



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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New York, New York 10007

March 6, 2016

Via ECF & Facsimile
Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
Fax: 212-805-0426

**Re: United States v. Adam Samia,
S9 13 Cr. 521 (LTS)**

Dear Judge Swain:

The Government writes in opposition to the March 3, 2016 application for pretrial release by defendant Adam Samia. (Dkt. No. 255).

At various times between 2008 and at least approximately 2012, the defendant worked as a mercenary for a transnational criminal organization (the "Organization") that perpetrated acts of violence, torture, drug-trafficking, and money laundering across the globe. In February 2012, the defendant murdered Catherine Lee in the Philippines—by shooting her in the face—inside a vehicle driven by his co-defendant, Carl David Stillwell. The defendants committed the murder-for-hire at the direction of Joseph Hunter, who was at that time the Organization's head of "security." The defendant and Stillwell then transferred the proceeds of the crime back to the United States in a series of structured transfers sent to third parties, and returned to their homes in North Carolina.

In light of this egregious conduct, the defendant and Stillwell are charged in Superseding Indictment S9 13 Cr. 521 (LTS) (the "Indictment") with conspiracy and substantive murder-for-hire counts, conspiracy to murder and kidnap in a foreign country, a related weapons offense, and conspiracy to commit money laundering. Thus, the defendant faces a potential mandatory term of life imprisonment. Based on the circumstances of the offense, the gravity of the pending charges, the defendant's personal characteristics, and the fact that associates of the Organization with the capacity to assist the defendant in flight remain at large, the Government respectfully submits that there is no combination of conditions that could reasonably assure the safety of the community and the defendant's appearance in these proceedings. Accordingly, the defendant's application should be denied.

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BACKGROUND

I. The Defendant's Work for the Organization

In approximately 2008, the defendant began to work for the Organization by participating in gold-transportation activities in Africa and Asia, which he described in his post-arrest statement as "asset security" work. In that timeframe, the defendant worked with Hunter and a man named David Smith, who was then the Organization's head of security.¹ Documents seized from the defendant's home on the day of his arrest reflect, among other things: (i) June 2008 roundtrip airfare for a trip by the defendant and Hunter between Kinshasa and Lubumbashi in the Democratic Republic of the Congo; and (ii) August 2008 roundtrip airfare for a trip by the defendant between Manila, Philippines and Port Moresby, Papua New Guinea, which was purchased by Smith.

In October 2011, the defendant communicated with Hunter regarding the international "smuggling" of a stash of tramadol, an opioid, for the Organization.² The defendant assured Hunter that his "guy" was "eager to work!!," and Hunter described the task as follows:

The trans[portation] is on hold right now, for a week or two, we are investigating things so the trans guy is safe in moving the stuff. We dont want anything to happen to the guy!!!

Basically there are 72 check points with about 11 in the state where he will pick up, thats permanent ones and there are random ones that they set up in various places. The check point is no real problem, it is immigration check points in which they are suppose to look for illegals, but they also are looking for smuggling. The only thing they can do without consent is run the dog around the outside of the vehicle which is no problem for us. The guy you have is white? The immigration thing will be no problem for him and they will

¹ As the Court is aware, Hunter was arrested in Thailand in September 2013, as a result of a sting investigation by the Drug Enforcement Administration ("DEA"), based on charges related to conspiracies to commit drug-trafficking crimes and to murder a DEA agent and a confidential source. On February 13, 2015, Hunter pleaded guilty to: (i) conspiracy to import cocaine into the United States, in violation of Title 21, United States Code, Sections 963 and 959(c); (ii) conspiracy to murder a law enforcement agent and a person assisting a law enforcement agent, in violation of Title 18, United States Code, Sections 1117, 1114, and 3238; and (iii) conspiracy to possess a firearm in furtherance of a crime of violence, in violation of Title 18, United States Code, Sections 924(o) and 3238. Hunter has not yet been sentenced.

² Tramadol was listed as a Schedule IV controlled substance, pursuant to the Controlled Substance Act, on August 2014. Prior to that listing, the distribution of tramadol was regulated by the Food, Drug, and Cosmetic Act.

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immediately wave him through, but he has to have a good cover story for his travel, because they will ask him where he is going. He has to be cool with no concerns when dealing with these guys. We are just looking into these things a little more before we start.

