



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

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*271 Cadman Plaza East
Brooklyn, New York 11201*

January 6, 2011

VIA FAX AND ECF

The Honorable Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Deme Nikqi, et al.
Criminal Docket No. 10-420 (NGG)

Dear Magistrate Judge Pohorelsky:

The government respectfully submits this letter in support of its application for a permanent order of detention with respect to the defendant Deme Nikqi.

On May 19, 2010, a Grand Jury in the Eastern District of New York returned a 28-count indictment against Nikqi, also known as "Dema Nikic," "Dema Rustema Nikci," "Dino Rusani," "Deme," "Dragan," "Gjagji" and "Zoki," and seven co-defendants.¹ Nikqi, a Kosovar national, is charged with inducement of aliens to enter the United States and conspiracy to do so, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I); alien smuggling, in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii); and conspiracy to bring aliens to the United States, in violation of Title 18, United States Code, Section 371. On October 4, 2011, Albanian authorities arrested Nikqi, who was traveling under the alias "Hektor Kelmendi," in Albania pursuant to a provisional arrest request made by the government, and on December 20, 2011, the Albanian Ministry of Justice ordered Nikqi's extradition to the United States. Nikqi was subsequently transported to this District by the United

¹ Because these co-defendants are fugitives, a version of the indictment that redacts their names and aliases has been unsealed.

States Marshals Service and is scheduled to be arraigned before the Court on January 7, 2012.

Factual Proffer

The government proffers the following facts concerning the charges at issue and pretrial detention. See United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (the government is entitled to proceed by proffer in a detention hearing); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995) (same); United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986) (same). These facts are relevant to the four factors to be considered in the detention analysis under the Bail Reform Act: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g).

I. Nature and Circumstances of Crimes Charged and Evidence of Nikqi's Guilt

From at least January 2006 through February 2010, Nikqi was the leader and organizer of an international criminal network dedicated to smuggling ethnic Albanians from the Balkans into the United States via Europe and Latin America. Nikqi operated this smuggling enterprise from his home in Peje, a town located in western Kosovo. Based on the government's interviews of over 100 individuals smuggled into the United States by Nikqi and his co-conspirators, among other evidence, the government estimates that Nikqi's criminal network was responsible for smuggling hundreds of ethnic Albanians and others across the Mexican border and into the United States each year.

Typically, Nikqi would charge the aliens over 12,000 Euros each; in return, he would supply the aliens with fraudulent passports and visas, as necessary, and arrange flights from various locations in Europe to Cancun, Mexico; San Jose, Costa Rica; and Buenos Aires, Argentina. Working with Kosovar and local co-conspirators in these countries, Nikqi arranged overland transportation through Central America and into Mexico. These journeys were often hazardous. Some aliens were hidden in the luggage compartments of buses and inside locked trailers, with little or no food or water. On February 2, 2010, a car transporting three Kosovars who paid Nikqi for their journeys, as well as Latin American aliens, crashed while being pursued by Texas Highway Patrol in the area of Laredo, Texas. Tragically,

one Kosovar and one Salvadoran national were killed, and several other aliens in the same vehicle were severely injured.

The government's evidence of Nikqi's criminal activity is extensive. The anticipated testimony of the aliens who were smuggled into the United States has been corroborated by, among other things, text messages sent by Nikqi to the aliens to guide them in their long and complicated journeys through the Balkans, Western Europe, Latin America and into Mexico; photographs and videos of Nikqi visiting the aliens in Argentina and elsewhere; and fraudulent passports and travel documents (such as tickets and itineraries) obtained by Nikqi for the aliens.

II. History and Characteristics of the Defendant

For nearly 30 years, Nikqi's life has been characterized by repeated attempts to commit immigration fraud against the United States on behalf of himself and others. According to Nikqi's immigration file, he was born on or about June 10, 1958 in the former Yugoslavia. In a 1995 interview with the United States Immigration and Naturalization Service ("INS"), the predecessor agency to the Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), Nikqi - using the name "Dema Nikic" - claimed that he illegally entered the United States through the Mexican border in 1983. At the time of the interview, he was residing on Ocean Parkway in Brooklyn, New York, with his wife, a then-Yugoslav citizen, who told the INS that Nikqi smuggled her across the Mexican border in 1988. Also in 1988, Nikqi applied for Temporary Resident Status based on his purported employment as a seasonal agricultural worker in New Jersey; the employer he listed, however, was convicted of immigration fraud for providing false documentation of seasonal agricultural work.

