

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
vs.
Mohammed Reza Alavi,
Defendant.

CR 07-0429-PHX-NVW
ORDER

The court has considered the Government’s Clarification of the Record (doc. # 57) concerning its contentions in its Appeal from Detention (doc. # 18). In light of clarifications of the contentions of the Government, the court concludes that the Government’s showing now falls short of a clear preponderance of the evidence that Defendant Alavi is a serious flight risk for whom “no condition or combination of conditions will reasonably assure [his] appearance” 18 U.S.C. § 3142(e). Therefore, the prior Order concerning the detention appeal (doc. # 24) will be modified as herein provided and Defendant will be ordered released on the conditions hereinafter stated.

Amendments to findings in the April 20, 2007 order

The legal standard that must be met before a defendant may be detained pending trial is that “no condition or combination of conditions will reasonably assure the appearance of the person and the safety of any other person and the community” 18 U.S.C. § 4132(e). The Government grounded its challenge to Alavi’s release solely on the flight-risk branch

1 on this test, not on danger to the community. However, in assessing the risk of flight, the
2 Government argued, and the court was persuaded, that harm to public interest bears upon
3 possible punishment, which in turn bears directly on the incentive to flee.

4 The maximum statutory sentence for the offense which Alavi has been charged with
5 is ten years imprisonment, a \$50,000 fine, or both. 50 U.S.C. § 1705. The advisory
6 Sentencing Guidelines range is 15 to 21 months imprisonment. United States Sentencing
7 Guidelines § 2M5.1(a)(2). A sentence can be higher or lower than the advisory Guidelines
8 range, depending on various factors in the Guidelines and the statutory purposes of
9 sentencing. 18 U.S.C. § 3553(a). With respect to the advisory Guidelines range, the
10 Government had argued that, if a conviction ensued, it would be asking for a sentence higher
11 than the advisory Guideline range.

12 The clarifications of the contentions of the Government require amendments to some
13 of the findings made in the court's April 20, 2007 Order (doc. # 24).

14 1. The Government contended that, though there was no evidence that Alavi
15 intended to do ill with the software, "there would be a sentencing argument that taking a
16 widget to Iran is different than taking schematics for the largest power plant in the United
17 States to Iran" The Government added that "what he's got may, in fact, demonstrate
18 vulnerabilities, plans, schematics. I mean, the thing he's got, in the wrong hands, you know,
19 lead to some threat At the same time, I wouldn't walk the blueprints of the Palo Verde
20 plant to Tehran." The Government has now advised the court, "Although the program
21 contains schematics and other detailed information relating to Palo Verde's reactor control
22 room and related systems, those schematics and other details do not amount to architectural
23 blue prints or designs of the physical layout of the Palo Verde site." (Doc. # 57, p. 1.)

24 2. The court found in the April 20, 2007 Order that on October 10, 2006, Alavi
25 "successfully downloaded a 3 KeyMaster software registration key to a computer in Tehran,"
26 which the court characterized as "accessing the software" (doc. # 24, p. 4), relying on the
27 Government's characterization that Alavi "reinstalled the software in October." The
28 Government argued that "the only rationale for re-accessing would be to download that onto

1 another computer and create a second copy of the program in Iran.” The Government now
2 acknowledges:

3 Alavi would not have downloaded the 3 KeyMaster program from the Western
4 Services website. He only would have obtained the registration key to make the
5 program operational. The government’s investigation is continuing to determine
6 whether Alavi obtained the registration key on October 10, 2006 in order to complete
7 a new installation of the 3 KeyMaster program or to reactivate an existing program.

8 (Doc. # 57, p. 2.)

9 3. Returning to whether the offense charged in this case might warrant a sentence
10 reflecting public harm from nuclear reactor information put “in the wrong hands,” to use
11 the Government’s words adopted by the court, though that may or may not be proved in the
12 future, it is not now shown that the software in question poses a threat to the public interest
13 beyond the economic interests that usually underlie 50 U.S.C. §§ 1701 and 1705
14 prosecutions.

15 **Conclusion as to flight risk and effectiveness of conditions of release**

16 These amendments and developments change the calculus of flight risk and
17 effectiveness of conditions to reasonably assure Alavi’s appearance at trial. With the
18 diminishment in likely harm and consequences to Alavi from conviction of this offense, the
19 advantage of fleeing to avoid answering for this charge diminishes. The financial and other
20 losses from fleeing would remain.

21 The conditions to assure appearance can be strengthened beyond what was originally
22 required by the Magistrate Judge. The court will require all the same conditions of release
23 ordered by the Magistrate Judge, plus notice of any attempt by Alavi to withdraw his 401k
24 securities account before such withdrawal could be completed, and GPS monitoring

25 Therefore, the court does not conclude that the Government continues to carry its
26 burden of showing that Alavi is a serious flight risk for whom no condition or combination
27 of conditions will reasonably assure his appearance.

28 Because the restrictions on Alavi’s 401k account as a bond will deprive him of the
liquid resources to obtain private defense counsel, despite his substantial net worth, the
appointment of the Federal Public Defender to represent him will be extended to cover his

1 entire representation in this case, subject to repayment for those services at the conclusion
2 of the case.

3 IT IS THEREFORE ORDERED that the Order of April 20, 2007 (doc. # 24) is
4 modified to the extent that the court finds that the Government fails to carry its burden of
5 showing that Alavi is a serious flight risk for whom no condition or combination of
6 conditions will reasonably assure his appearance.

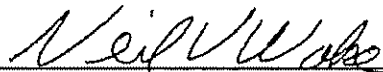
7 IT IS FURTHER ORDERED that Defendant is ordered released upon all the
8 conditions previously ordered by the Magistrate Judge, plus notice of any attempt by Alavi
9 to withdraw his 401k securities account before such withdrawal could be completed, and
10 GPS monitoring.

11 IT IS FURTHER ORDERED that the matter is referred to Magistrate Judge Duncan
12 for implementation of the conditions of release and for further proceedings concerning
13 release.

14 IT IS FURTHER ORDERED that the Federal Public Defender is appointed to
15 represent Defendant for all proceedings in this case, and Defendant is ordered to repay the
16 United States for those services at the conclusion of these proceedings.

17 IT IS FURTHER ORDERED that the Federal Public Defendant keep record of his
18 expenses and services rendered in this case.

19 DATED this 31st day of May, 2007.
20
21
22

23 
24 _____
25 Neil V. Wake
26 United States District Judge
27
28