

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 05-cr-00545-MSK-01

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH P. NACCHIO,

Defendant.

**ORDER DENYING DEFENDANT’S EMERGENCY MOTION FOR CONTINUED
RELEASE PENDING SUPREME COURT RESOLUTION OF A PETITION FOR
CERTIORARI, AS PREMATURE**

THIS MATTER comes before the Court on Defendant’s Emergency Motion for Continued Release Pending Supreme Court Resolution of a Petition for Certiorari (#538) filed March 11, 2009. In it, the Defendant asks for 1) determination of the Motion by the Court by March 16, 2009; and 2) bail pending the filing and determination of an anticipated Petition to the United States Supreme Court requesting a Writ of Certiorari.

Upon review of the Motion, the Court finds that:

- 1) Defendant seeks relief solely under the Bail Reform Act of 1984, 18 U.S.C. § 3143(b) “pending Supreme Court action on a petition for certiorari;”
- 2) Defendant offers no other authority for the relief requested;
- 3) By its express terms, 18 U.S.C. § 3143(b) allows consideration of a bail request only after the petition of certiorari has been filed.

the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who **has filed** an appeal or

a petition for a writ of certiorari, be detained, unless the judicial officer finds [specific grounds]; and

4) According to the Motion, no petition has yet been filed. Therefore, the Motion must be denied as premature.

IT IS THEREFORE ORDERED that:

- 1) The request for expedited determination by March 16, 2009 is **GRANTED**.
- 2) The request for bail pursuant to 18 U.S.C. § 3143(b) is **DENIED**, without prejudice.

DATED at Denver, Colorado, this 11th day of March, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style with a dot over the 'i' in "Krieger".

Marcia S. Krieger
United States District Judge