

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

WILLIAM McCALL CALHOUN,

Defendant.

:
:
:
:
:
:
:
:
:
:

Case No. 21-CR-116 (DLF)

**GOVERNMENT’S SUPPLEMENTAL MEMORANDUM
IN RESPONSE TO MARCH 7 MINUTE ORDER**

The United States, by and through the assigned Assistant United States Attorney, respectfully submits the following clarification in response to the Court’s minute order dated March 7, 2021, numbered sequentially in the order of the Court’s inquiry:

1. Consistent with prior briefing and argument, the government seeks to detain the defendant, Mr. Calhoun, as both as a serious risk of flight as well as the risk that he will “obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness” pursuant to 18 U.S.C. § 3142(f)(2)(B). This posture has been consistent since the government filed its initial form Motion for Detention (attached to this pleading as Exhibit 1) on January 15, 2021. These were also the enumerated grounds for detention as ordered by the Magistrate in the order previously attached to the government’s initial opposition to the motion for reconsideration at ECF 14, ex. 1.
2. The triggering authority for detaining the defendant on motion of the government in this case based on the charged offenses is 18 U.S.C. § 3142(f)(2)(A) and (B). There is no other basis in the Bail Reform Act for holding a detention hearing. Upon having a detention hearing, the substantive grounds for detaining the defendant are the factors found in 18 U.S.C. §

3142(g)(1) through (4) based on the record before the court consisting of the sworn testimony presented at the initial preliminary examination and detention review held on January 21, 2021 in the Middle District of Georgia (attached as exhibit 4 to ECF No. 14); the exhibits introduced at that hearing (paper copies attached as Exhibit 3 to ECF No. 14, digital exhibits shared with Chambers and counsel for Mr. Calhoun on Friday March 5, following their receipt from the Clerk of Court in the Middle District of Georgia); the additional still images of Mr. Calhoun submitted in the body of the government's supplementary response at ECF No. 16; and the testimony of the defendant himself during the March 5, 2021 hearing.

3. The defendant's motion for reconsideration, perhaps more accurately described as revocation, is properly before the court for *de novo* review under 18 U.S.C. 3145(b), which states that when "a person is ordered detained by a magistrate judge, ... the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order." 18 U.S.C. 3145(b). Neither § 3142 nor § 3145 specifies the standard of review to be applied by a district court reviewing a magistrate judge's release or detention order, and "the D.C. Circuit has not yet addressed the issue," *United States v. Hunt*, 240 F. Supp. 3d 128, 132–33 (D.D.C. 2017), however "[b]oth the BRA and the Federal Magistrates Act, 28 U.S.C. § 636, support the conclusion, reached by every circuit to have considered the question, that a district court reviews a magistrate judge's release or detention order *de novo*." *United States v. Chrestman*, No. 21-MJ-218 (BAH), 2021 WL 765662, at *5 (D.D.C. Feb. 26, 2021). Chief Judge Howell's recent memorandum opinion in *Chrestman* further clarifies that "[t]his deliberate choice by Congress to style review of magistrate judge decisions as "motions" rather than "appeals" indicates that the district court's review occupies a procedural posture more similar to a motion for reconsideration of its own decision, at which stage both

factual and legal findings are open to revision, than to appellate review, at which stage deference to factual findings is appropriate. *Id.* at *6. This Court is “free to use in its analysis any evidence or reasons relied on by the magistrate judge, but it may also hear additional evidence and rely on its own reasons.” *United States v. Smith*, 160 F. Supp. 3d 280, 282 (D.D.C. 2016) (citing *United States v. Hubbard*, 962 F.Supp.2d 212, 215 (D.D.C.2013) (quoting *United States v. Sheffield*, 799 F.Supp.2d 18, 20 (D.D.C.2011)); *see also United States v. Hitselberger*, 909 F.Supp.2d 4, 7 (D.D.C.2012). *Cf. United States v. Lee*, 451 F.Supp.3d. 1 (D.D.C. March 30, 2020), (“Notably, Lee did not appeal the initial determination of the Magistrate Judge . . . [t]hus Lee’s emergency request for release is properly construed either as a motion to reopen Lee’s detention hearing under 18 U.S.C. § 3142(f) . . . or as a motion under 18 U.S.C. §3142(i) . . .”).

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

/s/ Adam Alexander
ADAM ALEXANDER
Assistant United States Attorney
AK Bar No. 1011057
Detailee
U.S. Attorney’s Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2021, I sent a copy of the foregoing via the Court's electronic filing system to Jessica Sherman-Stoltz, Esq., counsel for the defendant.

