



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

TJS:ACG  
F.#2017R00150

*271 Cadman Plaza East  
Brooklyn, New York 11201*

January 25, 2017

By Hand and ECF

The Honorable Vera M. Scanlon  
United States Magistrate Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Denzell Oglesby  
Magistrate Docket No. 16-1009

Dear Judge Scanlon:

The government respectfully submits this letter in support of the pretrial detention of the defendant Denzell Oglesby. The defendant is charged in a complaint with committing a Hobbs Act robbery in violation of 18 U.S.C. § 1951 of a Brooklyn grocery store, during which he brandished a firearm in violation of 18 U.S.C. § 924(c). Because the defendant stands charged with a firearm offense in connection with a crime of violence under § 924(c), there is a rebuttable presumption that detention is warranted. 18 U.S.C. § 3142(e); Cf. United States v. Hill, 832 F.3d 135, 137 (2d Cir. 2016) (finding Hobbs Act robbery to be a crime of violence). Indeed, the defendant now faces the prospect of spending over a decade in prison, as the charged firearms offense carries a mandatory minimum seven-year sentence that must run consecutively to the sentence on the Hobbs Act robbery count. Accordingly, as set forth below, the government is seeking the defendant's detention because he poses a substantial flight risk and presents a danger to the community.

I. Background

A. The Gunpoint Robbery

As alleged in the complaint, on or about August 16, 2016 the defendant Denzell Oglesby, entered a grocery store located at 931 Boylan Street, Brooklyn, New York (the "Grocery Store"). Oglesby entered the store with another individual (the "Co-Conspirator"), who wore a shirt wrapped around his head with two holes for his eyes. Video surveillance

footage<sup>1</sup> from the Grocery Store reveals that Oglesby approached the front counter of the Grocery Store, behind which was the store attendant (the “Store Attendant”). Oglesby wore a blue shirt and white hat. The white hat partially obscured Oglesby’s face from the surveillance cameras in the Grocery Store.

Video surveillance footage from the Grocery Store shows Oglesby, upon entering and approaching the counter, raise a firearm and point it towards the Store Attendant, who attempted to run out from behind the counter and flee. Oglesby jumped over the counter and chased the Store Attendant.

Oglesby and the Co-conspirator caught up to the Store Attendant and restrained him. The Co-conspirator took possession of the firearm from Oglesby, and the Co-conspirator struck the Store Clerk in the head with the firearm. The Co-conspirator and the Store Clerk wrestled with each other as Oglesby went back behind the counter and began taking items from the Grocery Store and placing them in a black plastic bag, including approximately \$300 in United States currency.

Oglesby then ran to where his Co-conspirator and the Store Clerk were wrestling, and repeatedly punched the store clerk. Oglesby re-obtained possession of the firearm and struck the Store Clerk in the head with the firearm. Both the Co-conspirator and Oglesby fled the Grocery Store. Before leaving, Oglesby grabbed the black plastic bag into which he had placed items from the Grocery Store, including the United States currency that he had taken from the Grocery Store.

On October 20, 2016, Oglesby was arrested by the NYPD for, in sum and substance, using stolen credit cards and snatching a pocket book; Oglesby was charged with grand larceny in the third degree in violation of New York Penal Law § 155.30. Following his arrest, Oglesby was advised of his Miranda rights and agreed to waive those rights and speak with law enforcement. Upon seeing still images from the video surveillance footage, Oglesby, in part and in sum and substance, admitted that he had participated in the robbery of the Grocery Store (located at 931 Boylan Street, Brooklyn, New York).

#### B. The Defendant’s Criminal History

The defendant has three prior felony convictions of which the government is aware. On March 25, 2014, the defendant was convicted in New York State court of bail jumping in the second degree in violation of New York Penal Law 215.56, a class E felony. On January 29, 2014, the defendant was convicted in New York State court of aggravated cruelty to animals in violation of New York Agriculture & Markets Law § 353-A(1), a class E felony.<sup>2</sup>

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<sup>1</sup> Still photographs from the video surveillance footage are attached hereto as Exhibit 1. A copy of the video surveillance footage in whole is being submitted in hard copy with this letter as Exhibit 2.

<sup>2</sup> The New York Times reported that this conviction resulted from the defendant setting a cat on fire. See Stephanie Clifford, He Kicked a Stray Cat, and Activists Growled,

Also on January 29, 2014 the defendant was convicted in New York State court of attempted burglary in the second degree in violation of New York Penal Law § 140.25(2), a class D felony.

