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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA

v.

RAFAEL AVINA-TORRES,
FREDI GARCIA-MARCIAL,
DANIEL RAMIREZ,
EDUARDO JORGE CARILLO,
HECTOR MORENO PEDRIZCO,
a.k.a. "Chupas,"
FRANCISCO CEJA CASTILLO,
ERIK MARTINEZ,
LORENA MARTINEZ,
DARIO OCHOA SOTO,
a.k.a. "Teddy Bear," a.k.a. "Gordo,"
JORGE IVAN TORRES-AYALA,
JANE DOE
a.k.a. "Alejandra Mandujano-Molina,"
TESHIA VALERIA HUTCHINSON,

3:15-CR-00349-SI

GOVERNMENT'S MOTION AND MEMORANDUM IN SUPPORT OF PRETRIAL DETENTION

BRIAN LANCE BOUSKA,
a.k.a. "The Russian,"
ANDY JAMES WRIGHT,
JOSHUA TODD SUMMERHAYS,
a.k.a. "Hazy,
DONALD KENT McVEY,
a.k.a. "Donald Duck," a.k.a. "The Duck,"
WENDI ANN KINGSLAND,
MARTHA NAYELI CARRIEDO CASTANEDA,
a.k.a. "Monica,"
SAMUEL GOMEZ-CHAVEZ,
MATTHEW DANIEL GOOD,
BRADLEY CHARLES YOUNGBLOOD,
OSVALDO PACHECO-AYALA,
ANDREW MICHAEL ROWLAND, and
DEBORAH MILLER,

Defendants.

The United States of America, through Billy J. Williams, United States Attorney for the District of Oregon, and Scott M. Kerin, Patrick J. Ehlers and AnneMarie Sgarlata, Assistant United States Attorneys, hereby asks the Court to detain the defendants pending trial as both a risk of non-appearance and as a danger to the community.

A. Factual and Procedural Summary.

On October 8, 2015, the federal grand jury returned a Superseding Indictment charging all but one of the above listed defendants, in Count 1, for engaging in a vast drug trafficking conspiracy to Manufacture, Distribute and Possess with Intent to Distribute 500 grams or more of a Mixture and Substance containing Methamphetamine; Using Communication Facilities in Furtherance of the Conspiracy; and, Maintaining Places to Manufacture and Distribute Controlled Substances, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 843(b), 846,

856(a)(1) and 856(b).[1] Defendants Ramirez, Moreno Pedrizco, Avina-Torres, Soto and Kingsland were also charged in Count 2 for engaging in a criminal Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i), 1956(a)(1)(B)(i) and 1956(h). In Counts 3 through 21, a number of the defendants (Ramirez, Torres-Ayala, Mandujano-Molina, Miller, Wright, Pacheco-Ayala, Kingsland, Martinez, Moreno Pedrizco, Carriedo Castaneda, Gomez-Chavez, Good, Avina-Torres and Garcia-Marcial) were charged with substantive counts related to either their distribution and/or possession with the intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(B) and 841(b)(1)(C). Defendant Moreno Pedrizco is charged in Count 19 with Possession of a Firearm in Furtherance of a Drug Crime, in violation of 18 U.S.C. § 924(c). Defendants Ramirez and Carillo are charged in Count 22 with engaging in a Conspiracy to Violate the Animal Welfare Act, in violation of 18 U.S.C. § 371. Defendant Ramirez is charged in Count 23 with engaging in an Unlawful Animal Fighting Venture, in violation of 7 U.S.C. § 2156(a)(1) and 18 U.S.C. §§ 2 and 49(a).

On Count 1 the defendants faces a maximum term of Life imprisonment and a mandatory minimum sentence of 10 years imprisonment. All of the drug charges create a rebuttable presumption that no condition or combination of conditions will (1) reasonable assure the safety of the community and (2) reasonably assure the appearance of defendant as required. 18 U.S.C. § 3142(e)(3)(A).

This case involves a vast drug trafficking conspiracy in which drug cartels, criminal organizations and gangs were sourcing a large drug trafficking organization that was operating

[1] Defendant Deborah Miller is not charged in Count 1, but only in Count 11 (possession with the intent to distribute methamphetamine) and Count 12 (Use of a Communication Facility to Facilitate a Drug Offense).

within Washington County, Oregon with hundreds of pounds of methamphetamine, which in turn was being sold to other drug distributors within the area. Each defendant, whatever their role, was instrumental in carrying out this massive criminal enterprise. As noted in the indictment:

Sources of Supply and Wholesale Distributors

Defendants Daniel Ramirez, Eduardo Jorge Carillo, Hector Moreno Pedrizco, a.k.a. "Chupas," Francisco Ceja Castillo, Lorena Martinez, Erik Martinez, Rafael Avina-Torres, utilizing their associations with criminal organizations and gangs based in Mexico, Texas and California, including individuals associated with drug cartels in the Mexican states of Michoacán (La Familia Michoacana and Los Caballeros Templarios) and Sinaloa (Sinaloa cartel a.k.a. "the Company"), obtained and distributed hundreds of pounds of methamphetamine within the United States, including within the District of Oregon.

