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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

v.

DERRICK RAYMOND THOMPSON (001),

Defendant.

No. CR2016-159174-001

**MOTION TO MODIFY RELEASE
CONDITIONS**

(Assigned to the Honorable J. Sinclair)

(Oral Argument Requested)

The defendant, Derrick Raymond Thompson, by and through undersigned counsel, moves this Court to modify his release conditions. This request is made pursuant to Rule 7.4(b) of the Arizona Rules of Criminal Procedure in light of material facts and circumstances not previously presented to the Court. Mr. Thompson respectfully requests this Court to modify his release conditions and release him on his own recognizance or in the alternative, to release him to pretrial services. U.S. Const. amend. VIII; Ariz. Const. art. 2, §§ 15 and 22.

MEMORANDUM OF POINTS AND AUTHORITIES

I. CHARGES AND CURRENT RELEASE CONDITIONS

Mr. Thompson is in custody and his bond is currently set at \$100,000. He has been in custody for two months. Mr. Thompson has been charged with Participating in a Criminal Syndicate, a class 2 felony, Assisting a Criminal Syndicate, a class 2 felony, and Attempted Misconduct Involving Weapons, a class 5 felony.

II. LAW AND ARGUMENT

The purpose of bail or any condition of release is to assure the appearance of the accused. Ariz. Const. art. 2, § 22. Arizona law prefers release on a person's own recognizance. Ariz. R. Crim. P. 7.2(a). Under Rule 7.2(a), "[a]ny person charged with an offense bailable as a matter of right shall be released pending or during trial on the person's own recognizance, unless the court determines, in its discretion, that such release will not reasonably assure the person's appearance as required." If the court determines additional conditions are necessary, it may do so as outlined in Rule 7.3.

Arizona Rule of Criminal Procedure 7.4(b) provides that the defendant's release conditions may be reviewed upon motion of any party whenever "the motion alleges the existence of material facts not previously presented to the court." This Court may do so by looking at a number of factors, including the nature and circumstances of the offense, the weight of the evidence against the accused, and the accused's family ties. *See* Ariz. Rev. Stat. § 13-3967(b).

Several new facts have surfaced that were not presented at the time of Mr. Thompson's bail being set and constitute a material change in his case.

1. *The nature and circumstances of the charged offense should not outweigh Mr. Thompson's presumed innocence and constitutional liberty rights.*

The State alleges that on or between January 6, 2015 and December 20, 2016, Mr. Thompson induced or incited others to promote the criminal objectives of a criminal syndicate and assisted a criminal syndicate. While these allegations can be based on serious conduct, in Mr. Thompson's case, they are not. The conduct described in Special Agent Lance Kuhn's affidavit for a search warrant and only amounts to "liking" and commenting on YouTube videos. This type of conduct is nonviolent and does not warrant confinement to secure Mr. Thompson's appearance at court hearings.

2. *The weight of the evidence against Mr. Thompson is slight due to limited discovery and the absence of proposed testimony.*

The witnesses and materials disclosed by the State demonstrate the case against Mr. Thompson not very strong. The State's disclosed materials (Bates AG00001-AG005675 and AG005676-AG005684) do not present any facts supporting conviction to this court. Special Agent Kuhn's affidavit in support for a search warrant consists of various comments on YouTube videos with Special Agent Kuhn's inferences from those comments. However, these inferences about Thompson's alleged support for the Islamic State of Iraq and Syria (ISIS) are conclusory and not supported by the language in the comments.

For example, on a post titled, "KKK and Black Activists Face Off at Confederate Flag Protest Outside South Carolina State House," the State alleges Mr. Thompson wrote:

It's time for the black man and black woman in America to stand up and fight. This time of holding hands and protesting is over. It's time for the African to come back to his true religion of Islam and leave the religion that keeps them

oppressed and enslaved after 400 years. Come back to honor and nobility and your rightful status in Islam. The mujahideen [sic] are behind you. But as Allah says he won't change the condition of a people until they change what is within themselves.

Special Agent Kuhn Search Warrant Affidavit at 19. From this language, Special Agent Kuhn believes Thompson is encouraging violence, telling those who engage in violent acts the mujahedeen supports them, and views himself as a mujahedeen. *Id.* It is unreasonable to infer Mr. Thompson believes himself to be a mujahedeen or is encouraging violence from that comment. As a whole, Special Agent Kuhn's inferences about Thompson's support of ISIS are tenuous and unsupported.

Additionally, these inferences are the bulk of the State's case against Mr. Thompson. In their Notice of Disclosure, the State has disclosed the names of two witnesses who may testify at trial: Special Agent Kuhn and Hugh Gorman, a record custodian. Special Agent Kuhn's testimony about his interpretations about various comments posted on the internet is not likely to satisfy its heavy burden of proof that Mr. Thompson participated in or assisted a criminal syndicate.

3. *Mr. Thompson has strong family ties.*

Mr. Thompson is currently married to Amina Yassin and he has two young children, Derrick and Nura. Additionally, Mr. Thompson's parents, Wilton and Daisy Thompson reside in Phoenix. Mr. Thompson's continued confinement makes him unable to support and care for his family.

III. CONCLUSION

In light of these material facts, Mr. Thompson respectfully requests an order

releasing him on his own recognizance or, alternatively, to pretrial services.

RESPECTFULLY SUBMITTED this 17th day of February, 2017.

MARICOPA COUNTY PUBLIC DEFENDER

By /s/ Robert Ditsworth
ROBERT DITSWORTH
Deputy Public Defender

Copy of the foregoing filed/e-filed
this 17th day of February, 2017 to:

HONORABLE JOAN SINCLAIR
Judge of the Superior Court
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By /s/ Robert Ditsworth
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