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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 DUSTIN HEARD'S  
MEMORANDUM IN SUPPORT OF  
MOTION FOR IMMEDIATE  
PRETRIAL RELEASE**

Case No.:

Magistrate Judge Paul M. Wagner

**DEFENDANT DUSTIN HEARD'S MEMORANDUM  
IN SUPPORT OF MOTION FOR IMMEDIATE PRE-TRIAL RELEASE**

Defendant Dustin L. Heard, pursuant to Federal Rules of Criminal Procedure 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. Heard—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. Heard—who has known for months that he would be arrested and charged in this matter—has never shown any 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, D.C. (and thereby waive a venue challenge), but would seek to detain Defendants who surrendered in Utah. Having conceded that Defendants are not candidates for detention in Washington, D.C., 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**

Dustin Heard is 28 years old. Since leaving Iraq in November 2007, he has lived and resided in Maryville, Tennessee with his wife and young daughter. Mr. Heard was originally born and raised in Texas. He has no criminal record.

Mr. Heard enlisted in the United States Marine Corps in 2000, when he was 19 years old. He began as a private in the Marine Corps Infantry force. After basic training at Camp Pendleton, he was sent to North Carolina for specialized training in the “Security Force Battalion School.” He served with the Marines for four years, from 2000 to 2004. He was honorably

discharged with an excellent service record. While in the Marines, Mr. Heard was stationed for extensive periods of time in the Middle East. Before the Iraq war, he was stationed in Bahrain as part of a security force to support U.S. missions in the Middle East. He was assigned to Kuwait at the outset of the attack on Iraq in 2003. He was part of the "Fleet Anti-Terrorist Security Team" deployed to secure oil fields off the coast of Iraq during the invasion. He was then assigned to Southern Iraq, near Karbala, as part of a Marine team whose mission was to recover downed pilots and aircraft in Iraq. Later in 2003, Mr. Heard was deployed to Afghanistan at the Bahrain Air Force Base. During his years with the Marine Corps, Mr. Heard received a number of awards and commendations.

In December 2004, as a natural extension of his military experience and training, Mr. Heard joined Blackwater to serve in Iraq for Blackwater. He received a number of awards and commendations for his service with Blackwater.

On September 16, 2007, Mr. Heard 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 Officer for US 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. Raven 23's 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. Heard and four other Blackwater guards who were part of Raven 23.

Over a year ago, Mr. Heard retained his present counsel, based in Washington, D.C., to represent him in this matter. During the course of that year, Mr. Heard's counsel has been in regular contact with the Assistant U.S. Attorney, Kenneth Kohl, who is conducting the investigation. In June 2008, Mr. Heard was informed by AUSA Kohl that he was a "target" of the investigation. Counsel for Mr. Heard had a number of discussions with AUSA Kohl about the case, culminating in an extensive presentation made to AUSA Kohl and supervisory Department of Justice officials by counsel for Mr. Heard along with the lawyers representing the other targets of the investigation.

Since learning that he was a target of the investigation, almost six months ago, not only has Mr. Heard not given any indication that he is a risk of flight or a danger to the community, but precisely the opposite: He has given every indication of participating in the legal process to fight the allegations and prove his innocence. Again, after being told three weeks ago that he would be indicted by AUSA Kohl, Mr. Heard gave no indication of being a risk of flight or a danger, but rather offered to self-surrender once he was told an indictment was handed down. In short, *despite the fact that Mr. Heard knew for almost six months that it was likely he would be arrested and charged, Mr. Heard not only showed no indication of fleeing, but to the contrary, agreed to and then did self-surrender to authorities.*

## I. LEGAL ANALYSIS

### A. The Legal Standard

Pretrial release and detention are governed by 18 U.S.C. § 3142. Under Sections 3142(e) and (f), a defendant may be detained only if the court finds by clear and convincing evidence that there are no conditions of release that will reasonably assure the defendant's appearance in court or the safety of any person and the community. 18 U.S.C. § 3142(e); *see also United States v. Cisneros*, 328 F.3d 610, 616 (10th Cir. 2003). In making this determination, the court must consider the following factors: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *United States v. Cos*, 198 Fed. Appx. 727, 729 (10th Cir. 2006) (unpublished opinion).