Manufacturing

Defendants Eduardo Jorge Carillo and Jorge Ivan Torres-Ayala prepared, processed, packaged and repackaged methamphetamine for purposes of further distribution.

Enforcer

Defendant Dario Ochoa Soto, a.k.a. "Teddy Bear," a.k.a. "Gordo," operated as an "enforcer" for defendant Daniel Ramirez, which included threatening individuals with firearms and violence when disputes arose.

Runners and Money Collectors

Defendants Jorge Ivan Torres-Ayala and Jane Doe, a.k.a. "Alejandra Mandujano-Molina," operated as "runners" for defendant Daniel Ramirez in picking up methamphetamine in California as well as delivering methamphetamine to various customers within the District of

Oregon, primarily within Washington County, Oregon. These defendants also collected money for defendant Daniel Ramirez that was derived from the sale of methamphetamine to and by local distributors.

Defendant Francisco Ceja Castillo also operated as a "runner" for defendant Eduardo Jorge Carillo delivering methamphetamine to various customers within Washington County, Oregon and then collecting money from customers that was derived from the sale of methamphetamine.

Defendant Samuel Gomez-Chavez acted as a "runner" for Hector Moreno Pedrizco, a.k.a. "Chupas," and removed approximately 17 pounds of methamphetamine and a firearm from a residence associated with Moreno Pedrizco and Martha Nayeli Carriedo Castaneda a.k.a. "Monica," in an effort to prevent its discovery by law enforcement.

Defendant Fredi Garcia-Marcial acted as a runner for Rafael Avina-Torres picking up and delivering methamphetamine.

<u>Stash Houses</u>

1. Defendants Daniel Ramirez, Eduardo Jorge Carillo, Hector Moreno Pedrizco, a.k.a. "Chupas," maintained residences and premises for the purpose of manufacturing, processing and distributing methamphetamine.

<u>Local Distributors</u>

Defendants Francisco Ceja Castillo, Lorena Martinez, Teshia Valerai Hutchinson, Brain Lance Bouska, a.k.a. "The Russian," Dario Ochoa Soto, a.k.a. Teddy Bear," a.k.a. "Gordo," Andy James Wright, Joshua Todd Summerhays, a.k.a. "Hazy," Donald Kent McVey, a.k.a. "Donald Duck," a.k.a. "The Duck," Wendi Ann Kingsland, Martha Nayeli Carriedo Castaneda, a.k.a. "Monica," Matthew Daniel Good, Andrew Michael Rowland, Osvaldo Pacheco-Ayala,

Bradley Charles Youngblood and Deborah Miller obtained methamphetamine from their sources of supply, including co-defendants Daniel Ramirez, Eduardo Jorge Carillo and Hector Moreno Pedrizco, a.k.a. "Chupas," for purposes of distribution within the District of Oregon, primarily within Washington County, Oregon.

Money Laundering

Defendants Daniel Ramirez, Hector Moreno Pedrizco, a.k.a. "Chupas," Rafael Avina-Torres, Dario Ochoa Soto, a.k.a. "Teddy Bear," a.k.a. "Gordo," and Wendi Ann Kingsland wire transferred money, obtained or derived from the sale of methamphetamine, in an effort to pay for and to launder the proceeds obtained from the sale of methamphetamine.

Based upon the presumption of detention that attaches due to the charges they are facing and the defendants' roles in this vast criminal conspiracy that was responsible for flooding Washington County, Oregon with hundreds of pounds of methamphetamine, the government asks the Court to detain the defendants pending trial.

B. Applicable Law.

1. Rules of Evidence Do Not Apply at a Detention Hearing

The Federal Rules of Evidence do not apply in pretrial detention proceedings. Fed. R. Evid. 1101(d)(3); 18 U.S.C. § 3142(f). Accordingly, both the government and the defense may present evidence by proffer or hearsay. *United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986); *see also United States v. Bibbs*, 488 F.Supp.2d 925, 925-26 (N.D.Cal. 2007).

2. Rebuttable Presumption of Detention

Under the Bail Reform Act, 18 U.S.C. § 3142, *et seq.*, which governs the detention of a defendant pending trial, the Court shall order a defendant detained if, after a hearing, it finds that "no condition or combination of conditions will reasonably assure the appearance of the person

as required and the safety of any other person and the community." Generally, the United States bears the burden of establishing danger to the community by clear and convincing evidence; risk of flight need only be proved by a preponderance of the evidence. *United States v. Aitken*, 898 F.2d 104, 107 (9th Cir. 1990); *Winsor*, 785 F.2d at 757.

