

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

DETENTION MEMO

UNITED STATES OF AMERICA :

- v. - :

14 Cr. 055

KEVIN LOWE, :

DAVID MOODY, :

RASHAWN WHIDBEE, :

a/k/a "Ra-Ra," :

ROBERT WILLIAMS, :

a/k/a "Crusader Rob," :

DONALD CARR, :

a/k/a "Buster," :

GEORGE BARROW, :

a/k/a "Coco," :

BRADLEY MITCHELL, :

ELIJAH PINCKNEY, :

EVELYN WHITE, :

CEDRIC WHITE, :

a/k/a "Sin," :

SHEILA CARTER, :

RAVELO MANZANILLO, :

a/k/a "Grande," :

JONATHAN HUERTAS, :

OLGA MENDOZA DELAROSA, :

BRYAN RIVERA, :

SAMANTHA LIVINGSTON, :

BRIDGET HIGGINS, :

DAVID STEWART, :

a/k/a "Cash Money," :

a/k/a "Pork Chop," :

VOKART ALSAIDI, :

KENRICK CHANDLER, :

a/k/a "Booby," :

DARRYL BRATHWAITE, :

THEODORE ROOSEVELT JOHNSON, :

a/k/a "Top," :

WALEED ALSAIDI, :

RONALD CARR, :

Defendants. :

- - - - - X

**MEMORANDUM IN SUPPORT OF THE  
DETENTION WITHOUT BAIL OF CERTAIN DEFENDANTS**

The Government respectfully submits the following in support of its anticipated application to detain certain of the twenty-four defendants named in the above-captioned Indictment (the "defendants"). Below, the Government highlights certain issues relevant to all defendants.

**I. Background**

As set forth more fully in the Indictment, a copy of which is attached hereto, the defendants are all charged with participating in a massive drug distribution ring involving the prescription pain killer oxycodone. Oxycodone is a highly addictive, prescription narcotic-strength opioid used to treat severe and chronic pain conditions. The misuse of prescription painkillers such as oxycodone leads to as many as 500,000 annual emergency room visits. In fact, the number of prescription painkiller overdose deaths is now greater than the number of overdose deaths from heroin and cocaine combined.

Oxycodone prescriptions have enormous cash value to street level drug dealers, who can fill the prescriptions at most pharmacies and resell the resulting pills at vastly inflated rates. Indeed, a single prescription for 180 30-milligram oxycodone pills has an average resale value in New York City of more than \$6,000, and up to \$18,000 in nearby states.

The conspiracy charged in the Indictment involved the unlawful diversion and trafficking of millions of oxycodone tablets. The operations of the alleged drug distribution ring were centered at "Astramed," a purported pain management clinic with several locations in the Bronx, including a primary location on Southern Boulevard (the "Clinic") and another location on Westchester Avenue in the Bronx (the "Westchester Ave. Office"). The conspiracy involved doctors, Clinic employees, and drug traffickers who managed crews of "patients," sending them into the Clinic to obtain medically unnecessary prescriptions.

Essential to this illegal distribution conspiracy were corrupt, Board certified, state licensed doctors who, in exchange for cash, were willing to write medically unnecessary prescriptions for large quantities of oxycodone (the "Doctors"). The Clinic typically charged \$300 in cash for "doctor visits" that usually lasted just a minute or two, involved no actual physical examination, and consistently resulted in the issuance of a prescription for large doses of oxycodone, typically 180 30-milligram tablets, or a daily dosage of six 30-milligram tablets.

The Clinic itself bears little resemblance to a standard medical office. For example, on a daily basis, crowds of up to one hundred people gathered outside the Clinic,

clamoring to see one of the Doctors and thereby get a prescription for oxycodone. The majority of these individuals had no medical need for oxycodone, or any legitimate medical record documenting an ailment for which oxycodone would be prescribed. Instead, most of these individuals were members of "crews" - that is, they were recruited and paid by high-level drug traffickers (the "Crew Chiefs") to pose as "patients" in order to receive medically unnecessary prescriptions from the Doctors. The Crew Chiefs then arranged for and oversaw the filling of the resulting prescription at various pharmacies and took possession of the oxycodone pills for resale. Crew Chiefs also paid the Clinic's employees hundreds of dollars in cash at a time to get their Crew Members into the Clinic to see one of the Doctors. The Crew Chiefs maintained their joint control over the operations of the Clinic in part as a result of intimidation and the threat of violence.