In 1996, Nikqi was ordered to be deported from the United States based on, among other things, his failure to appear for his immigration hearing. Nikqi claimed that he was unable to appear because he was suffering from severe back pain, despite the fact that he also claimed to be employed as a roofer. At the time, Nikqi claimed to be a citizen of the Republic of Slovenia. But in May 1999, Nikqi took advantage of the brutal conflict that was then raging in Kosovo to claim that he was actually from Kosovo, not Slovenia, and sought to re-open his immigration case based on changed country circumstances in Kosovo. The INS rejected this claim on the ground that because he was (or at least claimed to be) a Slovenian citizen, changed circumstances in Kosovo were irrelevant. It is believed that at some point after this application to reopen was rejected, Nikqi returned to

his base in Peje, Kosovo, although he frequently traveled to Latin America and the Caribbean to further his alien smuggling crimes.

III. Seriousness of the Danger Posed by Nikqi's Release

According to many witnesses and local press accounts, Nikqi is well-known in Kosovo as one of the most prominent and prolific smugglers of ethnic Albanians into the United States. In light of Nikqi's extensive and longstanding criminal activity and his likely financial resources, if he is released and flees to Kosovo, or even if he remains in New York but is able to freely communicate with his criminal associates, it is highly likely that he will seek to intimidate or even harm the families of the various witnesses to prevent their testimony. Indeed, law enforcement authorities in Kosovo recently arrested Nikqi's brother and other criminal associates based on their involvement in Nikqi's alien smuggling network. The government has been informed by law enforcement authorities in Kosovo that Nikqi was in communication via mobile phone with his co-conspirators even while he was incarcerated in Albania, and that during that period of incarceration, his co-conspirators began offering large payments to the families of certain witnesses in what appear to be payoff attempts.

Analysis

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., federal courts must order a defendant's pre-trial detention upon determining that "no condition or combination of conditions would 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). A finding of dangerousness must be supported by clear and convincing evidence. See United States v. Rodriguez, 950 F.2d 85, 88 (2d Cir. 1991); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985). A finding of risk of flight must be supported by a preponderance of the evidence. Id.

The factual background provided above demonstrates by clear and convincing evidence that Nikqi's release would pose a danger to the safety of others. As noted above, if he is released and able to freely communicate with his co-conspirators, he could direct them in efforts to intimidate and possibly harm the families of witnesses in Kosovo. Furthermore, Nikqi's release would enable him to continue to operate his criminal network, which is an inherently dangerous enterprise that has already resulted in the deaths of at least two people. Others have described being kidnaped and held in dangerous conditions

until they were able to pay their various handlers on the route to the United States. As a measure of the danger Nikqi poses, without his extensive connections in Europe and throughout Latin America, it is likely that his network will be severely disrupted, if not entirely incapacitated, provided that he remains incarcerated. There is simply no condition or combination of conditions that could prevent him from continuing to orchestrate his dangerous criminal enterprise if released from custody.

The factual proffer also demonstrates by a preponderance of the evidence that Nikqi poses an exceptional risk of flight. Nikqi's entire criminal career is based on his ability to travel freely and to obtain fraudulent passports and other identification documents of sufficient quality to enable foreign nationals to evade the immigration laws of not only the United States, but also the various countries through which the aliens transit in Europe and Latin America, and he also appears to have contacts at certain foreign embassies who corruptly assist the aliens in obtaining visas. If anyone in the world could quickly and easily obtain a fake passport to flee the United States, it is Deme Nikqi. Nikqi also has a long history of using aliases to evade law enforcement scrutiny. Indeed, despite the seven aliases known by the government and identified in Nikqi's indictment, Nikqi was apprehended only after the government determined that he was traveling in the Balkans using yet another alias, "Hektor Kelmendi."

Nikqi also has a powerful motive to flee: the very long term of imprisonment he faces if convicted. The statutory maximum sentence for Count 27 alone - inducing John Doe #13 to enter the United States illegally, resulting in his death - is life imprisonment, and the mandatory minimum sentence for smuggling more than three aliens into the United States for the purpose of commercial advantage and private financial gain is five years. Using a conservative estimate, Nikqi faces a sentence in the range of 20 years under the United States Sentencing Guidelines.

Finally, the United States has no extradition treaty with Kosovo or Serbia, and thus Nikqi was not apprehended until he was found in Albania, nearly a year and a half after he was indicted in this District. Consequently, if Nikqi were to flee and return to Kosovo or even to Serbia, there would be no way for the government to re-extradite him, even if the government were somehow able to identify his new alias(es).

Conclusion

For these reasons, the government respectfully requests that the Court enter a permanent order of detention with respect to the defendant Deme Nikqi.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ Cristina M. Posa
Cristina M. Posa
Assistant U.S. Attorney
(718) 254-6668