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F. #2020R00066 / OCDETF #NY-NYE-870

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against - Docket No. 21-CR-222 (ARR)

JO-ANDY CHRISTEPHER MARIE BALENTINA,
also known as "Enchi," "Angie" and "Benzy,"
JOELL CHARLES MARIE BALENTINA,
SHERIANN ANN MARIE BRYAN,
also known as "Sheryl" and "Sharon,"
LEON GEORGE HALL,
also known as "Bunny," and
EDLYSON REUEL ELIAS SOPHIA,
also known as "Primu,"

Defendants.

- X

THE GOVERNMENT'S DETENTION MEMORANDUM

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PRELIMINARY STATEMENT

The government respectfully submits this memorandum in support of its application for a permanent order of detention for the defendants Jo-Andy Christepher Marie Balentina, also known as "Enchi," "Angie" and "Benzy" ("Jo-Andy Balentina"), Joell Charles Marie Balentina ("Joell Balentina"), Sheriann Ann Marie Bryan, also known as "Sheryl" and "Sharon" ("Bryan"), Leon George Hall, also known as "Bunny" ("Hall") and Edlyson Reuel Elias Sophia, also known as "Primu" ("Sophia"), who are organizers, leaders and/or members of a drug trafficking organization based in Curaçao (the "Curaçao DTO"), responsible for importing and conspiring to import hundreds of kilograms of cocaine into the United States. The defendants were arrested by Curaçao authorities on August 19, 2021. They were extradited from Curaçao to the United States yesterday and are scheduled to appear before the Court this afternoon for an arraignment on the Indictment in this case. See ECF Dkt. Entry No. 1 (the "Indictment"). For the reasons set forth below, at their arraignment, the Court should enter permanent orders of detention, as no conditions or combination of conditions can assure the safety of the public or the defendants' appearances at trial.

STATEMENT OF FACTS[1]

I. THE CHARGES

A grand jury sitting in the Eastern District of New York returned the Indictment on April 21, 2021. For their participation in the Curaçao DTO, the Indictment charges all defendants in Counts One and Two with, respectively, international cocaine distribution conspiracy and conspiracy to import cocaine into the United States, all between January 2017 and April 2021, in violation of Title 21, United States Code, Sections 963, 959(d) and 960(b)(1)(B)(ii).[2] Counts Three through Five charge certain defendants with international cocaine distribution in connection with three individual shipments of cocaine, knowing and having reasonable cause to believe that such cocaine would be illegally imported into the United States, in violation of Title 21, United States Code, Sections 959(a), 959(d), 960(a)(3) and 960(b)(1)(B)(ii). The relevant shipments are charged as follows: Count Three (defendants Jo-Andy Balentina and Joell Balentina) – March 2017 shipment of approximately 32 kilograms of cocaine; Count Four (defendants Jo-Andy Balentina, Joell Balentina, Bryan and Hall) – May 2017 shipment of approximately 64 kilograms of cocaine; and Count Five (defendants Jo-Andy Balentina, Joell Balentina and Sophia) – November 2019 shipment of approximately 6 kilograms

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[1] As permitted by the Second Circuit, the government proceeds by factual proffer in support of its motion for a permanent order of detention. See United States v. LaFontaine, 210 F.3d 125, 130–31 (2d Cir. 2000); United States v. Ferranti, 66 F. 3d 540, 542 (2d Cir. 1995). As this proffer seeks only to articulate facts sufficient to justify detention, it is not a complete statement of all the evidence of which the government is aware or which it will seek to introduce at trial.

[2] The Indictment also charges a sixth defendant, Israel Osial Barrett, also known as "English" ("Barrett"), in certain counts. Defendant Barrett was arrested in the United Kingdom in October 2021 in connection with these charges, and the government is currently seeking his extradition. Accordingly, the government generally omits discussion of Barrett herein and makes no motion with respect to Barrett, but reserves its right to do so at an appropriate time.

of cocaine. Finally, Count Six charges the defendant Jo-Andy Balentina with participating in a money laundering conspiracy, in violation of Title 18, United States Code, Section 1956(h).