In total, between in or around January 2011 and in or around January 2014, Astramed Doctors wrote approximately 31,500 medically unnecessary prescriptions for oxycodone, comprising nearly 5.5 million oxycodone tablets with a street value of up to \$550 million. Astramed's owner, DR. KEVIN LOWE, the defendant, alone collected nearly \$12 million in fees for "doctor visits" made by Crew Members during this time period.

## II. Applicable Law

The Indictment charges various defendants with conspiring to distribute and possess with the intent to distribute a controlled substance in violation of Title 21, United States Code, Sections 846 and 841(b)(1)(C). Count One carries a maximum sentence of 20 years' imprisonment. Accordingly, Count One carries a statutory presumption that no condition or combination of conditions will reasonably assure the defendant's appearance in court and the safety of the community. 18 U.S.C. § 3142(e)(3)(A). Because the statutory presumption of Section 3142(e)(3)(A) is triggered here, the defendants bear the burden of producing sufficient evidence to rebut that presumption. See United States v. Sabhnani, 493 F.3d 63, 75 (2d Cir. 2007); see also United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986).

In determining whether a defendant has rebutted that statutory presumption, courts are instructed to consider: (1) the nature and circumstances of the crime charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant, including family ties, employment, community ties, past conduct; and (4) the nature and seriousness of the danger to the community or to an individual. See 18 U.S.C. § 3142(g)(1). Even where a defendant produces sufficient evidence to rebut the statutory presumption of

detention, the presumption does not disappear, instead it becomes a factor to be weighed and considered like all the others in deciding whether to release the defendant. See United States v. Rodriguez, 950 F.2d 85, 88 (2d Cir. 1991).

If a defendant meets the burden of production, the ultimate burden of persuasion remains with the Government, which must establish either (1) by a preponderance of evidence that the defendant is a flight risk and no condition or combination of conditions will assure his appearance in court, or (2) by clear and convincing evidence that the defendant poses a danger to any other person or the community. For purposes of the bail statute, the concept of dangerousness includes "the danger that the defendant might engage in criminal activity to the detriment of the community." United States v. Millan, 4 F.3d 1038, 1048 (2d Cir. 1993). Notably, danger to the community includes "the harm to society caused by [the likelihood of continued] narcotics trafficking." United States v. Leon, 766 F.2d 77, 81 (2d Cir. 1985).

### **III. Discussion**

While the Court's bail determination is obviously unique to each defendant - and the Government certainly anticipates making defendant-specific presentations - below the Government highlights certain factors likely to be relevant to all

defendants and that may not be apparent from the face of the Indictment:

A. Risk of Flight

With respect to the risk of flight, factors such as the strength of the Government's case and the exposure each defendant is likely to face upon conviction all counsel in favor of detention for many of the charged defendants.

*1. Strength of the Government's Case*

The Indictment is the result of an extensive investigation by the United States Attorney's Office for the Southern District of New York and the Tactical Diversion Squad of the Drug Enforcement Administration Task Force ("DEA Task Force"). To date, the investigation has involved the use of at least a dozen cooperating sources, confidential informants and undercover agents; thousands of hours of surveillance, much of it recorded; multiple search warrants of premises associated with the drug diversion scheme, including the Astramed clinic itself; and extensive analysis of prescription records obtained from the Bureau of Narcotics Enforcement.

As a result of that extensive investigation, the evidence against the defendants is both varied and strong. It includes, among other things:

- (a) Consensual recordings made by undercover agents posing as "patients" that expose the internal dealings of the Clinic as well as the sham "doctor visits" which invariably led to the issuance of oxycodone prescriptions.

- (b) Consensual recordings involving Crew Chiefs discussing, among other things, the use of "patients;" the payment or receipt of cash in exchange for getting new "patients" in to see a Doctor; fees associated with obtaining urine samples; and the use of intimidation to maintain control over the defendants' access to the Clinic.
- (c) Records documenting the tens of thousands of medically unnecessary prescriptions written by Clinic Doctors, who averaged more than 200 such prescriptions each week and who, on occasion, wrote well over 100 oxycodone prescriptions in a single day.
- (d) Hundreds of hours of surveillance, much of them recorded, that capture virtually every aspect of the scheme, including the defendants' daily presence at the Clinic escorting "patients" in and out of the Clinic; guarding the main entrance to the Clinic and controlling access to its Doctors; picking up and distributing oxycodone prescriptions written by Clinic Doctors for the defendants' "patients;" and traveling in packs to pharmacies to fill these unlawfully obtained prescriptions.

