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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) No. CR 14-196 CRB
15 v.) UNITED STATES' OPPOSITION TO MOTION TO
16 KWOK CHEUNG CHOW, et. al.) REVOKE DETENTION ORDER
17 Defendant.)
18)
19)

20 INTRODUCTION

21 Defendant House was ordered detained by the Magistrate Court. The Magistrate Judge ordered
22 House detained after two hearings and taking the extraordinary measure of personally reviewing some of
23 the evidence in the case. Defendant now moves for this Court to overrule the Magistrate Court's Order.
24 The government respectfully submits that this Court should affirm the order of detention.

25 BACKGROUND

26 A. Defendant's Charged Offenses

27 Along with co-defendants, defendant was charged by a complaint issued by a Magistrate Judge
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1 on March 24, 2014 (See Affidavit in Support of Complaint by SA Emmanuel V. Pascua). Defendant
2 was arrested on March 26, 2014. On April 3, 2014, a Grand Jury returned a Fifty Count indictment
3 charging defendant with two Counts including: (1) engaging in sales of firearms without a license, in
4 violation of 21 U.S.C. § 922(a)(1); and (2) felon in possession of firearms, in violation of 18 U.S.C. §
5 922(g). A Superseding Indictment was subsequently issued, but it did not change the charges against
6 defendant House. The government has been agreeable to the release of most of defendant's co-
7 defendants who were arrested in this District, but has opposed the release of some, including House.

8 **B. Defendant's Bail Hearing**

9 Defendant made his initial appearance on March 26, 2014, and was initially detained, pending a
10 hearing. The government sought defendant's pretrial detention based on a concern that the significant
11 exposure to imprisonment would motivate defendant to flee, and based on a concern that defendant's
12 connections to weapon dealers and various organized crime entities posed a serious risk that he would
13 obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror, or
14 pose a danger to the community. Pretrial Services conducted a bail study, and was similarly concerned
15 with defendant's risk of flight and dangerousness to the community. However, Pretrial Services
16 concluded that these risks might be mitigated through stringent release conditions.

17 Defendant had a detention hearing on September 3, 2014. Due to a dispute during the hearing
18 regarding the content of conversations attributed to House during the respective proffers by the parties,
19 the Magistrate Judge requested that the government provide the Court with some of the actual
20 recordings of House so that the Magistrate Judge could review the contents himself.

21 By way of brief introduction, government agents were introduced to defendant House by
22 defendant Keith Jackson. Defendant Jackson insisted that defendant House was a member of organized
23 crime, capable of providing firearms, and capable of carrying out violent crimes. One of the undercover
24 agents (UCE 4599) eventually purchased two firearms supplied by defendant House, facilitated by
25 defendant Jackson. In between, UCE 4599 met with House on a number of occasions and engaged
26 House in direct conversations regarding, among other things, (1) his connections to organized crime, (2)
27 his ability to procure acts of violence for hire, and (3) his abilities to obtain firearms for sales.

28 What follows is a summary of several pertinent conversations regarding defendant House, by

1 recording, with times indicated. These were many of the conversations, together with the charges
 2 against defendant House, and his history and background, which assisted the Magistrate Judge's ruling:

3 Date of 4 Conversation	5 Summary of Conversation	6 Pertinent Time
7 11/19/2012	8 UCE 4599 asked Jackson if Sullivan and Brandon Jackson ever got 9 "girlfriends," meaning guns. Jackson said that they did. UCE 4599 10 explained that his marijuana operation "up north" had problems with 11 white supremacists. Jackson suggested another individual to provide 12 weapons. Then Jackson asked if UCE 4599 needed the services of 13 House, a.k.a "Black" to deal with it. UCE 4599 told Jackson he would 14 try to rectify the problem himself but wanted to reserve the option to 15 use House.	16 01:12:00-01:15:12
17 11/28/2012	18 UCE 4599 talked to Jackson about his problems "up north." Jackson 19 suggested that UCE 4599 should use House to take his motorcycle 20 gang and go deal with the problem. Jackson stated that House was a 21 member of "BGF – Black Guerilla Family" ¹ . Jackson recounted that 22 House recently took possession of comedian Katt William's Bentley 23 because Williams refused to pay rapper Too Short for a recent 24 performance. Black backed down rapper Suge Knight and summoned 25 the help of his organization to steal Williams' Bentley. Jackson 26 described that Black would take his biker dudes and go take care of 27 business for UCE 4599. House was shot during a robbery attempt at 28 his barbershop in Oakland. According to Jackson the individual who 29 shot House was gone.	30 01:42:30-01:47:40
31 01/02/2013	32 UCE 4599 told House they could maybe do some business. They 33 discussed House having connections with smoke shops in San	34 01:33:45-01:52:00

