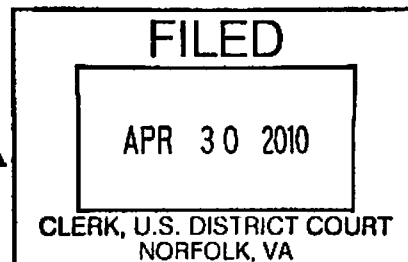


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



UNITED STATES OF AMERICA

v.

Case No. 2:10cr57

MAHAMED FARRAAH HASSAN,

Defendant.

ORDER OF DETENTION

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), the Court held a hearing on April 28, 2010, on the United States Government's motion to detain Defendant. For the reasons set forth below, the Court FINDS that Defendant's detention pending trial is warranted.

On April 21, 2010, a federal grand jury issued an indictment charging Defendant with one (1) count of piracy under the law of nations, in violation of 18 U.S.C. § 1651; one (1) count of attack to plunder vessel, in violation of 18 U.S.C. § 1659; one (1) count of assault with a dangerous weapon in the Special Maritime Jurisdiction, in violation of 18 U.S.C. § 113(a)(3); one (1) count of conspiracy to use firearms during a crime of violence, in violation of 18 U.S.C. § 924(o); and one (1) count of use of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii).

Because the indictment charges Defendant with violations of 18 U.S.C. § 924(c), there is a rebuttable presumption "that no

condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." See 18 U.S.C. § 3142(e)(3). At the detention hearing, counsel for Defendant presented certain evidence favorable to Defendant's contention that he should be released on terms and conditions. Accordingly, the Court considers the presumption in favor of detention pursuant to 18 U.S.C. § 3142(e) to be rebutted. However, the presumption "remains . . . a factor to be considered" by the Court. United States v. Fortna, 769 F.2d 243, 251 (5th Cir. 1985); see also United States v. Dillon, 938 F.2d 1412, 1416 (1st Cir. 1991); United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986); United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986).

The Court, having taken into consideration the proffer of the Government and counsel for Defendant, the Bond Report, and the grand jury indictment of April 21, 2010, FINDS by clear and convincing evidence that Defendant represents a danger to the community, and that there is no condition or combination of conditions that will reasonably assure the safety of the community. The Court also FINDS by a preponderance of the evidence that Defendant represents a risk of flight, and that no condition or combination of conditions will reasonably assure the return of Defendant for further proceedings.

The Court first considered the nature and seriousness of the charges against Defendant. See 18 U.S.C. § 3142(g)(1). Defendant

is charged with five (5) counts of violent offenses arising from an attack on a United States Navy vessel. If convicted of the charges against him, Defendant faces the potential of a lengthy term in prison and substantial fines. Specifically, if Defendant is convicted of piracy under the law of nations, he "shall be imprisoned for life." 18 U.S.C. § 1651. Accordingly, the Court FINDS that the charges against Defendant are very serious.

The Court next considered the weight of the evidence against Defendant. See 18 U.S.C. § 3142(g)(2). The Government alleged that on or about April 10, 2010, Defendant and five (5) other individuals were onboard a skiff in the Gulf of Aden. Defendant and the other individuals approached the USS Ashland, a United States Navy vessel. The Government alleged that the defendants fired a number of rounds at the USS Ashland, striking the ship. The USS Ashland returned fire, and the skiff exploded in the exchange. Defendant and the five (5) other individuals were located swimming in the water. Individuals onboard the USS Ashland photographed the burning skiff, which reveal that the vessel contained ladders, a hook, and what appeared to be the burnt remains of an AK47 assault weapon. Accordingly, the Court FINDS that the weight of the evidence against Defendant is strong.

The Court then considered Defendant's personal history and characteristics. See 18 U.S.C. § 3142(g)(3). Defendant is twenty-six (26) years of age. Defendant has lived in Somalia his entire life with his family. Defendant is employed as a fisherman and

makes just enough money to support his family. Defendant has no ties to the community and cannot speak English. Defendant has no assets, but significant debts in Somalia. Defendant has no immigration status because he was brought to the United States solely for prosecution. Accordingly, he would be unable to find employment in this country. Furthermore, Defendant is the subject of a detainer lodged by the United States Immigration and Customs Enforcement.

These facts lead the Court to conclude that Defendant should be held in custody until trial. The Court concludes that Defendant is a risk of flight and a danger to the community and that there are no conditions that could be reasonably fashioned to assure his return for further proceedings or the safety of the community.

The Court, therefore, ORDERS Defendant to be DETAINED pending his trial. See 18 U.S.C. § 3142(e) and (f); United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991); United States v. Araneda, 899 F.2d 368, 370 (5th Cir. 1990); United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); United States v. Medina, 775 F.2d 1398, 1402 (11th Cir. 1985).

Consequently, the Court further ORDERS that Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with

defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver Defendant to the United States Marshal for an appearance in connection with a court proceeding.

The Clerk shall mail or deliver a copy of this order to (i) the United States Attorney at Norfolk, (ii) the United States Marshal at Norfolk, (iii) the United States Pretrial Services Office at Norfolk, and (iv) counsel of record for Defendant.


United States Magistrate Judge

Norfolk, Virginia

April 30, 2010