



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

RF:PC:SC
F. #2005R01773

*One Pierrepont Plaza
Brooklyn, New York 11201*

*Mailing Address: 147 Pierrepont Street
Brooklyn, New York 11201*

April 12, 2007

The Honorable James Orenstein
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Salvatore LoPresti, et al.
Criminal Docket No. 07-273 (CBA)

Dear Judge Orenstein:

The United States submits this letter in support of its application pursuant to 18 U.S.C. § 3142(c) for the imposition of release conditions and the establishment of appearance bonds, secured by real property or similar assets, for the defendants charged in the above-referenced indictment. The defendants, all of whom were employed as correctional officers with the Metropolitan Detention Center ("MDC") in Brooklyn, New York, during the relevant period of time, have been charged with depriving former MDC inmates of their civil rights through the use of excessive force and/or with making false statements in connection with these incidents. One of the defendants, Salvatore LoPresti, also has been charged with making false statements and obstruction of justice in connection with another federal investigation regarding the unauthorized carrying of a concealed weapon by an MDC correctional officer.

As set forth in more detail below, the serious nature of the offenses with which these defendants have been charged, coupled with the weight of the evidence against them, which includes photographs, documentary evidence, videotapes, and information from eyewitnesses, warrant the imposition of a substantial, secured bond with restrictive conditions upon the defendants' freedom of movement and travel and extensive reporting to, and monitoring by, Pretrial Services.

A. Applicable Legal Standards

Pursuant to the Bail Reform Act, the Court may impose restrictions upon the pretrial release of a defendant if the Court concludes that release on personal recognizance or unsecured appearance bond "will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. § 3142(c). In making that determination, the Court looks to several factors including: (1) the nature and circumstances of the offense, including whether the offense is a crime of violence; (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 the community which would be posed by the person's release. 18 U.S.C. § 3142(g)(1)-(4). Should the Court conclude that an unsecured or personal recognizance bond will not assure the appearance of the defendant, it may order detention or impose additional conditions of release. See 18 U.S.C. § 3142(c)(1)(B)(i) et seq. In this Circuit, a violation of 18 U.S.C. § 242 involving the use of excessive force by law enforcement officers "qualifies as a crime of violence." United States v. Acosta, 470 F.3d 132, 135-36 (2d Cir. 2006); United States v. Ciccone, 312 F.3d 535, 542 (2d Cir. 2002) (citing 18, U.S.C., § 3156(a)(4)(A), (B)) (Bail Reform Act defines a "crime of violence" as an offense that has as one of its elements the "attempted use, or threatened use of physical force against the person or property of another," or "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense"). A review of the nature and circumstances of these offenses, and the strength of the evidence against these defendants, weighs heavily in favor of imposing restrictive release conditions and requiring the posting of significant personal and/or real property.

B. Charges & Relevant Facts

The superseding indictment charges the defendants variously with violations of 18 U.S.C. §§ 241, 242 and 1001. The charges stem from two incidents involving the defendants' use of excessive force against two former MDC inmates and false statements made by the defendants to Special Agents of the Department of Justice Office of the Inspector General ("DOJ/OIG") regarding these incidents. LoPresti is additionally charged with violating 18 U.S.C. §§ 1001 and 1512(c)(2) in connection with a separate DOJ/OIG investigation. During the incidents described below, defendants Salvatore LoPresti, Scott Rosebery, Kelly Tassio, Steven Peterson, Alfred Santana, Elizabeth Torres, Glen

Cummings, Jacques Lamour, Jamie Toro, Frank Maldonado and Angel Perez were all Federal Bureau of Prisons' employees who were working as correctional officers ("COs") at the MDC. LoPresti was a Captain and thus one of the highest ranking officers at the MDC; and Tassio, Torres and Maldonado were Lieutenants.

Detailed below is a proffer of the facts relevant to bail conditions and restrictions for the defendants. See United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000)(government entitled to proceed by proffer in detention hearings); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995) (same).

