

Brent O. Hatch (5715)
Paul G. Cassell (6078)
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

William F Coffield (*pro hac vice* pending)
Lankford, Coffield & Reed, PLLC
120 North Saint Asaph Street
Alexandria, Virginia 22314
Telephone: (703) 299-5000
Facsimile: (703) 299-8876

Attorneys for Defendant Evan Liberty

**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 LIBERTY,
AND EVAN LIBERTY,

Defendants.

**DEFENDANT EVAN LIBERTY'S
MEMORANDUM IN SUPPORT OF
MOTION FOR IMMEDIATE PRE-
TRIAL RELEASE**

Case No.:

Magistrate Judge Paul Warner

**DEFENDANT EVAN LIBERTY'S MEMORANDUM
IN SUPPORT OF MOTION FOR IMMEDIATE PRETRIAL RELEASE**

Defendant, Evan Liberty, 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. Liberty – 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. Liberty – 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

Evan Liberty is 26 years old. He was born and raised in Rochester, New Hampshire, where he currently resides. He has no criminal record.

After graduating from high school in Rochester, Mr. Liberty enlisted in the United States Marine Corps. He served honorably in the US Marine Corps for four years. During his military service, Mr. Liberty served as part of the security detail at two United States Embassies. He eventually held the position of Sergeant of the Guard, charging him with control of a detachment of 24 Marines. He was honorably discharged with an excellent service record.

In December 2004, as a natural extension of his military experience and training, Mr. Liberty joined Blackwater to serve in Iraq as a Protective Security Specialist. During his time at Blackwater, he was highly regarded and respected by his peers.

On September 16, 2007, Mr. Liberty 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. Liberty and four other Blackwater guards who were part of the Raven 23 team.

Over a year ago, Mr. Liberty retained his present counsel, based in Alexandria, Virginia, to represent him in this matter. During the course of that year, Mr. Liberty's counsel has been in contact with the Assistant U.S. Attorney, Kenneth Kohl, who is conducting the investigation. Almost six months ago, in June of this year, Mr. Liberty was informed by AUSA Kohl that he was a "target" of the investigation. Counsel for Mr. Liberty 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. Liberty along with the lawyers representing the other five persons named as targets of the investigation.

Since learning that he was a target of the investigation, almost six months ago, not only has Mr. Liberty 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, Mr. Liberty 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. Liberty knew for more almost six months that it was likely he would be arrested and charged and upon learning of the indictment, Mr. Liberty traveled back to the United*

States, established his residence back in New Hampshire, enrolled in school, and, ultimately, self-surrendered.

II. LEGAL ANALYSIS

A. The Legal Standard

Pretrial release and detention are governed by 18 U.S.C. § 3142. Under 18 U.S.C. §§ 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 2006 WL 2821376, 2 (10th Cir. 2006)(unpublished opinion).

Section 3142(e) also creates a rebuttable presumption of dangerousness, meaning that "no condition or combination of conditions will reasonably assure the safety of any other person and the community" in two circumstances. The first, not applicable here, applies if the defendant has a prior criminal conviction or a pending criminal case. 18 U.S.C. § 3142(e)(1), (2), and (3). The second, sometimes called the drug and firearm presumption, applies to any defendant charged with one of the offenses specified in the second paragraph of § 3142(e). Included in that provision is any offense under 18 U.S.C. § 924(c). Once the rebuttable presumption arises under