

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CR. NO. H-09-342
	§	(Hon. David Hittner)
ROBERT ALLEN STANFORD,	§	(Magistrate Frances Stacy)
LAURA PENDERGEST-HOLT	§	
GILBERTO LOPEZ,	§	
MARK KUHRT and	§	
LEROY KING	§	

**ALLEN STANFORD'S MEMORANDUM
IN SUPPORT OF HIS RIGHT TO PRETRIAL RELEASE**

DEFENDANT ALLEN STANFORD files this Memorandum in Support of his Right to Pretrial Release, showing the Honorable Court as follows:

1. **The Bail Reform Act of 1984 (18 U.S.C. §§3141-3150) requires that the Court release Allen Stanford on personal recognizance or upon the execution of an unsecured appearance bond unless the Court determines that such release will not reasonably assure his appearance as required or will endanger the safety of any other person or the community. 18 U.S.C. §3142 (b); *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992).**

If the Court finds that personal recognizance or bond will not reasonably assure appearance or will endanger safety, then the Court must consider attaching conditions to the release order. 18 U.S.C. §3142 (c); *Byrd* at 109. The Court may not detain Allen Stanford unless the Court, after a hearing, finds that no condition or combination of conditions will reasonably assure Stanford's appearance as required and the safety of any other person and the community. 18 U.S.C. §3142 (e); *Id* at 109. In determining whether there are conditions of

release that will satisfy these requirements, the Court shall take into account the available information concerning—

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including—
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense made under Federal, State, or local law; and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. §3142 (g).

The Bail Reform Act clearly favors non-detention. *Byrd* at 109. For this reason, any doubts about Allen Stanford's release should be resolved in his favor.

2. Allen Stanford is not a flight risk. The Government should be estopped from now arguing that Allen Stanford is a flight risk, because the Government has engineered circumstances designed to thwart Allen Stanford's efforts to voluntarily surrender and appear. Stated another way, the Government has sought to artificially generate a factual basis for Allen Stanford's continued detention.

Allen Stanford has shown he is not a flight risk through his actions thus far. The SEC filed its civil fraud action alleging criminal activity against Allen Stanford on February 17, 2009.

Two days later Allen Stanford voluntarily surrendered his passport to the United States Government through his attorneys at Williams Connolly in Washington, D.C.

Instead of fleeing, Allen Stanford engaged the undersigned to defend him in the criminal charges that were certain to follow. Since then Allen Stanford, through the undersigned, has on several occasions communicated to the Government his willingness to surrender upon indictment. On April 20, 2009 the undersigned sent a letter to the Government communicating the following:

Dear Gregg [Costa],

“Rumors persist that Allen Stanford will be indicted in the upcoming weeks. I plan to represent him . . .”

* * *

“Mr. Stanford wants to stand and fight. He does not present a danger of flight and he does not present a danger to the public. As you know all of his personal and business assets have been stripped from him both in the United States and around the world. Rather than fleeing the United States, which he could have easily done in the past few months, he is taking steps to establish his residency in the Southern District, where his principal office in the United States has been, where he lived for many years, and where some of his children and estranged wife live.”

“The purpose of this letter is to offer to surrender him into custody should he be indicted and to make steps to arrange reasonable bail. It would serve no purpose to have the government stage a “perp walk,” other than to create adverse publicity for Mr. Stanford. Therefore, I would appreciate your confirming that you will notify me if he is indicted and give us the opportunity to promptly surrender and arrange bail.”

On April 30, 2009 Allen Stanford, not knowing whether a warrant had been issued for his arrest, presented himself at the offices of the United States Marshals Service in the Southern District of Texas and attempted to surrender in this case, but he was turned away. The following

day, on May 1, 2009, the undersigned sent another letter to the Government communicating the following:

Dear Gregg [Costa],

“As you undoubtedly know (you’ve subpoenaed the records), Allen Stanford has established a residence at [Houston address]. Furthermore, he intends to present himself to the Marshal Service if and when there is a charge or warrant for him, as I have personally advised you. As we demonstrated yesterday, Mr. Stanford is perfectly willing to make himself available to authorities to answer any accusations. Please reconsider your refusal to allow him to voluntarily surrender.”¹

In June 2009, Allen Stanford was staying at his girlfriend’s house in Virginia, a location known to federal authorities. Allen Stanford was in Virginia temporarily to assist his Washington, D.C. civil lawyers in the ongoing SEC litigation. On June 18, 2009, Allen Stanford learned of a rumor that he had been indicted in this case. Allen Stanford, through the undersigned, then attempted to communicate with the Government to verify the rumor and arrange for his surrender. The same day, the undersigned sent yet another letter to the Government communicating the following:

Dear Gregg [Costa],

“New rumors have surfaced today that an indictment of Allen Stanford is imminent, perhaps as early as today.”

“The purpose of this letter is to again offer to surrender Mr. Stanford and to request that you give me advance notice in order to accomplish that.”

