUANCE OF ARREST WARRANT AND REVOCATION OF BOND**

As the Court is aware, Defendant Antoin Rezko returned to this country, promptly after his indictment, from Syria, a country from which he could not be extradited. This Court imposed a \$2 million bond, secured by nine homes and other properties posted by Mr. Rezko’s family and friends. The Court also placed Mr. Rezko on home detention with electronic monitoring. Mr. Rezko has been wearing an ankle bracelet for over 15 months, and has not once violated the conditions of his confinement.

The government moved to arrest Mr. Rezko on Saturday, January 26, 2008, based in large part on a \$3.5 million wire transfer that Mr. Rezko received on April 5, 2007. While the defense fully understands the Court’s concern about the completeness and accuracy of Mr. Rezko’s financial disclosures—and will make every attempt below to allay those concerns—the fact is that Mr. Rezko is no more of a flight risk today than he was in April 2007 or on any day since. The government has known about the April 5 transaction since virtually the day it happened, as its CI2 received a \$275,000 check directly from the Freeborn & Peters client escrow account into which the \$3.5 million loan proceeds were deposited. (Gov’t Motion, Ex.

B.) Mr. Rezko made no effort to hide either his settlement with CI2 or the \$3.5 million loan transaction, and he was represented by counsel in both transactions.

In short, there is simply no evidence that Mr. Rezko is a flight risk, and there is no new evidence about any financial transaction that either explains the timing of the government's motion or justifies detaining Mr. Rezko on the eve of his trial. If Mr. Rezko did not plan to stand trial, he would not have come back from Syria. If he were to flee at any time, he would have left after receiving the \$3.5 million, not nine months after paying most of the loan proceeds to fund his defense. And, if the government truly believed Mr. Rezko is a flight risk, it would have moved long before now to arrest him, rather than continuing its undercover investigation in the hope of uncovering additional evidence against him.

If the Court believes Mr. Rezko's financial situation has improved or is different than he represented it to be when the Court conducted its *in camera* investigation in January 2007, Mr. Rezko stands prepared to meet whatever increased bond or more stringent monitoring requirements the Court may see fit to impose. However, given the lack of any evidence that he intends to flee, his return from Syria, the monetary support he has received from friends and family to mount a vigorous defense, and his otherwise exemplary behavior while on electronic monitoring, the defense submits that there is no just basis to find that Mr. Rezko is a flight risk.

To detain Mr. Rezko this close to trial is to prevent him from receiving a fair trial. Mr. Rezko has served as an active member of his defense team and has worked long hours on a daily basis with his counsel in preparing his defense. Because of his familiarity with the individuals and relationships at issue, his participation is critical to the defense. Mr. Rezko has devoted hundreds of hours to reviewing and summarizing the 1600 Title III intercepts and hundreds of hours of consensual recordings at issue in this case, yet his work is far from complete. No other

member of the defense team has done so, and there is not sufficient time prior to trial for Mr. Rezko's work and work product to be duplicated. It is also not possible for Mr. Rezko to assist in his own defense from the MCC or, worse, one of the other possible locations, given the need for daily interaction with counsel, access to the Title III and consensual recordings, and access to the voluminous 3500 material, extensive defense work files, and the multitude of documents that is now approaching two million in number. This Court has previously denied the defense's motion for a continuance of the trial date, and it is very familiar with counsels' views as to the scope, timeliness, and completeness of the government's production of discovery materials in this case. The government continues to produce additional material on an almost daily basis, in utter disregard of two prior Court deadlines and a host of requests and protestations by the defense. Without regular and unfettered access to Mr. Rezko, there is no way that counsel will be able to fulfill their ethical duties to provide Mr. Rezko with a constitutionally adequate defense.