The defendant responded, “yes he is white” and “has a good cover story.” In a subsequent email, Hunter wrote to the defendant: “Your driving guy is on standby until we get a modified vehicle for him to use in his thing. . . . The drive[r] is definitely going to be used and soon as we make it as safe as possible for him.”³

During roughly the same timeframe in the fall of 2011, the defendant agreed with Hunter to travel to Brazil for the Organization. The Organization paid for the defendant’s trip by sending him approximately \$1,600 via a Western Union transfer originated in a false name. The defendant was unable to travel to Brazil, however, because he failed to obtain an entry visa.

II. The Murder-For-Hire

In October 2011, Hunter instructed the defendant to prepare for “Ninja stuff”—*i.e.*, murder-for-hire—on behalf of the Organization:

Boss says you are on standby until the other guy is ready and you guys will come here together for Ninja stuff. . . . We want you guys, but are just waiting until you and your partner can get on the same time table.

(Indictment ¶ 9(a)).

The defendant and Stillwell traveled to the Philippines in January 2012. (*Id.* ¶¶ 9(e), 9(g)). On January 23, 2012, the defendant sent an email to Hunter requesting “OP funds” to facilitate preparations for the murder. (*Id.* ¶ 9(i)). In a separate email, Hunter

³ It is not clear whether the Organization used the individual recruited by the defendant to transport the tramadol. However, by 2013, Timothy Vamvakias—another member of the Organization—was protecting the tramadol stash at a house in Texas in exchange for a monthly salary of \$7,500. The narcotics were later seized by the DEA. In September 2013, Vamvakias was arrested in Liberia based on the same drug-trafficking and murder-for-hire conduct that led to Hunter’s arrest. On January 9, 2015, Vamvakias pleaded guilty to: (i) conspiracy to import cocaine into the United States, in violation of Title 21, United States Code, Sections 963 and 959(c); (ii) conspiracy to murder a law enforcement agent and a person assisting a law enforcement agent, in violation of Title 18, United States Code, Sections 1117, 1114, and 3238; (iii) conspiracy to possess a firearm in furtherance of a crime of violence, in violation of Title 18, United States Code, Sections 924(o) and 3238; and (iv) conspiracy to distribute cocaine on board a U.S.-registered aircraft, in violation of Title 21, United States Code, Sections 963 and 959(c). On July 27, 2015, the Court sentenced Vamvakias principally to 240 months’ imprisonment.

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requested weapons from the leader of the Organization, including a “Rifle Silenced with optics” and a “.22 or 380 Pistol” with a silencer. (*Id.* ¶ 9(h)).⁴ Hunter later confirmed that he had received the weapons, requested a “bigger caliber rifle to go along with the small caliber one I received today,” and indicated that “Sal” and “JT”—the defendant and Stillwell, respectively—would be owed \$35,000 if they completed the murder (“Mission Success”). (*Id.* ¶¶ 9(j), 9(k)).

The defendant’s victim, Catherine Lee, was a real estate professional working in the area of Las Piñas, Philippines. A digital camera seized from the defendant’s residence on the day of his arrest contained surveillance photographs of a business where Lee worked, which were taken in late-January 2012 as the defendant and Stillwell planned the murder:



On February 4, 2012, Hunter sent an email requesting funds to purchase and modify a computer bag in order to conceal a weapon, and to pay for the travel to “this las pinas place” where Lee was located. (*Id.* ¶ 9(n)).

⁴ The leader of the Organization is referred to in the Indictment as the “Boss.” (*E.g.*, Indictment ¶ 9(a)).

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The defendant and Stillwell used the cover of potential real estate purchasers in order to establish contact with Lee. On February 12, 2012, the defendant shot Lee in the face inside a van driven by Stillwell, and they left her body on a pile of garbage. (*Id.* ¶¶ 9(o), 9(p)). On February 14, 2012, the defendant sent Hunter an “expense report.” (*Id.* ¶ 9(q)). On the same day, he sent a message to another individual via the Facebook website, which stated, in part, “MY [dog] is going on 11[years old] so it is coming for me to[o] . . . dreading that day . . . much easier to put down a person than a dog!!”

Between February and March 2012, the defendant and Stillwell sent part of the proceeds of the crime back to the United States via structured funds transfers using Western Union. (*E.g., id.* ¶¶ 9(r)-(v)). Stillwell returned to North Carolina on or February 29, 2012, and the defendant traveled home on or about March 8, 2012. (*Id.* ¶¶ 9(z), 9(bb)).

