UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,	:	**DECLARATION OF THOMAS A. FARINELLA**
Plaintiff-Appellee,	:	**Docket. No. 20-1720-cr**
-v-	:	
ROBERT S. KELLY,	:	
Defendant-Appellant,	:	

----------X

Thomas A. Farinella declares under of the penalties of perjury, pursuant to 28 U.S.C. § 1746:

1. I am an attorney with the Law Office of Thomas A. Farinella, PC. I represent Defendant-Appellant, Robert S. Kelly, and I offer this declaration in support of his Motion for an Order reversing an Order of pretrial detention entered by the District Court (Hon. Ann M. Donnelly) on May 15, 2020.

2. I respectfully submit with this declaration the Memorandum of Law in Support of Robert S. Kelly's Motion for Release of Pre-Trial Detention dated June 29, 2020. The Memorandum of Law in Support is attached as **Exhibit A.**

3. Mr. Kelly has been charged in this District with violating 18 U.S.C. §§ 2251, 2421, 2422 and 2423 (*see* ECF No. 43 ¶¶ 14, 19, 21-30, 39-42), and in the Northern District of Illinois with violating 18 U.S.C. §§ 2251, 2422 and 2252A (a)(2) (*see United States v. Kelly et al.*, l 9-CR-567, ECF No. 93), all of which are qualifying crimes involving a minor (see §3142(e)(3)(E)); therefore, there is a rebuttable presumption of pretrial detention.

4. On July 16, 2019, Judge Harry D. Leinenweber entered a permanent order of detention in the Northern District of Illinois, Case Number 19-cr-00567.

5. On August 2, 2019, there was a bail hearing held in District Court before Magistrate Tiscione. The transcript of the bail hearing is annexed hereto as **Exhibit B.**

6. On August 2, 2019, Magistrate Judge Steven L. Tiscione, in this case, entered a permanent order of detention. (Dkt. No. 19). The Order is annexed hereto as **Exhibit C.**

7. On October 2, 2019, after reviewing briefing on the issue and holding oral argument, the District Court affirmed the order of detention. (Dkt. No. 25). (*See* Oct. 2, 2019 ECF Minute Entry (reflecting this Court's denial of the defendant's motion for release after discussion with the parties)). Annexed hereto is the briefing on issue of bail before Judge Donnelly as **Exhibit D**

and the transcript of bail hearing in District Court before Judge Donnelly as **Exhibits E**.

8. On April 7, 2020, the Court denied the defendant's March 26, 2020 emergency bail motion (Dkt. No. 53). The Decision and Order is annexed hereto as **Exhibit F.**

9. On April 21, 2020, the Court denied the Defendant's renewed emergency motion for release (Dkt. No. 61). The decision is annexed hereto as **Exhibit G.**

10. On May 15, 2020, the Court denied Mr. Kelly's additional request for release. (Dkt. No. 68). The Order is annexed hereto as **Exhibit H.**

11. April 7, 2020, the Court's denial of the defendant's March 26, 2020 emergency bail motion, finding, inter alia, that the defendant (1) "ha[d] not demonstrated that he is within the group of people... the[("CDC")] has categorized as most at-risk for contracting COVID-19;" because the defendant is "fifty-three years old, twelve years younger than the cohort of 'older adults' defined by the CDC as at high risk for severe illness from COVID-19." (*Id.* Apr. at 2-3), and (2) continues to pose a risk of flight and a danger to the community, "particularly to prospective witnesses." *See* **Exhibit E**.

12. The Court's medical conclusions are poor at best and the CDC claims are incorrect. They claim that because he is 53 not 75 he's not at a high risk for COVID. Clearly risk increases with age but there is not a rule that only people 75 and older are at-risk. They are just at the highest risk, however 50-75 is also an at-risk group.

13. Per the CDC "As you get older, your risk of being hospitalized for COVID-19 increases. Everyone, especially older adults and others at increased risk of severe illness, should take steps to protect themselves from getting COVID-19." (See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html).

14. Moreover, it is well established in the Supporting Memorandum that he is not a danger to the community.

15. Finally, the Court did not find that the protective measures put in place by the Bureau of Prisons ("BOP") sufficiently interfered with the defendant's ability to prepare for his defense with counsel to warrant his release. (*Id*.) *See* **Exhibit E.**

16. The Defendant is on trial for various charges that span 25 years and needs time to prepare with counsel in person.

17. Presently, none of Mr. Kelly's attorneys are even allowed to visit with him at the MCC Chicago. No one is allowed in. There are no means by which

to have lengthy conversations as they are limited to 15 minutes (occasionally 30). There are no means by which to review evidence with Mr. Kelly, show him documents, review photographs, or discuss strategy.

18. If the present restrictions were lifted a problem presents because counsel should not have to go inside of the penal institution at the expenses of placing their own health at-risk.

19. The health dangers posed by the virus are cyclical: lawyers visiting clients in jail pose a risk to their clients, their clients pose a risk to them and they in turn pose risks to their other clients, colleagues, and family members. Although the courts are going to operate on a limited basis, when it comes to trial, lawyers cannot.

20. The Courts April 7, 2020 findings are not justified.

21. The Court found that the Defendant continued to pose a risk of flight because among other things, "he is now facing serious charges in multiple federal and state jurisdictions[,]" and that "the risk that the defendant would try to obstruct justice or intimidate prospective witnesses has not dissipated," so he therefore poses a risk to the public. (*Id*. at 2-3). The Court further explained that the conditions suggested by the defendant to mitigate his risk of flight and obstruction are inadequate because they can be easily circumvented by the defendant and "they cannot ensure that a defendant

with a history, incentive and opportunity to interfere with potential witnesses will not do so." (*Id*. at 3).

22. On May 15, 2020, the Court denied Mr. Kelly's additional request for release. *See* **Exhibit F.**

23. The District Court held, "The defendant "bears a limited burden of production...by coming forward with evidence that he does not pose a danger to the community or a risk of flight."... "As relevant here, temporary release of a defendant is governed by 18 U.S.C. § 3142(i), which permits a court to order temporary release for a "compelling reason." In this case, the defendant must rebut the statutory presumption of pretrial detention under Section 3142(e)(3) or show that a "compelling reason" calls for his release under Section 3l42(i). The defendant has done neither." *Id*.

24. The District Court stated that "In an effort to rebut the presumption of detention, the defendant cites...his history of return to court in the 2008 case...The significance of that record is substantially undermined by the grand jury's probable cause finding in the Illinois federal case that the defendant obstructed justice during that trial. The defendant is presumed innocent of the charges, but, as explained above, the grand jury's probable cause finding that he obstructed Justice in the past as well as the nature of the other charges are relevant factors in the pretrial detention analysts

under Section 3142...Nor are the defendant's proposed measures-that he be kept on home confinement and monitored by pretrial services-sufficient to eliminate the danger to the community…For these reasons, the Government sustained its burden of proving by clear and convincing evidence that the defendant poses a danger to the community, and by a preponderance that be is a flight risk. There are no conditions or combination of conditions that "will reasonably assure the appearance of the [defendant] as required and the safety of any other person and the community." 18 U.S.C. § 3142(e)." *Id.*

25. A finding of probable cause for an obstruction charge does not lead to the logical conclusion that the alleged past crime is evidence of potential obstruction in the case at bar.

26. The District Court addressed Mr. Kelly's request for temporary release under §3142(i) holding, "As he did in a previous application, the defendant cites the global coronavirus pandemic as a compelling reason justifying bis release. In my prior rulings I have found that the defendant has not presented compelling reasons for his release under Section 3142(i) in part because he is not uniquely at-risk for contracting severe illness from COVID-19. (ECF Nos. 53, 61.) The defendant argues that he is now uniquely at-risk because he has been diagnosed as prediabetic. (ECF Nos.

