

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs

Case No: 3:17-CR-00158-JZ
Honorable Jack Zouhary
MJ: James R. Knepp II

CORDELL JENKINS, et al,

Defendant(s).

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DEFENDANT CORDELL A. JENKINS'S MOTION FOR BAIL

Defendant Cordell Jenkins, by and through undersigned counsel, moves pursuant to the United States Constitution, 18 U.S.C. § 3142(g) and the Federal Rules of Criminal Procedure, in the matter styled above. This motion is based upon the following:

INTRODUCTION

This memorandum is submitted in support of Cordell Jenkins motion for bail pursuant to 18 U.S.C. § 3142(g) and the Fifth, Sixth, and Eighth Amendments to the United States Constitution. As addressed herein, these laws require that Mr. Jenkins be released on bail, as he is a good candidate for pretrial release. Moreover, he has demonstrated that he will not pose a risk of flight or danger to any person or the community. Finally, pretrial release is vital to Mr. Jenkins's defense, as the quantity

of discovery and complexity of the charged offense, detention will make it impossible for counsel to adequately prepare for trial, should Mr. Jenkins remain in detention.

STATEMENT OF FACTS

Cordell Jenkins is 46 years old and a resident of Toledo, Ohio. A high school graduate Mr. Jenkins attended Livingstone College, where he majored in Political Science. He was called to the ministry in 1994. Since 1994, Mr. Jenkins has built strong community ties as a minister. Mr. Jenkins is charged in the instant indictment in the Northern District of Ohio for sex trafficking. His family is aware of the charges against him, and is supportive and willing to sign for him, and put up their homes and property for him. Mr. Jenkins does not own a passport and has never left the continent of North America.

LEGAL ARGUMENT

Under the Bail Reform Act of 1984, 18 U.S.C. § 3141 et seq., a court generally “must release a defendant on bail on the least restrictive condition or combination of conditions that will reasonably assure the defendant’s appearance when required and the safety of the community.” *United States v. Madoff*, 586 F. Supp. 2d 240, 246 (S.D.N.Y. 2009); 18 U.S.C. § 3142(c)(1)(B). Bail, then, is properly viewed as a permissible regulatory, or preventative, measure for use by the courts, rather than being punitive in nature. See *United States v. Salerno*, 481 U.S. 739, 747, 107 S.Ct. 2095, 2101 (1987); *United States v. Stone*, 608 F.3d 639, 646 (6th

Cir. 2010); *United States v. Tirado*, 912 F. Supp. 2d 273, 277 (N.D. Ohio 1995)(“If the Judicial Officer finds that the defendant's release on his own recognizance or unsecured appearance bond will not reasonable assure defendant's appearance at trial or will endanger the safety of the community, the Judicial Officer may order the defendant's release subject to one or more conditions from a list of 14 provided. 18 U.S.C. § 3142(c).”). Significantly, in enacting the Bail Reform Act, Congress recognized “the traditional presumption favoring pretrial release ‘for the majority of Federal defendants.’” *United States v. Berrios-Berrios*, 791 F.2d 246, 250 (2d Cir. 1986) *cert. dismissed* 479 U.S. 978, 107 S.Ct. 562 (1986); *see also United States v. Tirado*, 912 F. Supp. 2d at 277. Accordingly, the Supreme Court has observed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Salerno*, 481 U.S. at 755, 107 S.Ct. at 2105. As the Second Circuit observed: “Because the law thus generally favors bail release, the government carries a dual burden in seeking pre-trial detention. First, it must establish by a preponderance of the evidence that the defendant, if released, presents an actual risk of flight. Assuming it satisfies this burden, the government must then demonstrate by a preponderance of the evidence that no condition or combination of conditions could be imposed on the defendant that would reasonably assure his presence in court.” *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007) (internal citations omitted). The government carries an even higher burden if it

seeks to prove that the defendant is dangerous, in which case its burden is proof by clear and convincing evidence. *United States v. Vasconcellos*, 519 F. Supp. 2d 311, 316 (N.D.N.Y. 2007).

In determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, the court must consider the following factors:

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(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 appearance 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, or completion of sentence for an offense under Federal, State, or local law; and

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

18 U.S.C. § 3142(g). The overriding policy objective is only "a limited group of offenders" should be denied bail pending trial, *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987)("In applying the factors to any particular case, the court

should bear in mind that it is only a ‘limited group of offenders’ who should be denied bail pending trial.” [citing S. Rep. No. 225, 98th Cong., 2d Sess. 7, reprinted in 1984 U.S. Code Cong. & Ad. News 3182, 3189].)

(1) The Nature and Circumstances of the Offense Charged and the Weight of the Evidence

While serious, these charges do not give rise to a presumption that no conditions of release will reasonably ensure the safety of the community. To support its request for detention, the government must therefore carry its burden of proving first actual risk of flight by preponderance of the evidence, or dangerousness by clear and convincing evidence, and then the absence of any combination of conditions that could reasonably assure Mr. Jenkins appearance when required. The seriousness of the charges that Mr. Jenkins is facing does not place him in that “limited group of offenders” who should be denied bail pending trial. See *Shakur*, 817 F.2d at 195.

