

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2066

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CLIFTON GIBBS,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES' OPPOSITION TO APPELLANT'S RULE 9(A)
MOTION REGARDING PRETRIAL DETENTION

Defendant-appellant Clifton Gibbs faces nine counts of sex trafficking by force, fraud, or coercion, six counts of forced labor, and one count of transportation for the purpose of prostitution, for manipulating and coercing 13 vulnerable victims into engaging in commercial sex acts and manual labor for his financial benefit. Given his alleged pervasive and egregious criminal conduct, and the findings by each court that no condition or combination of conditions would reasonably assure the public's safety, both the federal magistrate judge and the district court ordered that Gibbs remain detained in federal custody pending trial.

Those fact-bound rulings correctly applied the federal Bail Reform Act, which creates a presumption of detention when the charged offenses involve forced labor or sex trafficking by force, fraud, or coercion (or both, as in this case). Even assuming for purposes of this appeal that Gibbs rebutted that presumption, the district court properly ordered his continued pretrial detention based on the facts and record in this case. The district court also correctly concluded that Gibbs’s continued detention comports with due process under this Court’s decision in *United States v. Accetturo*, 783 F.2d 382, 388 (3d Cir. 1986). This Court should thus affirm the district court’s pretrial detention order and deny Gibbs’s request for relief.

BACKGROUND

A. Factual Background¹

1. Gibbs’s Scheme Manipulating And Coercing Vulnerable Victims

From 2014 to 2020, Gibbs and his co-defendant Brooke Waters ran a well-organized scheme that targeted vulnerable, drug-addicted women and coerced them into engaging in commercial sex and labor for Gibbs’s and Waters’s benefit.

¹ This section details the alleged facts based on the evidence the United States proffered during the proceedings below. Citations to “Doc. __, at __” refer to the page number of the filing in the district court by docket number. “Mem. __” refers to the page number of Gibbs’s Memorandum in this appeal. “App. __” refers to the page number of Gibbs’s Appendix containing Exhibits A, B, and C in this appeal.

Doc. 20, at 12. Gibbs met and recruited the victims by asking current or potential victims about their female friends; by searching known drug locations like trap houses in known drug neighborhoods; by meeting victims at gas stations and diners and asking about their drug history; and by reaching out to women via social media. *Id.* at 7. After initiating conversations with the victims about their drug use and living situation, Gibbs brought them to one of his properties, where he gave them drugs and promised to supply them with more drugs, housing, and food “for free.” *Id.* at 7-8.

Gibbs subsequently told the victims that the drugs, housing, and food were “not free” and directed them to perform commercial sex dates, steal goods from local stores, and perform manual labor for him. Doc. 20, at 8. Waters took photos of the victims for posting on the Backpage.com website (Backpage) and instructed them on what items to steal. *Ibid.* Gibbs took all the money victims made from their commercial sex acts, exchanged drugs for the items they stole (that he and Waters would use or resell), and required them to perform manual labor on his properties for his and Waters’s benefit. *Id.* at 8, 11. On the rare occasion that Gibbs and Waters allowed the victims to keep the money they earned, Gibbs generally required them to pay all of it to him for drugs, rent, or both. *Id.* at 8. Gibbs often would withhold drugs from the victims if their work was not

completed to his satisfaction, which triggered opiate withdrawal sickness. *Id.* at 8-9.

Gibbs and Waters kept the victims isolated from their family and each other and controlled their movements and communications by imposing and enforcing restrictive rules that limited their contact with outsiders apart from the arranged commercial sex acts. Doc. 20, at 9-10. Gibbs and Waters further used threats of physical violence (including brandishing a firearm) to victims or their family members, actual physical violence (including punching and choking), sexual assault, emotional abuse, and threats of other types of harm to prevent the victims from leaving or cooperating with law enforcement. *Id.* at 9, 21-22. Victims were also compelled to stay based on the strength of the drug addictions Gibbs had fostered and their related fear of withdrawal. *Id.* at 10.