## II. Legal Standard and Procedure

Under the Bail Reform Act, 18 U.S.C. § 3141 *et seq.*, federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. 18 U.S.C. § 3142(e). While a finding of dangerousness must be supported by clear and convincing evidence, United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995), risk of flight can be proven by a preponderance of the evidence, United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987).

A rebuttable presumption applies here by way of the charges in the complaint: the defendant has been charged with a firearm offense under 18 U.S.C. § 924(c), specifically the brandishing of a firearm in connection with a Hobbs Act robbery, which is a crime of violence. 18 U.S.C. § 3142(e); Hill, 832 F.3d at 137. 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 any other person and the community." Id. The defendant must come "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). Even if the defendant were to meet his burden of production, "the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court." Id.

Four factors guide the Court's determination of whether the defendant should be released on bail: (1) the nature and circumstances of the crimes charged, (2) the history and characteristics of the defendant, (3) the seriousness of the danger posed by the defendant's release, and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g).

Evidentiary rules do not apply at detention hearings and the government is entitled to present evidence by way of proffer, among other means. See 18 U.S.C. § 3142(f)(2); see also United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000). In the pre-trial context, few detention hearings involve live testimony or cross-examination. Most proceed on proffers. Id. at 131. This is because bail hearings are "typically informal affairs, not substitutes for trial or discovery." Id. (internal quotation marks omitted).

Indeed, the Second Circuit has reversed district courts where they have not credited the government's proffer, including proffers with respect to a defendant's dangerousness. See, e.g., Mercedes, 254 F.3d at 437 ("[The defendant] has twice been convicted of weapon possession--one felony conviction, and one misdemeanor conviction. We find the district court committed clear error in failing to credit the government's proffer with respect to [the defendant's] dangerousness.").

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N.Y. Times, Sept. 29, 2014, [https://www.nytimes.com/2014/09/30/nyregion/animal-abuse-gains-traction-as-a-serious-crime-with-jail-more-often-the-result.html?\\_r=0](https://www.nytimes.com/2014/09/30/nyregion/animal-abuse-gains-traction-as-a-serious-crime-with-jail-more-often-the-result.html?_r=0)

### III. Argument

In this letter and attached exhibits, the government has proffered clear and convincing evidence showing the defendant's dangerousness to the community. The defendant is also a considerable flight risk. Oglesby, faces a mandatory minimum sentence of seven years and a United States Sentencing Guidelines range that is significantly longer. When the incentive to flee because of the potential sentence is so strong, few combinations of sureties and other restrictions can assure a defendant's appearance. *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); *United States v. Henderson*, 57 F. App'x. 470, 471 (2d Cir. 2003) (summary order) ("the presumption regarding flight risk has changed because [the defendant] now faces a ten-year mandatory minimum sentence"). That remains true even with electronic surveillance and home confinement. *See United States v. Orena*, 986 F.2d 628, 632 (2d Cir. 1993) ("electronic surveillance systems can be circumvented by the wonders of science and of sophisticated electronic technology") (internal quotation marks omitted).

Even more importantly, the defendant cannot show that any bail package would protect the community. That is why the Second Circuit has repeatedly rejected elaborate bail packages for violent defendants, even ones that include "home detention and electronic monitoring," which the Court has explained try to "replicate a detention facility without the confidence of security such a facility instills. If the government does not provide staff to monitor compliance extensively, protection of the community would be left largely to the word of [the defendant] that [he] will obey the conditions." *United States v. Millan* 4 F.3d 1039, 1049 (2d Cir. 1993) (citation and internal quotation marks omitted).

Moreover, all of the § 3142(g) factors counsel in favor of detention.

*First*, the nature of the crime charged is very serious: the defendant committed a gunpoint robbery of the Grocery Store, in which he and his co-conspirator both pistol-whipped the store clerk. *See, e.g., Mercedes*, 254 F.3d at 437 (holding that this factor "weighs heavily against release" where the crime was armed robbery).

*Second*, the defendant's "history and characteristics," including the defendant's prior animal cruelty conviction and his bail jumping conviction, weigh in favor of detention. The defendant's prior bail jumping conviction demonstrates his inability to comply with the terms of any release, and thus renders him a flight risk. In a similar vein, the defendant's animal cruelty conviction is indicative of the defendant's aberrant criminal behavior, and likewise demonstrates his inability to comply with the law.