63, 66.). I do not agree that a diagnosis of prediabetes presents a compelling reason for the defendant's release...*My review of the defendant's medical records* reflect that he is receiving more than adequate care to manage this condition. The health care professionals at the MCC see him regularly and are working with him to implement lifestyle changes so that bis condition improves. (ECF No. 65 at 1-6.)(emphasis added) Those recommendations include diet, weight loss and exercise. Section 3142(i) "has been used sparingly to permit a defendant's release where, for example, he is suffering from a terminal illness or serious injuries." United States v. Hamilton, No. 19-CR-54, 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020) (collecting cases). The defendant's diagnosis of prediabetes - a relatively common and treatable condition-is not a "compelling reason" for his release. See United States v. Deutsch, No. l 8-CR-502, 2020 WL 1694358, at *1 (E.D.N.Y. Apr. 7, 2020) (finding no compelling reasons where a defendant has a prediabetes diagnosis but "does not have Type 1 or Type 2 diabetes, be does not suffer from any pre-existing respiratory issues, he is young, and his medical condition appears well managed throughout his pretrial detention")." *Id.*

27. Mr. Kelly is prediabetic. His diagnosis, as the court noted above, requires diet, exercise and weight loss to be manage. The Defendant is on total

lockdown and cannot exercise or lose weight. This is exacerbating his pre-diabetes and puts him at-risk for developing it.

28. As far as the courts review of the defendant's medical records and conclusion he is not "uniquely at-risk" is contradicted by the CDC. Per the CDC *"Because COVID-19 is a new disease, more work is needed to better understand the risk factors for severe illness or complications. Potential risk factors that have been identified to date include:*

a. Age-as discussed, he is 53 years old and certainly not in a low risk category;

b. Race/ethnicity- as reports show, African Americans are more susceptible;

c. Gender;

d. Some medical conditions- as discussed, he has pre-diabetes that is not properly being managed as well as had surgery recently that may also affect him; and

e. Poverty and crowding- both of which exist in prison conditions.

29. Although the CDC guidelines are important to follow, this is a completely unknown virus. Many people have developed sever complications, such a fibrosis of the lungs, long term permanent pulmonary problems and there

are those that have died from the virus even though they were not "categorized as most at-risk for contracting."

30. The Court did not address the issues raised by defense counsel regarding Mr. Kelly's right to prepare for trial and the fact that he has literacy issues making it impossible to prepare for trial without being to meet with him in person. At present, counsel cannot meet with Mr. Kelly to prepare him for the September 2020 trial date in the Eastern District of New York.

WHEREFORE, for the reasons stated in the attached memorandum of law, this Court should enter an order reversing the district court's order of detention and directing that Mr. Kelly be released from custody, subject to appropriate conditions of release and any other conditions supported by the evidence and needed to reasonably assure community safety and risk of flight so Mr. Kelly can prepare for trial.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed: New York, New York
June 30, 2020

s/ Thomas A. Farinella
Thomas A. Farinella

CERTIFICATE OF SERVICE

I certify that on June 30, 2020, I electronically filed the foregoing DECLARATION OF THOMAS A. FARINELLA, with attached Exhibits A-D, with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: New York, New York
June 30, 2020

s/ Thomas A. Farinella
Thomas A. Farinella

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ROBERT S. KELLY,

Defendant-Appellant

APPEAL FROM A DETENTION ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YOUR

MEMORANDUM OF LAW IN SUPPORT OF ROBERT S. KELLY'S MOTION FOR RELEASE FROM PRETRIAL DETENTION

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-1720

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

ROBERT S. KELLY,

Defendant-Appellant

APPEAL FROM A DETENTION ORDER
OF THE UNITED STATES DISTRICT COURT
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MEMORANDUM OF LAW IN SUPPORT OF ROBERT S. KELLY'S MOTION FOR RELEASE FROM PRE-TRIAL DETENTION

INTRODUCTION

Courts should always "bear in mind that it is only a 'limited group of offenders' who should be denied bail pending trial." *United States v. Shakur*, 817 F.2d 189 (2d Cir.1987) (*quoting* S. Rep. No. 225, 98th Cong., 1st Sess. 6-7, reprinted in 1984 U.S.C.C.A.N. 3182, 3189 ("Senate Report"). After all, denial of bail under the Bail Reform Act (hereinafter the "Act") was *not* intended to apply to *all* defendants charged with serious crimes, but only to a "small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or of other persons." *Id.* at Senate Report, at 3189 (emphasis added). Thus, as the Supreme Court has cautioned, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno,* 481 U.S. 739, at 755.

Here, defendant Robert S. Kelly ("Mr. Kelly") moved for pre-trial release in light of the coronavirus pandemic, and in order to be able to prepare for trial. (Dkt. 68). The circumstances that exist as a result of the Covid-19 pandemic will continue to exist into the foreseeable future and have made it impossible for Mr. Kelly to prepare for his September 2020 trial if bail is not granted.

It is undisputed that Mr. Kelly cannot read or write. Therefore, unlike most defendants, he cannot spend hours reading and reviewing the documents that are

relevant to his case; he cannot make notes about those documents: he cannot meaningfully communicate in writing with his lawyers; and he cannot meet face-to-face with his lawyers. He has essentially been cut out of the discovery and trial preparation process. Moreover, because of the pandemic and the conditions imposed by the MCC Chicago (where he is detained) because of it, his overall communications with counsel are subject to crucial limitations (a sporadic, once a week short phone call or a Facetime exchange). This is particularly troublesome as the means of those limited communications do not even possess the safeguards of confidentiality that are necessary to engage in meaningful attorney-client conversation. Moreover, there is no denying that this is an extraordinary time, and that the issues that ordinarily affect bail determinations have to be viewed differently, and more liberally.

Furthermore, the allegations in the Indictment in this case span three decades. The Indictment alleges, in sum, that Mr. Kelly's care as nationally recognized singer and performer constitutes a RICO "racketeering enterprise." Mr. Kelly has lived that career and is in the best position to assist counsel in the review of the discovery. While a defendant is often the best historian in any case, Mr. Kelly's contribution is even more crucial here because the trial court has allowed the government to conceal the identities of some of the alleged victims – who will be key trial witnesses

The District Court erroneously concluded that Mr. Kelly poses a significant danger to the community, that no combination of bail conditions can adequately address; that he is likely to flee; and that the judicial system's oversight capabilities have been curtailed because of the pandemic (Dkt. 68).

However, as the records supports, even applying the most stringent standard of review, release should be granted. *United States v. Boustani,* 932 F.3d 79, 81 (2d Cir. 2019) ("We review a District Court 's order of detention for clear error and will reverse only where 'on the entire evidence we are left with the definite and firm conviction that a mistake has been committed.'"). Based upon the record before the District Court, there is no doubt that a mistake has been made, and it is definite and clear that Mr. Kelly is neither a flight risk nor does he present a danger to the community. *Id*. As to the nature and seriousness of the "danger" purportedly posed by his release, the concern expressed by the District Court and the government is that Mr. Kelly may attempt to obstruct justice because he has been charged with obstructing justice in another case. It is certainly not that he is a danger to commit any type of sexual misconduct.

