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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

DONALD BALL, DUSTIN HEARD,
NICHOLAS SLATTEN, PAUL SLOUGH,
AND EVAN LIBERTY,

Defendants.

**DEFENDANT DONALD BALL'S
MEMORANDUM IN SUPPORT OF
MOTION FOR IMMEDIATE
PRETRIAL RELEASE**

Case No.:

Magistrate Judge Paul Warner

**DEFENDANT DONALD BALL'S MEMORANDUM
IN SUPPORT OF MOTION FOR IMMEDIATE PRETRIAL RELEASE**

Defendant, Donald Ball, pursuant to Fed. R. Crim. P. 5(d) and 46 and 18 U.S.C. § 3142, respectfully moves this Court for an Order immediately releasing him on his personal recognizance in this matter. This motion provides the Court with a more comprehensive explanation of the history of this case and the characteristics that compellingly show the Court

that Mr. Ball – who adamantly asserts his innocence and will prove the government is wrong in its allegations – is not a risk of flight nor does he pose any danger to anyone in the community. To the contrary, Mr. Ball – despite knowing for months that he would be arrested and charged in this matter – has shown no indication whatsoever of trying to flee the jurisdiction or of presenting any threat or danger to anyone. Moreover, any effort by the Government to seek a seventy-two (72) hour hold pending a detention hearing should also be rejected. Prosecutors explicitly advised counsel that the Government would not seek detention for Defendants who surrendered in Washington, DC (and thereby waived a venue challenge), but would seek to detain Defendants who surrendered in Utah. Having conceded that Defendants are not candidates for detention in Washington, DC, the Government should not be heard to use the detention statute to punish those who surrender in a more appropriate venue where one of their number reside. The reasons supporting this motion are set forth below.

I. FACTUAL BACKGROUND

Donald Ball is twenty-six years old and has no criminal record. He was born in Utah and he currently resides in West Valley City, Utah. Mr. Ball's mother and siblings also live near Salt Lake City, Utah.

Mr. Ball attended Arcadia Elementary school then Bonneville Junior High School. As a youngster, he participated in athletics and the Boys Scouts of America. He achieved the highest rank of Eagle Scout. He also enjoys fishing and participating outdoor activities; he particularly took pleasure in pursuing these hobbies with his father until he passed away when Mr. Ball was sixteen years old.

Mr. Ball graduated from Cottonwood High School in May 2001. He lettered in track and cross-country. Following high school, he enlisted in the United States Marine Corps. Following boot camp at Camp Pendleton, California, Mr. Ball was named an Honor Graduate in the School of Infantry.

Mr. Ball was deployed three times to Iraq and he attained the rank of corporal during his time in the military. Mr. Ball participated in Operation Iraqi Freedom from March 2003 to May 2003, Al Fallujah from February 2004 to July 2004 and Ar Ramadi from February 2005 to July 2005. He served as Squad Team Leader during all three deployments.

Mr. Ball served the United States of America with honor and distinction during his time in Iraq and he received numerous awards and commendations. Mr. Ball was awarded the Navy and Marine Corps Achievement Medal in August 2005. In support of this award, Mr. Ball's commanding officer wrote:

- Corporal Ball "braved numerous improvised explosive devices and small arms attacks and never lost his focus on mission accomplishment and troop welfare."
- "In April when an enemy sniper attacked, his calm leadership and initiative under extremely dangerous combat operations were key in the success of his Marines. His attitude and devotion to duty were excellent examples for his Marines to follow."

Mr. Ball was awarded a Certificate of Commendation in July 2005. In support of this award, Mr. Ball's commanding officer wrote:

- "In 2004, Corporal Ball began his second combat tour, boldly fighting in a fierce urban battle with insurgents during Operation Vigilant Resolve in the city of Al Fallujah, Iraq. He then displayed great character as he transitioned from intense urban combat into stability and security operations in the city of Al Karma." (emphasis added).

In recognition of his honorable service to our country, Mr. Ball also received the following awards and commendations: Marine Corps Good Conduct Medal, Combat Action

Ribbon, Sea Service Deployment Ribbon (w/ 2 stars), Iraq Campaign Medal; Global War on Terrorism Service Medal, Global War on Terrorism Expeditionary Medal, National Defense Service Medal, Presidential Unit Citation and Rifle Expert Badge (2nd Award).

After he was honorably discharged from the Marine Corps, Mr. Ball returned to Utah where he worked for a freight trucking company. In August 2006, Mr. Ball was hired by Blackwater. As a Blackwater security officer, he returned to Iraq in December 2006 to support of the mission of the United States Department of State. He left Blackwater in November 2007, and joined another firm. For this company, Mr. Ball trained Marines who were preparing for deployment to Iraq.

In March of 2008, Mr. Ball entered the police academy at the Salt Lake City Community College. Mr. Ball is scheduled to graduate on December 18, 2008. In addition to attending the police academy, Mr. Ball worked as a school bus driver and now works as a bailiff at the Salt Lake City Justice Court.

On September 16, 2007, Mr. Ball was working as part of a Blackwater Tactical Support Team ("TST") in Baghdad, Iraq known as "Raven 23." At approximately 11:30 AM that day, a massive car bomb (also referred to as a vehicle-borne improvised explosive device or "VBIED") detonated in close proximity to the Izdihar Compound, an Iraqi Government installation where a USAID official was visiting under the protection of a Blackwater security detail operating under the command and control of the Department of State's Regional Security Office for U.S. Embassy-Baghdad ("RSO-Baghdad"). In response, Raven 23 proceeded out of the protected "Green Zone" into the city of Baghdad, to a location known as Nisour Square. Their orders were

to secure the traffic circle at Nisour Square, to facilitate the safe return of the USAID official, and her Blackwater protectors.

Shortly after Raven 23 entered the traffic circle, a white Kia sedan directly approached Raven 23 in a highly threatening manner, circumventing several other stopped Iraqi vehicles, ignoring the warnings of Blackwater personnel, and refusing to stop. Raven 23 personnel immediately identified the white Kia as a potential car bomb and it is alleged that they halted the car by means of defensive fire. At approximately the same time – or shortly thereafter – the members of Raven 23 began receiving gun fire from several different directions, which threatened the entire convoy and posed an especially lethal risk to the seven turret gunners who were exposed without the benefit of armored protection. In the deadly two-way firefight that ensued, it is alleged that various Blackwater guards returned fire in order to protect their lives and the lives of their teammates from incoming hostile fire.

In the days after the firefight at Nisour Square, media reports indicated that a number of Iraqi civilians were killed or injured in the course of the battle. The civilian casualties that occurred in the course of the Nisour Square battle give rise to the present charges against Mr. Ball and four other Blackwater guards who were part of the Raven 23 team.

Over a year ago, Mr. Ball retained his present counsel, based in Washington, D.C., to represent him in this matter. During the course of that year, Mr. Ball's counsel has been in regular contact with the Assistant U.S. Attorney, Kenneth Kohl, who is conducting the investigation. Almost six months ago, in June of this year, Mr. Ball was informed by Mr. Kohl that he was a "target" of the investigation. Counsel for Mr. Ball had a number of discussions with AUSA Kohl about the case, culminating in an extensive presentation made to AUSA Kohl