No response or notice from the Government was forthcoming. While Allen Stanford was making preparations to return to Houston and surrender on the rumored indictment, numerous

¹ This communication, and the two other written communications from the undersigned to the Government offering to voluntarily surrender are attached as Appendix A.

Government agents in Virginia appeared at the house where he was staying to arrest him; Allen Stanford immediately surrendered. The Government refused to give Allen Stanford an opportunity to surrender himself as he had been prepared to do for several months.

Regarding risk of flight, the undersigned has learned that the Government is taking the position that significant funds are “missing” and are suspected to be under Allen Stanford’s control. Allen Stanford disputes the Government’s claim. Even if Allen Stanford had access to funds, he did not use them for flight.

At all times since learning of the SEC’s lawsuit, Allen Stanford has been prepared and willing to surrender himself in this case and appear at any proceedings as required. He is not a risk of flight.

3. The nature and circumstances of the offense charged weigh in favor of pretrial release. First, the allegations against Allen Stanford do not involve violence or illegal narcotic drugs. 18 U.S.C. §3142 (g)(1). Furthermore, the nature and circumstances of the allegations make this a type of case where pretrial release has historically been granted.²

² *United States v. Richard Scrushy*. Charged in 2005 in the Northern District of Alabama with fraud in excess of \$1 billion and other offenses in connection with his position as C.E.O. of HealthSouth Corporation. Pretrial release granted with conditions. *United States v. Jeffrey Skilling*, *United States v. Kenneth Lay*. Charged in 2004 in the Southern District of Texas with fraud involving tens of billions of dollars, and other offenses in connection with their positions as President and C.E.O. of Enron Corporation. Pretrial release granted with conditions. *United States v. Bernard Ebbers*. Charged in 2003 in the Southern District of New York with fraud involving approximately \$11 billion, and other offenses in connection with his position as C.E.O. of WorldCom. Pretrial release granted with conditions. *United States v. Bernard Madoff*. Charged in 2009 in the Southern District of New York with fraud and other offenses relating to Madoff’s alleged operation of a \$50 billion Ponzi scheme. Pretrial release granted with conditions. *United States v. John Rigas*. Charged in 2002 in the Southern District of New York with fraud involving \$2.3 billion and other offenses in connection with his position as founder of Adelphia Communications Corp. Pretrial release granted with conditions.

4. **The weight of the evidence against Allen Stanford does not justify detention.** This “weight of the evidence” factor is arguably the least important of the factors to be considered. See *United States v. Gebro*, 948 F.2d 1118 (9th Cir. 1991)(the weight of the evidence is the least important of the factors); *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985)(Bail Reform Act neither requires nor permits a pretrial determination of guilt); see also *United States v. Barnett*, 986 F. Supp. 385, 393 (W.D. LA. 1997)(favorably citing *Gebro* and *Motamedi* for the propositions stated).

The Indictment reveals that the Government’s allegations against Allen Stanford will depend upon proof of complex and sophisticated factual and legal theories. The nature of the factual basis stated in the Indictment suggests that much of the Government’s case has been generated through the use of persons cooperating with the Government in the building of a case against Allen Stanford, with the hope that they may, by cooperating, lessen the consequences of their own misconduct.

Clearly, the “ weight of the evidence” factor requires intelligent consideration beyond a perfunctory determination of probable cause; Congress at any time since 1984 could have easily exempted indicted cases from application of this §3142 (g) factor, but Congress has not done so.

The complex character and uncertain source of key aspects of the Government’s prospective proof argue against assessing any substantial weight to the evidence in favor of detention. Because the Bail Reform Act clearly favors non-detention, *United States v. Byrd*, *supra*, at 109, any doubts about resolution of this factor should be resolved in Allen Stanford’s favor.

5. Allen Stanford's history and characteristics weigh in favor of pretrial release:

- (a) Character. The allegations in the Indictment are unproven. Allen Stanford has exhibited strong character and solid work ethic over the course of his lifetime. Until the Government seized his assets, Allen Stanford always maintained financial responsibility for his children and other dependents, and his parents.

While doing business in Antigua, Allen Stanford founded and served on the Board of "Hero House," a charitable foundation for single mothers. In his work with Hero House, Allen Stanford took time to personally interact with those whose needs Hero House served. Also in Antigua, Allen Stanford personally volunteered to help clean up a nursing home, including providing new beds for the residents.

- (b) Physical and mental condition. Allen Stanford is physically and mentally healthy. No condition exists that would prevent him from appearing in court or from complying with any condition of release that the Court may impose.

The Court can be assured that Allen Stanford will deal with the stress of indictment and impending trial in a healthy and responsible manner. Allen Stanford has been prescribed Ativan, an anti-anxiety medication. The medication has proven beneficial. During the stress of his sudden arrest on June 20, 2009, Allen Stanford was responsive to federal agents and calmly complied with their instructions.

