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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 18 MAG 10939(LMS)

BAIL HEARING

JACOB ROSNER,

Defendant.
----------x

United States Courthouse
White Plains, New York
March 26, 2019

Before: THE HONORABLE LISA MARGARET SMITH, Magistrate Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
JAMIE E. BAGLIEBTER
SAMUEL S. ADELSBERG
Assistant United States Attorneys

SAMUEL BRAVERMAN
Attorney for Defendant

Also present: STEVEN ZAGER, Yidish Interpreter

*Proceedings recorded via digital recording device.

THE DEPUTY CLERK: In the matter of the United States of America v. Jacob Rosner.

Counsel, please note your appearance for the record.

MS. BAGLIEBTER: Good afternoon, your Honor. Jamie Bagliebter for the government, and with me at counsel table is AUSA Sam Adelsberg.

THE COURT: Good afternoon.

MR. BRAVERMAN: Good afternoon, your Honor. Sam Braverman for Mr. Rosner. Mr. Rosner is seated immediately to my right.

THE COURT: Good afternoon.

THE INTERPRETER: Steven Zager, New York State Yiddish interpreter.

THE COURT: Good afternoon. Do I understand that your oath is on file?

THE INTERPRETER: Yes.

THE COURT: Thank you.

I take it we are here for a bail hearing with regard to Mr. Rosner. Is that right?

MR. BRAVERMAN: That is correct, your Honor.

THE COURT: Let me hear from the government first.

MS. BAGLIEBTER: Your Honor, the government's position is that detention should be continued awaiting trial. This is primarily because the defendant is a flight risk, but he is also a risk to the community from a dangerousness

perspective.

A few points first just to provide some context.

The defendant here has been charged with 18 U.S.C. 1201, a kidnapping charge, so it's a rebuttable presumption case here. I'll also note that Probation has recommended detention in this case.

Another point of context is that, in the Lev Tahor community, the defendant, who's 20 years old, is considered to be married to one of the victims in the case, an individual who's 14 years old. As you'll note in the Pretrial Services report, he's identified himself as single, but has noted that, in a religious context, there was a ceremony in which he was intended to wed or wed the 14-year-old victim. So that is important context in understanding the defendant's position here.

And then, third, I would like to just provide some brief description of his role in the conduct. As I'm sure defense counsel will emphasize, the defendant here is not a leader of this kidnapping effort, he's a follower, and that presents just as much concern to us. That presents just as much concern to us because the defendant here is a devout student of the Rabbi in Lev Tahor, whose name is Nachman Helbrans, and is a co-defendant of his on this case, and he is the son of Mayer Rosner, another leader of Lev Tahor and another leader of the kidnapping effort. And those

individuals, as well with the other co-defendants, planned a kidnapping and assigned this defendant roles in that kidnapping, and he took place in the kidnapping because that's what he was asked to do by the leaders of his organization.

And he did have a significant role in the kidnapping. He was there before the kidnapping, part of planning conversations, taking actions to buy disguises for the victims to wear so that they would be more difficult for law enforcement to find during the kidnapping, and then he was there after the taking of the children from New York in Mexico with the children. So he was found by Mexican law enforcement officers in a house in Mexico with several of the other co-defendants. And we didn't know this at the, time but we later learned that the victims were, in fact, inside of that house with the defendant.

So the defendant's role was not minor here. He was not a leader, but he did participate in the kidnapping, and he did so because that's what he was instructed to do. And his role was active and his role was knowing. And even if it was because he was beholden to these other individuals, that creates a real flight risk concern. So let me turn to the flight risk issues.

This is an extreme risk of flight case. The largest concern is his lack of ties to the United States. The defendant was born here, lived here for three years, and has

since been living in Canada or in Guatemala. He has no family here. He has no occupation here. He has nowhere to live here. In fact, in the Pretrial Services interview, he was unable to provide the address that he would be staying here. So he doesn't have any ties to this community in New York. His community is in Guatemala. There are several members of Lev Tahor in Guatemala. That's where they are predominantly located and that's where he has lived the majority of his life, with respect to Canada, as I mentioned, and a couple months in Mexico.