/s/ Adam Alexander

ADAM ALEXANDER
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA :
 :
 vs. : CRIMINAL NO. 5:21-MJ-__8__
 :
 WILLIAM McCALL CALHOUN, JR. :
 _____ :

GOVERNMENT’S MOTION FOR DETENTION

COMES NOW the United States of America, by and through its attorney, the United States Attorney for the Middle District of Georgia, and requests that the defendant be detained pursuant to 18 U.S.C. § 3142(e) and (f), and in support of said motion shows the following:

1. Reason for Detention.

The Court should detain the defendant because there are no conditions of release which will reasonably assure (check one or both):

- the defendant’s appearance as required; and/or
- the safety of any other person or the community.

2. Eligibility of Case.

This case is eligible for a detention order because it involves (check all that apply):

- a crime of violence (18 U.S.C. § 3156), sex trafficking (18 U.S.C. § 1591), or a federal crime of terrorism (18 U.S.C. § 2332b(g)(5)(B)) for which a

maximum term of imprisonment of ten years or more is prescribed;

an offense for which the maximum sentence is life imprisonment or death;

a drug offense with a maximum term of imprisonment of ten years or more;

a felony where the defendant has two or more prior convictions in the above three categories, or two or more State or local offenses that would have been offenses in the above three categories if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such Federal, State or local offenses;

a felony which is not otherwise a crime of violence that involves (1) a minor victim, (2) the possession or use of a firearm or destructive device (18 U.S.C. § 921), or any other dangerous weapon, or (3) a failure to register as a sex offender (18 U.S.C. § 2250);

a serious risk that the defendant will flee; or

a serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

3. Rebuttable Presumption (optional).

If set forth below, the Government invokes the rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other

person and the community, pursuant to 18 U.S.C. §§ 3142(e)(2) and 3142(e)(3), because (check all that apply):

- there is probable cause to believe that the defendant committed a drug offense with a maximum term of imprisonment of ten years or more;
- there is probable cause to believe that the defendant used or carried a firearm during and in relation to a crime of violence or drug trafficking crime, or possessed a firearm in furtherance of any such crime (18 U.S.C. § 924(c));
- there is probable cause to believe that the defendant committed an offense involving a minor victim, as set forth in 18 U.S.C. § 3142(e)(3)(E);
- there is probable cause to believe that the defendant conspired to kill, maim, or injure persons or damage property in a foreign country (18 U.S.C. § 956);
- there is probable cause to believe that the defendant committed an act of terrorism transcending national boundaries (18 U.S.C. § 2332b) or a federal crime of terrorism as set forth in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of ten years or more is prescribed;
- there is probable cause to believe that the defendant committed a crime of peonage, slavery or human trafficking for which a maximum term of imprisonment of 20 years or more is prescribed (18 U.S.C. §§ 1581-1596);

or

- the defendant has been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been an offense described in § 3142(f)(1) if a circumstance giving rise to Federal jurisdiction had existed; the offense was committed while the defendant was on release pending trial for a Federal, State, or local offense; and a period of not more than five years has elapsed since the date of conviction for the offense, or the release of the defendant from imprisonment, whichever is later.

4. Time for Detention Hearing.

The Government requests that the Court conduct the detention hearing:

- at the initial appearance; or
- after a continuance of three days.

The Government requests leave of Court to file a supplemental motion with additional grounds or presumption for detention should this be necessary.

RESPECTFULLY SUBMITTED, this 14th day of January, 2021.

PETER D. LEARY
ACTING UNITED STATES ATTORNEY

BY: Leah E. McEwen
ASSISTANT U.S. ATTORNEY
Assistant United States Attorney
Georgia Bar No. 490763
United States Attorney's Office
Middle District of Georgia
201 W. Broad Ave.
Albany, Georgia 31701
Telephone: (229) 430-7754
Email: Leah.E.McEwen@usdoj.gov

CERTIFICATE OF SERVICE

I, Leah E. McEwen, Assistant United States Attorney, hereby certify that I electronically filed the within and foregoing *Government's Motion for a Detention* by electronically filing said motion with the Clerk of the Court using the CM/ECF system.

This this 14th day of January, 2021.

PETER D. LEARY
ACTING UNITED STATES ATTORNEY

BY: /s/ Leah E. McEwen
ASSISTANT U.S. ATTORNEY
Assistant United States Attorney
Georgia Bar No. 490763
United States Attorney's Office
Middle District of Georgia
201 W. Broad Ave.
Albany, Georgia 31701
Telephone: (229) 430-7754
Email: [Leah. E. McEwen@usdoj.gov](mailto:Leah.E.McEwen@usdoj.gov)