

and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. The State must prove two things:

- a. The defendants are a danger to the community or to any other person and
 - b. No conditions of release will insure the safety of the community.
2. Unless the State proves these two prongs by clear and convincing evidence, the New Mexico Constitution requires the Court to set reasonable release conditions.
 3. Clear and convincing evidence means evidence that instantly tilts the scales in the affirmative when weighed against the evidence in opposition so that the fact finder's mind is left with an abiding conviction that the evidence is true. It is an extremely high standard of proof and the State has failed to meet this standard.
 4. The Court frequently reminds juries that they are not to consider anything except the evidence presented within the four walls of the Courtroom. Here, the State apparently is inviting the Court to consider media reports (that the Court has made an effort to avoid), conjecture and assumption and to piece together evidence sufficient to determine significant dangerousness.
 5. The Court authorized three search warrants in this underlying case. The Court was aware, from search warrant affidavits, that there were allegations about the starvation of the children, about the multiple hazards within the "compound", and the lack of medical, dental or other care that the children allegedly suffered. The State produced no such evidence in Court. The State produced no evidence of the condition of the children at the time they were taken from the compound. There were no medical reports regarding their condition, there were no witness Statements regarding their

conditions. The charges in all these cases are for child abuse. The State produced no evidence of any abuse.

6. All 11 children who were at the "compound" at the time the warrant was executed are in the protective custody of the State. The Court has no information and none was presented as to their current conditions. The adults' access to the children will be controlled by CYFD.
7. There was evidence that one child died in the custody of the defendants. This child was the child of Shirraj Ibn Wahhaj. Evidence was presented that the child was taken from the State of Georgia by Mr. Wahhaj. Siraj Ibn Wahhaj is held on a detainer from Georgia and will not be released. No charges have been filed by the State regarding this child. The only evidence received by the Court regarding this child is that he was ill and disabled and that the defendants prayed over him and touched him on the forehead prior to his death. There was evidence to suggest that he had seizures. However, no evidence was presented to the Court regarding the child's cause of death. The child may not have received adequate medical attention. However, no evidence regarding the child's medical history, medical needs or medical attention, or lack thereof was propounded by or even referred to by the State. While the Court finds these allegations extremely disturbing, the allegations, without more, do not rise to the level of evidence that clearly convinces the Court that the defendants are a danger to any other person (all other children are in the custody of the State) or to the community at large.

8. The State has not charged any of the defendants with any crime related to the death of the child. The State has not charged the defendants with any crime related to the possession of any firearms. No charges are pending regarding any actual threats of terrorism. No actual threats of terrorism or any credible evidence of a substantive plan was produced regarding the same.
9. All defendants are charged with eleven counts of child abuse. In addition, defendant Siraj ibn Wahhaj is charged with being a fugitive from justice. Defendant Morton is charged with harboring a fugitive.
10. The State produced no evidence regarding the condition of the children who were found at the "compound" in Amalia. The Court is aware that all 11 children are in protective custody and are not in the custody of their parents. From the Court's own authorization on probable cause of search warrants, the Court is aware that the State is alleging that the adults subjected the children to unhealthy and perhaps dangerous living conditions. However, at the detention hearing the State did not produce any evidence of these allegations.
11. The State produced evidence that there were weapons found at the compound. None of the weapons were stolen or illegal. All of these weapons are available for purchase at retail outlets. The State produced evidence that the firearms were in the proximity of the children. This would be a dangerous condition if the children continued to reside in the compound. There is no current threat to the safety or well-being of the children.
12. There was evidence produced that two of the children were being trained in the use of firearms and that there was a firing range on the "compound." The State conceded that

any children exposed to firearms should be trained in their use. The firearm culture is a significant aspect of American life and individuals' rights to keep and bear arms for their own use has been zealously guarded by many groups. The proximity of weapons to the children who resided in the "compound" troubles this Court. The Court does not find that this establishes the defendants' dangerousness for the purpose of this hearing; the children are now in protective custody. The State offered a hand-written "manifesto" of sorts but completely failed to establish in any way its origin. Although the rules of evidence are relaxed in detention hearings the State must produce indicia of reliability and authenticity of evidence it wishes the Court to consider. This was not done. The Court is unable to accept or consider this proffered evidence because of the failure of the State to even establish its origins.

