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*ADMITTED IN NY & NJ

June 1, 2015

BY ECF

Hon. Eric N. Vitaliano
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *U.S. v. DiScala*, et al., 14 CR 399 (ENV)

Dear Judge Vitaliano:

I and my associate Robert Caliendo represent Kyleen Cane in the referenced case. We write in reply to the government's May 28 opposition to our May 26 application for bail modification. For all the reasons stated herein, and in our submission of May 26, 2015, we respectfully submit that Ms. Cane poses no flight risk. Therefore, we respectfully request that the Court grant our client's request to travel to Edinburgh, Scotland to help her teenage son get acclimated to the college where he will spend the next four years studying. 18 U.S.C. § 3142.

The government opposes Ms. Cane's travel request on the ground that her son Stephen should have declined to attend the University of Edinburgh – one of the most prestigious academic institutions in the world – because “Cane's family must have understood that the pending charges would limit Cane's availability to travel abroad.” ECF No. 140, p. 3. Apparently, the government's view is that Stephen should attend a less prestigious school that is closer to home, simply because his mother has been charged with a crime.

In fact, however, attending the University of Edinburgh is a unique opportunity for Ms. Cane's son, a straight A high school student who intends to study law as an undergraduate, and who will be eligible to take the bar and begin law practice in this country after obtaining a LLM degree upon his return to the United States. Thus, by attending the University of Edinburgh, Ms. Cane's son may be eligible to begin practicing law in 5 years rather than the typical 7 years required for an undergraduate degree in this country, followed by three years of law school.

Ms. Cane is not a flight risk

In its May 28 letter, the government argues that Ms. Cane is likely to flee, and refers to two defendants -- Julian Tzolov and Thomas Qualls -- who fled prosecution in the Eastern District of New York in connection with two cases entirely unrelated to this one. ECF No. 140, p. 3. The government cites no factual or legal connection or analogy between the Tzolov and Qualls cases and this one, apart from the fact that the Tzolov and Qualls cases involved "financial crimes," just as this case does. But so do hundreds of other cases -- the vast majority of "financial crimes" cases -- in which thousands of federal criminal defendants have not fled prosecution for "financial crimes." Indeed, I can represent to the Court that I have personally represented at least ten defendants in this District accused of committing "financial crimes" -- often very serious ones -- and none of those defendants have ever fled prosecution despite the very serious allegations lodged against them. Therefore, to the extent history is any guide, it favors the defendant here. The government has cited no facts to suggest that Ms. Cane will act any differently than the thousands of other defendants accused of financial crimes in this district and others who have not fled prosecution.

The government also complains that "[o]ver the [its] objection, Cane has been permitted to travel freely in the United States, provided she provides advance notice to Pretrial Services in Nevada, and she is permitted to fly her own plane within the United States." ECF No. 140, p. 2. This observation also weighs in favor of Ms. Cane's application. The government has objected to Ms. Cane's freedom to travel before, and those objections have turned out to be unfounded. Ms. Cane has not abused the liberty extended to her by the Court over the past 10 months, and there is no reason to believe she will do so now. Like Chicken Little, the government complains that "the sky is falling," but does not cite any evidence that supports its assertion. The sky has not fallen in the last 10 months, and there is no reason to think it will fall in August.

An opportunity to flee indeed exists. But the government offers no evidence that Ms. Cane is likely to flee this prosecution. Indeed, if she wanted to abscond, Ms. Cane does not need to travel to Scotland to do so. She could simply drive across the border into Mexico. Or she could fly her plane across the border. She has not done so, and that should give the Court confidence that she will not attempt to flee from Scotland if she is permitted to go there for a few days.

The government also contends that Ms. Cane's decision to begin study in a University of Nevada microbiology program "indicates that her prior career as a lawyer and the operation of her own law firm in Las Vegas no longer roots her to her community as they previously did." ECF No. 140, p. 2. This is nonsense. The defendant is simply trying to make the best of a difficult situation.

Ms. Cane's professional reputation has been destroyed by the allegations contained in the indictment, and she is unable to practice as a lawyer as a result of the charges in this case. Rather than simply giving up on life, wringing her hands, and worrying about this case full time, Ms. Cane has begun the difficult process of changing careers at 60 years of age by working to obtain a new degree in a field unrelated to law. Pursuing her degree in microbiology at a local university is a lengthy process, and Ms. Cane's decision to begin that process is some evidence that she is optimistic about the outcome of this case and is disinclined to flee. Ms. Cane is signed up for summer school, and plans to enroll in the fall semester before the Scotland trip. Ms. Cane's actions plainly indicate intent to remain in the U.S. Ms. Cane is as rooted in her community as she ever was, and her enrollment in a local University is proof of that fact.

Moreover, while it is true that Ms. Cane does have a significant net worth, her wealth is not in assets that could easily be transferred overseas. Ms. Cane still owns the building that housed her law practice, as well as other real estate located in Las Vegas, some of which has been posted to secure her bail. The bulk of her remaining assets at this point are, in fact, unmovable real estate holdings located in Nevada and California. Ms. Cane has no intention of abandoning *any* of her U.S. real estate holdings, nor her 80 year old step-mother, nor her other son who lives in Las Vegas and Oregon (where he attends college), and who requires her support and attention in the U.S. All of Ms. Cane's ties are to this country, and the government provides no evidence whatsoever to suggest that Ms. Cane has taken any step to establish a residence abroad where she might flee. It certainly has not provided the Court with any basis to infer that Ms. Cane might use her non-liquid wealth to flee the country during a trip to Scotland for a week or two.

The government posits that the “logical extent of Cane’s argument essentially supports a claim that if a person has abided by bail conditions for a certain amount of time, those conditions are unnecessary and should no longer apply.” ECF No. 140, p. 3. Ms. Cane argues no such thing. Ms. Cane concedes that her bail conditions and minimal restrictions on her travel are appropriate given the magnitude of this case (although she disputes the government’s allegations as they pertain to her, as well as the wildly inflated claim of “losses” they have made). All she argues is that it is reasonable to permit an accused person to travel when that person has consistently complied with bail conditions and shunned multiple opportunities to flee. That is certainly the view of Officer Kamuela Kapanui, the law enforcement professional tasked with monitoring Ms. Cane, because he makes no objection to her request to travel to Scotland.

Ms. Cane’s son needs her

Ms. Cane’s son Stephen – who is presently 17 years old – will soon leave her home and live alone for the first time. And he will do it in a foreign country. He requires Ms. Cane’s help and support, as any other teenager would in these circumstances. Stephen has lived with Ms. Cane his entire life, and Ms. Cane was the parent who helped him navigate his college selection process. The government speculates that Ms. Cane’s presence in Scotland is unnecessary because “based on Cane’s letter, it appears that Cane’s former spouse is also planning to travel with their son.” ECF No. 140, p. 3. Our May 26 application doesn’t state that Ms. Cane’s former spouse will be travelling with Stephen and Ms. Cane to Edinburgh, Scotland.¹ It is our understanding that Ms. Cane would be travelling with Stephen alone. Her former spouse does not intend to travel with Stephen to Scotland in August, but may visit Stephen in Scotland at a later date.

¹ Our letter asserted that “Stephen may not be physically able to move furniture without help from his parents, and Ms. Cane would like to provide him with that help.” There was no suggestion that Ms. Cane’s former spouse intended to travel with them.

Conclusion

For all the reasons stated herein, and in our letter of May 26, 2015, we respectfully submit that the defendant's application to travel to Edinburgh, Scotland should be granted.

Respectfully submitted,

/S/

Roland G. Riopelle