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U.S.C.A. - 7th Circuit
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

v.

ANTOIN REZKO

) No. 08-1335
)
) Appeal from the United States
) District Court for the
) Northern District of Illinois,
) Eastern Division
)
) No. 05CR 691
)
) Honorable Amy J. St. Eve
) District Judge, Presiding

U.S.C.A. - 7th Circuit
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GOVERNMENTS RESPONSE TO DEFENDANT'S MOTION
FOR PRE-TRIAL RELEASE ON BOND

ON AIMS

FEB 22 2008

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INTRODUCTION

Antoin Rezko, a citizen of the United States and Syria who travels outside the United States for prolonged periods and has strong family and business ties to several non-extradition countries, testified under oath at a bond proceeding that he had no income, no expectation of income, no expectation of receiving monetary advances or money from overseas, and had no assets, save one, of any value. With respect to his one asset of potential value – shares in a venture to develop a 62 acre property in Chicago – Rezko represented that his interest was illiquid, incapable of valuation, of speculative worth that was contingent on the repayment of hundreds of millions of dollars to his partner and additional millions to a lender, and that he had no immediate plans or expectations to realize money – either by way of an advance or sale – from it. After a probing inquiry, the district court concluded that Rezko could remain on release with specified conditions including electronic monitoring, and a \$2 million bond secured by properties posted by family and friends. The district court later ordered Rezko, as a condition of bond, to inform the Court immediately of any changes to his income and any changes in the status of his interest in the 62 acre property.

Three months after Rezko testified that he had no expectation of receiving funds from overseas, \$3.5 million was wired from Lebanon by his business partner General Mediterranean Holdings (“GMH”) for Rezko’s benefit into an account held by Rezko’s civil attorneys. Rezko then directed that hundreds of thousands of dollars from this wire transfer be deposited into the bank accounts of his wife, his child, and a “non-operational” business, and eventually paid over to several third parties who had posted property to secure his bond. In one case, he paid the owners of bond property a sum equivalent to their equity in that posted property. As the court later discovered, this \$3.5 million was basically an advance payment Rezko for a portion of his

interest in the 62 acre project sold in July 2007 for \$28.3 million. While the majority of that purchase price was forgiveness of a debt that predated Rezko's sworn testimony, approximately \$5.4 million "new" money changed hands in 2007 in connection with this sale after Rezko testified under oath that he had no expectation of short term return on that venture. In December 2007, unbeknownst to the court, Rezko signed another agreement to sell his remaining shares of the venture to GMH for an additional \$4 million, \$200,000 of which had already been advanced to him to pay legal bills.

By engaging in transactions affecting his income and the status of his interest in the 62 acre real estate venture and not informing the district court of these transactions, Rezko violated the court's order. When it learned of the transactions in late December 2007 and early 2008, the government obtained an arrest warrant for Rezko. The district court then held hearings and unsealed the transcript of Rezko's *ex parte* testimony. Rezko's criminal defense counsel claimed that counsel was largely ignorant about these transactions and relied on Rezko and civil counsel to ensure compliance with the court's orders. He also suggested that because the \$3.5 million was a loan GMH advanced to Rezko before GMH purchased some of Rezko's interest in the 62 acre real estate venture – a purchase made in part by forgiving that very same \$3.5 million – neither the \$3.5 million transfer nor the subsequent sale of interests needed to be reported.

The district court did not buy those arguments, and found instead that the pattern of dealing between GMH and Rezko evidenced at the hearings and Rezko's efforts to liquidate the property through a purchase/sale transaction directly contradicted Rezko's sworn statements to the Court in January 2007, including his statements that he had no reason to believe that he would receive anything of value for his interests in the 62 acre property in the near term and no expectation that he could borrow or obtain money from GMH. In sum, the court found that

Rezko had lied under oath. The court also found that Rezko violated a court order by failing to inform the court of his changed income, his sale of interest in the 62 acre venture in July 2007, and his intent to sell his remaining interests as evidenced by the contract he signed in December 2007.

In light of these revelations, including the evidence that Rezko had used newly acquired funds to pay individuals who had posted property to secure his release or to pay their relatives, the district court found the existing security had been substantially undermined and that no condition or combination of conditions could be fashioned to ensure his appearance.