- (c) Family ties. Allen Stanford maintains solid relationships with his children, Randi (age 26, Houston resident), Reid (age 17, Houston resident), Alexandra (age 17, Miami resident), A.J. (age 15, Miami resident), Ross (age 13, Dallas resident),

and Elena (age 11, Dallas resident).³ Allen Stanford also maintains amicable relationships with his children's mothers. Stanford's father and stepmother, with whom Stanford remains close, reside in Mexia, Texas; his mother, with whom he also remains close, resides in Granbury, Texas. Allen Stanford's adopted sister Sandra, and his half-sister Darlene, reside in Mexia and Dallas, respectively. None of Allen Stanford's immediate family resides outside the United States.

(d) Employment and financial resources. Allen Stanford is unemployed, but his family and friends are lending adequate financial support for him to maintain a residence in Houston and meet the cost of any conditions of release that the Court may impose.

(e) Length of residence in the community and community ties. Allen Stanford grew up in Mexia, Texas and has lived in Texas for the majority of his life; for many years he maintained a residence in Houston until approximately 11 years ago, when he moved to Miami. Prior to his arrest, in 2009 Allen Stanford established a new residence in Houston in preparation for his required presence during the pendency of this case.

For many years Allen Stanford based much of his business in Houston, and has maintained significant community ties through his business relationships. Understandably, many of Allen Stanford's Houston business relationships have ceased to exist since the SEC filed its lawsuit in February 2009. However, Allen Stanford continues to enjoy the support of a number of local friends and former employees.

³ Ross and Elena, and their mother, are making preparations to relocate to Houston in early July, 2009 to be closer to Allen Stanford.

Allen Stanford does not maintain more substantial community ties in any other country than he does in The United States. Allen Stanford is easily recognizable.

- (f) Past conduct. The allegations in the Indictment are unproven. Throughout his life, Allen Stanford has conducted himself in a legal and dignified manner.
- (g) History relating to drug or alcohol abuse. Allen Stanford has consumed alcohol in social settings throughout his adult life. Following the filing of the SEC lawsuit in February 2009, Allen Stanford began drinking more heavily to self-medicate his depression and anxiety. Since then, Allen Stanford sought medical attention and was prescribed Ativan, an anti-anxiety medication. Since he began taking Ativan to appropriately manage his anxiety, Allen Stanford has not relied on alcohol to self-medicate. Allen Stanford has no other substance abuse history.
- (h) Criminal history. Allen Stanford has no criminal history. The allegations in the Indictment are unproven and Allen Stanford maintains his innocence.
- (i) Record concerning appearance at court proceedings. The Government has not given Allen Stanford an opportunity to appear at any court proceedings on his own. If the Government had afforded Allen Stanford the opportunity, Stanford would have appeared as required.

6. Allen Stanford's release will pose no danger to the community; this factor thus weighs in favor of release. The offense charged does not involve any acts of violence or any other conduct that would constitute a danger to the community or any individual. No other evidence exists to indicate that Allen Stanford would be a danger.

7. **Detention will substantially interfere with Allen Stanford's ability to assist in the preparation of his defense.** The criminal proceedings against Allen Stanford and his co-defendants will certainly go on for a year or more. Preparation of Allen Stanford's defense will involve many hundreds of meetings with Allen Stanford, financial experts, and other lawyers. The majority of these meetings will require examination of documents and the use of computers.

If Allen Stanford is detained pending trial, his lawyers and financial experts will be severely constricted in their ability to prepare a meaningful defense. This—and not any legitimate fear that Allen Stanford is a flight risk—is likely the real reason why the Government seeks Allen Stanford's detention.

In determining whether the length of prospective pretrial detention violates a defendant's Due Process rights, the Court must consider, in addition to the statutory factors of the Bail Reform Act, other factors including the length of the detention that has in fact occurred or may occur in the future, the non-speculative nature of future detention, the complexity of the case, and whether the strategy of one side or the other occasions the delay. *See United States v. Hare*, 873 F.2d 796, 801 (5th Cir. 1989). Considering both the prospective length of Allen Stanford's detention and the high complexity of this case, each in the context of the Government's efforts to perpetuate an artificial impression that Allen Stanford is a flight risk, the Court should find that Allen Stanford's detention under the circumstances would violate Due Process as guaranteed by the Fifth Amendment and would furthermore interfere with Allen Stanford's Sixth Amendment assurance of effective assistance of counsel.

other conduct that would constitute a danger to the community or any individual. No other evidence exists to indicate that Allen Stanford would be a danger.

8. **Relief requested.** Allen Stanford requests that the Court grant pretrial release with such reasonable conditions as the Court may require. Because the Bail Reform Act clearly favors non-detention, *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992), any doubts about Allen Stanford's release should be resolved in his favor.

Respectfully submitted,

DEGUERIN & DICKSON

/s/ Dick DeGuerin

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Allen Stanford's Memorandum in Support of His Right to Pretrial Release has been filed via the ECF System on June 23, 2009.

/s/ Dick DeGuerin

Dick DeGuerin