The proposal for him to stay -- my understanding of the proposal, and I may just -- I'm sure I'll learn more details as we go, but my understanding of the proposal is for the defendant to stay with a rabbi who is the Rabbi employed by Westchester County Jail, who is has been visiting the defendant. The defendant doesn't know where this Rabbi lives. Their relationship is I believe, by definition, fairly new because he's only been incarcerated for a couple months here. And the proposal is that he will live there.

There is really no moral suasion value in living with this new individual, and that raises enormous concerns about why he would stay here in New York rather than flee. As I mentioned earlier, he's beholden to the leaders of Lev Tahor. If they tell him to kidnap, he kidnapped. They tell him to flee, he's going to flee. And we don't really have a sense of

what would keep him here because he doesn't have his family members here, he doesn't have a life here, his siblings and his mother are in Guatemala, and he sort of would just be here awaiting trial in this very, very unusual circumstance.

Another point on the flight risk is really just looking at the kidnapping itself and how it demonstrated how adept these individuals can be at evading law enforcement. The victims were taken in the middle of the night, I guess the early morning hours on December 8th, and they were not located until December 27th. The co-defendants -- the defendant and his co-defendants used forms of false identification. They used numerous cell phones to communicate with each other and messaging apps. They exchanged money through many different formats to make it more difficult to trace. As I mentioned earlier, they wore secular clothing to try and disguise themselves, even though that's not their traditional clothing. They planned here routes out of the country very meticulously. They left in different routes out of the country, also making it harder to track. It was very difficult to locate these defendants when they fled because they worked very hard to evade law enforcement in that setting. I'll also note we know that at least some of them got over the Mexican border and we have no records of that. So there is also movement across borders that we can't track.

All of those things show that if there's a desire to

flee here, they can flee. This defendant can flee, and he can flee in a way that makes it very, very difficult for us to find him.

I would just also note, in terms of considering the flight risk, that Lev Tahor itself is an international organization. They have operations and allies in Canada, in Israel and some European countries. Those ties are what is going to be strongest for this defendant.

And also on the risk of flight, defendant's facing a very serious sentence. He's facing a maximum penalty of life. With that kind of sentence potentially facing him, being released to a person's home that he's just met, having been someone who's been on the run from U.S. law enforcement for weeks without being found, there's a real question of why he wouldn't run in this instance, particularly if that's what he was advised to do.

Now, lastly, just very briefly, I'll just address dangerousness. The statute looks at whether there's a danger to the community or a danger to any particular person and, again, this defendant, on his own, in isolation, is not the most dangerous person there is. We don't have prior acts of violence. But he did participate in a kidnapping, which is a very dangerous crime.

And it's important also to note that there are members of the Lev Tahor community right now who are currently

and actively continuing to find and look for ways to take these children back to Guatemala. And law enforcement has expended credible resources to protect the safety of these children and the safety of this family. And one of the kidnappers who was part of the scheme to kidnap her is currently seeking to be released out on bail at a time when there are active efforts to kidnap the children once again. And I'll note that these efforts, we know that they are in part being dictated by the Rabbi Nachman Helbrans, who is incarcerated right now. He is participating in recorded calls in trying to find ways to get these children back to Guatemala. And that's happening currently. And so there is a real risk of dangerousness because if the defendant is out, that's one more individual who is taking the orders and listening to the leaders of this community to cause great risk to this family.

Thank you.

THE COURT: Thank you, Ms. Bagliebter.

Mr. Braverman.

MR. BRAVERMAN: Thank you, Judge.

Well, Judge, some things I would suggest are not in dispute. It is, I think, not in dispute that, on a particular evening, the two people who are identified as the complainants walked out of a house. There's apparently videotape showing them walk out of the house. So the statute identifies this as kidnapping, and I'm sure that Congress meant something to

convey that was really dangerous and important. Of course, when we talk about kidnapping, we usually talk about somebody bonked on the head, duck taped and tossed in the back of a car, not somebody who flees from someplace to go someplace else.