On March 18, 2012, Hunter sent the defendant an email in which he was critical of the manner in which the defendant and Stillwell (“JT”) conducted the murder:

Let me explain, you signed up for a job with JT, in which I am responsible for both of you. I am expected to get these things done. You said you wanted the job. First, I waited a year for you to be available because of your other plans. Then you finally come onboard, do one sloppy job which could have endangered everyone and left. . . .

(*Id.* ¶ 9(cc)). In March 2013, during a videotaped meeting in Phuket, Thailand, Hunter described the defendants’ murder of Lee to other mercenary recruits of the Organization:

[A]nother real estate agent and uhm . . . when they was planning initially, they did the same thing. They called her, said, “I wanna see houses” and they told . . . They came back.

[. . .]

And then, just keep driving and find a place to dump her. What these guys did, they didn’t listen to me. They picked her up at, at Jolly B and then they went to all these different houses with her, where there was people living in the houses. So every house they went to, people saw them together. They saw their faces. They saw the real estate agent. So they went . . . They did this for like three different days. . . . And then I was watching the news and they had the sketches, but the sketches didn’t look like them so everything was O.K. One guy kinda looked like an Asian and the other guy looked like a cartoon character. So I got them on the plane. They were Americans so I got them back to America

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III. The Defendants' Facebook Communications

The Government obtained numerous communications relating to the defendant's murder of Lee and his ties to the Organization from Facebook accounts maintained by the defendant and Stillwell. Set forth below are some of those messages.

On November 20, 2013, the defendant and an associate ("Male-1") exchanged messages regarding the DEA's September 2013 arrest of Hunter, Vamvakias, and others:

Male-1	you hear bout Tim [Vamvakias] and Joe [Hunter]?
Defendant	. . . no what happen
Male-1	read this
Male-1	http://www.justice.gov/dea/divisions/hq/2013/hq092713.shtml ^[5]
Defendant	Wow . . . holly Shit
Male-1	That is crazy stuff
Defendant	very stupid people
Defendant	they are done they will never get out
	* * *
Male-1	yeah I would imagine not . . . I can't believe that they are that sloppy .
	* * *
Defendant	they got blinded by greed

On December 11, 2013, the defendant exchanged the following messages with another associate ("Male-2"):

Defendant	. . . any new ideas to get rich quick!! Lol
Male-2	Murder, sex, and drugs lol
Defendant	did those already ;) . . . well no drugs lol
Male-2	Lol im guilty
Defendant	Yep . . . like you said that why we get along so wellllllll . . . lol

The defendant sent the DEA Press Release to Stillwell and Male-2 on December 20, 2013.

⁵ The link related to a September 27, 2013 press release by the DEA regarding the arrest of Hunter, Vamvakias, and others based on the drug-trafficking and murder-for-hire crimes discussed above in footnotes 1 and 3 (the "DEA Press Release").

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On January 22, 2014, the defendant exchanged the following messages with a third associate ("Male-3"):

Defendant	How are thing going in [the Philippines] Bro ?!
Male-3	Feels a little chilly even though its 76F . . . Other than that, same old stuff . . . I suppose you've already heard about Joe Hunter?
* * *	
Defendant	ya that is crazy shit
Defendant	Got greedy an sloppy
Male-3	Yep... They're gonna put him in a cell UNDER the prison
Defendant	Ya him an Tim [Vamvakias] . . . dont know the others . . .

On September 22, 2014, the defendant exchanged additional messages with Male-1:

Defendant	well that's good news Bro . . . how are you doing . . . anything new . . . I am going crazy need to get back out!!
Male-1	Nothing going on. Lachlan indicted by the Feds and will be arrested soon ^[6]
Defendant	what for what
Male-1	Stuff he did for [the leader of the Organization]
Defendant	wtf . . . how many years ago was that from
Male-1	Does not matter
Defendant	did [the leader of the Organization] get pop too
* * *	
Male-1	[He] got lifted by the Feds in Brazil in 2012 and sang like a canary and set all his guys up
* * *	
Defendant	wow
Defendant	scary shit dude
Male-1	So far there have been ten guys who worked for him lifted in diff countries and extradited to US ^[7]
Defendant	wow holy shit

⁶ On or about March 18, 2014, the Government unsealed drug-trafficking, money laundering, and other charges against Lachlan Scott McConnell and others. (See Indictment 13 Cr. 273 (D. Minn.) (Dkt. No. 5)). McConnell is a fugitive.

