

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-MJ-58
)	
RICHARD J. HERMANN,)	
)	
Defendant.)	

**UNITED STATES’ RESPONSE TO DEFENDANT’S
APPEAL OF THE MAGISTRATE’S ORDER DENYING
RELEASE FILED JANUARY 14, 2008 (DOC. 12)**

COMES NOW the United States by and through its counsel, Larry Gomez, United States Attorney, and Presiliano Torrez, Assistant United States Attorney, and responds to Defendant’s appeal of denial of release as follows:

1. Defendant appeared before the Honorable Judge Garcia on a probable cause hearing on a criminal complaint, and the Government’s motion for detention.
2. As a result of that hearing, on January 15, 2008, the Judge Garcia filed his Findings of Fact on (the Government’s) Motion for Detention¹. In these findings, the court determined that there is clear and convincing evidence of the following: 1) on January 8, 2008 Defendant sent a threatening e-mail message to several judges and a law professor regarding a dispute he is having with Second Judicial District Court State Judge Nan Nash over her ruling in his divorce proceedings², 2) the Defendant had

¹ Judge Garcia’s order is attached hereto.

² E-mail is attached hereto with the heading “FW: Nan Nash and mediation”

been investigating Judge Nash to the extent that he was aware of her place of residence, had information regarding her neighborhood and family, and knew that she would be teaching a mediation class at the UNM School of Law, 3) the Defendant left a voice-mail message for New Mexico Supreme Court Chief Justice Edward Chavez, accusing him of not performing his duties in regard to the defendant's appeal, and 4) at the time of the defendant's arrest, he was armed with a loaded Glock 22 .40 caliber weapon, \$3000 in cash, and a passport in a backpack in his vehicle.

3. Judge Garcia found the defendant posed an unreasonable risk of harm and of flight, and that there are no conditions under which he can reasonably be released. The court directed that the defendant remain in custody pending further proceedings. Doc. 16.

4. Defendant now appeals the denial of release.

5. In determining whether there are conditions of release that will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer must consider: 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 persons release. *United States v. Cisneros*, 328 F.3d 610, 617 (10th Cir. 2003).

6. The nature of the circumstances are very serious. There is evidence that the defendant has been investigating not only Judge Nash, but several other members