35 ¹ Black Guerilla Family is a known prison and street gang started in the 1960s, and originating
 36 from San Quentin State Prison.

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	<p>Francisco to sell stolen cigarettes. House asked UCE 4599 if he had resolved his problem “up there.” UCE 4599 told House that he was still having problems with a white supremacist. House offered to take care of it and said it was “too easy.” House said he was the President of the Made Men. UCE 4599 asked about House’s relationship with the Hells Angels and House said it was a good relationship, the Hells Angels were House’s “boys.”</p>	
<p>07/11/2013</p>	<p>UCE 4599 asked Jackson what House could do for them. Jackson said House doesn’t follow through all the time, but was a good guy and loyal. Jackson said he didn’t have time to help House deal with the cigarette deal. Jackson said House could provide “muscle,” that was what he was good at. Jackson warned the UCE about doing any type of illegal activity with House because House deals with a lot of different people. UCE 4599 described that they tried to set up a deal, but House just wanted money without doing anything. The UCE asked Jackson if House had the capabilities to do real rough stuff. Jackson confirmed that House had the capabilities to do harm to others if contracted to do so.</p>	<p>46:00-52:00</p>
<p>12/03/2013</p>	<p>Jackson told UCE 4599 that he recently saw House. Jackson pointed to his bicep and told UCE 4599 if he needed anything from House, he should let him know. UCE 4599 said he needed an associate killed who owed him a lot of money. UCE 4599 asked if House would do that. Jackson asked the location and race of the intended victim. Jackson said he would talk to House in person. Jackson said that if House would not do it, then Jackson would ask Rinn Roeun. UCE 4599 said he would rather deal with House than Roeun. UCE 4599 said he would pay \$25,000 for the murder. Jackson said he would talk to House the next day. Jackson said Roeun would do it for cheaper.</p>	<p>01:19:30-01:25:25</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	02/12/2014	<p>UCE 4599 asked House how they could make some money. House said he wanted marijuana to sell. House said he was tired of dealing with low-level criminals. UCE 4599 asked if House had the ability to sell weapons (“big girls”). House asked “big girls” or “little girls” or “ammo.” UCE 4599 asked if House could get up to 30 guns. House said he could get two every other week but if he asked for too many his source would think there he was up to some big trouble. House gave UCE 4599 his telephone number to call him about the guns. House told UCE 4599 he would be able to produce the weapons the following week. House said the source of supply for the weapons was Asian and his associates got arrested last year with 50 guns. UCE 4599 talked about paying House. House said they could do favors for each other. House said he could send two “goons” to do whatever UCE 4599 wanted. One of the “goons” was from New York and would do anything. UCE 4599 asked if the “goons” could damage a vehicle to send a message to someone. House responded “that’s a done deal, that’s too easy. I call that the sleeper.” House told UCE 4599 he didn’t even have to meet the goons to minimize his culpability in the event.</p>	04:07:50-04:12:30; 04:21:00-04:23:20
20 21 22 23 24 25 26 27 28	03/17/2014	<p>UCE 4599 and Jackson met with House. House greeted UCE 4599. House told UCE 4599 he didn’t have a working phone number for UCE 4599. UCE 4599 called House’s cellular phone so that House could add UCE 4599 to his contacts. House confirmed he had UCE 4599 listed as “Jersey Boy.” UCE 4599 asked if House was going to supply the firearms that evening. House said “yeah, I’m going to bring them up.” House and Jackson agreed to meet that evening at a location only identified as “Julious” at 7:00 p.m. UCE 4599 asked House if the guns were two “big girls” (assault rifles). House advised he had “one</p>	2:28:30-02:33:45