The one thing I also want to do is I do not want to be in any sort of debate with this Court or with the government or with anybody in the audience as to whether or not a particular religion is correct or incorrect. I know that is not the province of this Court and it's not the province of me to make that kind of determination. We're only here to enforce what the laws are for our society and whether or not this gentleman can be released under some sort of conditions.

The government suggests that it is a presumption case. With the question of presumption, can I overcome that? I believe that the answer is yes.

A court already has ruled on one of the co-defendants. Judge Davison ruled several weeks ago that one of the co-defendants could be released. The conditions that were set forth there -- I have a copy of the bail conditions -- they were substantial, they were quite broad, and they are quite acceptable to us.

So, for example, in that case, that is a person who has resources. You can't really compare the resources of that individual to my client because my client is close to zero. So divide it by zero would not work. But the resources of that

individual are enormous, and that was $10 million bail.

What I have here is an individual by the name of Abe Lichtenstein.

Please stand up. Would you please stand up, sir.

Mr. Lichtenstein here is a member of the community here, and he has provided to me documents, which were provided to the government I guess about ten days ago; tax returns, property identification.

What we're proposing here is a million-dollar bond fully secured by property. Mr. Lichtenstein has owned this property outright. He has it. It is not his only property, but it is property that he has. And I present him to be available for interview to Pretrial Services and to the government. They can take all the time they need to discuss his situation and so forth and why he's willing to put forth a significant fully secured bond to bet on this gentleman here, making sure he doesn't go anywhere else. So in terms of what would be realistically put up, we're realistically willing to put up that.

In terms of making sure that Mr. Rosner doesn't go anywhere, as we did with the other Rosner, we're proposing electronic monitoring, strict pretrial supervision, home confinement. So that would be that the young Mr. Rosner here would have a bracelet on his ankle. He would not be able to leave the house absent approval by Pretrial Services. He would

not be able to go out on a regular basis. He would have a set curfew, could not wander around during the day. Anything that was proposed for Mr. Rosner we accept completely.

The place where he would stay is with Rabbi Horowitz.

Rabbi Horowitz, please stand up.

This gentleman here is Rabbi Horowitz. Rabbi Horowitz, as the government correctly points out -- thank you, sir -- met my client only several months ago. So my client was detained on December 28th. So they've only had a chance to see each other now for just about exactly three months.

So why would a person who has only met my client three months ago be willing to stake his entire reputation, his liberty, his assets, why would he be willing to do that for this young man? That must have been quite the powerful relationship that's developed in three months. So Rabbi Horowitz has met with my client nearly every single day and, during that time period, they have prayed together, they have talked, they have discussed. And in that time period, Rabbi Horowitz indicates to me that he's developed an actual friendship and a respect for this young man, so much so that he would be willing to have him in his own home; not because somebody's threatening or forcing him to do it, not because somebody's paying him to do it, not because he owes it to anybody, but because it's a good deed and because he believes, as I asked him again today -- I spoke with him yesterday, spoke

with him before. Whenever I've asked him, I've said will you follow the rules that this Judge sets? Not your own set of rules. Not what you like the community's rules to be. The rules exactly as laid out. He says I will absolutely follow the rules. And I said what if Mr. Rosner doesn't follow the rules. He says I will try and make him follow the rules, and if he doesn't, then I will make sure that Pretrial Services knows.

And I've asked Mr. Rosner here what if a rabbi comes to you and says God tells you to do something different from what the Court says. This is a serious question. My client said to me he will follow the rules as this Court sets them. It's a punishment of going to jail. It's a punishment of being arrested and charged with new crimes. It's a punishment of causing enormous damage to other people who have taken consideration of him.

I have no doubt that if my client were to flee, that would affect my client's father's kids and my client's uncles' kids. And I assure you that if the government believes that my client would follow the instructions of the Rabbi, my client would do nothing to hurt the Rabbi and he would do nothing to hurt his father, and his flight would have a direct consequence of both of their cases.