The district court's determination that there was a basis to revoke Rezko's bond was not clearly erroneous, but instead, was well supported in the record. The court's holding that Rezko lied under oath at the January 2007 hearing is amply demonstrated by how the events actually unfolded, which belied his claims that he had no intent or expectation to realize a gain from the 62 acre venture in the near future, and by his efforts to conceal from the court the transfer of monies to him by directing it to numerous nominees and shell companies. The court's factual findings, including its credibility determinations, are entitled to particular deference. There is no basis to disturb them on this record.

Likewise, with respect to the court's holding that Rezko violated the court's order, there is no question that the district court's order required Rezko to inform the court immediately in the event he sold his interest in the 62 acre venture or realized income from the venture. It was likewise undisputed that Rezko did not inform the court that he sold 60 units of the venture or that he had realized income from such a sale – by way of the forgiveness of a \$3.5 million April 2007 “loan” in July 2007. Consequently, the district court's conclusion that her order had been intentionally violated was not clearly erroneous.

The fact that Rezko was found to have provided false information to the court in connection with its consideration for bond fundamentally undermined the conditions of release that the court initially required because these conditions were premised on his false representations. In light of these lies and Rezko's payment to individuals who has posted property to secure his release, the court's determination that no condition or combination of conditions could be fashioned to assure his appearance was not clearly erroneous. In sum, this Court should deny Appellant's motion.

FACTUAL BACKGROUND

Rezko, a naturalized American citizen (10/19/06 Tr. 4) who has retained Syrian citizenship (1/16/07 Tr. 49)¹, was indicted in October 2006 in two separate criminal cases—a political corruption/kickback/money laundering case and a separate multi-million dollar fraud case—each of which could result, if Rezko is convicted, in sentences substantially in excess of 10 years. 10/19/06 Tr. 9-10. Rezko was a frequent international traveler, logging 20 trips abroad during the two years before October 2006, many to Middle Eastern countries with which the United States does not have extradition treaties. *Id.* 11. The indictments were returned under seal at a time when Rezko was traveling for a two-month period in the Middle East, including to Syria where his wife and daughter joined him. *Id.* 11-12. Rezko has substantial business ties, including on-going real estate and other projects with a company called General Mediterranean Holdings, SA (“GMH”), which is operated by Nadhmi Auchi, a billionaire resident of London, whom it was later revealed is Rezko's personal friend. 1/16/07 Tr. 58.

¹ At the initial bond hearing, Rezko was represented as being a citizen of the United States only (10/19/06 Tr. at 4); however, when he testified later *ex parte*, Rezko admitted that he had retained his Syrian citizenship. 1/16/07 Tr. 49.

At the initial bond hearing on October 19, 2006, the government sought Rezko's detention on the grounds that he posed a risk of flight. It pointed to Rezko's frequent and extended foreign business trips, ties to the Middle East, the seriousness of the two separate indictments facing him, his wire transfer of money to a foreign account, his prior use of nominees in financial transactions, and the weight of the evidence. 10/19/06 Tr. 12-13.

The court ultimately ordered Mr. Rezko released on a \$2 million bond secured by, in relevant part, nine properties posted by third-parties, and the condition that he be placed on home-confinement and electronic monitoring. *Id.*, 41, 43. The district court ordered Rezko to submit a financial affidavit and stated that it would re-assess the release terms once it saw the financial affidavit. *Id.* 13-14, 43, 47. The forfeiture agreements relating to all of these properties specified that they could not be encumbered or sold. App.Ex.10. The district court specifically admonished Rezko. 10/19/06 Tr. 46-48.

On November 2, 2006, Rezko, in a letter by his counsel to the court, stated that it was "abundantly clear" that Rezko "has no income, negative cash flow, no liquid assets, no unencumbered assets, is significantly in arrears on many of his obligations . . . and has been forced to rely on family and friends for financial assistance." 11/2/06 letter to the Court. In an attached unsigned financial affidavit, Rezko represented he only had \$9,000 in cash on hand, minimal funds in bank accounts, and money in a life insurance policy, and that he had a 100% interest in Rezko Property Holdings, LLC, which he characterized as non-operational.