⁷ Male-1 appears to have been referring to (i) the five defendants charged in Superseding Indictment S7 13 Cr. 521 (LTS), including Hunter and Vamvakias; and (ii) the five defendants charged in Superseding Indictment S8 13 Cr. 579 (ALC), with participating in a conspiracy to import heroin, in violation of Title 21, United States Code, Section 963.

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Defendant	that is fucking BS
Defendant	that's to[o] bad for Lachlan he is a good guy
Male-1	He's in a bad way at the moment
Defendant	have they picked him up yet
Male-1	Not yet
Defendant	wonder if we r going to get brought in to this shit
Male-1	No
Male-1	They were all involved in drugs and taken down by the DEA
Defendant	dumb I would never fuck around with that shit
Male-1	They got greedy and stupid
Defendant	I told joe that too
* * *	
Male-1	So now they all go down for life on conspiracy charges
Defendant	life . . . wow

On or about November 25, 2014, Stillwell posted a photograph to his Facebook page depicting a motorcycle that he referred to as "Blood Money":



On February 1, 2015, the defendant exchanged the following messages with Male-1:

Male-1	tim [Vamvakias] took a plea deal and will go down for 10 years
* * *	

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Defendant	Wow . . . crazy shit
Defendant	What about [Lachlan] and Hunter
	* * *
Male-1	hunter will get life . . . no plea deal for him
Male-1	Lach is still in the [Philippines]
Defendant	That's a whole lot of crazy shit brother
Male-1	it is
Defendant	Being foolish being greedy not knowing who you working with

IV. The Defendants' Arrests

On July 22, 2015, the defendants were arrested in the vicinity of Roxboro, North Carolina. In addition to the digital camera containing surveillance photographs relating to Lee, DEA agents seized from the defendant's house body armor, printed email correspondence with Hunter, a travel itinerary relating to the defendant's trip to the Philippines, and a lease for an apartment in the Philippines dated January 22, 2012. The Bureau of Alcohol, Tobacco, Firearms and Explosives also seized approximately 30 firearms from the defendant's residence, and approximately 159 firearms from Stillwell's residence. Some of the weapons seized from the defendant's residence—including a .50-caliber rifle—appear to have been modified or manufactured by the defendant, and the ATF is investigating whether the firearms were lawfully possessed. Set forth below are photographs of the weapons seized in connection with the arrests of the defendants:



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Following the arrest of the defendant, he waived his *Miranda* rights and made statements to the agents. He described his work with Smith and Hunter in Africa, characterizing it as “asset security” for a business involving “buying gold and mailing it to Dubai and Hong Kong.” The defendant stated falsely, however, that he traveled to the Philippines to perform “security work and advance work” for Hunter, and that no one else he knew accompanied him on the trip.

Stillwell also waived his *Miranda* rights following his arrest. He admitted to participating in the murder of Lee with the defendant:

Agent	Did Adam Samia pull the trigger on that woman?
Stillwell	Yes.
Agent	Were you present?
Stillwell	Yes.
Agent	Did it happen in the van?
Stillwell	It was in a vehicle.
Agent	Who was driving the vehicle?
Stillwell	I was driving.

V. The Pending Charges

The Indictment was filed on February 24, 2016, and charges the defendant and Stillwell in five counts:

- Count One: Conspiracy to commit murder-for-hire, in violation of Title 18, United States Code, Sections 1958(a) and 3238;
- Count Two: Murder-for-hire, in violation of Title 18, United States Code, Sections 1958(a), 3238, and 2;
- Count Three: Conspiracy to murder and kidnap in a foreign country, in violation of Title 18, United States Code, Sections 956(a)(1), 956(a)(2)(A), and 3238;
- Count Four: Using and carrying a firearm during and in relation to a crime of violence constituting murder, in violation of Title 18, United States Code, Sections 924(j), 3238, and 2; and
- Count Five: Conspiracy to commit money laundering, in violation of Title 18, United States Code, Sections 1956(h) and 3238.

The Court arraigned the defendants on these charges at a conference on March 4, 2016.