Putting aside for the moment the fact that he is presumed innocent, the law does not concern itself with allegations of former conduct, but rather speaks to a real and present danger. Here the danger is merely speculative and without record support. The expressed concern also ignores reality, or as they say, the proof is in

the pudding. One of the government's alleged victim Jane Does, apparently at the same time she was cooperating with the government, was still living with Mr. Kelly. After Mr. Kelly's arrest and incarceration, the government did not - as would be customary – even seek to bar him from contacting any possible witnesses, but rather allowed Mr. Kelly to have an extraordinary level of contact with that witness. They were afforded (pre-pandemic) personal, one-on-one visits at the MCC Chicago. Yet, through months of contact, there was not a single allegation of any kind of nefarious behavior on Mr. Kelly's part with respect to this Jane Doe, including any allegation that Mr. Kelly ever tried to influence her, pressure her, or to direct her to do so with respect to any other potential witness.

Given that the District Court clearly erred in finding that Mr. Kelly is irremediably dangerous, that no bail conditions can reasonably assure community safety, and that federal Pre-Trial Services are incapable of monitoring him, the question becomes what condition(s) are in fact appropriate. Certainly, conditions can be constructed that would alleviate any legitimate concerns. Location monitoring can be employed, the use of electronics by Mr. Kelly can be restricted or completely eliminated, and Mr. Kelly can be denied Internet access. The real issue here is whether, by denying him bail, is it appropriate to put him in a position where he cannot assist his counsel to prepare for his upcoming September 2020 trial.

FACTS

The facts are set forth more fully in the accompanying Declaration of Thomas A. Farinella. ("Farinella Decl."). In brief, Mr. Kelly is a 53-year-old with *no* prior criminal convictions, who is charged with offenses in Illinois State court and in the federal courts for the Northern District of Illinois ("NDIL") and the Eastern District of New York ("EDNY"). Mr. Kelly was granted release on bond in the Illinois State court case. He was on bond, without issue, until he was Indicted and detained in each of his federal cases despite the fact that federal Pre-Trial Services in the NDIL —who would be responsible for his supervision—recommending that he be released and thus that a combination of conditions exist that would secure his appearance and alleviate any perceived danger to the community.

Mr. Kelly should have been released from the start in these matters and the initial decisions to detain him were themselves erroneous. But now, with the Covid-19 pandemic, there has been a cataclysmic change in circumstances that calls for his release. The simple fact is that a jail setting is not somewhere that is safe from Covid-19. The conditions at the MCC Chicago have deteriorated to the point they are arguably inhumane, even for the healthiest of persons. Contrary to the District Court's finding that Mr. Kelly's medical condition is insignificant and treatable, Mr. Kelly has been required, for months now, to be in a permanent lockdown setting, in a cell because of the COVID-19 crisis He has had minimal opportunity for

movement, no opportunity for recreation, and no opportunity for social interaction with anyone other than a cellmate (Mr. Kelly's current cellmate is a foreign national who is difficult to communicate with). Commissary is sporadic, once a month, and phone calls are infrequent. When inmates are moved, they are still crowded onto an elevator. Clearly, these social distancing measures do not make inmates the priority—and the results show it. With the staff having first-person knowledge of the health risks inside the institution, even bathrooms and showers present a haven for infestation.

There is no visitation, social or otherwise—including legal visits. His trial in the EDNY is set for September, and trial in the NDIL for late October. Mr. Kelly is unable to effectively and meaningfully consult with his counsel to adequately prepare for these upcoming federal criminal trials—for which he faces up to *de facto* life in prison.

Further, if Mr. Kelly remains in custody, his counsel will be forced to risk their own health by way of visits to the MCC Chicago. But, to be clear, such visits are not currently even allowed, and have not been for months. Counsel should not be forced to visit with Mr. Kelly in jail during this pandemic. Counsel should not have to endanger their own health in order to fulfil their duties to their clients.

In any event, as noted above, in-person visits with attorneys are not even allowed. Phone calls with counsel are also extraordinarily limited and require that

they be scheduled well in advance. Any such phone call poses concerns as to confidentially, particularly where one of the callers is within a correctional institution. More importantly, communicating over the phone does not allow counsel the opportunity to show or explain documents to Mr. Kelly or *vise versa*. When and if visits are eventually allowed—whenever that may be—Mr. Kelly's counsel will be competing with all of the other attorneys who need to speak with their clients; these visits will also likely be limited in time, as well as in what materials are allowed to be brought inside. Mr. Kelly is not a priority for the MCC Chicago because each of the inmates have the same right to access counsel. With respect to the types of conversations that need to be had to prepare for criminal trials of this magnitude, there is simply no meaningful substitute for old-fashioned face-to-face conversation.

ARGUMENT

A. Burden Of Proof And Standard Of Review

Under the Bail Reform Act, a court is required to order the pretrial release of a defendant on personal recognizance, or after the execution of an appearance bond, "unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. §3142(b). Release is mandated unless "there is no condition or combination of conditions of release that will assure that [he] will

not . . . pose a danger to the safety of any other person or the community." 18 U.S.C. § 3148(b)(2)(A).

Where "there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger." § 3148(b)(2). While not dispositive, it should be noted that the underlying conduct for which Mr. Kelly is charged occurred nearly two decades ago.

The Act mandates a simple two-step inquiry, and a defendant may be detained pending trial *only* if both prongs are satisfied. *See* 18 U.S.C. §§ 3142(e), 3142(f). First, the Government must demonstrate the defendant has been charged with one of the crimes enumerated in Section 3142(f)(l), or that he presents a *serious* risk of flight or danger to the community. *See* 18 U.S.C. § 3142(f); *see also United States v. Friedman*, 837 F.2d 48 (2d Cir. 1988). Thus, no matter how dangerous an individual may be, he cannot be detained unless one of these initial conditions is satisfied. *See Friedman*, *supra*, 837 F.2d at 49.

There was simply no record evidence e to support a finding that Mr. Kelly is a member of the "small group" of "particularly dangerous defendants" for whom no adequate conditions can be fashioned.

Mr. Kelly's continued detention is not justified based upon the record evidence, and it marks a substantial departure from the class of cases in which

pretrial detention has been deemed necessary. To gather a sense of the type of "particularly dangerous" individuals whom Congress had in mind under the Act, one need looks no further than the line of Second Circuit cases addressing pretrial detention.[1] These cases confirm that Mr. Kelly is clearly *not* the type of person for whom pretrial detention was intended or is warranted. Mr. Kelly is 53 years old, does not have any criminal history, and is presumed innocent.

This case has been handled as a presumption case. "In a presumption case [. . .] a defendant bears a limited burden of production—not a burden of persuasion—

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[1] *See, e.g., United States v. Ciccone*, 312 F.3d 535 (2d Cir. 2002) (denying bail for alleged organized crime boss charged with supervising multiple acts of extortion, loansharking, money laundering and witness tampering); *United States v. Ferranti*, 66 F.3d 540 (2d Cir. 1995) (reversing District Court's order releasing defendant charged with arson resulting in death and witness tampering; defendant also allegedly shot a criminal associate and directed others to intimidate tenants at a building he owned and to terrorize and kill a tenants' rights activist who was later found murdered); *United States v. Millan*, 4 F.3d 1038 (2d Cir. 1993) (reversing District Court's order releasing defendant who had ordered numerous shootings, beatings, and a contract murder, and had issued threats against the families of witnesses who testified adversely to him at trial);*United States v. Orena*, 986 F.2d 628 (2d Cir. 1993) (overturning District Court order releasing alleged acting boss and captain of the Colombo crime family who were charged with murder, conspiracy to murder and illegal possession of weapons; evidence showed that plans existed for further murders); *United States v. Rodriguez*, 950 F.2d 85 (2d Cir. 1991) (vacating District Court's order releasing defendant who was introduced to an undercover agent as a hitman, agreed to perform a murder in exchange for one kilogram of cocaine, and allegedly shot someone in the kneecap over a $60 debt); *United States v. Shakur*, 817 F.2d 189 (2d Cir. 1987) (reversing District Court order releasing defendant charged with 19 separate predicate acts of racketeering, including three murders, two of which were murders of law enforcement officers, three armed robberies of armored trucks, one bank robbery, seven attempted armed robberies and two armed kidnappings); *United States v. Colombo*, 777 F.2d 96 (2d Cir. 1985) (overturning District Court order releasing defendant who operated his own "crew" within the Colombo crime family and directed crew members to rob large-scale drug dealers and distribute narcotics, to abduct a drug dealer, assault the manager of a car dealership, to extort a restaurant owner, to attempt to murder a government informant, and to rob passengers on a flight to Atlantic City); *United States v. Gotti*, 385 F. Supp. 2d 280 (S.D.N.Y. 2005) (affirming order of detention for alleged leader of Gambino crime family who was charged with three murder conspiracies and attempted murders, as well as extortion and other crime).

