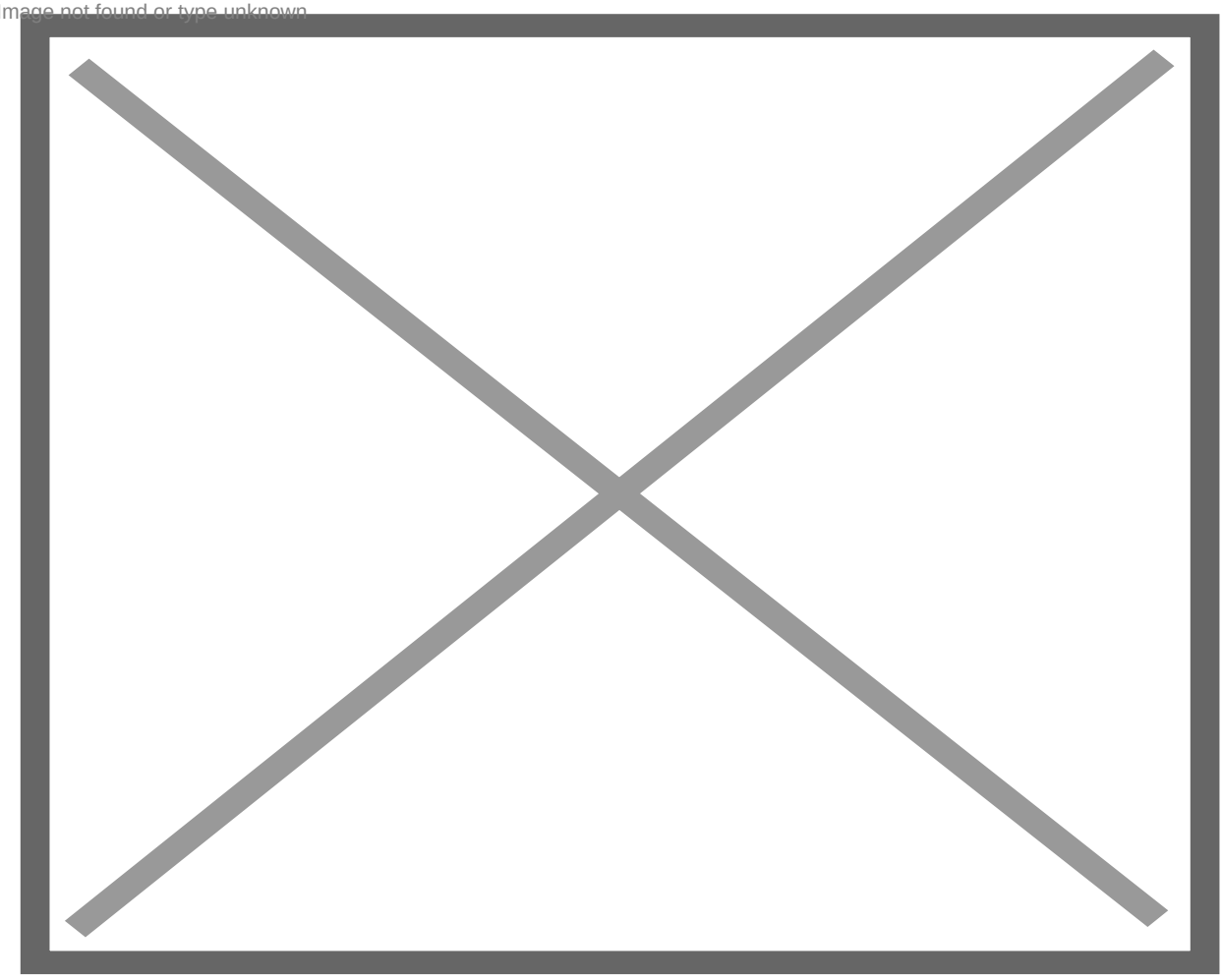
logo Image not found or type unknown

Fahie's Attorney Argues He's Neither a Flight Risk Nor a Danger to the Community as She Prepares for His Thursday Bond Hearing

Caribbean / **Published On May 18, 2022 05:32 PM /**

Janeka Simon May 18, 2022

Image not found or type unknown



Former BVI Premier Andrew Fahie.

