

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
v. ) 25-mj-03074-JDH  
 )  
MAXIMO PEPIN )

**OPPOSITION TO GOVERNMENT’S MOTION FOR DETENTION AND NOTICE OF  
PROPOSED RELEASE PLAN**

Maximo Pepin is a nearly life-long resident of the Boston area. Born in the Dominican Republic, he came to the United States before his memory and became a naturalized citizen through his father at an early age. His mother still resides in the Dominican Republic, along with other loved ones, and Mr. Pepin travels periodically using his United States passport to visit them, including at least once with the permission of a Superior Court judge while on probation. Most recently, he resides in a two-bedroom apartment of a three-floor walkup in Worcester with his girlfriend of approximately 2.5 years and their infant daughter. He works for a cleaning service and his girlfriend works in a beauty salon. He has three other children in Boston for whom he provides support and remains in contact with. Four days before his eighteenth birthday, he participated in a home invasion in Boston on January 10, 2013 – now some 12 years ago – to which he pled guilty and served a 4-5 year sentence in the Massachusetts Department of Corrections. He has no other crimes involving victims on his Massachusetts Board of Probation record. Because there are conditions of release which will reasonably assure the appearance of Mr. Pepin and the safety of any other person and the community, he must be released.

**I. Legal Framework**

Mr. Pepin comes before the Court following his arrest in this District based upon an arrest warrant for an Indictment from the District of Maine charging him with one count of drug

conspiracy alleging his involvement as a member of a conspiracy which included the distribution and possession with intent to distribute more than 400 grams of a mixture of substance containing a detectable amount of fentanyl. At the initial appearance before the Court pursuant to Rule 5, the government moved for detention citing 18 U.S.C. § 3142(f)(1)(A) (i.e. “danger to the community”) and (f)(2)(A) (i.e. “serious risk of flight”). The provisions of 18 U.S.C. § 3142(f)(1)(A) plainly do not apply to Mr. Pepin as he is not charged with any of the listed offenses, and the Court must therefore deny the government’s motion as it pertains to “danger to the community”.<sup>1</sup>

Under the statutory scheme of the Bail Reform Act, “it is only a ‘limited group of offenders’ who should be detained pending trial.” *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987) (quoting S. Rep. No. 98-225, at 7 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3189); *see also United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992) (“There can be no doubt that this Act clearly favors nondetention.”). One charged with a crime is, after all, presumed innocent. *See generally Stack v. Boyle*, 342 U.S. 1, 4 (1951). Due to the crucial interests involved, it follows that a “case-by-case” approach is required at any stage of the case in assessing the propriety of pretrial detention. *See United States v. Gonzales-Claudio*, 806 F.2d 334, 340 (2d Cir. 1986) (discussing due process analysis for evaluating propriety of prolonged pretrial detention, and the interests at stake) (citations omitted), cert. dismissed sub nom., *Melendez-Carrion v. United States*, 479 U.S. 978 (1986).

In this case, a rebuttable presumption of detention arises under 18 U.S.C. §3142(e)(3)(A). However, the Court may still release Mr. Pepin “as long as the defendant has presented **some**

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<sup>1</sup> Mr. Pepin would oppose the Court permitting the government to move for detention under 18 U.S.C. § 3142(f)(1)(C) if it so requests at the detention hearing in this matter. But, as a legal matter, Mr. Pepin concedes that he is charged with an offense that carries a maximum term of imprisonment of more than ten years in the Controlled Substances Act.

evidence and the magistrate or judge has evaluated all of the evidence with Congress's view of the general problem in mind.” *United States v. Jessup*, 757 F.2d 378, 384 (1st Cir. 1985) (emphasis added). That “general problem” in drug cases was “the problem of drug offenders and flight,” a problem that Congress identified because “drug traffickers often have established ties outside the United States ... [and] have both the resources and foreign contacts to escape to other counties.” *Id.* (quoting S.Rep., *supra*, at 20, 1984 U.S.Code Cong. & Admin.News, p. 23). This “burden of production is not a heavy one to meet.” *Dominguez*, 783 F.2d at 707.

Indeed, the presumption of detention is rebutted by “[a]ny evidence favorable to a defendant that comes within a category listed in § 3142(g) . . . including evidence of their marital, family and employment status, ties to and role in the community . . . and other types of evidence encompassed in § 3142(g)(3).” *Id.* (emphasis added); *Jessup*, 757 F.2d at 384. Any “evidence of economic and social stability” can rebut the presumption. *Dominguez*, 783 F.2d at 707. As long as a defendant “come[s] forward with some evidence” pursuant to § 3142(g), the presumption of flight risk and dangerousness is definitively rebutted. *Id.* (“Once this burden of production is met, the presumption is ‘rebutted.’”) (quoting *Jessup*, 757 F.2d at 384); *see also O’Brien*, 895 F.2d at 816 (finding presumption of flight risk rebutted by evidence of effectiveness of electronic monitoring ankle bracelet together with posting of defendant’s home). The government bears the burden of *persuasion* at all times. *Id.*; *Jessup*, 757 F.2d at 384; *United States v. Chimurenga*, 760 2d 400, 405 (2d Cir. 1985). After the presumption is rebutted, the Court must weigh the presumption against all of the other evidence about the defendant’s history and characteristics that tilts the scale in favor of release. *See Dominguez*, 783 F.2d at 707 (“[T]he rebutted presumption is not erased. Instead, it remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g).”); *Jessup*, 757 F.2d at 384 (holding that the judge should consider the rebutted presumption along with the § 3142(g)

factors). The Court should not give the presumption undue weight if evidence relating to other § 3142(g) factors support release.