to rebut that presumption by coming forward with evidence that he does not pose a danger to the community." *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001) (*per curiam*) (*citing United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1991)). "To determine whether the presumption[] of dangerousness [is] rebutted, the District Court considers: (1) the nature and circumstances of the crime charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant, including family ties, employment, community ties, past conduct; (4) the nature and seriousness of the danger to the community or to an individual." *Id*. (citing 18 U.S.C. § 3142(g)).

Although this Court reviews a trial court's findings of "historical facts underlying the conclusion that the defendant is a risk to flee or poses a danger to the community" for clear error, (*United States v. Melendez-Carrion*, 790 F.2d 984, 994 (2d Cir. 1986)), "'danger to the community' is not as clear a concept as risk of flight and has not been fully developed as a basis for pretrial detention. Application of the 'dangerousness' ground for pretrial detention may therefore implicate legal interpretations to a degree somewhat greater than the ground of risk of flight, with a corresponding broader scope of review." *Id*; *see also United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995) ("Our scope of review is slightly broader [than clear error] with respect to the 'ultimate determination' that a defendant does, or does not, present a risk to the citizenry.").

"While [appellate] review is deferential, it is nevertheless guided by the 'traditional presumption favoring pretrial release for the majority of Federal defendants.'" *United States v. Berkun*, 392 Fed. Appx. 901 (2d Cir. 2010) (summary order) (*quoting United States v. Berrios-Berrios*, 791 F.2d 246, 250 (2d Cir. 1986)). At bottom, "it is only a 'limited group of offenders' who should be denied bail pending trial." *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987) (*quoting* S.Rep. No. 225, 98th Cong., 2d Sess. 7, reprinted in 1984 U.S. Code Cong. & Ad. News 3182, 3189).

B. Mr. Kelly Met His Burden Of Establishing That He Does Not Pose a Danger To The Community Or A Risk Of Flight

In determining whether a defendant has rebutted the presumption that he is dangerous and a flight risk, the trial court is obligated to consider certain factors, including the nature of the charges against the defendant, the weight of the evidence against him, his history and characteristics, and the extent to which his release would pose a risk to any person or the community. 18 U.S.C. § 3142(g); *see also Mercedes*, 254 F.3d at 436 (The District Court considers the Section 3142(g) factors "[t]o determine whether the presumptions of dangerousness and flight are rebutted."). With respect to the nature of the charges and the weight of the evidence, it is difficult for defense counsel - who has not yet even seen a single meaningful witness interview during discovery - to opine on these issues. But suffice it to say that the charges themselves are not particularly egregious, do not entail acts of violence, and

largely involve events from decades ago. While the charges are serious, they are not the type of charges that should implore a court to detain an individual because he is a real and present danger should he be released.

Moreover, that is only one factor in the overall analysis. Here, the District Court was aware of, but utterly ignored, Mr. Kelly's historically perfect record of compliance with court conditions. It is undisputed that Mr. Kelly was granted release on bond in an Illinois State court case involving similar allegations in 2002. The charges he was then facing could have landed him in prison for a decade or longer; in other words, those charges were equally serious to the ones now at issues. Nonetheless, Mr. Kelly appeared at each and every court appearance in that action over a period of almost a decade. He never once missed a court appearance, and never had any issues with respect to the conditions of his release. He was even allowed to repeatedly travel overseas while on bond in that matter and returned each time without incident – even though he was not subject to any form of monitoring.

Moreover, again in early 2019, after posting significant monetary bail in a still pending State court case in Cook County, Illinois, Mr. Kelly appeared at each and every required court appearance. He also met all other conditions of his release.

In fact, when federal agents approached him to arrest him in connection with the present case, on a public street, he was fully cooperative. Indeed, Mr. Kelly

knew for a significant period of time that he would be charged federally, but never attempt to take any steps to abscond.

With respect to the issue of to flight, certainly, in the current environment, it would be difficult if not impossible, for someone like Mr. Kelly to walk through an airport and blend in with others -not to mention the fact that he could never possibly pass through a TSA checkpoint in the first instance. Even if airport personnel somehow did not recognize Mr. Kelly, he has no passport.

Additionally,, Mr. Kelly has no means to flee. The fact is that Mr. Kelly possesses almost no liquid financial resources. The government was unable to point to any evidence whatsoever that suggested that Mr. Kelly possesses a desire to flee, in this case or otherwise. Even if such a desire actually existed, Mr. Kelly has nowhere to go, no way to get there, and no money to survive.

Significantly, the District Court impermissibly overlooked or ignored the proposed combination of conditions put forth by Mr. Kelly and his counsel, including monitored home confinement, a prohibition on the use of electronics by Mr. Kelly, and a prohibition on Mr. Kelly having contact with anyone other than his attorneys and his live-in significant other. With these conditions in place, Mr. Kelly would not pose any risk of flight or danger to the community. In sum, but for court appearances, he would be confined to his residence. Moreover, with no ability to use or access electronic devices, Mr. Kelly would have no access to the outside world

and no means for engaging in any form of obstruction. He would effectively be subject to all conditions he is now—*sans* the risk of death. Mr. Kelly is an individual who is scared for his life because of COVID-19 and the lock down conditions at the MCC Chicago, with absolutely no intention of violating the orders of release of any court. Not a shred of record evidence existed to the contrary.

Surely, the above-referenced record evidence should have been more than adequate to shift Mr. Kelly's required burden of production to the burden of persuasion required to be made by the Government.

C. The Government Did Not Meet Its Burden Of Persuasion, By Clear And Convincing Evidence, That Mr. Kelly Posed An Irremediable Danger To The Community

"Even in a presumption case, the government retains the ultimate burden of persuasion [. . .] that the defendant presents a danger to the community." *Mercedes*, 254 F.3d at 436. In its decision denying Mr. Kelly release, the District Court held that "the Government sustained its burden of proving by clear and convincing evidence that the defendant poses a danger to the community [. . .]." (*See* Exhibit H). Rather than relying on any record evidence put forth by the government, the District Court looked to the charges on their face, failing to engage in a critical analysis as to the facts underlying these allegations.

Significantly, the government did not even try to shoulder this burden. It asserted, without putting forth any actual record evidence, that the mere allegations

of the Indictment established that Mr. Kelly posed a danger to obstruct justice. The government did not argue, let alone substantiate with record evidence, that "no condition or combination of conditions of release [] will assure that [Kelly] will not . . . pose a danger to the safety of any other person or the community." 18 U.S.C. § 3148(b)(2)(A).