2. Investigation Into Gibbs And His Arrests

In February 2015, Homeland Security Investigations (HSI) arrested Gibbs and Waters for drug possession and interviewed two victims with whom they were traveling. Doc. 20, at 1-2. The victims told investigators that Gibbs and Waters posted advertisements of them on Backpage for commercial sex in exchange for drugs and a place to stay. *Id.* at 2. Gibbs acknowledged that the Backpage photos appeared to be taken inside one of his homes but claimed that he did not know who took the photos and denied any involvement in prostitution activities. *Ibid.* The

revelations of the two victims, however, raised suspicions that Gibbs and Waters might be coercing the women to engage in commercial sex acts. *Ibid.*

These suspicions were heightened when in January 2016 HSI arrested Gibbs with another victim after an undercover police officer answered a backpage advertisement. Doc. 20, at 2. A now-deceased victim who was arrested in an unrelated police operation the same night claimed that she formerly worked for Gibbs and made similar allegations to the two women HSI had earlier interviewed. *Ibid.* She also provided the names of other women she knew who worked for Gibbs under similar circumstances. *Ibid.* After interviewing several of these women, HSI contacted federal prosecutors and continued its investigation into Gibbs's activities. *Id.* at 2-3.

The investigation waned due to the deaths of several of the victims and the difficulty in reaching the others. Doc. 20, at 3. In 2018, local law enforcement alerted HSI to three victims connected to Gibbs who were involved in a string of retail thefts. *Ibid.* Interviews with two of the victims informed the investigators that Gibbs was using the same coercive methods he employed against the earlier women to compel these victims to steal expensive goods for him to resell. *Ibid.* One victim also disclosed that Gibbs coerced her into performing commercial sex acts at one of his properties—a fact that another victim corroborated. *Ibid.* The investigation further intensified in January 2021 when the victim who was

traveling with Gibbs during his 2016 arrest called the National Human Trafficking Hotline to report being trafficked by Gibbs. *Ibid.*

After additional investigation, Gibbs was arrested on the instant charges in May 2023. Doc. 11.

B. Procedural History

In April 2023, a federal grand jury in the District of Delaware returned a 17-count indictment against Gibbs and Waters, charging both of them with nine counts of sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. 1591; six counts of forced labor, in violation of 18 U.S.C. 1589; and one count each of interstate transportation for purposes of prostitution, in violation of 18 U.S.C. 2421. Doc. 3. Gibbs pleaded not guilty to all counts. App. 4.²

In May 2023, a magistrate judge held a contested detention hearing and ordered Gibbs detained pending trial, concluding that the government proved by clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the safety of any other person and the community. Doc. 22, at 2-3. Ruling from the bench, the magistrate judge found that the statutory factors relevant to this determination—the nature and circumstances of the charged offense, the weight of the evidence against the defendant, the

² Waters pleaded guilty to one count each of sex trafficking, forced labor, and interstate transportation for purposes of prostitution. App. 4.

defendant's history and characteristics, and the nature and seriousness of the danger to any person or the community posed by the defendant's release—all weighed in favor of Gibbs's pretrial detention. App. 42-46 (citing 18 U.S.C. 3142(g)).³

In May 2024, Gibbs, proceeding *pro se* with standby counsel, requested rehearing as to his detention order in front of the district court and further challenged his pretrial detention as violating due process under *United States v. Accetturo*, 783 F.2d 382, 388 (3d Cir. 1986). Doc. 123; App. 7. The district court conducted a hearing and denied Gibbs's release pending trial. App. 2. First, the court found clear and convincing evidence under the factors set forth in 18 U.S.C. 3142(g) that no pretrial condition or combination of conditions could reasonably assure the safety of any person and the community. *Id.* at 7-14. Second, the court concluded that the three additional *Accetturo* factors—the length of the detention, the complexity of the case, and whether any party has added needlessly to that complexity—examined together with the statutory factors did not show that Gibbs's continued pretrial detention violated due-process principles. *Id.* at 14-17.

³ Gibbs was represented by appointed counsel at the detention hearing before the magistrate judge. Doc. 13. He subsequently elected to proceed *pro se* and was appointed a different standby counsel. Doc. 87.

DISCUSSION

This Court should affirm the district court's pretrial detention order denying Gibbs's request for bail. This Court exercises a deferential plenary review of the district court's order denying bail, "giv[ing] the reasons articulated by [the] trial judge[] respectful consideration," and reversing only "if, after careful assessment of the trial judge's reasoning" and evidence the parties proffered, it "independently reaches a conclusion different from that of the trial judge." *United States v. Delker*, 757 F.2d 1390, 1400 (3d Cir. 1985); *see also United States v. Roeder*, 807 F. App'x 157, 160 (3d Cir. 2020) (same). Under this deferential standard of review, this Court should find that the district court correctly determined under the specific facts of this case that no condition or combination of conditions of pretrial release would reasonably assure the public's safety, and that Gibbs's pretrial detention does not violate his due-process rights.