## II. Argument

Congress' reasoning for including a presumption of detention for most drug offenders does not apply to Mr. Pepin. He does not have the sort of resources or extra-territorial ties which Congress envisioned. Rather, he has family in the Dominican Republic by virtue of his birth there. His entire life is here in the United States, where he is a citizen. Neither would he place himself beyond the reach of the United States Government's vast resources and will by absconding to the Dominican Republic. More to the point, this concern does not present any *serious* risk of flight that is not sufficiently mitigated by the practice in any other case of having a defendant surrender his passport and not obtain any travel documents while the case is pending.

This conclusion that there is no serious risk of flight by his personal background. He is in an established relationship and maintains the support of his girlfriend who appeared at the initial appearance in this matter. He has an infant daughter and 3 additional children here in Boston whom he supports and maintains contact. He is employed and knows no other life beyond his in Massachusetts and the United States. Nor does he have any history of defaults in his previous Board of Probation record – to the contrary, while on probation following the service of his custodial sentence for is Suffolk County conviction, he responded to a demand that he appear for a probation surrender hearing in October 2018, knowing that his probation officer sought revocation and he could face additional incarceration.<sup>2</sup> What's more, he sought and received permission from the Superior Court in November 2021 to travel while on probation to see his family in the Dominican Republic.

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<sup>2</sup> The docket reflects that the judge found him in violation but continued him on the same terms and conditions and completion date.

Because there is ample evidence which rebuts the presumption of detention based on risk of non-appearance in this case, the burden is on the government to prove by clear and convincing evidence that there are no conditions which would reasonably assure Mr. Pepin's appearance as required. It cannot.

And to the extent "safety of the community" might be a permissible basis for detention, there is equally ample evidence to conclude that conditions of release can reasonably assure the safety of any person and the community. No doubt the government will direct the Court to Mr. Pepin's Suffolk County conviction dating to events in January 2013 and the violation of a post-custody probation term. Mr. Pepin was not even 18 years old when he committed these offenses. He accepted responsibility for his conduct and served a significant custodial sentence of 4-5 years in prison as a result. While still an emerging adult and on post-custody probation for some counts of conviction, law enforcement arrested him for a hand-to-hand sale in January 2019. As a result, the Superior Court revoked his probation, and he served an additional period of incarceration in that case as well as a concurrent sentence from the Lawrence District Court. Mr. Pepin ultimately completed a new period of probation in the Suffolk County case. Aside from the conduct committed in 2013 when he was barely able to be charged as an adult in the Commonwealth, his Board of Probation record contains no suggestion of violence. Neither does the indicted offense here.

Any community safety concern triggered by the nature of the offense in the Indictment here can be reasonably mitigated by conditions that ensure his whereabouts are accounted for, his travel limited, and his employment and housing remain stable. Mr. Pepin is no longer in state court, the perils of non-compliance with bail conditions by committing new offenses are more severe than a period of bail revocation in a Commonwealth jail. Against this backdrop, the Court should conclude that conditions can be imposed which will reasonably assure the safety of any person or the community.

### **III. Proposed Conditions**

Mr. Pepin will submit to any condition which the Court considers necessary and appropriate in these circumstances. Given the facts before the Court, he submits that the following conditions would satisfy the requirements of the Bail Reform Act and be no greater than necessary:

- Report to pretrial services as directed.
- Maintain residence and notify supervising probation officer of any intended change of residence so that a home visit can be completed, and not to move without prior permission of supervising probation officer.
- Curfew as determined appropriate by supervising probation officer with GPS monitoring to ensure compliance.<sup>3</sup>
- Surrender any passport to US Probation and do not obtain any travel documents during the pendency of this case.
- Travel restricted to the District of Massachusetts and as necessary in transit to the District of Maine directly to and from required Court appearances or consultation with attorney.
- Seek and maintain employment and do not change employment without notifying supervising officer in advance and provide verification of employment.
- Refrain from possession of any firearm or other dangerous weapon.
- Refrain from use or possession of marijuana, regardless of any state law or prescription approving of its use, and any other narcotic drug or other controlled substance without a

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<sup>3</sup> Mr. Pepin submits that a curfew is appropriate under these circumstances, principally so that he may maintain employment in a manner that effectively allows his supervision without unduly burdening the probation department with scheduling changes. Should the Court or US Probation believe any greater level of movement restriction is necessary, he would abide by that condition.

valid prescription, and provide verification of any prescription to supervising officer.

- Refrain from contact, direct or indirect with any codefendant or alleged coconspirator

For these reasons, and any additional reasons that may be presented at the detention hearing, Mr. Pepin respectfully requests that the Court find that any presumption of detention has been rebutted and release him with any conditions deemed appropriate by the Court.

MAXIMO PEPIN

By his attorney,

*/s/ Brendan Kelley*

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**CERTIFICATE OF SERVICE**

I, Brendan Kelley, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on April 17, 2025.