While the District Court was allowed to look to a probable cause determination with respect to an obstruction charge as evidence, it must look to the underlying substance of that charge in order to ascertain a potential *present* danger. Here, in a footnote, the District Court looked to the statutory language charged, which lists all of the different types of behavior that could potentially constitute obstruction. The District Court clearly did so in order to combat Mr. Kelly's argument that the witnesses could not be tampered with, regardless of the absence of any record evidence suggesting that Mr. Kelly had any intent to tamper with them or otherwise obstruct justice. *See* District Court's May 15, 2020 Order, at Fn. 4 (Dkt. No. 68) This was improper. The government should have been required to put forth actual evidence, or in the least a substantive proffer, that Mr. Kelly posed a danger of obstruction *at present*. The District Court had no basis for simply deeming the charge of obstruction sufficient to amount to a danger of obstruction in the present *carte blanche* - —particularly where it relates to conduct that is alleged to have occurred more than fifteen years ago.

Even where there is a rebuttable presumption in favor of detention, the query becomes whether there are *any* conditions or combination of conditions that would mitigate against the risks. Detention is only appropriate if the court "finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. 3142(e). In determining whether any condition or combination of conditions is sufficient, the court can consider several factors, including: (1) the nature and circumstances of the charged offense; (2) the weight of the evidence; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger posed by the defendant's release. 18 U.S.C. 3142(g).

Where a district "court does not consider the factors set forth in 18 U.S.C. § 3142(g) in reaching its ultimate finding on the existence or nonexistence of conditions, the finding will be subject to more flexible review." *Shakur*, 817 F.2d at 196-97 (*citing Berrios-Berrios*, 791 F.2d at 252).

In the present case, however, the District Court placed far too much weight on these factors. While the government typically relies on 18 USC 3142(g)(2), the weight of the evidence factor, this factor should be the least important consideration. *United States v. Gebro*, 948 F.2d 1118 (9th Cir. 1991). That is because of the presumption of innocence, and the lack discovery at the bail/detention phase of the process. Moreover, the Bail Reform Act specifically states that, "[n]othing in this

section [3142] shall be construed as modifying or limiting the presumption of innocence." 18 U.S.C. §3142(i).

The record contained no evidence suggesting that Mr. Kelly would engage in obstruction at this time, thus taking the teeth out of any argument that he is dangerous. The community danger feared here is witness tampering. Yet, there was no record evidence that Mr. Kelly would be able to contact any of the witnesses in this case if he were released, and since barring contact with all others would be a condition of release, there was no danger shown.

The Indictment contains reference to six 'Jane Does.' The defense has previously requested and moved that each of them be identified. The District Court denied that request with respect to Jane Doe's two and three. Therefore, to-date, their identities remain unknown to the defense. (Dkt. 38). The government has identified a picture of Jane Doe number four and provided no further information about her. To date, predicated solely upon that picture, the defense has been unable to identify that individual. This means that defense counsel and Mr. Kelly do not even know the identity of three of the six Jane Does.

The simple fact is that Mr. Kelly poses no genuine danger to the community– let alone one so pronounced that it cannot be remedied by appropriate conditions of release. Indeed, defendants accused of posing greater dangers than Mr. Kelly have been released pending trial. *See United States v. Sabhnani*, 493 F.3d 63, 65 (2d Cir.

2007) (reversing order of pretrial detention for defendants charged with holding "two Indonesian women in peonage at their Long Island home, denying them freedom of movement, subjecting them to serious physical abuse, and paying them no wages," given availability of bail conditions that would reasonably assure defendants' appearance at trial); *United States v. Chimurenga*, 760 F.2d 400, 401 (2d Cir. 1985) (upholding pretrial release of defendant charged with conspiracy to commit armed robbery because bail conditions would "reasonably assure" community safety and defendant's appearance); *United States v. Blauvelt*, No. WDQ-08-0269, 2008 WL 4755840, *1-*2 (D. Md. 2008) (granting bail to defendant accused of "very serious" charges of sexually exploiting a minor to produce child pornography); *United States v. Soto Rivera*, 581 F. Supp. 561, 563-65 (D.P.R. 1984) (granting bail to defendant charged with bank robbery and with killing the assistant bank manager).

This Court "may weigh the evidence [] if the district court considers those factors but nevertheless in reaching its ultimate finding relies primarily on some factor or factors not set forth by Congress in § 3142(g)." *Shakur*, 817 F.2d at 197. Not only did the District Court not address the statutory factors, it in fact relied on a factor not set forth by Congress: [W]ith regard to federal Pretrial Services purported inability to monitor Mr. Kelly, the District Court found, "*given the pandemic, where the judicial system's oversight capabilities are curtailed.*" (See

Judge Donnelly's Decision dated April 21, 2020) (emphasis added) There was no basis for that finding. No one ever presented the District with any evidence of any kind to support that finding.

D. The Government Did Not Meet Its Burden, By A Preponderance Of the Evidence, That Mr. Kelly Poses A Risk of Flight

There is zero evidence from which this Court can infer that Mr. Kelly is a risk of flight, let alone the required "serious" risk. To the contrary, Mr. Kelly's history directly undermines the government's unsupported assertions of flight risk. Perhaps most significant is Mr. Kelly's record of appearance. As referenced above, Mr. Kelly faced prior criminal charges in Illinois State court in the early-2000s for which he was released pending trial and never missed a single court appearance. He was ultimately acquitted by a jury on all charges, after weeks of trial. Mr. Kelly appeared dozens of times in that matter. He was never even late. Additionally, he was allowed to travel, always returning.

As the defense explained at the initial bail hearing, the subsequent hearing before the District Court, and in three motions requesting bond, the presumed risk of flight proffered by the government is entirely groundless. The District Court 's conclusion that Mr. Kelly will flee was reached without any record evidence; was premised entirely upon speculation; and defies logic.

Here, it is undisputed that the fact that Mr. Kelly was being investigated by the federal government was well known. Certainly, it is undisputed that he knew.

The record before the District Court established that, in the face of that, Mr. Kelly *still* went about his normal activities. There was never any concern that Mr. Kelly was going to flee, notwithstanding the swirl of rumors of investigation and looming Indictment. When the federal Agents arrested Mr. Kelly, he was walking his dog. He was fully cooperative; never attempted to flee; and never made any plans to flee – nor did the government even attempt to argue that Mr. Kelly had done anything that suggested preparations for flight.

Equally, or perhaps even more importantly, when Mr. Kelly was indicted for very serious charges in Cook County, Illinois in the spring of 2019, he voluntarily surrendered the same day.[2] When charges were added to that action, and he was told that he had to appear in court for an arraignment on those additional charges, he promptly and voluntarily did so. Notably, the Illinois prosecutors did not even ask to increase or change any condition of his bond at that time.

Additionally, it was misreported to the Magistrate Judge in the present case that Mr. Kelly travels internationally. He does not. It is undisputed that his last international travel occurred approximately eight years ago. In any event, because Mr. Kelly's passport has already been surrendered, he cannot travel internationally.

[2] The Cook County, Illinois State court charges include what are referred to as class X felonies. These charges require a minimum sentence of six years in the Illinois Department of Corrections.

None of the typical indicia of flight risk exist in this case. Discussing the types of factors that might support a finding of flight risk, the Second Circuit in *Friedman* pointed to *United States v. Coonan*, 826 F.2d 1180, 1186 (2d Cir. 1987), where the defendant had been a fugitive for close to four months on the very charges for which he was incarcerated, and his fugitive status ended only by his capture, and *United States v. Jackson*, 823 F.2d 4, 6-7 (2d Cir. 1987), where the defendant had shown skill in avoiding surveillance, had lived from hotel to hotel, had hidden assets, and had used a number of aliases.[3] Neither of those cases bears even a remote resemblance to the facts presented in this case.