The extreme flight risk Andrew Fahie represents exists only in the fevered imaginings of U.S. prosecutors, said defense attorney Theresa Van Vliet as she sought to build her case detailing why her client’s freedom on bond is something the court should allow.

In a filing entered at the beginning of the week, Fahie's counsel contended that the government’s representation of the former British Virgin Islands premier as a flight risk and a danger to the community is not solidly based on the available direct evidence.

Beginning with the foundational presumption of innocence as he stands before the court, the defense notes the absence of the actual money and drugs Fahie is accused of conspiring to traffic and launder. Framing the activities of the government agents as a "ruse and a sting operation," the defense paints as problematic the ability of prosecutors to invoke the statutory presumption that a defendant is a flight risk, because of the quantity of imaginary narcotics involved in said sting operation. Because of this possibility, Van Vliet argued that the statutory presumption should not be weighted as heavily in this case as in others where there is a "substantive offense involving actual importation".

Fahie's attorney further attacked the claims that her client has compelling reason to flee trial, contending that the portentous implications of the allegations and resulting arrest, which have already been realized in the former premier's removal from office, meant that he had an even more compelling reason to stay and fight the charges.

The propensity to flout the law alleged by government prosecutors, Van Vliet went on to say, is currently also tenuously based on a version of events yet to be supported by solid evidence. The filing notes that transcripts of recordings of the conversations referenced in the government case, requested since the beginning of May, have yet to be supplied to the defense. In these conversations with a confidential source of the Drug Enforcement Administration, which in preliminary hearings was attested to as reliable by a witness, Fahie is alleged to have discussed up to 20 years of involvement in criminal activity. However, the defense argues that no evidence of such exists outside of this case to support the allegation of a habitual disregard for the law.

Regarding the question of immunity, Van Vliet clarifies that Fahie is asserting immunity in a personal jurisdiction and as such, what must be considered is which forum is appropriate for the allegations against him to be resolved, rather than whether said allegations are proven. The attorney downplays the since-discredited note from the Premier's Office arguing that such immunity exists, which was included in the defense's initial filings, and concedes that the provenance and veracity of the letter is without consequence in the case as the UK Government is the competent authority in the immunity matter, not the government in its overseas territory.

Because he has not been proven to be a dangerous confederate of smugglers with an extreme and reckless disregard for the law, for whom only continued detention will suffice, Fahie's defense argues that the bond conditions already stipulated are more than sufficient to ensure his presence at trial. Citing a recent case in the District in which the allegations were heinous and evidence on the prosecution side was strong, the defense noted that the court was still able to find conditions that it was satisfied could assure the defendant's presence.

Another case, United States v. Pako 2021, was cited in which that court noted that mitigation of the risk of non-appearance does not need to be absolute, but only sufficient. The Pako court asserted that the Bail Reform Act of 1984 requires courts to accept the risk of, on the margins, releasing a dangerous person vs detaining a non-dangerous one when it comes to the decision on bail or bond.

This sentiment, Van Vliet argues, should prevail when it comes to this court's consideration of whether Andrew Fahie should continue to be detained. The $500,000 bond already laid out for the former premier is already the most restrictive possible, and the conditions attached, including 24-hour house arrest with electronic monitoring and limited valid opportunities to leave the residence, provide authorities with oversight of his every movement. She contends that his ties to the district are strong, contrary to assertions from prosecutors, who did not acknowledge in their arguments that his two daughters are U.S. citizens who would also be required to remain in the U.S. as a

condition of the bond. Indeed, the defense counsel argues that this district is perhaps the only place in which the defendant has such family ties, as a clandestine return to the BVI would only open him up to the risk of prosecution in that jurisdiction.

In addition to these arguments in favor of Fahie being offered bond, van Vliet claims that prevailing conditions at the federal detention facility where he is being held are hindering the ability to quickly prepare a competent defense. The former premier has been moved from the special housing unit he was in immediately following his arrest, and is now in the general population of detainees. Attorney visits are limited to 1 hour per day between the hours of 7:00 a.m. to 2:00 p.m. on weekdays, and there are reportedly only six visitation rooms adequate for a review of the type of evidence involved in the case. Further, family visits have been suspended since last Friday, with rising cases of Covid-19 cited as the reason.

The hearing, which will determine whether the defense or prosecution’s arguments prevail in the court’s consideration of bond for Andrew Fahie, is scheduled for Thursday at 9:00 am.