Where there is probable cause to believe that the defendant committed a Title 21 narcotics offense and the maximum penalty for that offense is a term of imprisonment of 10 years or more, the law creates a presumption that no condition or combination of conditions of release will reasonably assure the appearance of the person as required and the safety of the community. 18 U.S.C. § 3142(e)(3). In such a case, the burden of proof shifts to the defendant to rebut the presumption of detention. *United States v. Carbone*, 793 F.2d 559, 560 (3rd Cir. 1986). The defendant's indictment in this case creates such a presumption of detention.

Concern about the safety of the community is not limited to concerns about violence; rather it is the *risk* that a defendant will continue committing crimes while on release, such as drug dealing, that warrants their continued detention as a danger to the community:

> [T]he language referring to the safety of the community refers to the danger that the defendant *might* engage in criminal activity to the detriment of the community. The committee intends that the concerns about safety be given a broader construction than merely danger of harm involving physical violence. This principal was recently endorsed in *United States v. Provenzano and Andretta*, in which it was held that the concept of 'danger' . . . extended to nonphysical harms such as corrupting a union. *The committee also emphasizes that the risk that a defendant will continue to engage in drug trafficking constitutes a danger to the 'safety of any other person or the community.'*

S.REP. NO. 98-225, 98th Cong., 1st Sess. (1983), *reprinted in* 1984 U.S.C.C.A.N 3182, 3195 (Bail Reform Act)(emphasis added); *see also United States v. Hare*, 873 F.2d 796, 798-99 (5th Cir.1989)(Congress has determined "that drug offenders pose a special risk of flight and dangerousness to society.").

The Senate Report further explained *why* they created the presumption that there was no condition or combination of conditions of release that will reasonably assure the appearance of drug dealers or the safety of the community:

> These [the crimes outlined in 18 U.S.C. § 3142(e)] are serious and dangerous federal offenses. The drug offenses involve either trafficking in opiates or narcotic drugs, or trafficking in large amounts of other types of controlled substances. It is well known that drug trafficking is carried on to an unusual degree by persons engaged in continuing patterns of criminal activity. Persons charged with major drug felonies are often in the business of importing or distributing dangerous drugs, and thus, because of the nature of the criminal activity with which they are charged, they pose a significant risk of pretrial recidivism.

S.REP. NO. 98-225, 98th Cong., 1st Sess. (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3203 (Bail Reform Act).

The presumption in favor of detention, as both a flight risk and danger to the community, does not vanish if a defendant comes forward with some evidence to rebut it, but rather it remains an evidentiary factor to be evaluated. *United States v. Jessup*, 757 F.2d 378, 384 (1st Cir.1985); *see also United States v. Rueben*, 974 F.2d 580, 586 (5th Cir.1992); *United States v. Rodriguez*, 950 F.2d 85, 88 (2nd Cir.1991); *United States v. Hare*, 873 F.2d 796, 798 (5th Cir.1989). Were the presumption to vanish, "courts would be giving too little deference to Congress' findings regarding this class." *United States v. Martir*, 782 F.2d 1141, 1144 (2nd Cir.1986).

The degree of danger posed by a defendant charged with narcotics trafficking is critical. *United States v. Leon*, 766 F.2d 77, 81 (2nd Cir. 1985). To determine that degree and decide if a defendant should be detained pending trial, a judicial officer must look to the nature and circumstances of the crime charged; whether the crime involved violence or drugs; the personal history of the person, the seriousness of the danger posed by the person's release; and, the evidence of the individual's guilt. *Id*. Evidence of defendant's family ties in the area, residence

in the community and employment history should have no bearing on the court's determination of dangerousness and cannot rebut the presumption that arises under the statute. *See* S. Rep. No. 225, 98th Cong., 1st Sess. 24 (1983) (minimizing community ties and pointing to the "growing evidence that the presence of this factor does not necessarily reflect a likelihood of appearance, and has no correlation with the question of the safety of the community.").

If the defendant proffers evidence to initially rebut the presumption of dangerousness or risk of non-appearance, the Court should then examine the following four factors in deciding whether release is appropriate:

(1) the nature and circumstances of the offense charged, including whether the offense . . . involves . . . a controlled substance . . . ;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including –

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal . . . ; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

18 U.S.C. § 3142(g).

C. Factors Supporting Detention.

The defendants cannot meet their burden of rebutting the presumption that "no condition or combination of conditions of release will reasonably assure the appearance of the person as required and the safety of the community," and thus, the Court should detain them pending trial.

However, even if the Court finds that a defendant has met his or her burden of rebutting the presumption against release – and it should not – the government asserts the factors in 18 U.S.C. § 3142(g) require detention. There is simply no release condition that will eliminate the risk that the defendants will return to drug dealing or that they will make their future court appearances.