So in terms of moral suasion, we would have in the house in which he lives a rabbi, which is a person of enormous

respect in his community. He would have the moral suasion that he would cause damage to his father and to his uncle and to the rabbi and his community. So the moral suasion would be direct, it would be immediate and it would be very specific.

So the conditions that were set down for Mr. Rosner, Mr. Aron Rosner, were things like he is not to leave the house. And he was given I think a very strict window of about two and a half hours per week that he could do to attend to religious services. And if this Court found that that was appropriate, we would live by those terms. Aron Rosner was not to have any contact with members of Lev Tahor. My client would abide by exactly the same set of rules. My client would have no internet access. If it was necessary to have a phone, we could find a phone. I, many times, have arranged for a client to have a phone with no internet capabilities whatsoever. We could do that. The government could keep a pen register on that phone so that any calls that are coming in or going out, the government could know where they're talking to and who is he talking to.

The Rabbi has a place of worship in his own home, so the fact is it's even easier. Services come to him. And so there would be a place where my client would have a room and he would have a place to live and if there were religious services, they could be done in the home and my client doesn't even have to travel beyond -- literally, anything that Pretrial

Services says is not appropriate, we would live by those rules.

I have had a chance to speak -- so I understand, in terms of the connection to the community, it appears, Judge, actually, that my client has something approaching 30 aunts and uncles who live in this community here within -- I guess within the Southern District of New York. That's more than I have, and I've been here for 53 years. But aunts and uncles.

And the people who have come to visit my client -- literally every day somebody's coming to visit my client and to provide him with food and to provide him with clothing, and it's not because he's a leader in their community, but because he's a member of their community and they are caring for one of their own. And so I would think, Judge, that actually provides reasonably good confidence to this Court that these people will make sure that he abides by the rules. The last thing that they want him to do is to go back to prison. Because I get a call nearly every day where somebody says they've come to visit my client in prison and he weeps all the time and he's terrified and he's scared to be sitting there. It's devastating.

As the Court well knows, as I well know, as we all know, jail is an awful place. And so I guess the question I'm proposing to the Court is is that the only possibility. Can we not create a system, a group of considerations, that will make this Court comfortable that this Jacob Rosner will not reoffend

and will attend everything he needs to do, and I think that there are. And if the Court said I would like more conditions, I will negotiate any conditions the Court is looking for, because I think -- I've been in front of this Court for 15 years now. I know the conditions are going to be reasonable. They're going to be tailored to this situation. If the Court has more conditions you would like to impose, that's fine with me, too. Mr. Rosner will follow any conditions the Court imposes.

But I absolutely believe -- and then, remarkably, Judge, the community that's been here today, that's all attending here, they would all stand up now. And if the Court wanted to interview Rabbi Horowitz, I have three witnesses here who have come today just in case the Court wanted to know about Rabbi Horowitz. Rabbi Bloom is here and he would come -- you could interview him about the quality of Rabbi Horowitz. And Mr. Lichtenstein, if the Court wanted to interview him, I've got three people here. You could interview them about him and whether or not he's trustworthy. So that, at the end of the day, the Court could have the concerns that the Court may have addressed.

In terms of the dangerousness to the community, Judge, it's a significant charge. I don't dispute that. And I don't dispute that the government says -- if it says it can prove it, as we know, they can't bring a charge that they don't

believe they could prove. I do believe that, at the end of the day, if there was a jury trial, if we convey to the jury the information that I have received now in three months, this jury would never convict my client of kidnapping. If the jury thought -- if the charge were proposed to them about the custodial interference charge, which seems to be much closer matching to the facts of this case -- I have not received discovery. There's an enormous amount that I probably don't know about this case. In fact, in funny ways, I may be the person that knows the least amount about the case in the room here. But everything I've learned, custodial interference does seem like the more accurate charge. That is not a presumption charge. That is not a mandatory minimum charge. And that's a big difference from where we are here now. And so that is still -- this Court is not trying the case. I'm not asking you to try the case. But it's something for the Court to consider.