1 2 3 4 5	nice, one little one. You are going to like both of them.” UCE 4599 understood House was talking about one assault rifle and one handgun. House advised his associate from a motorcycle club had two additional firearms from House. UCE 4599 told House he would take care of him. House left. ²	
6 7 8 9 10 11 12 13 14	03/21/2014 UCE 4599 met with Jackson. Jackson stated that Pamela Gilmore drove House and Jackson to Vallejo, CA, to pick up the assault rifle. Jackson showed the assault rifle to Brandon Jackson. UCE 4599 removed a bag containing the assault rifle from the trunk area of Jackson’s vehicle. Jackson told UCE 4599 that House wanted more money for the assault rifle. Jackson acknowledged UCE 4599 already gave House \$1400 for the purchase of two guns. Jackson gave House an extra \$500 of his own money to complete the transaction. UCE 4599 and Jackson then discussed donations to Senator Yee.	00:02:10-00:07:45

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16 On September 17, 2014, after reviewing the recordings of House, the Court held the remainder of
17 the detention hearing. Following a lengthy hearing during which both sides were permitted to make all
18 available arguments, the Magistrate Judge ordered the defendant detained as a danger to the community.

19 ARGUMENT

20 A. Standard of Review

21 This Court need not defer to the findings and order of the Magistrate Judge. *United States v.*
22 *Koenig*, 912 F.2d 1190 (9th Cir. 1990). That said, the government believes that a review of the record
23 made before the Magistrate Judge reveals that the Magistrate Judge came to the correct determination as
24 to the defendant’s danger to the community. It also means that this Court is free to find that defendant is
25 a risk of flight or obstruction.

26 B. The Crimes Charged Against Defendant Involve a Danger to the Community and 27 Make Detention Appropriate

28 ² UCE 4599 paid House \$1400 for the firearms during this meeting and told Jackson that House better come through after he’d been paid.

1 The Bail Reform Act of 1984 (“the Act”) permits pretrial detention of a defendant without bail
2 where “no condition or combination of conditions will reasonably assure the appearance of the person as
3 required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Detention is
4 appropriate where a defendant is either a danger to the community or a flight risk; it is not necessary to
5 prove both. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant
6 is a danger to the community must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f).
7 A finding that a defendant is a flight risk need only be supported by a preponderance of the evidence.
8 *Motamedi*, 767 F.2d at 1406. The statute recognizes the appropriateness of moving for detention in
9 cases involving firearms. 18 U.S.C. § 3142(f)(1)(E).

10 The Act and the Ninth Circuit have identified several relevant statutory factors in determining
11 whether pretrial detention is appropriate: (1) the nature and circumstances of the offense charged; (2) the
12 weight of the evidence against the defendant; (3) the defendant’s character, physical and mental
13 condition, family and community ties, past conduct, history relating to drug or alcohol abuse, and
14 criminal history; and (4) the nature and seriousness of the danger to any person or to the community that
15 would be posed by defendant’s release. 18 U.S.C. § 3142(g); *United States v. Winsor*, 785 F.2d 755,
16 757 (9th Cir. 1986); *Motamedi*, 767 F.2d at 1407. Upon consideration of each of these factors,
17 defendant House was properly ordered detained.