The second factor of § 3142(g) “the weight of the evidence against the person” requires the Court to consider evidence proffered by the government that it intends to use at Mr. Jenkins’s trial. However, even if the government has substantial evidence that Mr. Jenkins participated in the offenses outlined in the indictment, there is no reason to conclude, on the basis of such evidence, that he is unlikely to observe his legal obligation to attend a trial that may result in the imposition of a substantial sentence.

(2) The History and Characteristics of the Person

Mr. Jenkins has sufficient community support to ensure he abides by the conditions this Court imposes. There are no factors present in this case that would demonstrate that Mr. Jenkins is an irremediable flight risk. Mr. Jenkins does not, for example, have significant financial resources with which to finance flight, *cf. Sabhnani*, 493 F.3d at 76, he does not have citizenship or family ties in another country, *cf. United States v. Kirkaldy*, 1999 U.S. App. LEXIS 10782 (2d Cir. May 26, 1999), nor does he have a history of travel and residence in other countries, *cf. United States v. Shelikhov*, 4 68 Fed. Appx. 54, 56 (2d Cir. 2012). Mr. Jenkins's significant family and community ties weigh strongly in favor of pretrial release in this case. There are clearly conditions that would reasonably assure Mr. Jenkins's presence in court.

(4) The Nature and Seriousness of the Danger to Any Person or the Community

Mr. Jenkins' release would not result in any danger to any person or to the community. In similar cases, district courts have militated against any potential danger posed by pretrial release by either imposing special restrictions on the defendants' computer use, or by permitting unrestricted computer use subject to monitoring by pretrial services. Such monitoring or other restrictions would ensure that Mr. Jenkins would not pose a danger to the community through repetition of his

alleged offenses, and would make the government instantly aware of any attempt to do so.

(5) Due Process Considerations

Although the Speedy Trial Act, 18 U.S.C. § 3161 et seq., is designed to ensure that criminal matters are brought to trial expeditiously, in reality, it often takes many months before a complex case can be tried. Preventive detention for many months, without a finding of guilt, raises a serious constitutional question, and the length of the defendant's detention must be considered in a bail application such as the present one. Given the voluminous amount of discovery in this case and Mr. Jenkins's intention to go to trial, there is a very high risk that continued pre-trial detention would result in a due process violation.

Pretrial detention constitutes punishment in violation of the Fifth Amendment's Due Process Clause when it is excessive in relation to non-punitive purposes of detention, such as "preventing danger to the community," *Salerno*, 481 U.S. at 746–47, or "ensur[ing] [a defendant's] presence at trial," *Bell v. Wolfish*, 441 U.S. 520, 536, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). Due process sets no bright-line limit on the length of pre-trial confinement, but courts have found prolonged pre-trial detention to violate due process when insufficiently justified by other factors. See, e.g., *United States v. Ojeda Rios*, 846 F.2d 167, 168–69 (2d Cir. 1988) (holding unconstitutional pretrial detention for thirty-two months without trial date); *United*

States v. Gatto, 750 F. Supp. 664, 665 (D.N.J. 1990) (although court still considered defendants dangerous to community, 15-month detention had become punitive under due process clause and required release on conditions pending trial); *United States v. Khashoggi*, 717 F. Supp. 1048, 1051 (S.D.N.Y. 1989) (finding that likelihood of a somewhat prolonged pretrial detention weighed in favor of defendant's bail application); *United States v. Lofranco*, 620 F. Supp. 1324, 1326 (N.D.N.Y. 1985) (while releasing defendant would create potential dangers to the public and to the integrity of his trial, danger was outweighed by liberty interest of defendant who had already been held for six months); *Gonzales Claudio*, 806 F.2d at 341. The vast majority of this discovery could prevent Mr. Jenkins from participating meaningfully in his own defense and depriving him of his right to the effective assistance of counsel and a fair trial. A consideration of the factors set forth at 18 U.S.C. § 3142(g) therefore demonstrates that the conditions proposed herein would assure Mr. Jenkins's appearance and the safety of the community.

THE PROPOSED CONDITIONS

Accordingly, we propose that the following combination of conditions will assure both the safety of the community and Mr. Jenkins's appearance in court:

1. A \$50,000 bond secured by the signatures of five financially responsible parties including family members, close friends, and attorneys not associated with this case, and two properties belonging to family friends with equity in excess of \$50,000.

2. Residence in Toledo, and pre-trial supervision. Mr. Jenkins would reside in the home of ministers Joseph and Mary Quinn, and a financially responsible person who would also be a signatory to his bond. Mr. Jenkins would be proximate to the Northern District Courthouse and pre-trial services, as well as readily accessible to his attorneys and available to review the discovery in this case.
3. Monitoring of Mr. Jenkins's whereabouts by GPS Tracking and/or home confinement as well as monitoring computer usage by pre-trial services.

CONCLUSION

For the reasons set forth above, we respectfully submit that this Court should grant bail to Mr. Jenkins under the terms set forth herein and grant such other and further relief as may be just and proper.

Respectfully submitted,

/s/ Allison Folmar

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DATED: 5/23/2017

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2017, I electronically Defendant's Motion for Bail with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the following:

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/s/ Allison Folmar

ALLISON FOLMAR