



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

F.#2008R02060

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 7, 2009

Via Facsimile and ECF
The Honorable Roanne L. Mann
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Nicoletti, et al.
Criminal Docket No. 09-002 (KAM)

Dear Judge Mann:

The United States submits this letter in support of its application, pursuant to 18 U.S.C. § 3142(a), for (1) a permanent order of detention with respect to defendant Ralph Nicoletti; and (2) the imposition of significant pretrial release conditions, including home confinement with electronic monitoring, regular reporting to Pretrial Services, drug testing and substance abuse treatment as directed by Pretrial Services, and the establishment of appearance bonds signed by responsible suretors, with respect to defendants Michael Contreras and Brian Carranza.

As set forth in more detail below, the serious and violent nature of the charged offenses, the strength of the government's evidence, and the history and character of Ralph Nicoletti warrant the requested detention and imposition of pretrial release conditions.

A. The Defendants' Criminal Conduct

The government hereby proffers the following facts relevant to the charge filed against the defendants and Ralph Nicoletti's other criminal conduct. See United States v. LaFontaine, 210 F.3d 125, 130-131 (2d Cir. 2000) (government entitled to proceed by proffer in detention hearings); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995)(same).

1. Charged Criminal Conduct

The charges in the Indictment stem from a hate crime conspiracy to assault African-American residents in Staten Island in retaliation for President-Elect Obama's election victory, and from a series of assaults perpetrated by the defendants as part of that conspiracy.

On the night of the presidential election, November 4, 2008, the defendants and several friends were gathered at a makeshift outdoor clubhouse in the Rosebank section of Staten Island, New York. Throughout the evening, the group received updates on the election results from friends and via the Internet. Shortly after learning of Barack Obama's victory, the defendants and a fourth friend decided to find African-Americans to assault in retaliation for an African-American winning the election.

Nicoletti drove the group to Park Hill, a predominantly African-American neighborhood in Staten Island, where they came upon Ali Kamara, a 17-year-old African-American man who was walking home after watching the election at a friend's house. The four men then got out of the car and attacked Kamara. During the attack, Nicoletti beat Kamara with a metal pipe, and another member of the group hit Kamara with a collapsible police baton. Kamara, who managed to escape and run home, suffered injuries to his head and legs.

Resuming their hunt, the group found another African-American man in the Port Richmond section of Staten Island and assaulted him, pushing him to the ground. One of the men also verbally accosted a Latino man, demanding to know for whom he had voted, and later yelled profanities about Obama as they drove past an election night gathering of African-Americans at a hair salon.

The group's final assault involved a man they mistakenly believed to be African-American, whom they spotted walking along Blackford Avenue in Port Richmond. The group agreed that one of the men would hit the victim, Ronald Forte, with the police baton as they drove by him. Instead, as they approached Forte, Nicoletti decided to hit him with the car, causing Forte to be thrown onto the hood of the car and into the front windshield, shattering it. Although Forte survived, he was in a coma for a period of time after the attack.

2. Nicoletti's Other Criminal Conduct

Although only 18 years old, Nicoletti has an extensive history of illegal and violent activity, including distribution of marijuana and cocaine, burglary, car break-ins, destruction of property, including firebombing a neighbor's home and another neighbor's car, and numerous assaults. Nicoletti is a member of the "Rosebank Crew" or "RBK," started by Nicoletti's younger brother, Anthony Nicoletti. The group's primary purpose is to defend its members in inter-neighborhood disputes, some of which have resulted in significant violence.

During a search of Nicoletti's home, the FBI found in Nicoletti's dresser drawer an envelope addressed to "My RBK Brothers" from the "Boss Behind Bars."¹ The envelope contained a handwritten note addressed to "All my RBK brothers" and signed by "The Biggest Boss Ever." In part and substance, the note discussed how the RBK Brothers must stand strong together and not talk to the police. The note also stated, in substance, that the "Boss" has 10 brothers behind him and that he can kill a person's family. In the same drawer, the agents found a cache of weapons, including a collapsible police baton (the same type used during the election night assaults),² two butterfly knives, five folding knives, and a leather slapjack, which is a leather-covered piece of metal that is used as an impact weapon.

Within days of the assaults, Nicoletti approached a potential witness and told the witness not to speak to law enforcement authorities. Thereafter, the witness was approached several times by Nicoletti's associates and told not to talk to the authorities. The witness also received an anonymous telephone threat from a male caller telling him not to speak to the police.

¹ The letter is believed to be from Anthony Nicoletti, who currently is incarcerated on charges stemming from, inter alia, an incident in which Anthony Nicoletti ran down one or more individuals with his car in the aftermath of a fight involving Anthony Nicoletti and Contreras, who belong to RBK, against youths from another Staten Island neighborhood.