In connection with the arrests, the Government also executed five search warrants at locations associated with the oxycodone diversion scheme, including the Clinic itself and several apartments used by one of the largest crews, referred to in the Indictment as the "Beacon Crew." While agents are still processing the evidence gathered as a result of the search warrants, initial indications are that the warrants resulted in the recovery of substantial additional evidence of the charged conspiracy, including thousands of pages of documents relevant to the investigation that have been recovered from the Clinic.

This breadth of evidence is certainly something the Court should consider in connection with bail applications made by any defendant. See 18 U.S.C. § 3142(g)(1) and (2).

## *2. Sentencing Guidelines*

With respect to each defendant's risk of flight, the Government submits that the Court can and should properly consider that each of the twenty-four defendants charged in the Indictment faces a Guidelines' range substantially in excess of the 20-year maximum term of imprisonment authorized for Count One. A preliminary calculation of the Guidelines' range based on drug quantity alone for Count One is as follows:

- As detailed above, the offense involved approximately 5.5 million 30-milligram oxycodone tablets.
- Pursuant to U.S.S.G. § 2D1.4 (note 8), the Drug Equivalency Tables are used to convert oxycodone to its marihuana equivalent. Pursuant to the Drug Equivalency Tables, one gram of oxycodone is converted to 6,700 grams of marihuana.
- 5.5 million 30-milligram tablets equals approximately 165,000 grams of oxycodone. Accordingly, pursuant to the Drug Equivalency Tables, the offense conduct involves approximately 1,105,500 kilograms of marihuana.
- Pursuant to U.S.S.G. § 2D1.1(c)(1), the base offense level is 38 because the offense involved more than 30,000 kilograms of marihuana.

Even in Criminal History Category I - in which, as detailed further below, few of the charged defendants will be - an offense level of 38 yields an advisory, applicable

Guidelines' range of 235-293, capped by the 240 month statutory maximum. As referenced above, that Guidelines' calculation is based on drug quantity alone and does not factor in some of the various enhancements likely to apply to some or of the charged defendants, including enhancements for role, acts of violence and use of firearms in connection with the charged narcotics offense, and maintenance of a stash house, among other things.

The significant terms of imprisonment faced by the defendants thus unquestionably increases their risk of flight. This is particularly true given that the terms of imprisonment these defendants are likely to face in this case will be substantially higher than any term these defendants have previously served in connection with their other, prior convictions.

#### B. Danger to the Community

The Oxycodone distribution ring charged in the Indictment operated just like a traditional drug trafficking organization, relying on threats and violence to maintain and expand the organization's presence in New York City. In particular, the investigation to date has uncovered evidence of dozens of other incidents of violence committed as part of the charged conspiracy.

Based on debriefings of numerous informants, undercover agents, and cooperating witnesses, as well as the investigation

to date, the Government is aware of, among other things, the following:

- (a) Crew Chiefs frequently used threats, intimidation, and violence to control their "crews" of patients and to protect their access to the Clinic and its doctors. As recently as January 2014, for example, DAVID MOODY and GEORGE BARROW, a/k/a "Coco," spoke openly at the Clinic about the need for "patients" and Office Staff to stay silent, threatening anyone within earshot with retaliation for speaking with law enforcement.
- (b) Similarly, in May 2013, DARRYL BRATHWAITE, the defendant, bragged about his "crew" of patients - identified in the Indictment as the "Beacon Crew" - and talked about how he, along with VOKRT ALSAIDI and KENRICK CHANLDER, the defendants, used threats and intimidation to control the crew.

More generally, cooperators and sources described violence as a part of everyday life at the Clinic, where "bouncers" - such as DAVID STEWART, a/k/a "Cash Money," a/k/a "Pork Chop," the defendant - manned the front door at all times. Many Crew Chiefs also had their own "muscle," i.e., frequently armed body guards who remained in close proximity to the Clinic at all times, standing ready should violence erupt, which it frequently did. For example:

- (a) In or around September 2013, a Clinic employee not named in the Indictment ("Individual-1"), was thrown through a wall at the Clinic, suffering severe injuries. The attack, which the Government presently believes was committed by ELIJAH PINCKNEY, the defendant, was in retaliation for Individual-1's attempts to curtail the control various Crew Chiefs, including PINCKNEY, were able to exert over the Office Staff.

