

**FILED**  
Apr 30, 2018  
DEBORAH S. HUNT, Clerk

No. 18-3155

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, )  
)  
Plaintiff-Appellant, )  
)  
v. )  
)  
ASIF AHMED SALIM, )  
)  
Defendant-Appellee. )

ORDER

Before: SUHRHEINRICH, GILMAN, and SUTTON, Circuit Judges.

The United States appeals the district court’s order granting defendant Asif Ahmed Salim’s (Salim) third renewed application for release on bond pending trial on charges of conspiracy to provide material support to terrorists, in violation of 18 U.S.C. § 2339A and related offenses. Neither party requests oral argument.

We review the district court’s factual findings for clear error. Mixed questions of law and fact—including the ultimate question of whether detention is warranted—are reviewed *de novo*. *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010); *United States v. Hazime*, 762 F.2d 34, 37 (6th Cir. 1985). A defendant shall be detained pending trial if, after conducting a hearing, “the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community[.]” 18 U.S.C. § 3142(e)(1). In making that determination, the judicial officer shall take into account any available information concerning: (1) “the nature and circumstances of the

offense charged”; (2) “the weight of the evidence against the person”; (3) “the history and characteristics of the person”; and (4) “the nature and seriousness of the danger to any person or the community” if the person is released. 18 U.S.C. § 3142(g)(1)–(4).

The default position of the law is that a defendant should be released pending trial, but that position is modified for certain “particularly dangerous defendants.” *Stone*, 608 F.3d at 945. Subject to rebuttal by the defendant, it is presumed that no condition or combination of conditions will reasonably assure the defendant’s appearance as required and the safety of any other person and the community if there is probable cause to believe that the person committed a federal crime of terrorism for which a maximum term of imprisonment of ten years or more is prescribed. 18 U.S.C. § 2332b(g)(5)(B); 18 U.S.C. § 3142(e)(3). Salim does not dispute that he is charged with offenses that trigger the presumption. The presumption shifts the burden of production to the defendant to show that his release would not pose a flight risk or a danger to any person and the community. The government retains the burden of persuasion. *Stone*, 608 F.3d at 945.

Salim did not meet that burden in his renewed motion for pretrial release with his proposal to reside now in Ohio with his mother, who is already serving as a third-party custodian for Salim’s co-defendant and brother, Sultane Salim. A defendant, charged with terrorism offenses, who has not lived in the country for several years, and who has previously been deemed a flight risk by another judge, does not overcome the presumption that he is a danger to the community or a flight risk simply by proposing to live with his mother and his co-defendant. The brothers are alleged to have committed terrorism crimes jointly, and to have jointly obstructed the federal investigation into those crimes. Putting them into a living situation, shortly before trial, where they can freely communicate, and potentially conspire again, is a bad

No. 18-3155

-3-

idea. Furthermore, as the original district judge found, Salim has loose ties to Ohio and the United States and significant foreign connections.

Upon review of the facts and arguments presented, we conclude that the government has shown by clear and convincing evidence that the conditions of release imposed by the district court judge who is now presiding will not reasonably assure the safety of the community or avoid a risk of flight.

We therefore **REVERSE** the district court's order releasing Salim on bond. Salim shall be detained pending trial.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

---

Deborah S. Hunt, Clerk