Finally, there are various levels of monitoring, or even home detention, that would ameliorate any conceivable risk allegedly posed by Mr. Kelly. Moreover, speculation about flight is not enough. *See United States v. Lee*, 972 F. Supp. 2d 403, 408-09 (E.D.N.Y. 2013) (relaxing conditions of pretrial release because, "speculation about the possibility that Lee might disclose information during treatment that suggests he poses a threat is no substitute for evidence that he poses one now"); *United States v. Bodmer*, 2004 WL 169790, at *2 (S.D.N.Y. 2004) (granting pretrial release where "the Government's argument is mere speculation

[3] *See also Shakur*, *supra*, 817 F.2d 189 (finding serious risk of flight where defendant, who was charged with multiple murders and armed robberies, had eluded capture for four years, despite being on the FBI's "Ten Most Wanted" list, by moving from city to city and living under a fictitious name).

because it provides no *evidence* that Bodmer has any bank accounts outside of Switzerland" that he could use to finance flight) (emphasis in original).

In addition to substituting speculation for evidence, the District Court failed to address "whether the presumption[] of dangerousness [is] rebutted" given: "(1) the nature and circumstances of the crime charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant, including family ties, employment, community ties, past conduct; [and] (4) the nature and seriousness of the danger to the community or to an individual." *Mercedes*, 254 F.3d at 436 (citing 18 U.S.C. § 3142(g)). In the District Court's recent decision dated May 15, 2020, the Court found that:

> both indictments charge the defendant with serious crimes that span years. In this District, the indictment charges that for almost twenty-four year, the defendant led an enterprise, the purposes of which were to promote the defendant's music, to recruit women and girls to engage in illegal sexual activity with the defendant and to produce child pornography (ECF No. 43 ¶¶ 2, 12). In the Northern District of Illinois, the defendant is charged with participating in a long-running conspiracy to obstruct justice and a conspiracy to receive child pornography.

The Indictment essentially alleges that Mr. Kelly's music career constituted a racketeering "enterprise," designed to obtain sexual partners. This ignores the fact that he made successful music and won several Grammy awards. It suggests that things such as the issuance of backstage passes and engaging in meet-and-greets with fans constitute criminal activities. It is a perversion of the purpose of the

racketeering statute, and surely extends the "…or in any sexual activity for which any person can be charged with a criminal offense" (*see* 18 U.S.C.A. § 2421) language far beyond its intended use. *See also Gebardi v. United States*, 287 U.S. 112, 118 (1932) ("Transportation of a woman or girl whether with or without her consent, or causing or aiding it, or furthering it in any of the specified ways, are the acts punished, when done with a purpose which is immoral within the meaning of the law").

E. The Continued And Unnecessary Incarceration Of Mr. Kelly Also Runs Afoul Of The 8th Amendment

Continued incarceration that is not absolutely essential may also violate Mr. Kelly's rights under the 8th Amendment to the United States Constitution. The Supreme Court has held that prison officials may not "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Detention in such circumstances may well violate the Eighth Amendment by exposing a prisoner to "an unreasonable risk of serious damage to his future health." *Id*. at 35.

Thus, "pretrial detainees' due process rights are at least as great as the Eighth Amendment protections available to convicted prisoners." *Maddox v. City of Los Angeles*, 792 F.2d 1408, 1415 (9th Cir. 1986); *see also Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1120 (9th Cir. 2003) ("[W]e have recognized that, even though

the pretrial detainees' rights arise under the Due Process Clause, the guarantees of the Eighth Amendment provide a *minimum standard of care* for determining their rights[.]"). Conditions as they presently exist within the MCC Chicago are of the kind that were contemplated by the Constitution, and a remedy exists for this Court to craft. The Supreme Court has held that the Eighth Amendment proscribes more than physically barbarous punishments. *See, e. g., Gregg v. Georgia, supra,* at 171 ; *Trop v. Dulles*, 356 U. S. 86, 100-101 (1958); *Weems v. United States*, 217 U. S. 349, 373 (1910). The Eighth Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency "(*Jackson v. Bishop*, 404 F. 2d 571, 579 (8th Cir. 1968)), against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society," (*Trop v. Dulles, supra,* at 101; *see also Gregg v. Georgia, supra,* at 172-173; *Weems v. United States, supra,* at 378, 103*103), or which "involve the unnecessary and wanton infliction of pain**.** *"Gregg v. Georgia*, *supra*, at 173; *see also Louisiana ex rel. Francis v. Resweber*, 329 U. S. 459, 463 (1947); *Wilkerson v. Utah, supra,* at 136.

Here, it is clear that leaving this defendant at the MCC Chicago, is rapidly becoming a death sentence, and, as such, it is "against the evolving standards of decency that mark the progress of a maturing society."

That same analysis is relevant in the pretrial context, where each day, Mr. Kelly's health is at risk. An Eighth Amendment violation arises where an incarcerated person establishes "the seriousness of the potential harm and the likelihood that such injury to health will actually be caused" by the medical threat—here, an escalating national pandemic. *Herson v. Sheahan*, 196 F.3d 839, 847 (7th Cir. 1999) (citing *Helling*, 509 U.S. at 36). In assessing such a Constitutional claim, this Court must also determine whether the alleged risk is "not one that today's society chooses to tolerate." Given the speed with which the coronavirus is spreading and the exacerbated dangers in jails and prisons, reduction of the population is critical to help prevent a mass outbreak. To be sure, there may be some people who present such a grave danger to society that they cannot be released pre-trial. Mr. Kelly is not such a person.

Any alleged violation of law while a defendant is on pretrial release will necessarily breach the trust of the court that released him; however, the relevant standard for denying bail is not breach of trust, but whether the person poses so much of a danger that absolutely "no condition or combination of conditions of release" will reasonably assure community safety. 18 U.S.C. § 3148(b)(2)(A).

The District Court decided, without any record evidence to support its decision, that Mr. Kelly poses such a danger, is likely to flee, and that federal Pretrial Services cannot possibly monitor him. To the extent any danger is suggested by the

record evidence, it is that Mr. Kelly will allegedly tamper with witnesses and flee if released. Those dangers are completely removed by requiring home confinement; limiting Mr. Kelly's ability to use a phone, the Internet, and all other electronic devices; limiting Mr. Kelly to contact only with his lawyers and his live-in significant others.

F. Mr. Kelly's Has A Fundamental Right To Proceed To Trial Expeditiously And A Fundamental Right To Prepare For That Trial

Indeed, an important point has seemed to have gotten lost in all of this, and that is that Mr. Kelly has a fundamental right to proceed to trial, expeditiously, whenever practicable. The issue of whether that trial can take place in September, as presently scheduled, given the pandemic, is a different issue than whether - if the trial cannot proceed - he can still be prepared for trial. It is understandable that the trial may not move forward in light of the pandemic, but it is unfair if the trial cannot move forward because he was held in custody during the pandemic and therefore, he and his counsel could not prepare for trial. Presently, none of Mr. Kelly's attorneys are even allowed visit with him at the MCC Chicago. No one is allowed in. There are no means by which to have lengthy consultations. They are limited to 15 minutes (occasionally 30). There are no means by which to review evidence with Mr. Kelly, show him documents, review photographs, or discuss strategy. Even if

the present restriction on visits are eventually lifted, counsel should not have to go inside of the penal institution at the expenses of placing their own health at risk.

The health dangers posed by the virus are cyclical: lawyers visiting clients in jail pose a risk to their clients, their clients pose a risk to them and they in turn pose risks to their other clients, colleagues, and family members. Although the courts are going to operate on a limited basis, when it comes to trial, lawyers cannot.

