

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

Thomas G. Connolly (*pro hac vice* pending)  
Steven A. Fredley (9415)  
HARRIS, WILTSHIRE & GRANNIS, LLP  
1200 Eighteenth St., N.W.  
Washington, D.C. 20036  
Telephone: (202) 730-1300  
Facsimile: (202) 730-1301

*Attorney for Defendant Nicholas Slatten*

**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 NICHOLAS  
SLATTEN'S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION FOR  
IMMEDIATE PRETRIAL RELEASE**

Case No.:

Magistrate Judge Paul M. Wagner

**DEFENDANT NICHOLAS SLATTEN'S MEMORANDUM  
OF LAW IN SUPPORT OF MOTION FOR IMMEDIATE PRETRIAL RELEASE**

Defendant Nicholas Slatten, 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. Slatten—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. Slatten—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**

Nicholas Slatten is twenty-five years old and has no criminal record. Mr. Slatten was born in Sparta, Tennessee and, except for the time spent in service to his country, has lived there his entire life.

Following the tragedies of September 11, 2001, Mr. Slatten enlisted in the United States Army after his graduation from high school. Mr. Slatten completed basic training and the Army's Airborne training course at Fort Benning, Georgia. Mr. Slatten was subsequently assigned to the 82<sup>nd</sup> Airborne Division headquartered at Fort Bragg, North Carolina. Just over one year after graduating from high school, Mr. Slatten was deployed to Iraq. During his eight

month deployment, Mr. Slatten operated in one of the most dangerous cities in Iraq—Fallujah. While in Fallujah, Mr. Slatten and his unit, in coordination with the CIA and Special Operations, were involved in missions designed to capture the Iraqi government's top officials, who were famously depicted on a deck of playing cards. Following his first deployment, and based on the recommendation of his commanding officer, Mr. Slatten successfully completed the Army's Sniper Training Program. Only one-third of the candidates who started the course completed it. Mr. Slatten was redeployed to Iraq in September 2005, this time operating along Iraq's northern border with Iran. Mr. Slatten has an unblemished military record and received numerous awards and commendations for his service to the country. After four years in the Army, Mr. Slatten was honorably discharged.

In October 2006, as a natural extension of his military experience and training, Mr. Slatten joined Blackwater to serve in Iraq as a Protective Security Specialist. During his time in Blackwater, Mr. Slatten was highly regarded and respected among his peers.

On September 16, 2007, Mr. Slatten 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, 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. Approximately six minutes after Raven 23 first reported receiving fire from multiple insurgents, Raven 23 exited Nisour Square and returned to the Green Zone.

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. Slatten and four other Blackwater guards who were part of Raven 23.

Over a year ago, Mr. Slatten retained his present counsel, based in Washington, D.C., to represent him in this matter. During the course of that year, Mr. Slatten's counsel has been in regular contact with the Assistant U.S. Attorney, Kenneth Kohl, who is conducting the investigation. In June 2008, Mr. Slatten was informed by AUSA Kohl that he was a "target" of the investigation. Counsel for Mr. Slatten 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. Slatten 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. Slatten 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. Slatten 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. Slatten knew for almost six months that it was likely he would be arrested and charged, Mr. Slatten 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).

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