I. The district court properly determined that Gibbs remains a danger to the community.

In ordering Gibbs detained, the district court faithfully followed the Bail Reform Act, which requires a federal court to detain a defendant pending trial where the court determines that "no condition or combination of conditions [of pretrial release] will reasonably assure . . . the safety of any other person and the

community.”⁴ 18 U.S.C. 3142(e). The Bail Reform Act creates a rebuttable presumption of detention in cases like this one, where probable cause exists that the defendant engaged in forced labor, in violation of 18 U.S.C. 1589, or sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. 1591, or both. 18 U.S.C. 3142(e)(3)(D) (covering Chapter 77 offenses, including both Section 1589 and 1591, that have maximum terms of imprisonment of 20 years or more). To rebut the presumption, the defendant must “produce some credible evidence forming a basis for his contention that he . . . will not pose a threat to the community.” *United States v. Carbone*, 793 F.2d 559, 560 (3d Cir. 1986) (per curiam).

If a defendant produces sufficient evidence rebutting the presumption of dangerousness—as the district court assumed without deciding here (App. 8)—the government must establish by clear and convincing evidence that the defendant remains a danger to the community. *See* 18 U.S.C. 3142(f); *United States v. Perry*, 788 F.2d 100, 114-115 (3d Cir. 1986). “[T]he presumption ‘remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence.’” *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting

⁴ The Bail Reform Act also authorizes a federal court to order a defendant’s detention pending trial where “no combination of condition or conditions will reasonably assure the appearance of the person as required.” 18 U.S.C. 3142(e). The United States did not seek detention on this ground. Doc. 20, at 4 & n.2.

United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986)). A court should consider four factors to determine whether the government can show by clear and convincing evidence that no condition or combination of conditions can assure the community's safety from defendant's future dangerousness:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the defendant; and
- (4) the danger to any person or the community posed by the defendant's release.

18 U.S.C. 3142(g); *see Perry*, 788 F.2d at 106 & n.3. Here, all four factors support Gibbs's continued pretrial detention.

A. The nature and circumstances of the offense supports detention.

Section 3142(g) defines the nature and circumstances of the offense to include "whether the offense is a crime of violence, *a violation of section 1591*, . . . or involves . . . a controlled substance, firearm, explosive, or destructive device."

18 U.S.C. 3142(g)(1) (emphasis added). Gibbs's years-long coercion of 13 vulnerable, drug-addicted victims into engaging in commercial sex acts, manual labor, or both, for his benefit is serious conduct that reflects his cruel manipulation of members of his community for his personal gain. Gibbs used the threats of opiate withdrawal and of physical violence (including brandishing a handgun), and actual physical violence (including rape, punching, and choking), to prevent his

victims from leaving and cooperating with law enforcement. Doc. 20, at 9-10, 21-22; App. 8-9, 43. Accordingly, he has been charged with nine counts of sex trafficking in violation of 18 U.S.C. 1591, each of which carries a mandatory minimum of 15 years' imprisonment and a statutory maximum of life imprisonment, and six counts of forced labor under 18 U.S.C. 1589, each of which is punishable by a maximum term of 20 years' imprisonment. Doc. 3; App. 9. Thus, in the words of the magistrate judge, the charged offenses are "extremely serious" (App. 42), which Gibbs does not dispute (Mem. 6-7).