Failure to release Mr. Kelly will inevitably lead to a reduction in his constitutionally mandated right to access counsel and to assist in his defense during what the Supreme Court has found to be the most critical period of a case proceeding – the time between arraignment and the beginning of a trial. *Powell v. State of Alabama*, 287 U.S. 45, 57 (1932). Recognizing the importance of this period of time, Bail Reform Act included a provision that would allow a judicial officer to permit the temporary release of a detainee if the judicial officer determines the release "to be necessary for preparation of the person's defense or for another compelling reason." 18 U.S.C.A. 1342(i). Several federal courts have discussed the burden incarceration has on a defendant's ability to assist in their defense. The court in *U.S v. Vitta* reasoned that a defendant released on bail is available 24 hours a day to assist in their trial preparation, track down evidentiary leads, and provide key factual details in drafting motions and negotiations. *U.S v. Vitta*, 653 F. Supp. 320, 337 (E.D.N.Y. 1986); *see also Barker v. Wingo*, 407 U.S. 514, 533 (1972). Additionally,

the defendant may be the only person that is able to identify, explain, and help's attorneys to understand the evidence and his defense. *Id.* The court in *U.S v. Vitta* went on to note that the quality of the detainee's legal defense is likely to diminish dramatically the longer he or she is incarcerated. *Vitta*, 653 F. Supp. at 337.

Moreover, attorney-client communication is an essential component of the meaningful access to courts guaranteed under the Constitution. *See Dreher v. Sielaff,* 636 F.2d 1141, 1143 (7th Cir. 1980) (internal citations omitted) *and Glisson v. Sangamon Cty. Sheriff's Dept.*, 408 F. Supp. 2d 609, 623 (C.D. Ill. 2006) (*citing May v. Sheahan*, 226 F.3d 876, 878, 883 (7th Cir. 2000) (hospitalized pretrial detainee with AIDS stated claim for violation of his constitutional right of access to the courts because of hospital detention policies that prevented him from attending court, filing motions—including to reduce his bond—and meeting with counsel; court found that "the opportunity to communicate privately with an attorney is an important part of that meaningful access" to courts under the 14th amendment). If a lawyer is unable to go to the jail because of the virus (e.g. is under mandatory quarantine because she or someone she is close is exhibiting symptoms associated with the virus, or has been exposed to someone who has tested positive) he can only communicate with his client by phone.

In sum, Mr. Kelly is being denied his Sixth Amendment right to access to counsel. "There is no iron curtain drawn between the Constitution and the prisons

of this country." *Wolff v. McDonnell, supra,* 418 U.S., at 555-556 (1974). A court should not "unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts." *Id.*, Therefore, restrictions imposed by the District Court should not dwarf Mr. Kelly's Sixth Amendment right to have access to his counsel and to be able to prepare for his trial.

CONCLUSION

This Court should reverse the Order of pretrial detention entered by the District Court and remand this matter for the imposition of appropriate conditions of release.

Dated: New York, New York
June 30, 2020

Respectfully submitted,

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Government,	) Criminal) No. 19-286 (AMD)
vs.	) ARRAIGNMENT
ROBERT S. KELLY, Defendant.	) Brooklyn, New York) Date: August 2, 2019) Time: 10:30 a.m.

TRANSCRIPT OF ARRAIGNMENT
HELD BEFORE
THE HONORABLE MAGISTRATE JUDGE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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Kathy Rodriguez, US Pretrial Services

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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(WHEREUPON, commencing at 10:33 a.m., the following proceedings were had in open court, to wit:)

THE COURTROOM DEPUTY: Criminal cause for arraignment, Case No. 19-CR-286, *United States of America v. Robert Sylvester Kelly*.

Counsel, your names for the record.

MS. GEDDES: Elizabeth Geddes, Nadia Shihata, Maria Cruz Melendez, and Kyra Wenthen, for the government. Good morning, Your Honor.

THE COURT: Morning.

MR. ANTON: Good morning, Your Honor. Douglas Anton, Hackensack, New Jersey, on behalf of Mr. Kelly.

MR. GREENBERG: Good morning, Your Honor. Steve Greenberg on behalf of Mr. Kelly.

MR. LEONARD: Good morning, Judge. Mike Leonard on behalf of Mr. Kelly.

THE COURT: Good morning.

Good morning, Mr. Kelly.

THE DEFENDANT: Good morning.

THE COURT: All right. The purpose of the proceeding is to make sure you understand the charges that have been brought against you, to advise you of certain rights that you have, and to address the questions of whether you can be released on bail.

First, you have the right to an attorney in this

case. If you cannot afford an attorney, the court will provide one to you at no cost.

I assume you are all retained counsel in this case.

MR. ANTON: Yes.

MR. GREENBERG: Yes.

MR. LEONARD: Yes.

THE COURT: You have the right to remain silent. You are not required to make any statements. If you have made any prior statements, you need not say any more.

If you decide to make a statement, you can stop at any time. But any statements you do make, aside from statements you make to your attorney, can be used against you.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. The grand jury in this district has returned a superseding indictment against you. Have you seen a copy of that, sir?

THE DEFENDANT: Yes.

THE COURT: Counsel, does your client waive a public reading of the indictment?

MR. ANTON: Yes, Judge.

THE COURT: And is he prepared to enter a plea at this time?

MR. ANTON: Plead not guilty at this time, Judge.

THE COURT: All right.

MS. GEDDES: Your Honor, there's also an underlying indictment that the defendant should be arraigned on as well.

THE COURT: Okay. Have you seen a copy of the original indictment that was filed in this case?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And how does your client plead to those charges?

MR. ANTON: Not guilty, Judge.

THE COURT: All right. Having seen the detention letters on both sides, obviously, I know the government's position with respect to detention here, but if there's anything you want to add to the position expressed in your letter, feel free to do so.

MS. GEDDES: Yes, Judge.

The government does seek a permanent order of detention in this case. As set forth in our detention memo, if the defendant were released, it is our position that he poses both a risk of flight, a risk of danger, as well as the fact that there's a serious risk that he will attempt to obstruct justice. The charges include certain offenses involving minors, so there is a presumption of both a risk of flight and danger here. But regardless of the presumption, given the defendant's lengthy and wide ranging history of criminal conduct here, including obstruction, there are no conditions that can overcome this presumption and mitigate the

risk of danger, flight, and obstruction.

THE COURT: Let me ask you this, because it is not quite clear from the indictment and from your letter. What, if any, overlap is there between this case and the other cases that are in Chicago?

MS. GEDDES: There is no overlap with the federal case. There may be some minor overlap with the state case, however, there are at least four additional victims in our case.

THE COURT: So between those cases, how many total victims are alleged to have --

MS. GEDDES: 13.

THE COURT: 13, okay.

The other thing that I am interested in, for purposes of the bail determination, is the obstruction of justice allegations, not, you know, the general arguments as to why obstruction is an issue, but there were some allegations about actual obstruction that the defendant was involved in in prior cases.

Can you tell me a little bit more about that.

MS. GEDDES: I can, Judge.

So with respect to the 2002 case, which the defendant was acquitted of after trial in Chicago, the defendant is charged in federal court in Chicago with obstructing that investigation. He is charged with paying off

witnesses, intimidating witnesses, such that they did not appear and such that they falsely testified.

In addition to the --

THE COURT: Intimidating how?

MS. GEDDES: Well, let me speak specifically about the government's evidence in this case. The defendant had, essentially, an inner circle who assisted him with a lengthy attempt at obstruction by paying off witnesses who indicated any interest in cooperating with law enforcement. He allowed -- or he had potential witnesses write letters containing false allegations that he would have at his disposal to use to embarrass witnesses who potentially turned against him. He told witnesses that they had the option of choosing his side or the other side and made witnesses feel as though if they did not -- if they were to cooperate against him, they could be subject to physical harm, both themselves and their family members.

He did this over a course of decades, and he did it with many women and children. He also created numerous recordings of minors and kept them at his disposal, such that they were available if he wanted to release them, and that served as an additional mechanism to deter witnesses from cooperating with law enforcement.