Rezko represented in this letter that his "one remaining asset of significant value [is] . . . his interest in MT Property Holdings, LLC." *Id.* Rezko characterized the value of that asset as speculative, incapable of quantification or estimation, and subject to payment only after satisfaction of large prior existing debts. Specifically, he represented in the letter that "it

remains to be determined” both whether this asset is “of significant value,” and “how that value can be liquidated given that the project’s value is tied to the development of what is currently a 62 acre vacant lot on Chicago’s south side.” *Id.* Rezko further suggested in the financial affidavit that he had liabilities in excess of \$50 million, and few assets.

At a November 3, 2006 hearing, the district court stated it needed a more complete “financial picture to make a determination as to whether or not [the bond condition] is sufficient going forward,” ordered that additional financial information be provided, and stated that it would question Rezko under oath *ex parte*. 11/3/06 Tr. 7-8.

On January 16, 2007, Rezko testified before the district court *ex parte in camera*. Before placing Rezko under oath, the court stated, “My questions to you today, Mr. Rezko, are so that I can make a fully-informed decision about whether or not your bond is sufficient to assure your appearance here in the future.” 1/16/07 Tr. 3-4. It further advised Rezko of the serious consequences should he testify falsely. *Id.* 5, 8. In defense counsel’s presence, the court questioned Rezko in detail about his finances, including having him attest to the financial information already provided. *Id.* 19. With respect to his interest in the 62 acre venture, Rezko testified that he was not getting paid any money out of the development, and that he had not been paid any money out of it since his indictment. He further testified:

Q: Do you anticipate receiving any money at any point in the near future?

A: No, your Honor. In the distant future.

Id. 13. In connection with verifying and updating the financial information previously submitted to the court, Rezko testified that he had recently converted two percent of his ownership interest in MT Property Holdings, “for previous existing debt over 5 years old.” *Id.* 21. His counsel then stated: “The only asset – real asset – that Mr. Rezko has is this MT

Holdings, and your Honor can question him, but there's no real value on it. There will be value down the road, so to speak." *Id.* 22. Counsel then explained that Rezko's civil attorneys were meeting with individuals "to whom Mr. Rezko owes substantial sums of money, asking them if they would be interested in taking – having Mr. Rezko assign part of MT Properties to them. And they're calculating a formula to use for this assignment. So, there's no exchange of money in exchange in exchange for release of his debt that's now pending." *Id.* 22 (emphasis added).

Rezko then testified that if the "if the property is sold today for \$200 million, I will receive not one dollar from that proceeds. The value for me in this property is in the future development. . . I will only create value by proceeding with the development over eight years."

Id. 23.

Rezko testified that GMH needed to be repaid \$130 million in cash plus a 12 percent annual premium and a first mortgage need to be satisfied. *Id.* 37. Rezko testified that no one outside the United States other than a family member in Canada was giving him money; and that he had no assets that he could get cash advances from. *Id.* 48-49. With respect to his partner GMH, Rezko testified that he had no access to nor did he receive money from transfers made by GMH to fund the 62 acre project. *Id.* 55. The court expressed a concern:

Q: [O]bviously, my concern is does he have access to [GMH's money].

A: Right.

Q: If he called on GMH and said, "Can you give me a hundred thousand dollars," how easy would that be to get?

A: I have not asked, your honor. I do not know. I'm a partner in the land.

Id. 56. Rezko's counsel volunteered:

Judge, one thing I wanted to make clear to your Honor, . . . this GMH is a . . . very large organization. . . . They run it like a big company. . . . [O]n a monthly basis they scrutinize

a budget and they fund the budget. So, I don't want you to – although he has a personal relationship with the Chairman – or believes he does – I want you to understand I don't think Mr. Rezko could call up on the phone and ask for favors or money from them. . . .

Q: Is that accurate?

A [Rezko]: Yes.

Id. 58-59.

On February 27, 2007, the district court ordered bond conditions to stand and denied requests to modify them. In Rezko's presence, it further ordered:

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.** And if you think it's best – you must notify the Court immediately. You may do that under seal. That's fine. But I certainly want notice of that.

2/27/07 Tr. 8 (emphasis added). Government counsel then asked, "If Mr. Rezko were to sell or use his collateral, any portion of that. Were you suggesting that you would give Mr. Rezko or his lawyers the instructions that if he is to liquidate or to use that in some way to make it liquid, that he is to inform the Court?" To which the court responded: "Yes. That's just part of it though. If the status changes in any way, if he is liquidating the asset, **if he gets income**, if it clears, if there is a change in the status of that, then you must notify the Court." *Id.* 9 (emphasis added).