If convicted of Count One alone, each of the defendants faces a mandatory minimum of 10 years and up to life imprisonment.

II. FACTUAL BACKGROUND

This case stems from an extensive federal investigation into the activities of the leaders, members and associates of the Curaçao DTO who were responsible for importing more than 100 kilograms of cocaine into the United States, and laundering illicit funds derived from their narcotrafficking activities and sales in the United States back to Curaçao. To transport cocaine from Curaçao into the United States, the defendants and their co-conspirators used a variety of means and methods including commercial airliners and cruise ships, as well as a network of corrupt airport employees in both Curaçao and the United States.

Since at least early 2017, defendant Jo-Andy Balentina was the principal leader of the Curaçao DTO. Organization members and associates including defendants Bryan, Hall and Sophia, were responsible for recruiting, training and managing other individuals as couriers to transport and accompany cocaine shipments on board commercial aircraft and cruise ships. The Curaçao DTO also utilized other members and associates who were corrupt airport employees at Curaçao/Hato International Airport ("CUR") in Curaçao – specifically, Jo-Andy Balentina's brother, defendant Joell Balentina – and at John F. Kennedy International Airport ("JFK") in Queens, New York and elsewhere, to exploit their security clearances and to facilitate the loading and unloading of cocaine shipments on the aircraft and bypass airport security and customs.

Once the cocaine arrived in the United States, it was smuggled out of the airport or seaport and sold directly by the Curaçao DTO or through various other established distribution networks. In turn, the proceeds were laundered from the United States back to the defendant Jo-Andy Balentina and the Curaçao DTO. Specifically, under the direction and control of Jo-Andy Balentina and others, drug proceeds were laundered either through a money laundering organization operating in the New York City metropolitan area, Curaçao and elsewhere, or smuggled via return commercial airline flights.

U.S. law enforcement officers have identified and/or intercepted multiple cocaine shipments sent by the Curaçao DTO including: (a) an approximately 32-kilogram cocaine shipment concealed within checked luggage onboard commercial aircraft that departed CUR and arrived at JFK in or about March 2017; (b) an approximately 64-kilogram cocaine shipment concealed within checked luggage onboard commercial aircraft that departed CUR and arrived at JFK in or about May 2017; (c) an approximately 6-kilogram shipment of cocaine concealed within luggage onboard a cruise ship that travelled between Curaçao and Miami, Florida in or about July 2018; and (d) an approximately 6-kilogram cocaine shipment concealed within checked luggage onboard commercial aircraft that departed CUR and arrived at JFK in or about November 2019. Additionally, as a result of this investigation, federal authorities have dismantled the United States-based network of corrupt airport employees and thwarted the planned importation of an additional 300 kilograms of cocaine to be supplied by the Curaçao DTO.

The defendants Jo-Andy Balentina, Joell Balentina and Sophia are citizens and residents of Curaçao. The defendants Bryan and Hall are citizens of Jamaica and residents of

Curaçao. They have no known ties to the United States other than their extensive narcotics trafficking.

ARGUMENT

I. APPLICABLE LAW

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., a federal court must order a defendant detained pending trial where it determines that "no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community[.]" 18 U.S.C. § 3142(e). A presumption of dangerousness and risk of flight arises when a defendant is charged with an offense under the Controlled Substances Act or the Controlled Substances Import and Export Act that carries a maximum term of imprisonment of 10 years or more and the Court finds probable cause to believe that the defendant committed such offense. 18 U.S.C. § 3142(e)(3)(A). Probable cause may be established by the fact that a grand jury has returned an indictment charging the defendant with the offense in question. See United States v. Contreras, 776 F.2d 51, 54–55 (2d Cir. 1985).