And so, for all of those reasons, Judge, and if there are any questions the Court has, I do believe there is a series of conditions that can overcome the presumption, that could allay the Court's concerns, that would give this Court good reason to say that if this gentleman is released, he will be back here on each and every day he is to be back.

Unless the Court has any further questions.

THE COURT: Thank you, Mr. Braverman.

MR. BRAVERMAN: Thank you, Judge.

THE COURT: Ms. Bagliebter.

MS. BAGLIEBTER: Just a few follow-up points.

Before I get to them, I just want to note I agree with Mr. Braverman wholeheartedly and I think it probably doesn't even require saying of either the government or the defense that this is not about whether any particular religion is correct or incorrect. That is not in any way relevant to our argument here, and I hope it's not construed by the Court or anyone else in that way.

Turning to sort of the more substantive pieces of what Mr. Braverman has said, the first thing I just want to address is Judge Davison's decision to let one defendant out on bail. That did occur. And Judge Davison was very careful in his ruling. And he said during that conference, he said this defendant stands in significantly different shoes than the other defendants. He said he's in stark contrast to the other defendants. And he said the defendant has strong family and community ties here.

And there is an enormous difference between the other -- his co-defendant Aron Rosner and the defendant here. Aron Rosner is an individual who has lived in Brooklyn the majority of his life. He was not in Guatemala. He was not in Mexico when the children were found. He was not an active participant. And I'm careful here. He was not -- on the night of the robbery, he did not act in taking the kids.

THE COURT: The kidnapping.

MS. BAGLIEBTER: In the kidnapping. I'm sorry. On the night of the kidnapping. He did not actively go retrieve the kids. And he didn't evade law enforcement by literally fleeing New York and going to Mexico. So that's one strong difference in Mr. Rosner's case, in Aron Rosner's case.

Aron Rosner also has a very large family here in Brooklyn. He has a wife. He has several children, one of which who has a disability that raises a bunch of child-care concerns for him and his wife and their family that I think Judge Davison was rightly taking into account. And Aron Rosner has a job in life and employment, or some form of employment in Brooklyn. His life was in Brooklyn. So that's a more traditional case where we had concerns about his flight risk, we had concerns about his dangerousness, but at least the Court was presented with, hey, this guy's going to go back to his life and where he lives; he's going to be on home detention, but he's going to be living with his family. And his wife's family put up an enormous amount of property. So, in Aron Rosner's case, it was a $10 million bond with nine financially responsible cosigners and $6 million secured in property. The defendant was detained for several weeks while the government waded through the necessary paperwork of the six properties to make sure that everything was up to the required standards and that all of the certificates of judgments were filed. So the

situation that Aron Rosner was in was very, very different than the defendant. As I've already gone through, the defendant here just doesn't have that level of ties here, or really any ties.

So now turning to Mr. Braverman's point about Mr. Lichtenstein and Rabbi Horowitz. The question is not whether it's an extraordinary act of generosity on the part of Mr. Lichtenstein and Rabbi Horowitz to put their neck out for the defendant. There's no question that it is. This is really an extraordinary showing from those individuals, and that's fantastic, but that's not what we're being asked here. And the fact that there's many people in the community who will speak to the great qualities of Mr. Lichtenstein and Rabbi Horowitz is also fantastic, but the question isn't what they are willing to do for the defendant. The question is what does it mean to the defendant that, if he runs, it will have a negative impact on them. And that's why so often we're looking to family members, to long-standing relationships that the defendant has, because that's what gives us and, I assume, the Court the comfort that the defendant will feel that moral-suasion pressure. And no matter how fantastic Mr. Lichtenstein and Rabbi Horowitz are, which they certainly seem to be, that doesn't change that we really don't have any reason to believe that the defendant is going to start caring more about what would happen to them than what would happen to everything that

he's cared about in the past, for his entire 20 years of life.

