

ATTACHMENT B

The Government has moved for pretrial detention here on the basis of both risk of flight and danger to the community. With respect to the first ground, the Second Circuit has established a two-tier test:

First, the court must make a finding as to whether the defendant presents a risk of flight if not detained

Second, if the court finds that a defendant is likely to flee, then the court must proceed to the second step of the inquiry, namely, whether there are conditions or a combination of conditions which reasonably will assure the presence of the defendant at trial if he is released. The burden of proof is on the government to prove the absence of such conditions by a preponderance of the evidence.

United States v. Shakur, 817 F.2d 189, 194-95 (2d Cir.)(citations omitted), cert. denied, 484 U.S. 840 (1987).

As stated in open court, the Government has sustained both its burdens here. If convicted of the drug charges, he may face a term of imprisonment of twenty years, and if the Government files a Superseding Indictment, he may face an additional mandatory minimum term of imprisonment of fifteen years, an exposure which dramatically exceeds the previous sentences he received in state court. For virtually all his convictions, he was already on probation (sometimes multiple probations), when he was arrested and convicted on each subsequent offense. As his lengthy rap sheet reflects, the only times he had significant gaps in criminal activity occurred for the relatively few times that he actually was in prison, as opposed to simply being placed on probation. Contrary to defense counsel's characterization, some of his most serious offenses are the most recent ones, from 2006 to 2011. While there is no doubt that there is a much greater degree of supervision by the U.S. Probation Office than its state counterpart, it does not bode well for defendant's willingness to abide by court orders, as properly observed by the USPO.¹

¹In light of this conclusion, there is no need to reach the issue of danger to the community.

However, as stated at the conclusion of the detention hearing, this finding is without prejudice to defendant filing a Motion for Reconsideration if and only if defense counsel can locate a suitable third-party custodian, who has a long standing relationship with defendant and a demonstrated ability to control him; such an individual must also have experience dealing with individuals with astonishingly long criminal histories, like that of defendant here, such as someone in the fields of law enforcement, corrections, military service, religious experience, and the like.