I. REZKO DID NOT WILLFULLY VIOLATE ANY COURT ORDER

Title 18, United States Code, Section 3148(b) allows an order of revocation and detention if, and only if, the Court finds: (a) that there is probable cause to believe a defendant committed a crime while on release; *or* (b) clear and convincing evidence that a defendant has violated any other condition of release. The government does not claim that Rezko violated any provision of this Court's Order Setting Conditions of Release [Docket #105] and, in fact, he did not. Instead, the government proceeds under 18 U.S.C. § 3148(b)(1)(A), and alleges that there is probable cause to believe that Rezko is in contempt of court in violation of 18 U.S.C. § 401. (Gov't Motion, p. 1.) "The essential elements of criminal contempt are a lawful and reasonably specific

order of the court, and a willful violation of that order.” *United States v. Hoover*, 240 F.3d 593, 596 (7th Cir. 2001).

The government does not point to any specific order of the Court that it believes Rezko willfully violated. Rather, the government claims that: “(1) Rezko made false representations to the Court about his financial condition in order to secure his release on bond; (2) while on bond Rezko . . . engaged in financial transactions that substantially undermined the security for his appearance; and (3) Rezko . . . disobeyed this Court’s instructions to keep it advised of changes in his financial condition.” (Gov’t Motion, p. 1.)

A. Rezko Did Not Willfully Make False Representations About his Finances

As for the first claim, there is no evidence that any false representation was made by Rezko or his counsel to the Court regarding his financial condition. Mr. Rezko’s counsel reviewed again the letters submitted to the Court on November 2, 2006, November 17, 2006, and January 22, 2007, as well as a draft transcript of the Court’s *in camera* examination of Mr. Rezko on January 16, 2007, and found no statements that, even with the benefit of hindsight, were false at the time they were made. Even if one or more of the representations made by counsel or Mr. Rezko prove to be wrong, they were made in an abundance of good faith based on the information known to counsel and Mr. Rezko at the time and can in no way be said to evidence a willful violation of a Court order.

As was made clear in the letters submitted to the Court, it was a very time consuming and difficult task to gather and summarize financial information related to the numerous complex business ventures in which Mr. Rezko was engaged. Prior to submitting the letters to the Court, undersigned counsel devoted many hours to gathering information and consulting with the accountants, bookkeepers, lawyers, and employees who were knowledgeable about Mr. Rezko’s

businesses and their finances. If any representation made in any letter submitted by counsel proves to be false, the fault lies with Mr. Rezko's advisors, not Mr. Rezko. Similarly, Mr. Rezko prepared for his *in camera* hearing by reviewing the information gathered by his lawyers and other advisors. If Mr. Rezko's testimony was erroneous in any respect, his mistake was more likely the result of receiving erroneous information from his advisors than an intent to mislead the Court. Indeed, in at least one instance, Mr. Rezko's testimony contradicted information provided by his lawyers, a fact which prompted further investigation and a follow-up letter advising the Court that Mr. Rezko's recollection was correct and a previous representation by counsel was incorrect. (*See* 1/22/07 Letter.) There is, in short, no basis whatsoever to find probable cause that Mr. Rezko committed criminal contempt in connection with any of the information provided to the Court about his financial condition.

B. Rezko Did Not Willfully Fail to Advise the Court of Changes in his Financial Condition

The government's third basis for alleging that probable cause exists to find that Mr. Rezko committed criminal contempt is its claim that Rezko willfully disobeyed this Court's instructions to keep the Court advised of changes in his financial condition. Again, if Mr. Rezko failed to abide by any instruction of this Court, he did not do so willfully, and blame for his inadvertence lies at the feet of his counsel.

The heart of the government's concern appears to be a \$3.5 million personal loan Mr. Rezko received from a business partner on April 5, 2007. Mr. Rezko's counsel were aware of this loan, as the proceeds were wired directly to a law firm escrow account, and \$1.9 million of the proceeds went directly to law firms to pay legal fees. Mr. Rezko's counsel did not notify the Court of this transaction because they did not understand it to be the type of transaction about which the Court wished to be advised.

As background, the Court will recall that it asked Mr. Rezko in a variety of different ways during its *in camera* examination how he was living and how he was paying his lawyers. He indicated that both his living expense and his legal fees were being paid by friends and family. In addition, the Court asked Mr. Rezko how easy it would be to get a large payment from GMH, and he responded—truthfully—that he did not know, had not asked, and in fact believed that GMH would scrutinize any such request as a business transaction. Mr. Rezko did describe the Chairman of GMH as a “close friend” and business partner, and he provided certain details of his business transactions with GMH. While the Court specifically directed Mr. Rezko to advise the Court if he obtained a salary during the pendency of the case, it made no such request to be advised of additional loans or gifts received from friends or family members.