*Third*, the defendant poses a danger if released. The defendant has shown a willingness to commit violent crime. In the charged robbery, in addition to pointing his firearm at the store clerk, the defendant himself struck the store clerk in the head with the firearm. Accordingly, the defendant has shown his willingness to use violent force, and thus presents a danger to the community. *United States v. Dono*, 275 F. App'x. 35, 37 (2d Cir. 2008) (summary order) (finding that "the district court committed clear error in determining that the specified bail conditions overcame the presumption that these defendants pose a danger to the community at large," where the defendants, charged with a violation of § 924(c) among other items, used

“firearms to assault two civilians physically, pistol-whipping them and attempting to or actually putting the barrel of a handgun in a victim’s mouth.”).

In addition, as the defendant possessed and used a firearm in the charged robbery, the defendant may have ready access to firearms. When taken with the defendant’s “history and characteristics,” releasing the defendant and thus allowing him potential access to weapons would pose a danger to the community. United States v. Ambrosio, 94-CR-674 (DC), 1995 WL 138605, at \*14 (S.D.N.Y. Mar. 30, 1995) (finding that access to and possession of weapons presents a danger to the community).

*Fourth*, the proof against the defendants is strong. The defendant, following his arrest by the NYPD on separate charges and after being advised of as well as waiving his Miranda rights, admitted that he had participated in the robbery of the Grocery Store. In addition, there is surveillance footage from inside of the Grocery Store that captures the robbery. See Exs. 1 & 2. While the defendant’s face is partially obscured in the footage, the defendant bears a likeness to one of the two robbers.

#### IV. Conclusion

For the foregoing reasons, the defendant cannot rebut the presumption that he poses a danger to the community and is a flight risk. Accordingly, the government respectfully requests that the Court enter a permanent order of detention for the defendant.

Respectfully submitted,

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United States Attorney

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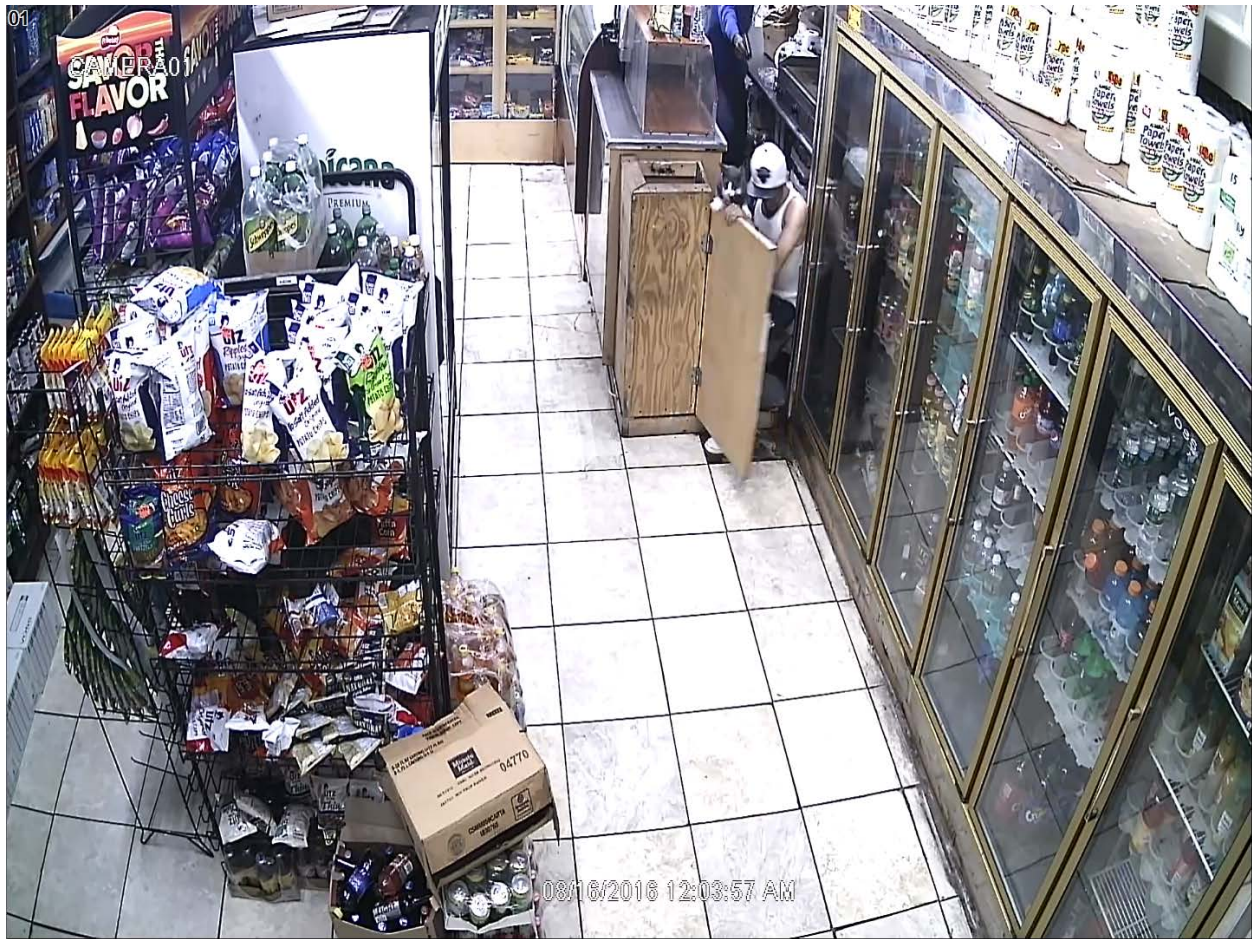
Attachments