18 **C. The Magistrate Judge Correctly Determined that Defendant Is A Danger**

19 Magistrate Judge Cousins correctly found that defendant should be detained. The Magistrate
20 Judge considered each of the factors in reaching his determination. Magistrate Judge Cousins correctly
21 considered, as required by 18 U.S.C. § 3142, the danger to the community posed by defendant’s release
22 and considered the Court’s ability to fashion adequate constraints to secure the community’s safety. In
23 light of probable cause being found by both the Magistrate Court and the Grand Jury that defendant
24 engaged in firearms trafficking and possession of firearms by a convicted felon, the risk to the
25 community is particularly significant. Additionally, defendant House identified himself, and was
26 identified by co-conspirators, to be associated with organized criminal enterprises with histories of
27 committing violence. House himself offered such services – extortion and carrying out violent acts – to
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1 the undercover agents involved in the investigation. Finally, while House identified some of his
2 potential sources to supply weapons and carry out crimes of violence, not all of those individuals were
3 identified, not all are in custody, and some are still on the streets.

4 Defendant's arguments against Judge Cousins' findings in his Motion boil down to disagreement
5 with the Magistrate's eventual decision. Def.'s Mot. at 2. In other words, House's Motion cannot make
6 out a case of any procedural or legal error on the part of Judge Cousins. Therefore, he simply requests
7 that this Court come to a different decision. The government respectfully submits that Judge Cousins
8 reached the correct result given this defendant and his background.

9 Magistrate Judge Cousins listed his rationales for detention at the hearing. In doing so, he
10 highlighted the following:

- 11 ■ The charges against House related to trafficking in firearms and illegal possession of firearms
12 which, while not raising a presumption of detention, are "per se dangerous." Tr. of 9/17/14
13 Hearing, attached as Exhibit A to Decl. of Phillips, at 33.
- 14 ■ That it was "fair to judge Mr. House by the words he used on these tapes about goons and his
15 connections to various organizations." Id.
- 16 ■ That House represented himself as being connected to people who were working together to
17 commit crimes. Id.
- 18 ■ That House was talking about violence as well as trafficking in firearms "that establishes by
19 more than clear and convincing evidence that Mr. House poses a danger to the community."
20 Id. at 34.
- 21 ■ That, in consideration of Mr. House's family situation, the Magistrate Judge did "look at how
22 he did on probation when he had an opportunity to serve the interest of his family. And he
23 had that opportunity and did not comply with those conditions." Id.

24 Again, the defendant cannot say that the Magistrate Judge erred in not considering all of the
25 information presented to this Court, or that the Magistrate Judge mis-applied the law. Nor does House
26 provide any information to this Court to refute any of the findings by the Magistrate Judge. Simply, the
27 defendant does not like the eventual decision made. Defendant claims his release is warranted because
28 the Magistrate Judge indicated that it was a "close call." Def.'s Mot. at 2. That argument is both

1 unavailing, as close calls need to be made sometimes and this one was called against Mr. House, and it
2 ignores the remainder of the Magistrate Judge’s ruling, as noted above, and that “the government has
3 established by **more** than clear and convincing evidence that to release Mr. House would be a danger to
4 the community.” Tr. at 32 (emphasis added).

5 Defendant House’s detention is warranted by the factors the Court must consider under Section
6 3142(g), as are further detailed in the Affidavit in Support of Complaint by Special Agent Emmanuel V.
7 Pascua. The following facts establish Defendant’s danger to the community by clear and convincing
8 evidence, and establish his risk of flight by a preponderance of the evidence:

