

Office of the Attorney General  
Washington, D. C. 20530

November 17, 2009

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

Re: *United States v. Robert Solomon*, No. 5:09-CR-04024-DFO (N.D. Iowa)

Dear Madam Speaker

Pursuant to 28 U.S.C. § 530D, I am writing to advise you of proceedings in a case involving the constitutionality of mandatory conditions of release under the Adam Walsh Act for a defendant charged with transporting child pornography. The district court held that mandatory electronic monitoring and curfew conditions violated procedural due process and remanded to the magistrate judge to determine whether those conditions should remain in effect based on the facts and circumstances of this case. The United States Attorney notified the Criminal Division of the Department of Justice of the district court's original ruling, but the Division determined that there was no final order to be appealed at that time. On further proceedings, the magistrate judge subsequently ruled, based on an individualized consideration in this case, that electronic monitoring was warranted but a curfew was not. The United States Attorney's Office did not then appeal to the district court, nor did it bring the magistrate judge's ruling to the attention of the Criminal Division in time for it to initiate the process to authorize an appeal. To avoid any similar situation occurring in the future, the Criminal Division has issued guidance to all federal prosecutors instructing them to bring all such matters to the Criminal Division's attention so that it can ensure that appeals are appropriately taken and authorized. The government will of course continue to defend the constitutionality of the Adam Walsh Act in other cases, despite the district court's decision in this case (a copy of which is enclosed).

Between November 2007 and June 2008, defendant Robert Solomon sent images of child pornography to 15 people. In April 2009, he was charged with possessing and transporting child pornography, in violation of (*inter alia*) 18 U.S.C. § 2252A(a)(1). In May 2009, he appeared before a magistrate judge for a detention hearing. The magistrate judge ordered Solomon's pretrial release, on several conditions, including that: he could not have contact with anyone under the age of 18 without prior written consent of his probation officer; he would have to submit to random, unannounced computer searches and monitoring; he would be electronically monitored at all times via Global Positioning System tracking; and he would have a curfew. The latter two conditions were imposed pursuant to a provision of the Adam Walsh Act requiring that any defendant charged with transporting child pornography and placed on pretrial release be ordered to comply with certain minimum conditions, including electronic monitoring and a curfew. See 18 U.S.C. § 3142(c).

In June 2009, Solomon moved the district court to remove the electronic-monitoring and curfew conditions, arguing that the Adam Walsh Act's mandatory imposition of those two conditions

The Honorable Nancy Pelosi

Page 2

violates the Due Process Clause of the Fifth Amendment. The government opposed the motion. The district court concluded that the mandatory electronic-monitoring and curfew conditions, as applied to Solomon, violated procedural due process by not requiring an individualized hearing on the need for the conditions. But the court did not remove the conditions. Instead, the court remanded to the magistrate judge for a determination of whether the conditions were necessary in this case to protect the public and to ensure that Solomon would appear in court. The United States Attorney notified the Criminal Division of that decision, and the Division determined that the decision was not a final order subject to appeal.

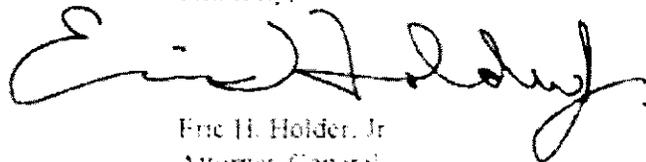
In August 2009, the magistrate judge held a supplemental detention hearing for the purpose directed by the district court. The judge noted that Solomon has a good employment history and currently has a full-time job. Acknowledging that Solomon had been on pretrial release for several months and that, during that time, he had abided by all conditions of his release, the judge nevertheless left the electronic-monitoring condition in place, concluding that it would protect the public and ensure Solomon's appearance in court. Believing, however, that a curfew would not in this case further the community-protection and appearance purposes that electronic monitoring would already serve, the judge modified the earlier release order to remove the curfew condition. The United States Attorney's Office did not file a notice of appeal from the magistrate judge to the district court within the ten-day time period allowed to appeal, nor did it notify the Criminal Division within that period so that it could initiate the process to authorize an appeal.

On October 15, 2009, Solomon pleaded guilty to all three counts in the indictment, including two counts of transportation of child pornography. The district court accepted his plea, but reserved ruling on finding him guilty. At the government's request, the court also imposed a curfew, so that Solomon is now subject to all of the mandatory Adam Walsh Act conditions.

The Department has defended the constitutionality of the amendments to 18 U.S.C. § 3142(c) added by the Adam Walsh Act, and it will continue to do so, including by seeking appellate review. The Criminal Division of the Department of Justice has instructed all federal prosecutors to bring such matters to its immediate attention so that it may ensure that appeals are properly authorized and taken.

Please let me know if we can be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric H. Holder, Jr.", written in a cursive style.

Eric H. Holder, Jr.  
Attorney General

Enclosure