Unbeknownst to the court and the government, in March 2007, GMH lent Rezko \$3.5 million. On April 4, 2007, GMH wire transferred approximately \$3.5 million from Lebanon to a Chicago area bank account maintained by the law firm Freeborn & Peters, who were Rezko's civil attorneys. Rezko subsequently used the \$3.5 million for his benefit without alerting the court. Indeed, within a week, Rezko had transferred \$700,000 to his wife's bank account, transferred over \$200,000 to a person who had posted properties with \$200,000 equity to secure

Rezko's bond, pocketed almost \$25,000 in cash, and moved another \$100,000 in an account held by the "non-operating" entity Rezko Property Holdings LLC, from which he then transferred \$20,000 to the wife of a fugitive living in Lebanon and over \$10,000 to relatives of individuals who had posted properties for his bond. Further details regarding the use of this \$3.5 million are set forth in the Government's "Motion for Issuance of an Arrest Warrant." Rezko App. 16.

On June 13, 2007, Rezko (through his civil and criminal counsel) informed the district court via an *ex parte* and *in camera* letter that there was a "pending reorganization of the ownership structure of the 62 acres" and that as a result of this reorganization Mr. Rezko's interest will be reduced from 40% to 20% and over \$27 million of debt will be satisfied. The letter further stated that "Rezko will not receive any cash as a result of the planned reorganization." 6/13/07 letter to the court.

After this letter was submitted, defense counsel had an *ex parte* conversation with the district court, reporting to the court "that the restructuring had not gone forward at that point and he had not gotten any money for it." 2/28/08 pm Tr. 15.

On or about July 24, 2007 (unbeknownst to the court and the government), Rezko signed a "Unit Purchase Agreement" whereby he agreed to sell GMH 60 Class B units of an entity he owned relating to the 62 acre venture in exchange for the forgiveness of the April 2007 \$3.5 million loan and a June 30, 2006 loan for approximately \$22.9 million, and the payment of an additional \$1.4 million to his business associate, Michael Rumman, who as part of the series of transactions entered that day agreed to sell his units in the project to Rezko. App. Ex. 5. Thus, in one day, Rezko purchased Rumman's shares and then sold the majority of his newly increased interest in the 62 acre project for approximately \$28.3 million. On that same day, GMH advanced Rezko another \$200,000. Rezko did not inform the court of his purchase of

Rumman's interest, his sale of units to GMH, his increased income by virtue of either the earlier \$3.5 wire transfer or the later forgiveness of this \$3.5 million debt, or the additional advance.

On around December 5, 2007, Rezko tendered to GMH's counsel a signed contract for the sale of his remaining units in exchange for forgiveness of the \$200,000 July 2007 "loan" and the payment of an additional \$3.8 million. That contract has not been accepted by GMH as of January 28, 2008. Rezko did not inform the district court about this proposed contract or his intention to sell his remaining interest in the 62 acres.

After obtaining bank records and other information showing the origin and use of the \$3.5 million transfer and Rezko's plans to sell the 62 acre venture, the government moved *ex parte* for an arrest warrant on the grounds (*inter alia*) that he was in contempt of court insofar as he had made false representations to the court about his financial condition and had failed to abide by the court's order to keep it apprised of changes to his income or interest in the 62 acres. RezkoApp. Tab 16. The motion was supported by a sworn affidavit. *Id.* A warrant was issued, and Rezko was arrested on the morning of January 28, 2008.

That afternoon, the district court held an extended hearing. At that hearing, defense counsel acknowledged that the district court "asked us to notify the Court if there was a change in income of Mr. Rezko and if there was some change involving the 62 acres of property." 1/28/08pm Tr. 8, 10.² After hearing proffers from both sides and receiving exhibits, the district court made a series of findings. *Id.* 31-33. The court held that Rezko did not inform the court of his change in financial condition as directed, *id.* 32, and that he had testified falsely in January

² There were two proceedings on 1/28/07: one in the morning; one in the afternoon. References to the transcripts of these two proceedings will reference "am" or "pm."

