

SHER TREMONTE LLP

September 14, 2018

**VIA ECF**

Honorable Nicholas G. Garaufis  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *United States v. Raniere, et al.*, 18 Crim. 204 (NGG)**

Dear Judge Garaufis:

We write on behalf of Kathy Russell to respectfully request that the Court rescind or modify the no-contact provision of her bond. We join the legal arguments made by counsel to Clare Bronfman (*see* Letter dated Sept. 7, 2018 (ECF No. 126)), but write separately to address the particular burdens the no-contact provision places on Ms. Russell.

The no-contact provision provides that Ms. Russell “must avoid all contact” with “any current or former employees or independent contractors of or for NXIVM (including any and all affiliated entities) or with any individual who is currently or was formerly on the stripe path, subject to reasonable exceptions agreed upon by the parties.” (*See* ECF No. 110). It is estimated that the number of individuals that fall within this category ranges from several hundred to over a thousand. While the government has repeatedly asserted that no-contact provisions are routine in a RICO prosecution, here the scope of the no-contact provision bears no relation to the charged enterprise – the alleged “inner circle” of trusted advisors to Keith Raniere. (Superseding Indictment ¶ 3 (ECF No. 50)). Notably, NXIVM is not itself charged as a criminal enterprise, a point the government has conceded. (Letter dated Aug. 21, 2018 (ECF No. 112 at 4)). Yet the current no-contact provision prevents Ms. Russell from having contact with anyone who ever associated with the organization, including hundreds of people who have nothing to do with the allegations in the Indictment and whose only contact with the organization may have been enrollment in a series of courses.

While the government has consented to Ms. Russell communicating with the two sureties who signed a bond and posted cash security on her behalf (only one of whom lives in the Albany area), the broad and unlimited no-contact provision has effectively

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deprived Ms. Russell of her ability to see or talk to her close personal friends. In 2002, Ms. Russell moved to Albany from Alaska to work for NXIVM. She has lived in Clifton Park ever since, and nearly all the relationships she has formed over the past 16 years have been with individuals affiliated with NXIVM. She is divorced, and her adult son lives out of state. In fact, she is in regular contact with only one family member – a sister who also does not live in New York. Thus, because Ms. Russell communicates only with two friends and one of her sisters, the no-contact provision has dramatically isolated her. Simply put, during the most stressful and trying period of her life, Ms. Russell is alone most days and nights.

The no-contact provision has also effectively deprived Ms. Russell of her ability to work and earn a living. Ms. Russell has few economic resources. Prior to losing her job as a result of the bond conditions in this case, she was making \$27 per hour. She is barred from working at NXIVM, even though the company has asked that she consult with outside counsel and accountants to assist them in closing the books on several non-active entities and in complying with its tax obligations. She also cannot continue her freelance bookkeeping work, as almost all of her individual clients were at one time associated with NXIVM. Thus, if the current bond conditions remain in place, not only will Ms. Russell endure the trauma of this prosecution alone, she will go broke.

While Ms. Russell initially consented to the no-contact provision as part of a negotiated bond, such consent was given with the expectation that she could subsequently request and obtain the government's consent to have contact with close friends, despite their connection to NXIVM. However, after it became clear that the individuals who had come forward for Ms. Russell were subjected to unwanted media attention and heightened scrutiny from their employers and perhaps law enforcement, Ms. Russell now objects to any condition of release that requires *her* to identify the individuals with whom she wishes to have contact. Plainly, doing so will simply put those individuals on the FBI's interview list, and earn them an entry on Frank Parlato's blogs, Artvoice and Frank Report.

Moreover, given the foundational nature of a defendant's right to associate freely, it is unfair to place the burden on Ms. Russell to identify the individuals with whom she seeks to have contact, as well as to justify her need to associate with them. Under the Excessive Bail Clause of the Constitution, a condition of release can violate the Eighth Amendment if it is "excessive" in relation to the government interest it is designed to protect. *See United States v. Salerno*, 481 U.S. 739, 754 (1987). Accordingly, it is the government's burden to set forth particularized evidence to justify a no-contact order, particularly when associational rights are at stake. *See United States v. Arzberger*, 592, F. Supp. 2d 590, 603-04 (S.D.N.Y. 2008); *United States v. Lillimoe*, No. 3:15-cr-25 (JCH), 2015 WL 9694385, at \*2 (D. Conn. May 28, 2015) (holding that determination whether no-contact restriction is appropriate must be based on "particularized evidence" and an "'individualized determination' of the need for the restriction").

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In light of the draconian impact of the no-contact provision and corresponding de-facto employment bar on Ms. Russell, and the fact that these conditions are unnecessary either to ensure her appearance in court or to protect the public, no particularized showing can be made to justify the broad restrictions currently in place. Ms. Russell has no ability or desire to control or manipulate potential witnesses, and there are no allegations that she directed or controlled any litigation on behalf of the company. Indeed, the charges against Ms. Russell are extraordinarily limited: committing identify theft by providing a false identification document to an alien crossing the Canadian-US border in 2004 and conspiring to unlawfully access the email of an unidentified individual (“John Doe 1”) between 2006 and 2008. Given the discrete nature of the specific charges against Ms. Russell, as well as the fact that they allegedly took place more than ten years ago, there is no legal or factual basis to require Ms. Russell to justify her need to associate with a given individual when the government has failed to establish any legitimate interest in preventing such contact in the first place.

In short, as to Ms. Russell, the no-contact provision is punishing in its effect, both emotionally and economically. We therefore respectfully request that the Court either rescind the no-contact provision or require the government to identify the specific individuals with whom Ms. Russell should not have contact and proffer particularized evidence justifying the need for such restriction.

Respectfully submitted,

/s/ Justine A. Harris

Justine A. Harris

cc: All Counsel (via ECF)