The presumption means that the Court must initially assume there is "no condition or combination of conditions that will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3124(e)(3). A defendant may rebut this presumption by coming "forward with evidence that he does not pose a danger to the community or a risk of flight." United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001) (per curiam). If this burden of production is satisfied, the government retains the burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community and by a preponderance of the evidence that the defendant presents a risk of flight. See 18 U.S.C.

§ 3142(f); Mercedes, 254 F.3d at 436; United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985).

The concept of "dangerousness" encompasses not only the effect of a defendant's release on the safety of identifiable individuals, such as witnesses, but also "'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) (quoting legislative history). Indeed—and significantly—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). In considering risk of flight, courts have found that where the evidence of guilt is strong, it provides "a considerable incentive to flee," United States v. Millan, 4 F.3d 1038, 1046 (2d Cir. 1993), as does the possibility of a severe sentence, see United States v. Jackson, 823 F.2d 4, 7 (2d Cir. 1987); United States v. Martir, 782 F.2d 1141, 1147 (2d Cir. 1986) (defendants charged with serious offenses with significant maximum terms had potent incentives to flee); see also United States v. Cisneros, 328 F.3d 610, 618 (10th Cir. 2003) (defendant was flight risk because her knowledge of seriousness of charges against her gave her strong incentive to abscond to Mexico).

Courts consider several factors in making the determination of whether pretrial detention is appropriate: (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, financial resources, community ties and past conduct; and (4) the nature and seriousness of the danger to any person or the community that would be posed by release. See 18 U.S.C. § 3142(g). Even where the defendant has met his burden of production to

rebut the statutory presumption in favor of detention, the presumption also remains a factor for the Court to consider. Mercedes, 254 F.3d at 436.

II. THE DEFENDANTS SHOULD BE DETAINED PENDING TRIAL

A. A Presumption of Detention Applies

This case involves offenses for which there is a presumption that no combination of conditions will reasonably assure any of the defendants' appearances or the safety of the community. See 18 U.S.C. § 3142(e)(3). Specifically, because each of the defendants is charged with multiple counts under the Controlled Substances Act and the Controlled Substances Important and Export Act for which the maximum term of imprisonment is life, they are presumed to pose a danger to the community and a risk of flight. Accordingly, the defendants bear the initial burden of showing that they are not a danger to the community or a flight risk. For the reasons set forth below, the defendants cannot sustain that burden.

B. The Nature and Circumstances of the Offenses Charged

The conduct with which the defendants are charged—participating in an international drug trafficking organization—are among the most serious offenses contemplated by the federal criminal justice system. For these crimes, each of the defendants faces a 10-year mandatory minimum up to life imprisonment. See 21 U.S.C. § 960(b)(1)(B)(ii). Such a sentence creates a powerful incentive for each of the defendants to flee should any of them be released on bond, confirming that each defendant is a serious risk of flight. When the incentive to flee is so strong, no combinations of sureties and other restrictions can assure the defendants' appearances. See, e.g., United States v. English, 629 F.3d 311, 321-22 (2d Cir. 2011) (affirming detention in part because the defendant was charged under § 924(c), faced a presumption against release, and a mandatory minimum sentence that incentivized fleeing); Jackson, 823 F.2d at 7; Martir, 782

F.2d at 1147; United States v. Henderson, 57 F. App'x 470, 471 (2d Cir. 2003) (summary order) ("[T]he presumption regarding flight risk has changed because [the defendant] now faces a ten-year mandatory minimum sentence.").

Moreover, as described above, members of the Curaçao DTO including, in particular, Jo-Andy Balentina and Joell Balentina, furthered their international narcotrafficking operations through corruption to circumvent airport security and customs measures both domestic and abroad. This behavior depicts individuals who have the experience and ability to thwart government and law enforcement efforts to disrupt criminal activity—individuals who have no respect for the public authority and the rule of law. Thus, there is no reason to believe that the defendants would obey the Court's orders or conditions of release if bail were granted, and the nature and circumstances of the charged offenses justify detaining the defendants.