1. Nature and Circumstances of the Offense – Vast Drug Dealing Conspiracy.

The defendants were all part, to varying degrees, of a vast drug trafficking organization that poured hundreds of pounds of methamphetamine into community. We are all too familiar with the direct and indirect harms that illegal drugs bring along with them, whether it drug overdoses; drug-affected individuals unable to fully function in society; families unable to care for their children; individuals who steal and rob to support drug addictions; or, drug-fueled violence. It is safe to say that the illegal distribution of drugs such as methamphetamine both the dealing and abuse of it, is a true danger within our community.

> Methamphetamine in the form of crystal methamphetamine, or "ice," continues to be readily available and widely used throughout the Oregon HIDTA [High Intensity Drug Trafficking Area] and represents the region's most serious drug threat. Methamphetamine is a highly addictive central nervous system stimulant that is abused for its euphoric and stimulant effects. Chronic methamphetamine abusers exhibit violent behavior, confusion, insomnia and psychotic characteristics such as hallucinations and paranoia. Methamphetamine-related crime, such as identity theft, abused and neglected children, and other serious person and property crimes, continues to occur at a palpable rate and is prevalent throughout the HIDTA region.
>
> Oregon and Idaho law enforcement officers surveyed in 2015 indicated methamphetamine remains a significant threat due to its level of use and availability; nexus to other crimes such as violent activity and property crime; societal impact; and connection to drug trafficking organizations, primarily MNDTOs [multi-national drug trafficking organizations]. Of law enforcement agencies surveyed, 62 percent reported methamphetamine as the greatest Oregon HIDTA Program drug threat to their area, with the majority indicating methamphetamine as the drug that

> contributes most to violent crime (88%) and property crime (69%). Furthermore, over 60 percent of officers ranked methamphetamine as the drug that serves as the primary funding source for major criminal activity.

Threat Assessment and Counter-Drug Strategy, Program Year 2016, OREGON HIDTA PROGRAM (June 2015).

If the defendants are released, Congress has noted that there is a strong presumption that they will once again go back to drug dealing. The statute puts the burden squarely upon the defendants to show that they are not a danger to go back to being involved in drug dealing – if they are unable to convince the Court of this, pursuant to statute, they should be detained. Absent sufficient rebuttal by the defendant, this Court can presume that a drug dealer, if released, will continue to engage in drug dealing and should thus be detained pending trial. *See Hare*, 873 F.2d at 799.

Here, given the extreme dangers that result from the drug trafficking conspiracy such as this, the Court should not risk the chance that these defendants will once again start poisoning more people in the community. They should be detained pending trial.

2. Weight of the Evidence.

The weight of the evidence against the defendants is very strong and supports their continued detention. As the Court can see, the federal grand jury has returned a very detailed indictment that spells out the specific roles and actions of each individual defendant and a series over overt acts that they engaged in. Through a variety of means, the government can prove those allegations beyond a reasonable doubt.

3. History and Characteristics of the Defendant.

The history and characteristics of the defendants also warrant pretrial detention. Each defendant was part of a lengthy and ongoing criminal conspiracy to distribute extremely large amounts of methamphetamine. This was their job and it was illegal. Some of the defendants

have prior convictions, some are in the country illegally, and some have strong ties to a foreign country. At their initial appearances the government will address each defendants' individual history and characteristics and why it justifies their pretrial detention.

4. Nature and Seriousness of the Danger to the Community.

Given the presumption of detention that comes along with the charges, Congress has obviously recognized the very serious risk that drug dealers pose to the community. Here, the defendants' risk of recidivism and the risk they pose to the community are proven and very high. They should be detained.

Conclusion

For the reasons set forth herein, the government respectfully requests that the Court detain the defendants pending trial and find they pose an unacceptable risk of non-appearance at future court hearings and that they are a danger to the community. We ask the Court to find that, with respect to each defendant:

- The offense charged creates a rebuttable presumption in 18 U.S.C. § 3142(e) that no combination of conditions will (1) reasonable assure the safety of the community and (2) reasonably assure the appearance of the defendant as required.

- The defendant has not rebutted, by sufficient evidence to the contrary, the presumption of detention provided in 18 U.S.C. 3142(e).

- Furthermore, due to the nature of the offense and the extreme dangers posed by the defendants illegal distribution of methamphetamine that there is no condition or combination of conditions that will reasonably assure the safety of other persons and the community if the defendant were released.

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- Due to the defendant's personal history and characteristics, including the potential penalties they are facing on the current charges, no condition or combination of conditions will reasonably assure the appearance of the defendant at future court hearings as required if released from custody.

Dated this 16th day of October 2015.

Respectfully submitted,

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/s/ *Scott Kerin*

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