2007. *Id.* 32-33. It further held that the government had established by a preponderance of the evidence that the defendant was a flight risk, and ordered Rezko detained. *Id.* 38. The district court unsealed the transcript of Rezko's *ex parte* testimony in January 2007. *Id.* The court stated that it would entertain further proposals and explanations from defense counsel. *Id.*

The following day, January 29, the district court held another hearing regarding detention. The government provided the district court with the sale agreement Rezko signed on December 5, 2007, which the government obtained only hours before. 1/29/08 Tr. 18-20. Asked why he had not advised the court of this transaction, defense counsel responded, "Quite frankly, I didn't get a letter, Judge." *Id.* 21. The probation officer recommended that Rezko be detained, stating "the risk of non-appearance has been heightened" and "we don't think that there are any conditions that could be fashioned that would assure him appearing in court." *Id.* 39. The court ordered that Rezko remain detained, and discussed at length efforts to accommodate the defendant and defense counsel in their trial preparations.

ARGUMENT

Antoin Rezko lied to the district court under oath about his assets and access to money and got caught. The district court also found that he violated the court's order by failing to report immediately changes in his income from and the status of his interest in the 62 acre real estate venture, and that in light of these new revelations, there was no condition or combination of conditions that could secure his appearance at trial if he were to be released. Rezko has filed a motion with this Court seeking to overturn those determinations arguing that the district court did not make sufficient factual findings, what findings it did make were unsupported, and Rezko's conduct was not wilful. None of these contentions has merit. The district court made detailed findings, those findings are amply supported by the record, and the assertions regarding

lack of wilfulness – essentially an imperfect advice of counsel defense – were specifically disclaimed below and are unpersuasive and unsupported here. Consequently, Rezko’s motion should be denied.

A. Standard of Review

The review of a district court’s determination to revoke bail is highly deferential, and the district court’s decision will only be disturbed if it is clearly erroneous. *United States v. Diaz*, 777 F.2d 1236, 1237-1238 (7th Cir. 1985) (“Appellate review of such a determination is, necessarily, highly deferential, even though personal liberty is at stake.”); *see also United States v. LaFontaine*, 210 F.3d 125, 130 (2d Cir. 2000); *United States v. Gotti*, 794 F.2d 773, 778 (2d Cir. 1986).

B. Revocation of Rezko’s Bond Pursuant to 18 U.S.C. § 3148(b)(1) Was Fully Supported in the Record and Was Not Clearly Erroneous

Title 18, United States Code, Section 3148 (b) provides that a judicial officer:

shall enter an order of revocation and detention of, after a hearing, the judicial officer --

(1) finds that there is –

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that –

(A) based on the factors set forth in 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

18 U.S.C. §3142(b). In this case, the district court made two critical factual findings: that Rezko lied to the court while under oath on January 16, 2007; and Rezko violated a condition of release, namely the requirement that Rezko apprise the court immediately of any change to his

income or the status of his interest in the 62 acre venture. Each of these findings independently forms a basis for revocation pursuant to §3142(b).

1. The District Court's Finding that Rezko Lied Was Not Clearly Erroneous

The district court found that Rezko lied, and set forth at length the reasons for the finding at the hearings on January 28th and 29th (1/28/08pm Tr. 31-33, 38; 1/29/08 Tr. 11, 27, 39), and subsequently reiterated it on February 14, 2008: "The bottom line is, I believe Mr. Rezko lied to me in connection with his finances in the case." 2/14/08 Tr.3. Knowingly providing false testimony to a federal court violates several federal criminal statutes and constitutes a felony. *See, e.g.*, 18 U.S.C. §1001 (false statement to the judicial branch); § 1621 (perjury); § 1623 (false declaration).³ Here there was more than sufficient basis to find probable cause that Rezko had committed any one of these crimes by lying to the court. While the district court did not review each of the elements of these offenses, there is no requirement in §3148 that it do so. The court's finding that Rezko testified falsely under oath at that hearing was sufficient for purposes of establishing the first prong of the revocation test under § 3148(1)(A).

