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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE MATERIAL WITNESSES
RENAN RANA, JED REBALLOS, JAY
GEROY, DOMER BELTRAN AND
CHRISTOPHER REYES

Case No.: 22-mc-1690-DDL
Related Cases:
22-MJ-4199-DDL
22-CR-2762-TWR-DDL

**ORDER DENYING WITHOUT
PREJUDICE EMERGENCY EX
PARTE PETITION FOR RULE 15
DEPOSITIONS OF FOREIGN
WITNESSES DETAINED IN THE
UNITED STATES AND
SUBSEQUENT RELEASE**

[Dkt. No. 1]

**I.
INTRODUCTION**

Federal Rule of Criminal Procedure 15(a) authorizes depositions either “because of exceptional circumstances and in the interest of justice” or upon request by “[a] witness who is detained” under 18 U.S.C. § 3144. Petitioners Renan Rana, Jed Reballos, Jay Geroy, Domer Beltran and Christopher Reyes are citizens of the Philippines who apply for an order compelling the United States to take their depositions under Rule 15 and ordering

1 their subsequent release.¹ The Court concludes that Petitioners – none of whom are in
2 custody – are not “detained” within the meaning of, and thus may not compel their
3 depositions under, Rule 15(a)(2). Further, the present record does not support a finding
4 that exceptional circumstances warrant the depositions under Rule 15(a)(1) at this time.

5 **II.**

6 **BACKGROUND**

7 On May 31, 2022, Coast Guard inspectors boarded the MV Donald, a cargo ship,
8 following its arrival at the Port of San Diego to investigate a report that the MV Donald’s
9 Chief Engineer, Denys Korotkiy, had ordered the crew to discharge oily bilge water
10 directly into the ocean and thereby bypass pollution prevention equipment. *See* Case No.
11 22-mj-4199-DDL, Dkt. No. 1 at 7. Thereafter, Coast Guard investigators interviewed
12 Petitioners and reviewed the MV Donald’s oil record book. *Id.* at 7-8.

13 On June 3, 2022, the Coast Guard entered into a Security Agreement with the MV
14 Donald’s owner and operator. Dkt. No. 1-4. The owner and operator agreed to post a \$1
15 million surety bond prior to the MV Donald’s departure from San Diego. *Id.* at 15. Further,
16 the owner and operator agreed that Petitioners, all of whom are MV Donald crewmembers,
17 would “remain within the jurisdiction of the U.S. District Court – Southern District of
18 California.” *Id.* at 18. To effectuate this agreement, the owner and operator agreed to
19 provide Petitioners with their wages, lodging, a per diem and health care “until the United
20 States, through its attorney responsible for the pending criminal investigation, advises that
21 their presence is no longer necessary.” *Id.* at 18-19. Further, in the event any Petitioner
22 requested the return of his passport (presumably to return to the Philippines), the owner
23 and operator agreed to provide the Coast Guard with 72 hours’ notice prior to returning the
24 passport. *Id.* at 22. Petitioners were not parties to the agreement. They have been
25 represented by counsel since at least July 20, 2022. Dkt. No. 1 at 8.

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¹ A sixth individual, Pavlo Raskatov, is similarly situated but is not a named Petitioner.

1 On November 15, 2022, Petitioners filed the instant application seeking to compel
2 the United States to take their depositions so they may return to the Philippines. Two days
3 later, the United States filed a criminal Complaint (Case No. 22-mj-4198-DDL) charging
4 Korotkiy with failure to maintain an accurate oil record book and aiding and abetting, in
5 violation of 33 U.S.C. § 1908(a) and 18 U.S.C. § 2. The United States simultaneously filed
6 a material witness complaint (Case No. 22-mj-4199-DDL) alleging that Petitioners and
7 Raskatov are material witnesses in the criminal case.

8 The United States served Petitioners with Notices to Appear, and Petitioners
9 appeared with their counsel on November 18, 2022. The Court set identical conditions of
10 pretrial release for each Petitioner under 18 U.S.C. § 3142, including prohibiting
11 Petitioners from traveling outside the State of California and requiring a personal
12 appearance bond in the amount of \$5,000 with no cash deposit.

13 Petitioners remain out of custody in the Southern District of California. At the
14 December 6, 2022 hearing on this application, Petitioners' counsel represented that the MV
15 Donald's owner and operator continues to pay Petitioners' wages and provide them with
16 lodging and a per diem for food. Each Petitioner has submitted a declaration stating that
17 he wishes to return home to the Philippines as soon as possible and describing personal
18 circumstances showing why his continued presence in the United States is difficult for him
19 and his family members in the Philippines. Dkt. Nos. 1-5, 1-6, 1-7, 1-8 and 1-9.