- 9 ■ Defendant was trafficking in firearms without a license, selling firearms to an FBI
10 undercover employee whom he believed to be a member of two criminal organizations (La
11 Cosa Nostra and the Chee Kung Tong), and whom he understood was using the firearms to
12 arm his associates who were manufacturing marijuana at purported grows in Mendocino
13 County and to fend off white supremacists who were interfering with his criminal operations.
14 As is obvious, the introduction of illegal and unregulated firearms into our community
15 creates a severe danger.
- 16 ■ Defendant proposed employing “goons” and others to commit violent acts on behalf of the
17 undercover agent. Understanding that UCE 4599 had issues with people not paying what
18 they owed and causing problems to UCE 4599’s fictitious marijuana enterprise, defendant
19 offered violent services. Defendant House contends that the government should have
20 followed through further to vet those offers. As explained to the Magistrate Judge, the risk of
21 making such a request of defendant House and his “goons” was considered by the
22 government and deemed to be sufficiently risky to cause the government to forego such
23 investigative measures. An additional wrinkle was that House was resistant to introduce the
24 undercover to the supposed “goons” making apprehension of the goons tenuous.
25 Defendant’s contentions that the government should have taken his invitations further are
26 simply uninformed speculation, and not relevant to the issue of detention.
- 27 ■ Defendant’s other associated organizations – Black Guerilla Family (“BGF”), Made Men
28 Motorcycle Club, and Hells Angels – are enterprises that have previously engaged in violent

1 activity and organized criminal activity. BGF and Hells Angels are undoubtedly well known
2 to this Court. As proffered at the hearing, a recent homicide trial in Contra Costa County
3 publicly involved two members of Made Men: the defendant, Willie Clay, and the victim,
4 Gary Townsend. Furthermore, there has been source reporting on Made Men's illegal
5 activities back to 2005.

6 ■ Defendant's activities were captured on tape in his own words. Furthermore, in a Mirandized
7 post-arrest interview, House admitted that he facilitated the sales of the firearms to UCE
8 4599. Therefore, while defendant, of course, enjoys the presumption of innocence, the
9 weight of the evidence against him – which must be considered by the Court – is incredibly
10 heavy. Furthermore, as noted above, the Magistrate Judge actually obtained and listened to
11 most of the conversations on which he relied, rather than simply rely on proffers or
12 summaries from either party.

13 ■ Defendant's criminal history spans decades. It includes a prior federal criminal conviction in
14 another District. It involves prior violations of conditions of release. It includes narcotics
15 offenses, a battery conviction, and other criminal offenses.

16 ■ Defendant has a spotty history of employment.

17 ■ Of extreme importance, as the Magistrate Judge noted, is that this defendant was on
18 probation for, not one, but **two** separate cases at the time he is alleged to have committed the
19 currently charged conduct. Defendant argues that to consider this fact is in violation of the
20 presumption of innocence. That argument is, of course, a red herring. All detention
21 determinations are predicated on probable cause for new offenses and the presumption is
22 unaffected by detention findings. 18 U.S.C. § 3142(j) (“[n]othing in this section shall be
23 construed as modifying or limiting the presumption of innocence”). Here, the defendant was
24 on probation for a narcotics case and a battery – the facts of which actually spell out a
25 domestic violence style kidnaping – while he was selling firearms. This fact alone is
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1 sufficient for this Court to determine that he does not abide by conditions placed on him by
2 the judicial system.

- 3 ■ Defendant House, perhaps inadvertently, misrepresents the position of his Alameda County
4 Probation Officer. While the Officer did initially recommend against detention for House, he
5 quickly reversed his position based upon a fuller understanding of the federal charges and
6 asked for the local court to impose a detainer on defendant House. On May 13, 2014, the
7 Probation Office moved by Memorandum to alter the initial recommendation. For unknown
8 reasons, that modified recommendation was not properly presented to the Alameda County
9 Judge. Thus, at the hearing on August 15, 2014, the Probation Officer's recommendation
10 was inaccurately reported. After learning of this situation, on October 17, 2014, the Alameda
11 County Probation Office filed an additional Memorandum to the Court recommending that a
12 detainer be placed on House. The government understands that the hearing on that issue is
13 currently set for November 21, 2014. At a minimum, any action to reverse the Magistrate
14 Judge's Order should be continued to allow the Alameda County Court to accurately address
15 the probation violation. But the Court should not operate under a misimpression that the
16 Alameda County Probation Office views House's release as appropriate.

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19 **CONCLUSION**

20 The government respectfully submits that the order of the Magistrate Court should be affirmed
21 and defendant House should be detained pending trial.

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23 Date: October 20, 2014

Respectfully submitted,
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25
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