The court's finding was amply supported in the record. Significantly, the government's evidence was largely undisputed: the defense did not dispute that the financial transactions

³ Rezko asserts on appeal that the court never made the required factual findings to support a probable cause determination that a criminal contempt of court had occurred. Although the government initially cited to that criminal contempt statute (18 U.S.C. § 401) when seeking arrest, that did not preclude the government from presenting evidence – or the court in finding on the evidence adduced at the hearing – that other crimes occurred. Here, the government only became aware of the false statements under oath *after* the district court unsealed the transcript of the January 16, 2007 hearing – although the district court was clearly aware of them and made extensive reference to them at the hearing on January 28, 2008. On January 29, 2008, the government pointed to specific instances in the January 16, 2007 transcript when it submitted Rezko had lied under oath to the court about his finances. 1/29/08 Tr. 15-18, 23.

described by the government had occurred. Instead, defense counsel argued that Rezko did not have reason to know when he testified in January 2007 that he could obtain funds from GMH. The court concluded otherwise after reviewing the totality of the evidence. In light of the detailed loan and sale agreements, the involvement of multiple law firms, and a business partner (GMH) located overseas, the court reasonably concluded that the March 2007 loan agreement between Rezko and GMH did not happen without some significant preparation and that Rezko's statements that he did not expect to receive money from the venture until far in "the distant future" (1/16/07 Tr. 13) were intentional falsehoods. Indeed, as the district court pointed out, the promissory notes and agreements detail transactions between Rezko and GMH that demonstrated Rezko "had access to large sums" contrary to his sworn testimony. 1/29/08 Tr. 10-11.

2. The Finding that Rezko Violated a Condition of Release Was Well Supported

The district court also found that Rezko had violated a condition of release, namely the requirement that he immediately notify the court of any change in his income and any change in the status of his interest in the 62 acre venture spelled out in the court's oral ruling of February 27, 2007 (2/27/07 Tr. 8-9). Rezko claims that the court never identified the specific order that was the subject of its findings (Mot. 9); however, the court and the parties' repeated reference to that order belies that assertion. *See, e.g.*, 1/28/08 pm Tr. 35; *id.* 10. In light of the on-going nature of the court's bond determination, there is no basis to conclude that the conditions of release for which revocation can be initiated pursuant to §3148 are limited to those conditions specified within the four corners of the court form (Def. Ex. 2) entitled "Order Setting Conditions of Release," as Appellant seems to suggest, particularly where as here the court made explicit that Rezko must notify the court of certain changed circumstances and made these

statements *directly* to Rezko in open court. 2/27/07 Tr. 8-9. Indeed, that form order was modified over time in several respects without changes to the form itself.

Next, there is no question that Rezko did not alert the court to the fact that he signed a contract on December 5, 2007 to sell his remaining interests in the 62 acres, just as he previously failed to alert the court of his sale of 60 units in that venture in July 2007 and of the additional significant income he realized due to that earlier sale. Defense counsel had no convincing explanation when asked why Rezko failed to inform the court of the December 2007 contract. Defense counsel suggested to the district court that counsel's June 13, 2007 letter adequately alerted the court to the contemplated transaction; however, that suggestion was belied by the fact that defense counsel informed the court *ex parte* after submitting the letters that the reorganization never took place. (1/28/08 pm Tr. 15). Furthermore, the transaction that actually occurred on July 24, 2007 was qualitatively different from the cash-less reorganization portrayed in that letter. To the contrary, it was a bonafide purchase/sale transaction in which part of the purchase price was \$3.5 million that had been advanced to Rezko before the closing. Regardless of how Rezko may characterize that \$3.5 million, it was clearly an advance of the eventual purchase price, was exchanged for an asset owned by Rezko, and (at the latest) became income to Rezko as soon as the corresponding promissory note was forgiven by GMH on July 24, 2007. Rezko's suggestion that he did not need to report the \$3.5 million because it was initially transferred to him pursuant to a loan agreement (Mot. 12) strains credulity, and does not address the more fundamental question as to why Rezko failed to inform the court that he realized income from the property as soon as the \$3.5 million note was forgiven (i.e., when the \$3.5 million ceased being a loan).

By failing to disclose immediately the sale and contemplated sale of his interests in the 62 acres in July 2007 and December 2007, and the attendant income that he realized, Rezko violated the court's order. The existence of such a condition of release and the failure to abide by it was demonstrated by clear and convincing evidence such that §3148(b)(1)(B) was satisfied.

3. Rezko's Imperfect Advice of Counsel Defense Is Unpersuasive

Rezko asserts that his conduct in failing to reveal the \$3.5 million transfer could not be deemed wilful since it "was done with the full involvement and knowledge of his criminal and business lawyers" and that he "rightfully relied on his lawyers to tell him if any disclosure needed to be made." Mot. 12. This argument is nothing more than an unsupported attempt to assert the advice of counsel defense. It should be rejected.