1. John Doe #1 Excessive Force Incident

On November 13, 2002, while making rounds of the Special Housing Unit ("SHU") with other Bureau of Prisons staff, then-Captain Salvatore LoPresti instructed an inmate, John Doe #1, to remove a t-shirt that John Doe #1 had tied around his head. John Doe #1 apparently "disrespected" LoPresti by failing to follow his instruction, prompting LoPresti to retaliate a short while later when he returned to the inmate's cell with a number of COs, including then-Lieutenant Kelly Tassio and Scott Rosebery. During this incident, LoPresti, Rosebery and other officers repeatedly struck, kicked and beat John Doe #1, leaving a pool of blood and clumps of the inmate's dreadlocks on the floor of the cell. After several minutes, the officers took a sheet from John Doe #1's bed, tied it into a noose, and then hung it from the window bars of the cell to make it appear that John Doe #1 had tried to hang himself.

LoPresti, Tassio, Rosebery, Alfred Santana and Steven Peterson, among others, wrote and submitted Incident Reports documenting the use of force against inmate John Doe #1. Each report falsely stated, in sum and substance, that the inmate had become combative as they attempted to prevent the inmate from committing suicide, thereby prompting the officers' use of force against him.

In June 2006, during the course of DOJ/OIG's investigation of the incident, Tassio admitted to a DOJ/OIG Special Agent that she had written a false Incident Report about the incident at the direction of LoPresti, and that John Doe #1 had not tried to hang himself. Five days later, however, Tassio recanted that statement and asserted, falsely, that her Incident Report was accurate.

2. John Doe #2 Excessive Force Incident

On April 11, 2006, a physical altercation occurred between a correctional officer ("CO #2") and an inmate, John Doe #2, inside John Doe #2's cell in general population at the MDC. Upon responding to the unit where the altercation had taken place and being informed by CO #2 that John Doe #2 had assaulted him, Rosebery and other officers retaliated against John Doe #2 by entering his cell and beating him as Lieutenant Elizabeth Torres looked on and taunted the inmate.

After the officers beat John Doe #2 in his cell, Rosebery, Jaime Toro and Jacques Lamour took John Doe #2 into custody to escort him to the SHU. Upon entering an elevator enroute to the SHU, Toro stuck out his leg while Rosebery and Lamour pushed John Doe #2, who was handcuffed behind his back, causing John Doe #2 to trip over Toro's outstretched leg and fall face-down onto the floor of the elevator. While Rosebery and Lamour struggled with John Doe #2 on the floor, Glen Cummings entered the elevator and repeatedly stomped on John Doe #2. Positioning herself in the hallway directly outside the open elevator door, Torres served as a look-out for the other officers during the attack.

Rosebery, Torres, Cummings, Lamour, Toro, Maldonado, and Perez all wrote and submitted Incident Reports regarding the matter, falsely claiming, in sum and substance, that John Doe #2 had become combative while being escorted by the officers, thus prompting their use of force against him.

3. The Gun Memorandum Signed by LoPresti

On July 29, 2003, federal agents arrested a then-MDC CO ("CO #3") in an unrelated investigation, and found in CO #3's possession a gun and a memorandum bearing LoPresti's signature, stating that, as an officer with the MDC, CO #3 was authorized under New York state law to carry a concealed weapon. According to the BOP Program Statement, however, COs are prohibited from using their credentials or the fact of their employment with the BOP to obtain a permit for an off-duty weapon. When questioned by DOJ/OIG Special Agents, LoPresti repeatedly stated that he neither wrote nor signed that particular memorandum nor any memorandum of that kind. However, further investigation revealed that, contrary to LoPresti's statements to DOJ/OIG, he had, in fact, signed CO #3's memorandum and had also created several similar memoranda for other MDC officers, all of whom told DOJ/OIG that LoPresti had provided them with the memoranda.

C. Argument

Application of the bail factors under 18 U.S.C. § 3142 to the proffered facts in this case supports the setting of substantial secured bonds for each of the defendants with significant restrictions on their movement and travel and frequent reporting and monitoring requirements.