And Mr. Braverman says, you know, I spoke to my client and he said he's going to follow the Court's law instead of what a rabbi tells you. Well, you know, these defendants knew what they were doing was wrong when they kidnapped the children. That's clear by all of the ways that they were trying to evade law enforcement. If they didn't think they were breaking the law, there would be no need for the multiple cell phones and multiple forms of money transfers and the disguises and all of that. So they knew what they were doing was wrong, and they were choosing to engage in self-help and they were choosing to do something on their own, even though it was contrary to the law and they knew that. So I just don't think that there's any real way to feel comfortable that he has, all of a sudden, in the three months that he's been detained and in his meetings with Rabbi Horowitz, has changed his tune and is sort of no longer beholden to the forces that he was before.

I think that's all, your Honor.

THE COURT: Thank you.

Mr. Braverman, last word.

MR. BRAVERMAN: Nothing in rebuttal, your Honor.

THE COURT: All right.

MR. BRAVERMAN: I apologize. One second, Judge.

THE COURT: Yes.

(Pause)

MR. BRAVERMAN: Thank you, your Honor.

Judge, just to add one additional fact, it appears that my client's father's parents, so my client's paternal grandparents, are here in the audience, as well, today, and has indicated that, if the Court wished, they would be specifically ones to sign the bond as well. So we can have this direct lineage on the bond as well. Thank you

THE COURT: Thank you, Mr. Braverman.

This is a highly unusual circumstance, but I do not believe that the circumstance that led to my colleague granting bail to the defendant Aron Rosner is at all similar to the circumstance currently present.

As Ms. Bagliebter mentioned, Aron Rosner is a resident of the greater New York community, has a home and family, direct family, including his wife and children, and had a history in the Southern and Eastern Districts of New York. Everything that's been presented tells me that this defendant has no such connection, no such history. Though he may have relatives -- not immediate family, but more distant, grandparents, aunts and uncles -- he was unable to tell Pretrial Services where he would be able to reside. And, indeed, of all of those family members, it's not a family member who has offered him a place to reside, but someone he's known for just a few months. This leads me to conclude that

the family ties are less than overwhelming.

This is a case in which the defendant is charged with an extremely serious crime. It's not up to me to decide whether the actions here were intended to be covered by this statute. It's up to me to decide whether the complaint establishes probable cause to believe that this defendant committed this crime. I have already made that determination, as did my colleague, Judge Davison, when he signed the original complaint. Probable cause has been established that this defendant participated in the crime of kidnapping two children; hiding their identities; taking them out of the United States, where their mother had lawful custody of them; hiding them from law enforcement in Mexico; and apparently intending to take them to Guatemala, where the possibility that those children could ever be returned was very small. This extremely serious offense, which, in my view, is established by the assertions in the complaint, carries with it a rebuttable presumption that there are no conditions or combinations of conditions which can assure both the safety of any other person and the community and the defendant's return to court.

Mr. Braverman has put forth a package which, in some circumstances, I would find to be adequate to assure the defendant's return to court, but, in this case, I'm not satisfied that this defendant would have sufficient allegiance to Rabbi Horowitz or to -- I'm sorry, I didn't -- I didn't hear

your name correctly. Mr. --

MR. LICHTENSTEIN: Lichtenstein.

THE COURT: -- Lichtenstein or even to his grandparents to assure that he would remain in the community as required and return to court as required.

Moreover, I am satisfied that releasing this defendant would present a risk of danger, specifically to the two victims of this kidnapping, who are still at risk.

So, for all of those reasons, I'm denying the application for bail. The defendant will remain detained.

Mr. Braverman, you're fully aware of your right to appeal.

MR. BRAVERMAN: Respectfully, I am, your Honor. Thank you.

THE COURT: Anything further, Ms. Bagliebter?

MS. BAGLIEBTER: No, your Honor.

THE COURT: Mr. Braverman?

MR. BRAVERMAN: Nothing further. Thank you, Judge.

THE COURT: Thank you. We are adjourned.

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