20 On December 6, 2022, Korotkiy was arraigned on a four-count indictment charging
21 him with offenses arising from the alleged discharge of oily bilge water from the MV
22 Donald. *See* Case No. 22-cr-2762-TWR (Dkt. No. 18). The parties will appear before the
23 District Court on January 13, 2023 for a motion hearing and trial setting.

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1 III.

2 **DISCUSSION**

3 Petitioners argue that the Court should compel their depositions under Rule 15 and
4 order their “release” to the Philippines thereafter. The United States opposes the
5 application. Dkt. No. 8. Korotkiy does not oppose taking Petitioners’ depositions, but his
6 counsel would not be able to depose Petitioners until January 2023 at the earliest. Dkt. No.
7 9 at 4.

8 **A. Petitioners Are Not Detained Under Rule 15(a)(2)**

9 This case involves the interplay between 18 U.S.C. § 3144 and Rule 15. Under
10 § 3144, “[n]o material witness may be detained because of inability to comply with any
11 condition of release if the testimony of such witness can adequately be secured by
12 deposition, and if further detention is not necessary to prevent a failure of justice.” Rule
13 15(a)(2) provides, in relevant part, that “[a] witness who is detained under 18 U.S.C. § 3144
14 may request to be deposed by filing a written motion and giving notice to the parties.”
15 “Read together, Rule 15(a) and § 3144 provide a detained witness with a mechanism for
16 securing his own release.” *Torres-Ruiz v. U.S. Dist. Ct.*, 120 F.3d 933, 935 (9th Cir. 1997)
17 (internal quotation omitted).

18 The issue presented by the Petition is whether Petitioners are “detained” and may
19 secure their release by requesting to be deposed under Rule 15(a)(2). This is significant
20 because a detained material witness proceeding under Rule 15(a)(2) need not establish the
21 “exceptional circumstances” required for a deposition under Rule 15(a)(1). Petitioners
22 assert they are functionally detained in the United States because they are not free to leave
23 the country and thus may seek to compel their depositions under Rule 15(a)(2). But this
24 argument cannot be squared with the fact that the Court set conditions of release for each
25 Petitioner and that none of them is in custody. *See* Case No. 22-mj-4199 (Dkt. Nos. 26-31
26 and 33-38). It is true that the conditions of release contain certain restrictions, such as
27 limiting each Petitioner’s travel to within the State of California. But these conditions of
28 release are not tantamount to detention. Indeed, given that identical travel restrictions are

1 routinely included in pretrial release orders for material witnesses and criminal defendants,
2 to adopt Petitioners’ “functional detention” argument would mean that virtually every
3 material witness and criminal defendant released on bond remains “in custody.” The Court
4 concludes that Petitioners are not detained and may not compel their depositions under
5 § 3144 and Rule 15(a)(2).

6 Petitioners cite *In re Material Witness Summons in re Motor Tanker Zao Galaxy*,
7 No. 19-XR-90626-KAW-1, 2019 WL 4221727 (N.D. Cal. Sept. 5, 2019) (“*Zao Galaxy*”),
8 in support of their argument that they are “functionally detained.” In *Zao Galaxy*, the
9 petitioner was a citizen of the Philippines and the Chief Engineer of an oceangoing motor
10 tanker that was under investigation for potential criminal violations arising from the alleged
11 discharge of oily waste into the ocean and maintaining an inaccurate oil record book. *Id.*
12 at *1. During the ongoing investigation, the Coast Guard and the ship owner entered into
13 a “Security Agreement” that required ten crew members, including the petitioner, who
14 allegedly witnessed the criminal activity, “to surrender their passports and remain in the
15 Northern District of California.” *Id.* The ship owner was obligated to pay the petitioner’s
16 salary and provide him with food, lodging and healthcare. *Id.* Thereafter, the United States
17 allowed five of the ten crew members to return to their countries of origin, but petitioner
18 remained at a hotel in the Northern District of California while the United States’ criminal
19 investigation continued. *Id.* at *2.

20 On these facts, the District Court concluded that the petitioner was “functionally
21 detained” because he “has had his passport taken from him and been compelled to remain
22 in the Northern District of California” for over 6 months. *Id.* at *3. The District Court
23 ordered the United States to depose the petitioner and then release him after he signed the
24 deposition transcript. *Id.* at *5.