This Court has held that advice of counsel "is not a free-standing defense, though a lawyer's fully informed opinion that certain conduct is lawful (followed by conduct strictly in compliance with that opinion) can negate the mental state required for some crimes, including fraud." *United States v. Roti*, 484 F.3d 934, 935 (7th Cir. 2007). This Court has also stated, "It isn't possible to make out an advice-of-counsel defense without producing the actual advice from an actual attorney." *Securities and Exchange Commission v. McNamee*, 481 F.3d 451, 456 (7th Cir. 2007). Here there is no evidence – by way of evidentiary proffer or witness statement-- that any attorney who was *fully* informed rendered an opinion to Rezko regarding his reporting obligations imposed by the court's February 27, 2007 order. Like the defendant in *McNamee*, Rezko failed to produce any opinion letter, letter from an attorney giving advice that reflected knowledge of all the material facts, the live testimony of any attorney; nor did Rezko detail what, if any, advice he claims to have relied on or which of his many attorneys gave this advice.

Rezko's criminal counsel specifically disclaimed a detailed knowledge of the financial transactions Rezko was involved in, 1/28/08am Tr. 6, 9, and clearly was unaware of key facts, including that Rezko had signed a contract in December 2007 to sell his remaining interests in the 62 acre parcel to GMH. 1/29/08 Tr. 21. Without knowing all of the material facts, counsel could not render a legal opinion that Rezko could rely on for these purposes. Nor did any of the attorneys, including Rezko's civil attorneys, who attended the hearing on January 28, 2008, claim that they had advised Rezko that he did not need to disclose these transactions to the court. The district court questioned defense counsel about his allusion to advice of counsel:

Q: Did anybody advise Mr. Rezko not to disclose this loan to the Court?

Mr. Duffy: Judge, I don't believe that discussion ever took place.

1/29/08 Tr. 9. Absent evidence that fully informed legal advice was given and relied upon, Rezko cannot now claim that his failure to disclose the transactions was not wilful due to reliance on advice of counsel. Nor does Rezko even suggest that he received legal advice absolving him of wilfully perjuring himself on January 16, 2007.

There is ample evidence in the record to conclude that Rezko intentionally concealed the \$3.5 million wire transfer and subsequent sale and attempted sale from the district court. Among other things, there is the manner in which the \$3.5 million was received and disbursed: none of that money was deposited into Rezko's personal bank account, but instead was held in an attorney client trust fund account, where presumably it was co-mingled with other funds, and from there transferred to others including a substantial transfer to his wife and a \$50,000 transfer to his child's high school checking account. App. 16 (Gov. Mot.) 10. The movement of funds through third parties and bank accounts of dormant companies, which is too involved to detail adequately here, suggests the intent to conceal. Further, Rezko apparently did not inform his

criminal counsel that he had signed the December 2007 contract. Indeed, after reviewing the evidence adduced at trial, the conclusion is unavoidable: Rezko was the only individual in possession of all of the facts, and he was the one who misled the court and violated its orders. He was the one who structured the transfers, and he did so in such a manner to make their detection and tracing difficult. In light of the evidence, the court's finding that Rezko intentionally violated its order is hardly subject to reversal as clearly erroneous.

4. The District Court's Finding That There Were No Conditions or Combinations of Conditions Sufficient to Assure Rezko's Appearance Was Not Clearly Erroneous

As noted previously, revocation pursuant to §3148 is a two pronged inquiry. If the district court finds either that there is probable cause to believe that a person has committed a federal criminal offense or that there is clear and convincing evidence that the person has violated any other condition of release, it must next address whether the defendant should remain on release. If the district court determines in this examination either that, based on the §3142(g) factors, there are no conditions or combination of conditions that will assure his appearance or alternatively that the defendant is "unlikely to abide by any condition or combination of conditions of release" §3148(b)(2)(B), it must order detention. Where the district court has determined that there is probable cause to believe that the defendant committed a felony while on release, a rebuttable presumption in favor of detention arises. §3148(b)(2).