B. The weight of the evidence supports detention.

As the district court and the magistrate judge both recognized, the weight of the evidence against Gibbs is "overwhelming" and "extremely strong," consisting of the testimony of multiple victims that corroborates each other *and* electronic evidence connected to Gibbs and to physical evidence found at his properties. App. 10-11, 43. In response, Gibbs contends that much of the victims' testimony is uncorroborated, contradicted by their own statements and that of other victims, or exculpatory of him. Mem. 7-9. Gibbs selectively cites to a few inconsistencies in the victims' testimony and his own self-serving denials of wrongdoing. Mem. 9-10. Yet he is unable to truly contest the findings of the district court and the magistrate judge. Indeed, he does not even attempt to challenge the evidence for which there is no innocent explanation, including documented interactions between

him and several victims. App. 10-11, 43-44. That the evidence is “susceptible to challenge” and ultimately subject to a jury’s determination (Mem. 10) is of little import. As the district court reasoned, “the evidence proffered against Gibbs is at least as strong as in other cases where the court upheld pretrial detention.” App. 11 (citing district court cases); *see United States v. Coleman*, 777 F.2d 888, 892-893 (3d Cir. 1985) (finding detention pending retrial warranted where government proffered evidence from trial that resulted in jury deadlock because standard for future dangerousness is clear and convincing evidence, not guilt beyond a reasonable doubt).

C. Gibbs’s history and characteristics support detention.

Gibbs’s lengthy criminal history, which include decades-old convictions for assault, sexual assault, and conspiracy to distribute cocaine, also weighs in favor of pretrial detention. His prior criminal convictions rightly “concerned” the magistrate judge “about the safety of other persons in the community” (App. 12, 44), because, as Congress recognized in the Act’s legislative history, “there is a ‘significant correlation’ between prior criminal history and pretrial rearrest,” *Delker*, 757 F.2d at 1400 (citation omitted). Indeed, in discussing this factor, this Court has cited with approval decades-old convictions for assault, *see ibid.*, and decades-old convictions for which probationary sentences were imposed, *see Coleman*, 777 F.2d at 893, belying Gibbs’s attempt (Mem. 11-12) to minimize his

similar criminal history as minor offenses that are remote in time. Certainly, the district court could and did consider this evidence alongside all other evidence of Gibbs's dangerousness to the community.

Gibbs claims that his age, poor health, strong family and community ties, and lack of mental health or drug abuse issues nevertheless favor his pretrial release. Mem. 10-11. But these “do not overshadow the factors that clearly and convincingly establish that he poses a danger to persons in the community.”

Delker, 757 F.2d at 1401. Moreover, contrary to Gibbs's contention, these factors did not all weigh in his favor. As the district court observed in addressing his danger to the community, Gibbs proffered a release address that was a site of his criminal activity and failed to propose a suitable custodian for pretrial release at his hearing. App. 14. Gibbs's recent conduct, which includes identifying alleged victims by name in pleadings and attempting to contact victims and potential witnesses, both in defiance of the district court's protective order (*id.* at 12-13), further evinces his disregard for the law and supports a finding of future dangerousness.

D. The danger to both the victims and the community supports detention.

Lastly, Gibbs presents a clear danger to the victims and to the community. First, the victims face danger if Gibbs is released: Prior to his arrest on the current charges, Gibbs repeatedly threatened victims and their families with physical harm

if they left him and cooperated with law enforcement. Doc. 20, at 9, 21-22. Indeed, even after being arrested and indicted, Gibbs has ignored the district court's protective order and attempted to contact victims and potential witnesses. App. 12-13. These threats alone are a compelling reason to deny Gibbs pretrial release. As this Court has observed, "[t]he legislative history of the [Bail Reform] Act repeatedly emphasizes that defendants who have threatened witnesses pose a significant danger and should be detained prior to trial." *Delker*, 757 F.2d at 1400.

Gibbs's conduct demonstrates that he poses a danger to the community as well. After being arrested in 2015 and 2016, and becoming aware that authorities were investigating him for sex trafficking, Gibbs continued operating his criminal scheme for several more years. Doc. 20, at 17; App. 45. Indeed, as late as 2022, after the end date of the charged offenses, Gibbs reached out, and planned to reach out, to other women using similar recruitment techniques that he used on many of the victims.⁵ Doc. 20, at 18-20; App. 46.