13. Two or more of the children allegedly made Statements that the family had a philosophy that the child who died would be resurrected as Jesus and would then give instructions to the family about elimination of corrupt aspects of society. There was other evidence obtained from the compound indicating interest in recovery from the trauma of war (a publication available on Amazon.com) and in the construction of weapons. As the Court indicated from the bench, all this information is troubling and unusual but it is not clear and convincing evidence of dangerousness. From this meager evidence the Court is requested by the State to surmise that these people are dangerous terrorists with a plot against the Country or institutions. The Court may not surmise, guess or assume.

14. All of the defendants are between their late thirties and early forties. The State did not establish that any of the defendants has a criminal history or a history of failures to appear at Court hearings nor did they attempt to establish such facts. The State did not produce any evidence of any history of violence that would cause the Court to conclude that they are a danger to the community or are unlikely to appear at hearings or to abide by their conditions of release.

15. The defendants are apparently of the Muslim faith. Siraj ibn Wajjah made a trip to Saudi Arabia last year. (The State admitted that observant Muslims by their faith are required to visit Mecca once in their lifetimes.) The Court was asked by the State to make a finding of dangerousness and a finding that no conditions of release could insure the safety of the community. The State apparently expected the Court to take the individuals' faith into account in making such a determination. The Court has never been asked to take any other person's faith into account in making a determination of dangerousness. The Court is not aware of any law that allows the Court to take a person's faith into consideration in making a dangerousness determination.

16. The State alleged that the defendants were teaching the children to participate in school shootings. If the State has additional evidence to support its claims of dangerousness, the State is invited to provide it to the Court in the form of a supplemental motion. There was no evidence produced in Court to support this assertion.

17. The State has not proved by clear and convincing evidence that there are no release conditions or combination of conditions that will reasonably protect the safety of any other person or the community if the Defendants are released pending trial.

18. The Court is aware that it will receive criticism about this decision. The canons of judicial ethics require that judges not concern themselves with public opinion and base their decisions on the law and the evidence presented in Court. The defendants are innocent until they are proved to be guilty beyond a reasonable doubt. They are entitled by law to be released upon reasonable conditions which protect the community and reasonably assure their future appearance in Court. Law enforcement has worked tirelessly and, in the Court's view, honorably, in investigating these matters. In Court, the burden was on the prosecution to prove its case and it did not do so. For that reason, the Court has denied the motion for detention without bond.

19. **Conditions of release as to all defendants:**

- a. **Post a \$20,000 appearance bond;**
- b. **Defendants will be on house arrests;**
- c. **All defendants will be fitted with an electronic monitor with monitoring 24 hours per day prior to release. The monitoring agency will provide immediate reports to law enforcement if there are any violations;**
- d. **Provide an address where residing prior to release;**
- e. **No contact with the children except for supervised contact at the discretion of CYFD;**
- f. **No possession of firearms or other deadly weapons;**
- g. **No possession or consumption of alcohol or illegal drugs;**
- h. **No discussion of the case with each other or with any other persons with the exception of their attorneys;**

- i. No contact with any of the State's witnesses in this case except as outlined above;
- j. Do not leave Taos County, New Mexico without permission of the Court;
- k. Attend all future hearings in this matter;
- l. Maintain at least weekly contact with attorneys; and
- m. Defendants are not to visit the "compound" in Amalia, New Mexico.

IT IS SO ORDERED:



DISTRICT COURT JUDGE

Copies to:
Defendants' Attorneys
Prosecuting Attorneys
Detention Center