1. Nature and Circumstances of the Crimes Charged

The offenses with which the defendants are charged are serious. They involve physical violence, wanton cruelty and a severe abuse of authority at the expense of the victim-inmates' fundamental rights and liberties. See Acosta, 470 F.3d at 135-36 (Section 242 violation involving use of force constitutes a crime of violence); United States v. LaVallee, 439 F.3d 670, 692-93 (10th Cir. 2006) (beating of inmates by federal correctional officers, prosecuted under 18 U.S.C. § 242, considered crime of violence). The officers' actions were deliberate and premeditated and, further, involved blatant lies and falsehoods as part of a concerted effort to conceal their criminal conduct.

If convicted of the charges, the defendants face potential sentences of up to 10 years on the conspiracy and excessive force charges (18 U.S.C. §§ 241 and 242) and up to 5 years on the false statement charge (18 U.S.C. § 1001). LoPresti additionally faces a potential sentence of up to 20 years on the obstruction of justice charge (18 U.S.C. § 1512(c)).

2. History and Characteristics Of The Defendants

Although the defendants all were at one time employed, or are still employed, by the Federal Bureau of Prisons ("BOP"), the nature of the crimes with which they are charged, which involve violence, deception and collusion, specifically demonstrates a lack of respect for the rule of law and authority. This factor indicates the need for restrictions that will ensure their compliance with the judicial process, including reappearance in court, and limit their ability to engage in collusion or obstruction during the pendency of this case. The government anticipates obtaining additional information relevant to this factor prior to arraignment, and will present such information to the court at that time.

3. Seriousness of Danger Posed By The Defendants' Release Without Conditions

As discussed above, a substantial secured bond with restrictive conditions is necessary to ensure the defendants' reappearance and compliance with the judicial process. All but two of the defendants are charged with participating in the physical attack of an inmate, which constitutes a crime of violence. Acosta, 470 F.3d at 135-36; LaVallee, 439 F.3d at 692-93. Furthermore, the investigation into gun memoranda signed or created by LoPresti, discussed herein, raises a concern about the pervasiveness of possession and concealment of off-duty weapons by MDC officers. Indeed, the government's investigation revealed that LoPresti enabled several MDC officers to carry concealed off-duty weapons. Releasing the defendants without conditions will create a risk that the defendants will commit future acts of violence.

4. Evidence of the Defendants' Guilt

The government's evidence in this matter is substantial, and, in part, irrefutable. In addition to eyewitness testimony, the government has significant visual, documentary and physical evidence corroborating the events described above. In particular, the attack on John Doe #2 in the elevator was captured on videotape. The government also has photographs from the incident involving John Doe #1 that depict a significant amount of blood, clumps of the inmate's dreadlocks on the floor of the cell, and a "noose" tied around the cell window bars only three feet off the ground. With respect LoPresti's obstruction of justice and false statement to the DOJ/OIG, the government has determined through forensic analysis that LoPresti signed the gun memorandum about which he was questioned and he also had multiple versions of similar gun memoranda on his MDC computer. In sum, the government's evidence not only establishes that the defendants engaged in vicious attacks on the inmates as charged, but also demonstrates the falsity of the defendants' written reports and their collusive efforts to cover up these crimes.

D. Conditions of Release

Given the serious nature of these offenses, the strong likelihood of conviction and subsequent incarceration and the significant evidence that has been amassed against these defendants, a personal recognizance bond is not an option for these defendants. Most have engaged in beating inmates, and all have abused their positions as federal officers by engaging in

these acts of violence and/or by concealing their own and others' criminal conduct. Based on the foregoing information and any other additional, relevant information obtained by the government prior to arraignment, the government will address specific bail conditions for each defendant individually at the arraignment this afternoon.

Respectfully submitted,

ROSLYNN R. MAUSKOPF
UNITED STATES ATTORNEY

/s/ Sarah Coyne

By:

Sarah Coyne
Assistant U.S. Attorney