At the February 27, 2007 status hearing, in response to concerns expressed by the government about Mr. Rezko’s access to a potentially large asset—the 62 acre development site—the Court directed as follows:

If something changes—and I believe I have advised you of this or ordered this before, but if not I want to make clear. If something changes with respect to the status of the 62 acres that we talked about and that I asked you multiple questions on, you must notify the Court immediately.

Based on the Court’s aforementioned directives, counsel understood, and so advised Mr. Rezko, that he did not have to advise the Court of additional loans or gifts received from family or friends, but did have to advise the Court if he stood to receive any income and of any changes to the status of the 62 acre development.

Thereafter, in late March or early April 2007, Mr. Rezko advised his counsel that his business partner had agreed to loan him \$3.5 million for legal expenses and to support his family pending trial.¹ While counsel were perhaps not as involved in the details of how this loan was disbursed as they should have been, the loan proceeds were, in fact, used for those purposes. As the government indicates, \$1.9 million of the proceeds went directly to law firms. An additional \$200,000 went to partially reimburse individuals who had advanced money for legal fees or living expenses. (Gov't Motion, p. 16, § G.) An additional \$275,000 was paid directly to a creditor, CI2, who, as the government was aware in March 2007, had previously received the proceeds of another loan Mr. Rezko arranged for his niece to received from another of Mr. Rezko's business contacts. An additional \$100,000 was transferred to an account of one of Mr. Rezko's businesses, Rezko Property Holdings. Of that amount, at least \$89,000 was paid to other lawyers and accountants, with the rest paid to creditors.

The rest of the \$3.5 million loan proceeds were distributed to members of Mr. Rezko's family. While Mr. Rezko's notion of supporting his family might be different than the norm, it is both a personal and cultural trait of Mr. Rezko's to provide generous support for his extended family. The Rezko family is extremely close, and Mr. Rezko has, if anything, been overly generous in supporting his siblings and his many nieces and nephews over the years. Many of

¹While the government attempts to besmirch Mr. Auchinleck's character, he is one of Britain's wealthiest men, has been a guest at the White House and met with two of the last three presidents, was Co-Chair of the Kennedy School of Government at Harvard, is President of the Anglo-Arab Organisation, and has received numerous awards and honorary positions from heads of state, including Queen Elizabeth II, Pope John Paul II, and King Abdullah II of Jordan. While Mr. Auchinleck is apparently no longer welcome in the United States, he apparently is welcome to travel to France, where he maintains a home, and every other country in the world, notwithstanding a criminal conviction in France, for which he was tried *in absentia* and received a suspended sentence.

those he helped in the past in turn helped Mr. Rezko and his wife in the chaotic months following his indictment by posting their houses—which in many instances Mr. Rezko helped them to buy—to secure Mr. Rezko’s release, or by providing money for living expenses. Of the \$3.5 million loan proceeds, \$200,000 went to a niece, Maha Makdah, \$100,000 went to a brother, Aboud Rezko, and \$24,947 went to a nephew, Antoin Rezko, whom the government mistook as the Defendant. As will be explained further below, none of these payments was intended to pay off people who posted their homes or as a means to facilitate flight. Rather, each of these payments was intended to provide support for individuals long supported by Mr. Rezko.

Specifically, at the time of the transfer to Ms. Makdah, her father, who is Tony Rezko’s oldest brother, was retired, disabled, and had recently been diagnosed with a serious case of lung cancer, which has since been characterized as terminal. Ms. Makdah is the family member most responsible for the care and support of her father, and Mr. Rezko transferred the \$200,000 to Ms. Makdah to fulfill what he considers to be his obligation to support his brother and his brother’s family in a time of need.