APPLICABLE LAW

As defense counsel acknowledges, there is a presumption of pretrial detention in this case. (*See* Def. Mem. at 5). Specifically, because the defendant is charged with violating Title 18, United States Code, Section 956(a), it is “presumed that no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community.” 18 U.S.C. § 3142(e)(3)(B).⁸ “The presumption [in favor of pretrial detention] reflects Congress’s substantive judgment that particular classes of offenders should ordinarily be detained prior to trial.” *United States v. Stone*, 608 F.3d 939, 945-46 (6th Cir. 2010) (citing *United States v. Jessup*, 757 F.2d 378, 384 (1st Cir. 1985) (“Congress intended magistrates and judges, who typically focus only upon the particular cases before them, to take account of the more general facts that Congress found.”) and *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986) (“[T]he presumption of dangerousness . . . represents Congressional findings that certain offenders . . . are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions.”)).

Where this presumption applies, the defendant “‘bears a limited burden of production—not a burden of persuasion—to rebut that presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight.’” *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (quoting *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001)). “Satisfying the burden of production does not eliminate the presumption favoring detention; it ‘remains a factor to be considered among those weighed by the district court.’” *Id.* (quoting *Mercedes*, 254 F.3d at 436). The Government “‘retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community,’ and ‘by the lesser standard of a preponderance of the evidence that the defendant presents a risk of flight.’” *Id.* (quoting *Mercedes*, 254 F.3d at 436).

In assessing the extent to which the defendant presents a danger to the community or a risk of flight, courts are to look to the factors in Title 18, United States Code, Section 3142(g): (i) “the nature and circumstances of the offense charged, including whether the offense is a crime of violence” or “involves . . . [a] firearm”; (ii) “the weight of the evidence against the person”; (iii) “the history and characteristics of the person . . .”; and (iv) “the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.”

⁸ “[A]n indictment returned by a duly constituted grand jury conclusively establishes the existence of probable cause for the purpose of triggering the rebuttable presumptions set forth in § 3142(e).” *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (internal quotation marks omitted).

DISCUSSION

The defendant's bail application is premised on the lie that he has lived for several years. In Roxboro, North Carolina, he presented himself to his family and friends as a man living a "lifetime of decent acts," serving as a "reserve deputy sheriff" with undefined duties in a Massachusetts town hundreds of miles away, and traveling internationally to perform unspecified security work. (Def. Mem. at 3). In the shadows, the defendant joined a global network of mercenaries willing to perform acts of violence in exchange for pay, committed a murder-for-hire on behalf of a transnational criminal organization, and watched anxiously with other members of the Organization as their associates were brought to justice. Arrested shortly after a trip to visit relatives in Lebanon (with which the United States has no extradition treaty), and prior to a planned departure to Iraq, the defendant is a danger to the community and poses a significant risk of flight.⁹ Therefore, his application should be denied.

I. The Strength of the Case

There is powerful evidence of the defendant's participation in the February 2012 murder-for-hire of Lee and his ties to the Organization. The defendant communicated with Hunter about performing "Ninja work" for the Organization before leaving the United States. Once he arrived in the Philippines, he requested additional "OP funds" to perform the murder-for-hire, and Hunter obtained weapons for the defendant to use to kill Lee. The surveillance photographs of Lee's workplace serve as devastating proof that the defendant plotted the crime methodically in January and February 2012. After killing Lee, the defendant and Stillwell repatriated the proceeds of the crime by sending a series of structured funds transfers to associates in the United States. Hunter later described the murder on video, and Stillwell made clear during his confession that he and the defendant committed it.

Both defendants displayed shocking nonchalance about having killed Lee. Just two days after committing the murder, the defendant joked that it was "easier to put down a person than a dog." In December 2013 Facebook messages, in response to the comment, "Murder, sex, and drugs," the defendant wrote "did those already ;) . . . well no drugs lol." And Stillwell purchased a motorcycle that he named "Blood Money."

The defendant's reaction to the Government's public efforts to dismantle the Organization serves as further evidence of his guilt. Upon learning of the arrests of Hunter and Vamvakias, rather than expressing surprise at the nature of their criminal activities, the defendant declared that they were "stupid," "got sloppy," and "blinded by greed." When the defendant learned of the charges against Lachlan Scott McConnell in Minnesota, he asked, "wonder if we [are] going to get brought in to this shit." The answer, of course, was yes. Tellingly, however, Male-1 assured the defendant that they would not be arrested, not due to their innocence but rather because the charges in existing cases against members of the Organization related to drug

⁹ Stamps in the defendant's passport indicate that he entered Lebanon on June 4, 2015, and returned to the United States on June 26, 2015.

