

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 99-1417 JP

WEN HO LEE,

Defendant.

**ORDER**

On July 21, 2000, Defendant filed “Renewed Motion of Dr. Wen Ho Lee For Pretrial Release” (Doc. No. 114). On August 4, 2000, the Government filed a response opposing Defendant’s motion. At the request of the attorneys, a hearing was scheduled for one-half day on the morning of Wednesday, August 16, 2000, the earliest date that the lawyers and witnesses were available and there was an open morning on the court calendar. The parties took considerably longer than anticipated to present their information to the Court and the hearing lasted three full days, Wednesday, August 16 through Friday, August 18, 2000. This has delayed completion of the transcript of the hearing which must be prepared under secured conditions at the United States Courthouse on weekends and evenings. Likewise, I must read the transcript of the hearing only in secured conditions at the United States Courthouse. Consequently, it has not been possible to prepare a Memorandum Opinion, which must be filed with the filing of an Order Setting Conditions of Release. However, enough of the transcript of the most recent hearing has been prepared and reviewed by me to permit the announcement of a ruling at this time, prior to completion and the filing of a Memorandum Opinion and final form of Order Setting Conditions of Release.

I have concluded that the totality of relevant information made available to me at the three-day hearing during December, 1999, and subsequently in documents relating to the case that I have reviewed *in camera* and otherwise, and at the three-day hearing of August 16-18, 2000, no longer has the requisite clarity and persuasive character necessary to overcome the statutory bias that distinctly favors pretrial release on conditions. I conclude that there now is a combination of conditions that will reasonably assure the appearance of Dr. Lee as required and the safety of the community and the nation.

Highly restrictive conditions of release, like those set forth in the attached draft of an Order Setting Conditions of Release, will satisfy the statutory requirement. A hearing will be scheduled on August 29, 2000 at which the parties may discuss the conditions of release proposed in the draft Order Setting Conditions of Release and at which they may suggest alternative or additional conditions.

IT IS ORDERED THAT:

1. The "Renewed Motion of Dr. Wen Ho Lee for Pretrial Release" (Doc. No. 114) is granted;
2. A hearing on conditions of release is scheduled at 9:30 a.m. on Tuesday, August 29, 2000.

  
UNITED STATES DISTRICT JUDGE

# DRAFT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 99-1417 JP

WEN HO LEE,

Defendant.

## ORDER SETTING CONDITIONS OF RELEASE

On August 24, 2000, the Court entered an Order that granted the Renewed Motion of Dr. Wen Ho Lee for Pretrial Release and scheduled a hearing on conditions of release. On August 29, 2000, the Court held a hearing on conditions of release.

The Court finds that the following conditions of release should be imposed:

1. Don and Jean Marshall, whose residence is next door to that of Dr. Lee in White Rock, New Mexico, must serve as third-party custodians of Dr. Lee during pretrial release. Either or both of them may enter Dr. Lee's residence to perform their responsibilities as custodians.
2. Dr. Lee must be in home detention at his residence, 80 Barcelona Avenue, White Rock, New Mexico at all times, with electronic monitoring by United States Pretrial Services, with the following exceptions:
  - (a) Dr. Lee may leave his home in the company of at least one of his attorneys to travel to the United States Courthouse or to Los Alamos National Laboratories to work on the preparation of Dr. Lee's defense in designated

DRAFT

# DRAFT

secured areas at those places. Before leaving his home in the company of an attorney and upon returning to his home in the company of an attorney, Dr. Lee must notify Pretrial Services of his departure and return. At all times while away from his residence under this exception, Dr. Lee must be in the company of at least one of his attorneys.

(b) Dr. Lee may be taken by one or both of the third-party custodians to a medical facility in Los Alamos, New Mexico for emergency medical treatment, should that become necessary.

3. Only Dr. Lee's wife, Sylvia Lee, may reside with Dr. Lee at his residence, 80 Barcelona Avenue, White Rock, New Mexico.
4. Dr. Lee's children may visit their parents at the residence, 80 Barcelona Avenue, White Rock, New Mexico, during daytime, but only after the visits are prearranged with Pretrial Services and federal law enforcement agencies, who may have a representative present during the visits.
5. Mrs. Sylvia Lee may leave the residence at 80 Barcelona Avenue, White Rock, New Mexico only after notifying United States Pretrial Services and designated federal law enforcement agencies advising them of the time of departure and anticipated time of return, destination, and purpose of her trip. A representative of the law enforcement agencies may search Mrs. Lee upon her departure and return.
6. Prior to Dr. Lee being released to his residence, federal law enforcement agencies may thoroughly search the premises at 80 Barcelona Avenue, White Rock, New Mexico.

DRAFT

## **DRAFT**

7. Computers, cellular telephones, and all other electronic means of communication, with the sole exception of a single telephone which can be used for electronic monitoring, must be removed from the residence before Dr. Lee is released to reside there and those items must be kept out of the residence.
8. Telephone calls initiated from the sole telephone that will be permitted at 80 Barcelona Avenue, White Rock, New Mexico will be restricted to calls to United States Pretrial Services, to attorneys for Dr. Lee, or to report an emergency.
9. Dr. Lee in the presence of one of the third-party custodians must report daily by telephone to the United States Pretrial Services Office between 8:00 and 9:00 a.m. and 7:00 and 8:00 p.m.
10. Federal law enforcement agencies may, if they choose, monitor twenty-four hours a day the telephone communications over the single telephone that will be permitted in the residence at 80 Barcelona Avenue, White Rock, New Mexico, and may immediately electronically block any communications that appear to involve the missing information that Dr. Lee downloaded onto tapes or other sensitive scientific information.
11. All mail received at 80 Barcelona Avenue, White Rock, New Mexico, and all mail sent by Dr. Lee or Mrs. Sylvia Lee may be inspected by federal law enforcement agencies.
12. Dr. Lee may be released to his residence at 80 Barcelona Avenue, White Rock, New Mexico only after posting a bond in the amount of One Million Dollars (\$1,000,000.00) secured by the assets of Dr. and Sylvia Lee, Don and Jean

**DRAFT**

# **DRAFT**

Marshall, and Lucky and Patty Lee pledged as shown on Exhibit J to the August 16-18, 2000 hearing. The owners of the property given as security for the bond must agree, in writing, to forfeiture of the property if Dr. Lee fails to appear at any court proceeding, as required, or violates any other condition of his release.

---

UNITED STATES DISTRICT JUDGE

**DRAFT**