Similarly, the transfer to Mr. Rezko’s brother, Aboud, was made at a time when Mr. Rezko did not know if he would have any more money available to him until after his trial and, if convicted, his sentence. He transferred the \$100,000 to support his brother and his brother’s family, as Mr. Rezko had long undertaken to do. Likewise, the \$24,947 check to Mr. Rezko’s nephew and namesake was used to pay for his nephew’s tuition, which Mr. Rezko had undertaken to pay.

The remaining \$700,000 of the \$3.5 million loan was transferred from Freeborn & Peters’ escrow account to Rita Rezko’s checking account. Mr. Rezko presumably did not want to receive funds into his own accounts due to the number of creditors that he has, but by no

means did he intent to hide the payment from the Court or the government. The purpose of the payment to Mrs. Rezko was to allow her to support their children, maintain the household, and pay any additional legal fees or other debts that had to be paid prior to the end of trial. The vast majority of this payment was kept by Mrs. Rezko, used for college tuition, or used for household expenses. Mrs. Rezko reimbursed \$50,000 to an individual who had advanced legal fees, and she transferred an additional \$50,000 into the Rezko Property Holdings account, which, as stated above, was used to pay lawyers, legal expenses, and creditors of various of Mr. Rezko's businesses. Mrs. Rezko also transferred an additional \$60,000 to Ms. Makdah to support her ailing father and \$6,000 to support another nephew.

The government referenced payments made by Mrs. Rezko on the mortgage loan secured by her brother's house. As was stated in open Court, these payments are in no way intended to denigrate the value of the property posted to secure bond. Rather, Mrs. Rezko agreed to help her brother rent his condo following his transfer overseas, which occurred after the time of the *in camera* session regarding Mr. Rezko's finances. Mrs. Rezko collects the rent from the tenant and deposits it into her brother's account. Because Mrs. Rezko is not a signatory on her brother's account, she pays the mortgage and other expenses from her account, and periodically reconciles accounts with her brother. Mrs. Rezko's brother is a 30-year old attorney now working in Qatar. He has no significant assets, is not a source of overseas funds, and in no way believes that Mrs. Rezko's assistance in renting the condo is in any way intended to undermine the value of the home he posted to secure Mr. Rezko's release.

In sum, the proceeds of the \$3.5 million loan were used for the same purposes as other loans received by Mr. Rezko: to pay for his defense and support his family during the pendency of his criminal case. While Mr. Rezko's various creditors may questions his allocation of

resources, this loan was a personal loan, evidence by a promissory note, was used for the purpose for which it was received. The loan resulted only in increasing Mr. Rezko's liabilities and did not produce any income to him.

The government separately claims in its motion that Mr. Rezko willfully failed to advise the Court about his efforts to sell his ownership units in the 62-acre development. (Gov't Motion, pp. 16-23.) As the Court acknowledged at yesterday's hearing, Mr. Rezko's counsel did advise the Court on June 13, 2007 of a pending reorganization of the 62-acre development. At that time, counsel disclosed to the Court that over \$27 million in debt owed by Mr. Rezko to GMH would be forgiven. That number included the \$3.5 million loaned by GMH to Mr. Rezko in April, a fact which, regrettably, was not reflected in counsel's letter to the Court. As the Court has indicated it did not base its decision to revoke Mr. Rezko's bond on this issue, only two points warrant mention. First, counsel's letter of June 13 demonstrates Mr. Rezko's good faith in attempting to comply with the Court's orders and his intention to stand trial. The fact that he converted his last remaining asset into cash to pay for his defense and satisfy creditors is inconsistent with any notion that he intends to flee. Second, it appears the government was aware of this transaction for months and took no action to prevent Mr. Rezko from fleeing. CI4, who works for the entity developing the 62 acres and provided the government with information about the transaction at issue, has been cooperating with government since June 2007, when the transaction occurred. (Gov't Motion, p. 22, n.15.) In addition, the defense believes the government learned of this transaction from at least one other witness in 2007. At the latest, the government admits it was aware of the transaction since December 12, 2007, but did not take action to prevent Mr. Rezko's flight until January 28, 2008.

