

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

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|----------------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 09-00296-03-CR-W-FJG |
| |) | |
| ROBERT E. STEWART, |) | |
| |) | |
| Defendant. |) | |

**GOVERNMENT’S RESPONSE TO DEFENDANT
STEWART’S MOTION FOR RECONSIDERATION**

Comes now, the United States, by and through its undersigned attorneys, and responds to Defendant Stewart’s Motion For Reconsideration of Detention Order, which was issued on October 2, 2009. Count One of the government’s indictment returned on September 23, 2009 charges defendants Angell, Burkitt, Stewart, Cox, Larson, and Donkersloot, who are all members of the Galloping Goose and El Forstero motorcycle clubs, with a narcotics distribution conspiracy from January 1, 2002 to July 31, 2007, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. Count Two charges defendant Angell with threatening a witness in connection with the same narcotics conspiracy investigation. Because defendant Stewart is a flight risk and a danger to the community, the government respectfully requests that this court deny defendant’s motion to reconsider.

On September 30, 2009, this Court held a detention hearing pursuant to 18 U.S.C. § 3142(f) for the purpose of determining whether any conditions of release would reasonably assure the defendant's appearance and the safety of the community if the defendant was granted bond. The defendant appeared in person and with then-counsel, John Osgood, and both parties stipulated to the Pretrial Services Report. After considering the evidence and the record, the Court found by a preponderance of the evidence that the defendant is a flight risk and a danger to the community, and the Court detained the defendant without bond. A written Detention Order was issued on October 2, 2009. Through a motion filed October 6, 2009 by his new attorney, Ron Partee, the defendant now asks this Court to reconsider its decision.

Count One carries a mandatory minimum penalty of ten years' incarceration and a maximum penalty of life imprisonment. Under 18 U.S.C. § 3142(e)(3)(A), there is a rebuttable presumption of detention if the court finds probable cause that the defendant committed an offense for which a maximum term of imprisonment of 10 years or more is prescribed under the Controlled Substances Import and Export Act. At the hearing, the court found probable cause that he committed the offense, and that the defendant did not adequately rebut the presumption of detention.

Through his new motion, the defendant fails to raise additional evidence sufficient to rebut this presumption. While the defendant now disputes some of his criminal history, he does not dispute that he has been convicted of multiple crimes and violations of the

law in the past. The defendant's health problems have already been considered by the Court. Over the last four years, his health situation did not prevent him from moving to Kansas City from Minneapolis or from attending numerous motorcycle runs and parties all over the country. He will be able to continue to receive the health care that he needs while incarcerated. In addition, the defendant admits that he is a daily marijuana user and the government feels that he is better suited to receive proper treatment in custody including helping him deal with his drug addiction. The defendant's admission that he has previously used a pseudonym and false identification is also problematic.

The defendant argues that because he has not yet fled the jurisdiction, despite knowing of the federal investigation and interacting with the case agent, he has demonstrated that if issued a bond, he will appear. However, while he was previously aware that he was a prospective target of a federal investigation, the defendant did not know for certain if and when he would be charged. The fact that he has remained in the area while two indictments were issued against his club brothers does not provide adequate assurance that he will appear now that he is definitely facing charges. Nor does it assure the safety of the community, which was the second basis for his detention.

The defendant is charged with a serious narcotics offense and faces significant penalties. The defendant is or was a member of a motorcycle club with an inherent culture of drugs, violence, and witness intimidation. For these reasons, defendant Stewart is a flight risk and a danger to the community, and the government respectfully requests this Court to deny the defendant's Motion for Reconsideration.

Respectfully submitted,

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By */s/Daniel M. Nelson*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on October 22, 2009, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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/s/Daniel M. Nelson _____
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