C. The Weight of the Evidence

The evidence of each defendant's guilt is overwhelming. Their arrests come at the end of an extensive investigation conducted by the U.S. Department of Homeland Security, Homeland Security Investigations, with assistance provided by the U.S. Drug Enforcement Administration and Curaçao authorities.

The evidence supporting the charges against the defendants includes, among other things: (a) photographs, messages and communications recovered from numerous cellular telephones linking each defendant to the Curaçao DTO's operations and establishing their roles within the organization, as described above—such materials include discussions of, among other things, (i) cocaine shipment quantities, concealment methods, pricing and profit sharing, (ii) costs associated with paying corrupt airport employees to bypass security and customs, (iii) recruitment and instruction of drug couriers, and (iv) laundering drug proceeds; (b) evidence of

cocaine shipments smuggled into CUR and out of JFK including documentary evidence and surveillance footage; (c) evidence of payments and transfers of hundreds of thousands of dollars of drug trafficking proceeds and moneys used and intended to be used to invest in cocaine shipments in furtherance of the Curaçao DTO's operations; (d) seizures of the July 2018 and November 2019 cocaine shipments; (e) seizure of more than $400,000 in cash proceeds of sales of cocaine supplied by the Curaçao DTO; and (f) one or more confidential informants and/or cooperating witnesses who are familiar with the defendants' roles within the organization and have direct knowledge of their participation in the charged crimes.

D. The History and Characteristics of the Defendants

While the defendants have no known criminal history in the United States, the defendants Jo-Andy Balentina and Bryan were charged in 2017 in Curaçao in connection with a kidnapping of a U.S. citizen. During the course of the investigation of the kidnapping and rescue of the victim, Curaçao authorities recovered from the apartment in which the victim was being held captive various indicia of drug trafficking, including 83 vacuum-sealed packages of marijuana, weighing approximately 40 kilograms, and packaging supplies. The exits to the apartment were locked. Although the victim denied to Curaçao authorities that s/he was kidnapped for refusing to serve as a drug courier, in context, it appears that the Curaçao DTO was engaged in efforts to coerce individuals to serve as drug couriers against their will.

Further investigation revealed efforts by defendants Bryan and Hall to obstruct the Curaçao investigation of the kidnapping and narcotics possession by offering to bribe the victim in exchange for refusing to cooperate with authorities. Regardless of whether the kidnapping victim was intended to be a drug courier, coupled with the evidence of the organization's efforts to subvert both foreign and domestic airport security and customs

measures, these events reinforce that the defendants are willing and able to go to great lengths, including physical force and obstruction of justice, to achieve their unlawful objectives.

E. The Nature and Seriousness of the Danger Posed by Release

The facts and circumstances of this case compel the defendants' detention, as the factors set forth in the Bail Reform Act show that their criminal activity and narcotics trafficking poses a danger to the community. The defendants engaged in international narcotrafficking for years. They were responsible for the movement of hundreds of thousands, if not millions of dollars' worth of dangerous drugs, and actively corrupted and evaded sophisticated airport safety and security measures designed, in part, to curb the proliferation of the defendants' deadly products, which have contributed to the overdose and drug addiction crisis in the United States and elsewhere. Further, members of the Curaçao DTO including some of the defendants have already demonstrated their willingness to employ physical force and coercion, as well as their commitment to undermining the rule of law by taking measures to intimidate and tamper with a witness against them and obstruct the administration of justice. Taken together, these facts demonstrate that releasing the defendants under these circumstances would pose a significant danger to numerous individuals and the community at large. No condition or combination of conditions can assure their safety.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court order the defendants to be detained permanently pending trial, as there is no condition or combination of conditions that could reasonably assure defendants' appearance at trial or the safety of the community.

Dated: Brooklyn, New York
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