C. Rezko Did Not Willfully Act to Undermine the Security Posted to Secure his Release

The government's second purported basis for alleging that Rezko is in contempt of Court is that he engaged in transactions that substantially undermined the security for his appearance. As a preliminary matter, counsel is aware of no order or law that precludes Mr. Rezko from giving or loaning money to individuals who posted bond properties. Even were such an obligation to exist, neither Mr. Rezko nor the individuals who posted their properties were advised that they should not engage in such financial transactions.

More substantively, as was stated above, none of the funds transferred by Mr. Rezko to the Makdahs, by Mrs. Rezko to her brother, or by anyone to any of the other individuals who posted their homes was intended in any way to compensate them for the anticipated loss of their home. The value of the property has in no way been undermined by any such transaction; the Makdahs would still lose \$200,000 of equity if Mr. Rezko flees, and Roger Malki would lose both his equity and his rental income if Mr. Rezko flees. While the defense understands the Court's concern about the similar amount being transferred to the Makdahs, Mrs. Makdah will be available in Court today to verify that the cash she received from Mr. Rezko was intended to help support her father and her family and was in no way intended to offset the value of her bond posting.

II. CONDITIONS SHORT OF DETENTION WILL ASSURE MR. REZKO'S APPEARANCE

Pursuant to 18 U.S.C. § 3148(b)(1)(2), even if the Court determines that there is probably cause to believe that Mr. Rezko willfully violated a Court order and, therefore, committed criminal contempt, the Court must find that no condition or combination of conditions will assure that Mr. Rezko will not flee. As stated above, the current conditions of release have

assured Mr. Rezko's presence at each appearance since he received the \$3.5 million loan in April 2007, at each appearance since Mr. Rezko advised the Court in June 2007 about the reorganization of the 62 acre project, and at each appearance since the government learned of these transactions. Under the present circumstances, the defense respectfully submits that there is no basis to detain Mr. Rezko as a flight risk. *See, e.g., United States v. Hammond*, 204 F.Supp.2d 1157, 1166 (E.D. Wis. 2002) ("Section 3142 does not seek ironclad guarantees, and the requirement that the conditions of release 'reasonably assure' a defendant's appearance cannot be read to require guarantees against flight."). In addition, as stated above, were he to be detained, he would be denied a fair trial given Mr. Rezko's central and indispensable role in trial preparations to date, the vital need for counsel to have unfettered access to their client, and for Mr. Rezko to have unfettered access to the multitude of tapes, documents, 3500 material, and defense work product at issue in this case.

Mr. Rezko offers the following combination of conditions to address the Court's concern about being accurately and promptly apprised of Mr. Rezko's financial condition and the security posted to secure his appearance: (1) Mr. Rezko will advise the Court prior to entering into any financial transaction of any nature whatsoever that results in Mr. Rezko or any member of his immediate family receiving any cash or cash equivalent; (2) Mr. Rezko will also agree to further restrictions of his home detention, subject only to being allowed to travel between his home and his counsel's office to prepare for trial; (3) the defense will work to cure any encumbrances that have been placed on any parcel that secures Mr. Rezko's release; and (4) the Chase account in Mrs. Rezko's name that currently contains approximately \$255,000 will be posted as further security for Mr. Rezko's appearance.

Dated: January 29, 2008

Respectfully submitted,

ANTOIN S. REZKO

By: /s/ William P. Ziegelmueller
One of his attorneys

Joseph J. Duffy
William P. Ziegelmueller
Mariah E. Moran
STETLER & DUFFY, LTD.
11 S. LaSalle St., Ste. 1200
Chicago, IL 60603
(312) 338-0200

CERTIFICATE OF SERVICE

I, William P. Ziegelmueller, an attorney, certify that I caused copies of the **Defendant's Response to Motion for Issuance of Arrest Warrant and Revocation of Bond** to be filed with the Clerk of the Court and served via the Court's CM/ECF System on:

Christopher Niewoehner, AUSA
Carrie Hamilton, AUSA
Reid Schar, AUSA
219 S. Dearborn, Room 500
Chicago, IL 60604

this 29th day of January, 2008.

/s/ William P. Ziegelmueller