

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
v.)
)
MICHAEL LEE FOSTER)
)
 Defendant.)

Case No. 2:19-CR-193
JUDGES CORKER / WYRICK

**MOTION TO RELEASE DEFENDANT PENDING TRIAL AND FOR A
HEARING PURSUANT TO 18 U.S.C. § 3142(f)**

Comes the defendant, MICHAEL LEE FOSTER, through counsel and pursuant to 18 U.S.C. § 3142, the Eighth Amendment to the United States Constitution, Stack v. Boyle, 342 U.S. 1 (1951), and their progeny, and respectfully moves this Honorable Court to enter an Order releasing the defendant pending trial upon any reasonable conditions the Court deems necessary.

In support, the following is submitted:

(1) On November 26, 2019, a Grand Jury for the Eastern District of Tennessee returned a 4 count Indictment against Michael Lee Foster [Doc. 2]. Count 1 charges enticing a minor to produce child pornography in violation of 18 U.S.C. § 2251(a). Count 2 charges possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). Count 3 charges knowingly or attempting to knowingly use means of interstate commerce to persuade, induce or entice a minor to engage in sexual activity in violation of 18 U.S.C. §2422(b). Count 4 charges knowingly receiving any child pornography that has been transported, shipped or mailed in interstate or foreign commerce including by computer in violation of 18 U.S.C. §§ 2252A(a)(2)(A), 2252A(b)(1).

(2) Mr. Foster was arrested on November 5, 2019 in Hartford City, Indiana and brought before the United States District Court, Northern District of Indiana. His initial appearance before the United States District Court, Eastern District of Tennessee was not until January 3, 2020, and he waived a hearing concerning his pretrial release without prejudice to later requesting one. Therefore, this motion is not a reopening of Mr. Foster's detention hearing, but rather concerns a request for the initial hearing called for under the statute since the detention hearing was initially waived. Pursuant to 18 U.S.C. § 3142(f), Mr. Foster requests a pretrial release hearing and his release upon any reasonable conditions the Court feels necessary to assure community safety and his appearance at proceedings before the Court.

(3) The rebuttable statutory presumption in 18 U.S.C. § 3142(e)(2) that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community is applicable to Mr. Foster. See 18 U.S.C. § 3142(e)(3)(E). Despite the rebuttable presumption, the ultimate burdens of proof and persuasion are on the government to establish no set of conditions can reasonably be placed on Mr. Foster. The rebuttable presumption can be overcome – or rebutted - with the proffering of information by the defendant in support of release. The information proffered to the Court in the accompanying memorandum and exhibits rebut that presumption. Mr. Foster is not a flight risk or a danger to the community. Mr. Foster has no prior criminal history. Prior to these allegations, Mr. Foster resided with his family and worked in Morristown for over 18 years and has long and significant ties to the Morristown community.

(4) Mr. Foster has worked for Petoskey Plastics in Morristown, Tennessee since 2002, and was the Director of Engineering and Maintenance. If Mr. Foster had been granted pretrial release previously, he likely would still be employed with Petoskey Plastics. Mr. Foster has worked

in the plastic industry for almost 30 years, is considered an expert in plastic fabrication, and was an invaluable member of Petoskey Plastics' leadership team. If released, Petoskey Plastics will consider re-employing Mr. Foster in some capacity.

(5) Mr. Foster previously held long term positions on the board for local soccer clubs in Morristown and maintained involvement in the Morristown soccer community throughout his children's lives. He is a well-respected and well-known member of the community because of these efforts and his employment.

(6) Mr. Foster has significant health concerns that are better treated outside of a county jail environment. Among his struggles with Meniere's disease and GERD, Mr. Foster tested positive for precancerous polyps on his colon three years ago. Their removal was successful, but he is now considered high risk for colon cancer. Mr. Foster was due back for examination and screening for colon cancer in November of 2019, but he has been unable to obtain preventative testing from his specialist due to his pretrial incarceration. Due to Mr. Foster's health problems, he also poses a high risk of contracting COVID-19, which has been declared a pandemic by the World Health Organization. High risk individuals are recommended to take immediate preventative actions to avoid contracting the virus.

(7) Mr. Foster's wife and adult daughter, who lived in the same residence as Mr. Foster in Morristown prior to his pretrial detention in this matter, are willing to accept Mr. Foster back into the family home and serve as third party custodians for purposes of his pretrial release. They are willing to accept restrictions on internet access and usage, and to monitoring by an outside expert at the defendant's expense, as conditions of Michael Foster's pretrial release to their custody.

(8) A memorandum is submitted in support of this motion, which is incorporated herein

by reference. The evidence proffered in the supporting memorandum rebuts any presumption of detention. Mr. Foster is not a flight risk, and no clear and convincing evidence exists to support a finding that Mr. Foster is a danger to the community and that no set of conditions can satisfy any concern for dangerousness if he were released. Accordingly, Mr. Foster should be released upon “the least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the appearance of the person as required and the safety of the community.” 18 U.S.C. § 3142(c)(1)(B); Stack v. Boyle, 342 U.S. 1, 4-5 (1951) (the right to bail ensures the integrity of the presumption of innocence).

Respectfully submitted by:

RITCHIE, DILLARD, DAVIES & JOHNSON, P.C.

A handwritten signature in blue ink that reads "Stephen Ross Johnson". The signature is written in a cursive style with a horizontal line underneath the name.

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