cc: Clerk of Court (VMS) (by ECF)

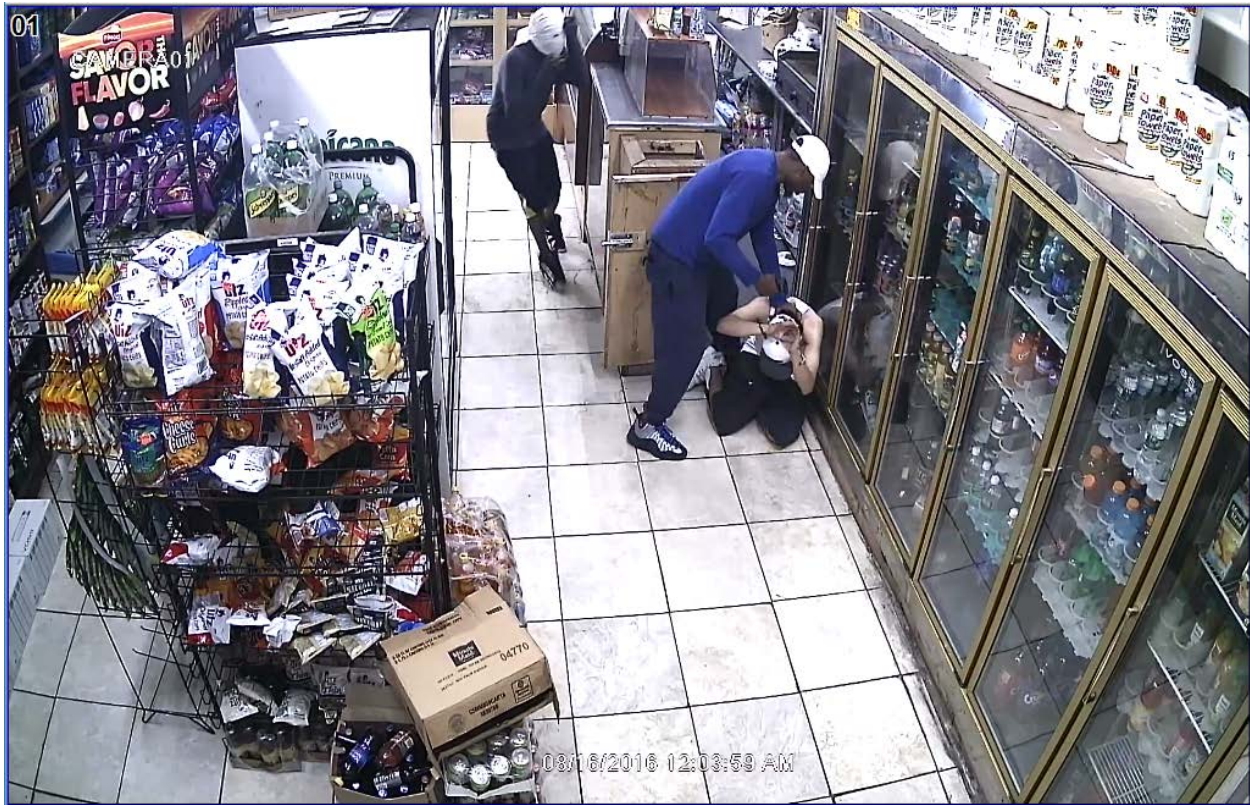
## EXHIBIT 1











**EXHIBIT 2**  
**(Video Provided in Hard Copy)**