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trafficking in investigations by the DEA, as opposed to the violence in which the defendant participated. The defendant then proclaimed—falsely, in light of his efforts to facilitate the transportation of the Organization’s stash of tramadol—that associates of the Organization who participated in narcotics-related conduct were “dumb” and that he “would never fuck around with that shit.”

Finally, Counsel is wrong that the Government’s disclosures in connection with discovery “defeat[] jurisdiction . . . as a matter of law.” (Def. Mem. at 7). The fact that the leader of the Organization had no contact with the defendant is simply an indication of the linear structure of the Organization. The emails set forth above make plain that the defendant took his taskings from Hunter, and that Hunter told the defendant as early as October 2011 that he was traveling to the Philippines to do violence for the Organization. Moreover, while it is true that certain witnesses in the Philippines failed to identify the defendant, that fact is consistent with his efforts to plan the murder covertly, and the witnesses viewed the photo arrays more than three years after the murder.

Put simply, there is a surfeit, rather than a “scintilla,” of evidence demonstrating the defendant’s guilt. (Def. Mem. at 7). Accordingly, this factor weighs strongly in favor of continued pretrial detention.

II. Risk of Flight

The evidence also demonstrates that the defendant has the means and ability to flee. He sent and received international funds transfers involving nominees, and his travel history includes multiple countries in Africa and Asia. In October 2011, he described to Hunter an associate who was prepared to smuggle contraband over a border. In addition to relatives in Lebanon, the defendant maintains ties in other countries. For example, in April 2014, the defendant stated in a Facebook message: “I worked in the [Philippines] quite a bit . . . I still might have a flat there, lol . . . I still have contacts in [the Philippines] . . . (friends).” Among the friends capable of facilitating flight by the defendant are Lachlan Scott McConnell (a fugitive), Male-1, Male-2, and Male-3, all of whom appear to be affiliated with the Organization and located abroad.

III. Danger to the Community

In light of the charges, the defendant’s ties to the Organization, and the strength of the evidence, it cannot seriously be disputed that he poses a danger to the community. At the time of his arrest, the defendant possessed body armor and numerous weapons, which he appeared to be capable of manufacturing and modifying. These items were stored in the same residence to which counsel requests that the defendant be released. Under the circumstances of this case, permitting the defendant to reside at that house with his father, who owns numerous firearms, in the vicinity of associates in North Carolina, who are also known to own weapons, would be wholly inconsistent with the Bail Reform Act.

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IV. Due Process

Finally, the defendant's due process argument is insufficient to warrant pretrial release. "It is well-settled that so long as pretrial detention is administrative rather than punitive, it is constitutional." *United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000).

To determine whether the length of pretrial detention has become unconstitutionally excessive, a court must weigh: (1) its length, (2) the extent of the prosecution's responsibility for delay of the trial, (3) the gravity of the charges, and (4) the strength of the evidence upon which detention was based, *i.e.*, the evidence of risk of flight and dangerousness.

Id.

For the reasons stated above, the gravity of the charges and the strength of the evidence relating to risk of flight and dangerous strongly favor denial of the defendant's application. "While the length of pretrial detention is a factor in determining whether due process has been violated, the length of detention alone is not dispositive and 'will rarely by itself offend due process.'" *Id.* (internal quotation marks omitted). Finally, the reasons for the lack of a trial date at this point in this complex case do not suggest that bail is necessary or appropriate.

On the day of the defendants' July 22, 2015 arrest in North Carolina, the DEA executed search warrants at their residences and seized a large quantity of evidence, including a total of approximately 49 electronic devices (the "Devices"). On August 5, 2015, the Government obtained warrants authorizing searches of the Devices, which the DEA then sent to its Digital Evidence Laboratory. The defendant also arrived in the District on August 5, 2015, and Stillwell arrived on August 12, 2015. The Government made its initial production of discovery on August 22, 2015. The production included the contents of more than 10 email accounts, financial records from several banks, travel records, and the contents of the defendant's Facebook account.