Here, the district court did not address whether the rebuttable presumption applied. Instead, the court engaged in the analysis of the §3142(g) factors and concluded that there were no bond conditions sufficient to ensure Rezko's appearance. 1/29/08 Tr. 39. The court noted that "the financial picture that has been provided to the court [in these hearings] is very different from the one that was given to the Court at the time that I set bond." *Id.* The court considered

“the totality of the circumstances – and I think Mr. Schar hit on those – the significant ties overseas, the travel overseas, no employment here. And the access to funds,” *Id.* 40, in reaching the conclusion that Rezko was a risk of flight. The court also discussed at length how the security posted by the third-parties had been undermined by subsequent events: “One of them the equity has been fully reimbursed. Two of them have been leased. One is behind in the property taxes. And one Mrs. Rezko has been paying the mortgage on.” *Id.* As the court explained, “that takes away any stake that – the money that has been paid by the Rezkos on these properties takes away the stake that – the property holders had in what they would lose if Mr. Rezko fled.” *Id.* The district court was not satisfied with the existing bond conditions or those proposed by the defense in light of those significant developments. Given the evidence adduced at the hearings and in the government’s submissions, this holding was not clearly erroneous.

Rezko suggests this ruling was erroneous and unsupported, and that it should not be treated with deference. Mot. 14. Rezko argues that the fact that he used a substantial portion to pay legal fees demonstrates his commitment to stand trial and exonerate himself, and that there is no evidence that he was preparing or intended to flee. The district court correctly found that the flight risk was intolerable, and the evidence showed that Rezko had long been in the process of cashing out his 62 acre venture (as evidenced by the June 2006 promissory note with GMH); had established a new venture with GMH to develop properties in Syria (a country of which Rezko is a citizen); lied to the court to conceal his true expectations and plans; and was in the process of cashing out his last remaining interest in the 62 acres and diverting monies to those who might be harmed if he fled, when he was arrested. On these facts, the district court hardly committed reversible error in determining Rezko posed a risk of flight.

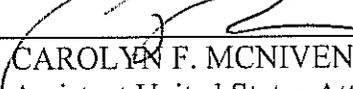
In trying to divert blame from himself and shift it to the government, Rezko suggests that the government knew Rezko “had obtained a substantial amount of money from the Middle East, yet waited until the eve of trial to raise the issue.” Mot. 15. The government did not know in April 2007, as Rezko claims, that Rezko was going to receive or had received \$3.5 million. The government did not confirm until late December 2007 that a \$3.5 million transfer for Rezko’s benefit had occurred or the uses to which he had put that money. 1/29/08 Tr. 13-14; Def. Ex. 16 at 6. The implication that the government was seeking some sort of tactical advantage is likewise absurd since government counsel is equally inconvenienced by these proceedings. After examining the nature and magnitude of these transactions, the government believed it had to seek an arrest warrant.

Finally, regarding Rezko’s arguments that detention will cause hardship in preparing for trial, the government points out that numerous defendants in complex cases face similar hurdles to those identified by Rezko. Here, the district court has gone out of its way to fashion relief for Rezko including delaying the trial, offering to hold court only four days a week so that Rezko can meet with his counsel (in the federal courthouse), and intervening to assist Rezko in obtaining various privileges. These accommodations are more than reasonable, and are certainly well beyond what is offered numerous similarly situated defendants. In sum, there is no basis to find that the district court’s determinations were clearly erroneous, and Rezko’s motion should be denied.

Respectfully submitted,

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U.S.C.A. - 7th Circuit
FILED
FEB 21 2008 JIR
GINO J. AGNELLO
CLERK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA, v. ANTOIN REZKO) No. 08-1335)) Appeal from the United States) District Court for the) Northern District of Illinois,) Eastern Division)) No. 05CR 691)) Honorable Amy J. St. Eve) District Judge, Presiding
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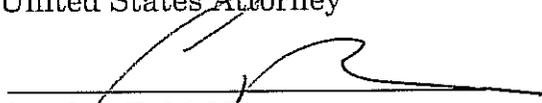
CERTIFICATE OF SERVICE

I, Carolyn F. McNiven, hereby certify that on February 21, 2008, I caused a copy of the foregoing **GOVERNMENTS RESPONSE TO DEFENDANT'S MOTION FOR PRE-TRIAL RELEASE ON BOND and APPENDIX OF THE UNITED STATES**, to be served upon the following by first-class, postage-paid mail:

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