25 The Security Agreement in this case and the agreement in *Zao Galaxy* are similar in
26 that both require the employer to pay the witnesses’ wages, lodging, per diem and health
27 care. And both cases raise similar concerns regarding foreign national witnesses who are
28 required to spend an extended period of time in the United States apart from family

1 members. But the critical distinction between this case and *Zao Galaxy* is the Order and
2 Conditions of Material Witness Pretrial Release issued in this case for each Petitioner. The
3 *Zao Galaxy* petitioner was in the Northern District of California solely based on a Security
4 Agreement between his employer and the United States with no criminal prosecution
5 pending. Here, in contrast, Petitioners are not in the United States solely based on an
6 agreement entered into by the Executive Branch. Rather, each Petitioner is subject to a
7 pretrial release order issued by the Court pursuant to 18 U.S.C. §§ 3142 and 3144.

8 The operative pretrial release orders – which were entered subsequent to the filing
9 Petitioners’ application – distinguish this case from *Zao Galaxy* and support a finding that
10 Petitioners are not detained.² Because Petitioners are not detained, the Court concludes
11 they may not seek to compel their depositions under Rule 15(a)(2).

12 **B. “Exceptional Circumstances” Under Rule 15(a)(1)**

13 The unavailability of depositions under Rule 15(a)(2) does not end the analysis.
14 Rule 15(a)(1) authorizes the Court to grant a motion to depose a prospective witness
15 “because of exceptional circumstances and in the interest of justice.” “The district court
16 retains broad discretion in granting a Rule 15(a) motion, and considers the particular
17 circumstances of each case to determine whether the ‘exceptional circumstances’
18 requirement has been satisfied.” *United States v. Omene*, 143 F.3d 1167, 1170 (9th Cir.
19 1998) (citation omitted).

20 Petitioners submit evidence that their absence from their homes in the Philippines
21 since early 2022 has resulted in hardship to their respective families. Dkt. Nos. 1-5, 1-6,
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24 ² Petitioners also cite *United States v. Maniatis*, No. 07-CR-0024-DLJ (E.D. Cal. June
25 21, 2007), where the District Court ordered the United States to depose a foreign national
26 witness who had been “functionally detained” in the United States for over seven months
27 and had testified at a prior trial of two co-defendants. Additionally, the witness was no
28 longer being paid and was “unable to send money home to his family in the Philippines.”
Id. at 2. It is unclear from the District Court’s order whether the witness was subject to a
pretrial release order similar to the order issued in this case.

1 1-7, 1-8 and 1-9. In particular, Petitioner Rana describes how his young son has been
2 having health problems. Dkt. No. 1-5. Petitioners’ counsel stated at the December 6
3 hearing that Petitioner Rana’s son was hospitalized and has since been discharged, but the
4 cause of the illness remains unknown as does whether the illness might reoccur.

5 The “exceptional circumstances” analysis is a fact-specific determination. The
6 Court’s research revealed a single, unpublished case in which a material witness who was
7 not in custody was allowed to give a deposition under Rule 15 and then return to her home
8 country. *See United States v. Ruiz*, 105 F. App’x 254, 255–56 (10th Cir. 2004) (finding no
9 plain error affecting substantial rights where Magistrate Judge granted motion of material
10 witness on pretrial release to take her deposition where witness “wished to return to Mexico
11 because her mother had suffered a heart attack and was ill”).

12 The Court concludes that the present record does not demonstrate exceptional
13 circumstances justifying depositions under Rule 15(a)(1). Although Petitioners have been
14 in the Southern District of California since May 31, 2022, they have been represented by
15 counsel since approximately July 20, 2022, prior to filing the instant application on
16 November 15, 2022. The Court does not doubt the sincerity of Petitioners’ respective
17 desires to reunite with their families or the hardship attendant to lengthy separation from
18 family members. But on the current record and given the uncertainty when the criminal
19 case will proceed to trial, the Court concludes that exceptional circumstances do not exist
20 to order depositions under Rule 15(a)(1).

21 The Court’s finding that exceptional circumstances do not currently exist does not
22 preclude any Petitioner from renewing his motion under Rule 15(a)(1) with additional facts
23 supporting such a finding. For example, it is unknown at this point when the trial will be
24 set and what circumstances particular to an individual Petitioner may arise in the interim
25 that might support a finding of exceptional circumstances. As such, the Court denies the
26 application without prejudice.

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IV.

CONCLUSION

For the foregoing reasons, the Emergency Ex Parte Petition for Rule 15 Depositions of Foreign Witnesses [Dkt. No. 1] is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: December 16, 2022



Honorable David D. Leshner
United States Magistrate Judge