At a status conference on September 14, 2015, the defendant was permitted to change counsel. The Court appointed Ms. Kunstler to represent the defendant, pursuant to the Criminal Justice Act, on September 16, 2015. (Dkt. No. 201). Ms. Kellman entered a notice of appearance on October 5, 2015, approximately two months after the defendant arrived in the District. (Dkt. No. 207). At a status conference on December 16, 2015, the Government notified the Court and counsel that the searches of the Devices were ongoing, and that the Government was in the process of seeking internal approvals to file additional charges against the defendants. (Dec. 16, 2015 Tr. ("Tr.") 2-3). Counsel requested a 60-day adjournment because they were still reviewing discovery and had not yet received all of the results of the DEA's ongoing searches of the Devices. (Tr. 12). Counsel also noted that, "if we need to be in touch with the Court as a group, we can do that by letter." (Tr. 12). At the end of the conference, neither defendant objected to the exclusion of time under the Speedy Trial Act until the next scheduled conference

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on March 8, 2016. (Tr. 13). The Court excluded time pursuant to Title 18, United States Code, Section 3161(h)(7)(A), based in part on a prior finding relating to the complexity of the case, *see* 18 U.S.C. § 3161(h)(7)(B)(ii). (Tr. 13; *see also* Sept. 14, 2015 Tr. 17-18).

On December 22, 2015, in response to a request from defense counsel, the Government further discussed with counsel the allegations against the defendant, the discovery that had been produced to date, the status of the DEA's ongoing searches of the Devices, and the status of the Attorney General's decision regarding whether to seek the death penalty in this case. On January 19, 2016, counsel sent the Government two questions regarding the discovery and inquired about the status of the Attorney General's decision. The Government responded to the questions on the same day, and sent a further response on January 21 in which it re-produced documents relating to Western Union transfers involving the defendant.

On February 3, 2016, the Attorney General authorized and directed this Office not to seek the death penalty against the defendants, and the Government began to prepare to present additional charges to the grand jury. On the morning of February 4, 2016, counsel requested the Government's consent to seek an adjournment of the March 8 status conference until March 15. Before the Government responded, however, counsel submitted a letter to the Court requesting an earlier conference. (Dkt. No. 245). The Court granted the request and scheduled a status conference for February 18, 2016. (Dkt. No. 247). On the evening of Friday, February 12, 2016, counsel sent the Government additional questions regarding the discovery. The Government responded to counsel in the courtroom prior to the February 18 conference. That conversation led counsel and the Government to conclude that prior counsel had failed to turn over some of the discovery produced by the Government in August 2015, and the Government subsequently provided current counsel with another copy of that production.

During the February 18 conference, the Government notified the Court and the parties of the Attorney General's decision and the likelihood of additional charges. The Indictment was filed on February 24, 2016. Following the February 18 conference, counsel sent the Government several additional questions regarding the discovery, as well as requests for assistance in obtaining materials relating principally to Catharine Lee, which are not presently in the Government's possession or control. The Government responded to those inquiries. Moreover, although counsel has not articulated a basis suggesting that the latter category of materials includes exculpatory evidence, the Government has sought to provide assistance where possible in obtaining these items. On February 23, 2016, the Government notified counsel that it had received from the DEA's Digital Evidence Laboratory the remaining results of the searches of the Devices. Those materials were produced to counsel on February 29, 2016, along with the results that the Government had received to date relating to an email account maintained by Lee. On March 3, 2016, the Government produced four additional search warrant affidavits that were omitted inadvertently from prior productions, and the Government expects to receive the full contents of the Lee email account during the week of March 7, 2016.

In conclusion, the Government is mindful that the complexity of this matter and volume of discovery warrant additional effort by the prosecution to facilitate defense counsel's

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review of the evidence. However, the record to date does not support pretrial release under the circumstances of this case, much less a due process violation, and the other factors discussed in *El-Hage* weigh strongly in favor of continued detention.

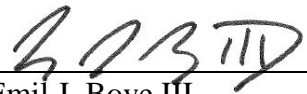
CONCLUSION

For the foregoing reasons, the Government respectfully submits that the defendant has failed to overcome the presumption that “no condition or combination of conditions will reasonably assure [his appearance] as required and the safety of the community.” Even if the defendant could overcome the presumption, he still presents a significant danger to the community and a risk of flight, and should be detained on both of these bases.

Respectfully Submitted,

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