Gibbs primarily contends that any danger to the community would be abated if the district court had subjected him to home detention with GPS monitoring,

⁵ Gibbs also argues that the passage of three years between the last criminal act charged in the indictment and his arrest indicates that he is not a danger to the community. Mem. 12. This argument does not help him. Given the undisputed complexity of the case and the significant evidentiary and investigative obstacles the government faced, such time was necessary for the government's investigation and prosecution. *See* Doc. 20, at 21. Nor does the mere passage of time necessarily show that Gibbs did not engage in criminal activity during that time.

limitation of visitors, avoidance of internet access, and release to the custody of family members. Mem. 12-13. Given Gibbs’s history of flouting district court orders, however, the court correctly found (App. 14) that it could not accept his assurances to avoid the internet or comply with any other conditions he might offer. *See Hir*, 517 F.3d at 1092-1093 (rejecting defendant’s strict proposed conditions of release, including GPS monitoring and internet ban, because of “unacceptably high risk” that he would not comply with them in good faith); *cf. Delker*, 757 F.2d at 1401 (concluding that the district court did not err in finding that based on defendant’s prior threats to potential witnesses, a condition prohibiting such contact would not adequately assure the safety of the community). Nor do these conditions sufficiently eliminate the risk of danger to the community without constant monitoring.

II. The district court correctly concluded that Gibbs’s pretrial detention comports with due process under *Accetturo*.

Nor does Gibbs’s continued pretrial detention violate due-process principles under *United States v. Accetturo*, 783 F.2d 382 (3d Cir. 1986). There, this Court acknowledged “that at some point due process may require a release from pretrial detention or, at a minimum, a fresh proceeding at which more is required of the government than is mandated by section 3142.” *Id.* at 388. This determination “should reflect the factors relevant in the initial detention decision” under Section 3142(g), as well as “such additional factors as the length of the detention that has

in fact occurred, the complexity of the case, and whether the strategy of one side or the other has added needlessly to that complexity.” *Ibid.* “In some cases, the evidence admitted at the initial detention hearing, evaluated against the background of the duration of pretrial incarceration and the causes of that duration, may no longer justify detention.” *Ibid.*

The district court correctly concluded that the additional *Accetturo* factors, viewed in combination with the Section 3142(g) factors—all of which justify continued detention—indicate that Gibbs’s detention comports with due process. First, the length of a time a defendant is detained “is not dispositive and will rarely by itself offend due process.” *United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000) (per curiam) (internal quotation marks and citation omitted). Just under 24 months will pass between Gibbs’s initial detention in May 2023 and the expected start of his trial in May 2025. Mem. 13; App. 15. Other federal courts of appeals have found no due-process violation for similar periods of pretrial detention. *See, e.g., United States v. Torres*, 995 F.3d 695, 708-710 (9th Cir. 2021) (21 months); *United States v. Briggs*, 697 F.3d 98, 101-104 (2d Cir. 2012) (26 months); *United States v. Watson*, 475 F. App’x 598, 601-603 (6th Cir. 2012) (24 months); *United States v. Infelise*, 934 F.2d 103, 104-105 (7th Cir. 1991) (19 months); *United States v. Zannino*, 798 F.2d 544, 548-549 (1st Cir. 1986) (16 months).

The second and third *Accetturo* factors also justify the length of Gibbs's pretrial detention. The district court correctly found that the case was complex due to the extensive electronic and paper discovery (App. 15), and Gibbs concedes (Mem. 13-14) as much. The government's strategy did not add needlessly to the case's complexity; the only delay attributable to the government the court found regarding Gibbs's access to discovery was addressed and resolved. App. 16. Gibbs's decision to proceed *pro se* and request discovery in particular formats, despite the district court's warning that this choice could limit his access to discovery and delay the proceedings, largely contributed to a later trial date. *Ibid.* Gibbs further delayed the start of his trial by moving for and receiving a 12-month continuance. *Id.* at 15. Gibbs's responsibility for the delay, regardless of his need to adequately prepare his defense (*see* Mem. 14), weighs against his argument that the length of his pretrial detention violates his due-process rights. *See, e.g., Briggs*, 697 F.3d at 102-103; *El-Hage*, 213 F.3d at 80; *Infelise*, 934 F.2d at 105; *United States v. Theron*, 782 F.2d 1510, 1516 (10th Cir. 1986).

In sum, Gibbs's pretrial detention does not violate due process.

CONCLUSION

This Court should affirm the district court's pretrial detention order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

1. This response complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the response exempted by Federal Rule of Appellate Procedure 32(f), the response contains 3,889 words.

2. This response complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the response has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman, 14-point font.

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Date: July 1, 2024

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2024, I electronically filed the foregoing UNITED STATES' OPPOSITION TO APPELLANT'S RULE 9(A) MOTION REGARDING PRETRIAL DETENTION with the Clerk of the Court using the appellate CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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