² Nicoletti obtained two police batons during a series of car break-ins that included vehicles owned by police officers. The baton used during the assaults was one of the two that Nicoletti stole.

About three weeks ago, Nicoletti, apparently believing that co-defendant Contreras was cooperating with authorities, went to Contreras's home with three male friends and attacked Contreras, calling him a "snitch." Nicoletti punched Contreras, causing Contreras's ear to bleed. Significantly, Nicoletti engaged in this conduct after having been released on bail in his pending criminal case in Richmond County stemming from the Kamara assault.

C. Detention of Ralph Nicoletti and Imposition of Significant Pretrial Restrictions and Bail Conditions on the Other Defendants are Warranted

1. Detention of Nicoletti

Detention of a defendant pending trial is warranted where the Court finds that no condition or combination of conditions that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. In making that determination, the Court must consider several factors, including: (1) the nature and circumstances of the charged offense; (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 the community which would be posed by the person's release. 18 U.S.C. § 3142(g)(1)-(4).

Here, these factors weigh heavily in favor of Nicoletti's pretrial detention.

a. Nature and Circumstances of the Charged Offense

Nicoletti and the other defendants are charged in this case with a crime of violence. The Bail Reform Act defines a "crime of violence" as an offense that has as one of its elements the "attempted use, or threatened use of physical force against the person or property of another," or "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense". 18 U.S.C. § 3156(a)(4)(A) and (B).

Here, the defendants engaged in a criminal conspiracy that had as its sole purpose the use of force and infliction of injury on African-Americans. On the night of the election, the defendants deliberately set out to hunt down African-Americans to assault, and they brutally assaulted three people as part of that conspiracy. Nicoletti, in particular, was responsible for the

most serious and depraved violence that night, when he ran Forte down with his car. Nicoletti also beat Kamara repeatedly with a metal pipe. Thus, the nature of the charged offense, as well as Nicoletti's role and conduct in that offense, demonstrate that he is a danger to the community.

b. Strength of the Evidence

The evidence against Nicoletti is very strong. It includes eyewitness testimony, corroborative testimony by third parties, and documentary and physical evidence. If convicted of the charged hate crime conspiracy, Nicoletti faces a sentence of up to 10 years and a guidelines range of 97-121 months.³ The likelihood of conviction, coupled with the severity of the potential sentence, creates a significant risk that Nicoletti will seek to tamper with, intimidate or harm witnesses, or flee.

c. History and Characteristics of the Defendant

Nicoletti has been committing crimes, causing destruction and engaging in violence since he was 14 years old, and his misconduct has only escalated and grown more violent over time. He has a demonstrated propensity for engaging in violence, retaliation and obstruction of justice and a complete disregard for the law. The fact that Nicoletti assaulted Contreras while on bail in his State case demonstrates that the threat of incarceration will not deter him from engaging in violence or obstruction.

d. Nature and Seriousness of the Danger Posed to the Community by the Defendant's Release

For the reasons discussed above, Nicoletti presents a serious risk of harm to the community and witnesses in this case if he is not detained.

2. Imposition of Pretrial Restrictions and Bail Conditions on Contreras and Carranza

The Court may impose restrictions upon the pretrial release of a defendant if the Court concludes that release on personal recognizance or unsecured appearance bond "will not reasonably assure the appearance of the person as required or

³ Furthermore, the government anticipates superseding to add substantive hate crime charges, which will substantially increase the potential penalties faced by the defendants.

will endanger the safety of any other person or the community." 18 U.S.C. § 3142(c). Should the Court conclude that an unsecured or personal recognizance bond will not assure the appearance of the defendant, it may order detention or impose additional conditions of release. See 18 U.S.C. § 3142(c)(B)(I) et seq.

The nature and circumstances of this offense and the strength of the evidence against these defendants, as discussed above, counsel strongly in favor of imposing significant pretrial release conditions and requiring appearance bonds signed by responsible suretors with respect to Contreras and Carranza. Given the seriousness of the charged offense and the defendants' conduct, which resulted in three separate assaults and life-threatening injuries to one of the victims, the defendants should be placed on home confinement to ensure that they do not engage in any further violence prior to trial. Because all of the defendants have histories of alcohol abuse, including on the night of the assaults, and drug use, such as marijuana and Xanax, the additional conditions of drug testing and substance abuse treatment as directed by Pretrial Services should be imposed.

C. Conclusion

For the reasons stated above, the government respectfully requests that the Court (1) issue a permanent order of detention with respect to Ralph Nicoletti; and (2) require home confinement with electronic monitoring, regular reporting to Pretrial Services, drug testing and substance abuse treatment as directed by Pretrial Services, and the establishment of significant personal appearance bonds signed by responsible suretors, with respect to defendants Contreras and Carranza.

Respectfully submitted,

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