- (b) On or about October 2, 2013, SAMANTHA LIVINGSTON, the defendant, was assaulted inside the Clinic office by unidentified individuals believed to be associated with Crew Chiefs who were upset at the increasingly high prices LIVINGSTON and other members of the Office Staff were charging to put new patients "into the system" to see a Clinic Doctor. LIVINGSTON, who was visibly pregnant at the time, was hospitalized as a result of the attack.
- (c) On or about December 27, 2013, RAVELO MANZANILLO, a/k/a "Grande," the defendant, was shot in the shoulder on Tintin Avenue in the Bronx, just blocks away from the Clinic. OLGA MENDOZA DELAROSA, the defendant, was also present at the time. Based on the investigation to date, the Government believes that the shooting stemmed from a dispute between MANZANILLO and another co-conspirator not named as defendant in the Indictment ("CC-2") over a recent, large sale of oxycodone tablets.
- (d) In mid-January 2014, a "bouncer" hired by the Crew Chiefs to guard the Clinic's front door threw an individual trying to gain access to the Clinic as a "new patient" through the Clinic's front window, shattering the window which remained broken for several weeks thereafter.

The doctors as well as the Clinic itself were also frequent targets of threats and violence initiated by Crew Chiefs intent on maintaining their control over the Clinic and their ready access to a continuous flow of unlawfully obtained oxycodone.

For example:

- (a) On or about October 17, 2012, two unidentified individuals robbed the Westchester Ave. Office at gunpoint, removing the Office safe - used to store the cash payments required by the Clinic for each "doctor visit" - in the process.
- (b) On or about April 14, 2013, a Doctor not named as a defendant in the Indictment ("CC-3") was

threatened at gun point just outside of the Westchester Ave. Office by three masked individuals - all believed to be Crew Chiefs - upset that CC-3 was not writing more medically unnecessary prescriptions for the "patients" being sent in by the Crew Chiefs each day. CC-3, who had been writing up to 50 medically unnecessary prescriptions each day, had at that point recently announced that he would not be accepting any additional "patients."

- (c) In or around July 2013, a Doctor referred to in the indictment as Doctor-1, called the police in response to threats from a "patient" sent into the Clinic by EVELYN WHITE, the defendant. Enraged at Doctor-1 for involving the police, WHITE proceeded to deface Doctor-1's car and slashed Doctor-1's tires, while threatening further, physical retaliation should Doctor-1 ever call the police again.
- (d) On or about February 4, 2014, Doctor-1 was arrested at the Clinic. Shortly thereafter, a search warrant was executed at Doctor-1's residence where law enforcement recovered a handgun along with approximately 47 rounds of ammunition.

In addition, DR. KEVIN LOWE, the defendant, was himself complicit in much of the violence described above, chastising Clinic employees for calling the police and making it generally known that he did not want law enforcement in or around the Clinic at any time, even amidst violent outbreaks.

This series of violent episodes - which touches on virtually every aspect of the charged conspiracy - weighs heavily in favor of detention. That is particularly true given that many of the charged defendants have lengthy criminal

histories which include prior drug convictions, as well as convictions for gun crimes and crimes of violence. For example:

- (a) GEORGE BARROW, a/k/a "Coco," the defendant, has at least seven prior drug-related felony convictions, and will likely be treated as a Career Offender pursuant to U.S.S.G. § 4B1.1.
- (b) DONALD CARR, a/k/a "Buster," the defendant, has at least two prior drug-related felony convictions, as well as a felony weapon conviction, and will likely be treated as a Career Offender pursuant to U.S.S.G. § 4B1.1.
- (c) KENRICK CHANDLER, the defendant, has at least four prior drug-related felony convictions, as well as a prior felony conviction for armed robbery, and will likely be treated as a Career Offender pursuant to U.S.S.G. § 4B1.1.
- (d) BRADLEY MITCHELL, the defendant, has at least three prior drug-related felony convictions, as well as a prior felony conviction for armed robbery, and will likely be treated as a Career Offender pursuant to U.S.S.G. § 4B1.1.
- (e) DAVID MOODY, the defendant, has at least three prior felony convictions, including prior felony drug-related and assault convictions, as well as