I would also note, when he was on bail in the 2002 case, the defendant continued to commit crimes,

notwithstanding the serious charges that were pending against him. In the indictment returned here in the Eastern District of New York, the defendant, one of the allegations contained in the racketeering charge, is kidnapping and sexual assault.

Those -- that conduct occurred while he was on bail. So he has shown a history of not being able to comply with the Court's conditions of release, and, you know, even more significantly perhaps, he has engaged in this pattern of obstruction by ensuring that witnesses would not be available to testify and were not willing to testify.

THE COURT: Thank you.

MR. ANTON: Judge, with respect to counsel's arguments, I'll start with the last one first. Counsel indicates that while out on another case, he committed crimes.

Well, he's been alleged to commit crimes, is what's being said. In fact, everything that makes up the predicate for the proffer before the Court today are the allegations that make up this indictment and/or -- and the superseding indictment and/or the Chicago case.

We have to talk about whether he's a flight risk. I have known Mr. Kelly for a period of time. We have gone to court on a number of issues where he's been free to appear in court. I have never known him not to appear in court. We do not have his passport anymore, that's been turned over, so he can't go anywhere out of the country, either to perform or to

flee the jurisdiction of this court, nor would it be his intention.

Obstruction of justice. We are dealing with an issue where there was a trial by a court, jury of his peers, and a lot of eyes on that case. Not after the verdict came back, not in the months or the years that followed did any of these things rear their ugly head, as they do now, that there was some level of obstruction of justice back then.

Now, along with this enterprise, which the Court knows from my letter, knows my feeling on what the government is calling an enterprise. When the government states he did these things, I don't know if the government is saying the enterprise did these things and, therefore, it is attributable to him, or that he specifically would say these things.

There is video that allegedly exists, but we don't have it before the Court nor is it indicated in the superseding indictment that the video exists as evidence in this case, or that video allegedly was taken of certain acts alleged to be committed by the defendant.

Danger to others. Outside of the accusations that exist here in this indictment and in the indictment in Chicago, which are unproven accusations for which our client has the right to remain not -- he's not convicted of. So there's nothing that can point the finger at him that should be used against him. Outside of allegations, we don't have

any obstruction of justice charge, we don't have any danger --

THE COURT: But because it is just an allegation, he hasn't been convicted of it yet, I should just ignore it for purposes of dangerousness of the defendant?

MR. ANTON: Definitely not. But the Court has the right to require a little more than just the government say so that this exists. And I ask the Court to look at the time period between the alleged obstruction, the alleged danger to others, the alleged issues in this case, and today, and look at what's happened between that time period.

The allegations that are mostly contained in this indictment date back some years. Only one of which Jane Doe No. 5 is a more recent thing, 2017 to '18. And that issue has different parts to it. But the Court certainly can require, if the government is going to say obstruction took place, for some level of -- a document, some level of identification of obstruction rather than videos were made and there was a wink-wink and a, hey, if you don't say this or say this, this is going to happen. Otherwise, it is completely -- the entire proffer then is based on just allegations, and not one piece of evidence that this Court can rely on in taking away my client's freedom and not letting him come out and cooperate with counsel and be able to fully participate in his defense.

THE COURT: I understand that this is a separate case. But when you talk about allowing your client his

freedom, as a practical matter, he's already in custody on another case. So even if I theoretically release him on a bail in this case, he is not going anywhere.

MR. ANTON: Without question. However, Mr. Greenberg has filed a motion for reconsideration yesterday in the federal matter in Chicago, and that's going to be addressed hopefully within the next couple of weeks. I do believe Mr. Greenberg can speak a little more intelligently about this. There are overlapping issues in this case and the other case. So that's another issue that would be addressed.

But we certainly don't want to have a situation where -- we want -- we would ask this Court to make an independent determination about his flight risk and about his danger to society, based on -- or to others, based on the presentation made by the government here, or, in our opinion, lack thereof, outside of we say these things took place many years after.

If there's jury tampering in the case, usually somebody complains about it right after. But in this case, there was -- not that the victim -- alleged victim or the person on the tape --

THE COURT: I don't think there was an allegation of jury tampering, was there?

MS. GEDDES: There's not, Judge.

THE COURT: There's an allegation of witness

tampering.

MR. ANTON: Witness tampering. That the witness was not supposed to appear.

But the witness -- parents did communicate, they did have communication with the parents of the witness. It is not like the witness just disappeared and then surfaced years later.

So there was communication. Prosecutor did have access to the witness, and the parents, and the witness just decided that they weren't going to testify because of their opinion about what the video was.

So it is a long stretch from Mr. Kelly made a witness disappear on threat of X, Y, Z. And that, I think, is what's trying to be proffered here, and it just is not true.

And this Court, as I stated in the letter I had sent, this Court has the right to ask for independent evidence that can be presented to it before it denies my client his ability to get out of jail. And, again, we'd like this Court to make a determination here, because if Mr. Greenberg is successful on that motion, we would then have to come back here, and, certainly, Your Honor shouldn't be swayed one way or another by what another court does, but do it independently so then we can use that in the further case.

MR. GREENBERG: Your Honor, may I just --

THE COURT: Sure. I mean, look. I am going to

continue to consider this independently, notwithstanding the fact that he's in custody on another case anyway. So if that's your concern, you don't have to spend more time arguing it.

MR. GREENBERG: No. No, that wasn't what I was going to argue. But Mr. Anton, I just wanted to correct something. The young lady in the prior state case did testify before the grand jury that it was not her in the video. So she did provide some level of cooperation. We have not gotten all the discovery in that matter. We haven't gotten any, in fact.

What I was perhaps going to suggest -- I filed this motion yesterday when I was at the airport. Mr. Anton brought a hard copy. I also have an additional copy of the transcript, and I don't know if it would assist if I shared that copy of the transcript.

THE COURT: Transcript of what?

MR. GREENBERG: Of the hearing in Chicago, the bail hearing, and perhaps we took a few minutes, and the Court could see the motion and reconsider, which we think -- we think that the Judge -- the Judge never reached -- he said that because the grand jury had found guilt, that Mr. Kelly wasn't entitled to bail, and I think that was the wrong analysis. He never reached the point of conditions, which were recommended in Illinois. Release was actually

recommended by pretrial services there.

So I am making that offer --

THE COURT: You have seen the addendum. It is not recommended in this district.

MR. GREENBERG: Right. I have seen that, just before court this morning. But if that would assist --

THE COURT: I am happy to look at whatever you want to submit, as long as you submit a copy to the other side.

MR. GREENBERG: Sure. Can I e-mail it? Would that be okay? I only have one copy of the motion.

MS. GEDDES: I have your motion.

MR. GREENBERG: You do?

MS. GEDDES: Yes.

MR. GREENBERG: But the transcript I've got on my computer, Your Honor. Unless there's some way someone can print it. It is about 30 pages. It is not very long. Thank you.

(WHEREUPON, said document was tendered to the Court.)

(Short pause.)

MR. ANTON: Judge, I have one thing to add that is not an allegation, but is a fact that I think the Court would be concerned with. Although I wasn't a part of that earlier case, it was a 2002 case that the government had referenced. The case resolved itself in 2008, approximately, by way of

acquittal. Mr. Kelly was free on bail that entire time, never fled anywhere, and he could have. He appeared at every one of his court appearances. And I think that history of this defendant and how he addresses the legal matters before him, as well as even his most recent stint that he's been doing in the Cook County case, should speak volumes of his desire to address issues, appear in court every time, and his lack of desire to flee any jurisdiction, but to always live up to his obligations with any court, and I believe that he will do so, and his history shows that he will do so in this case, Your Honor. Thank you.

THE COURT: Anything further?

MR. ANTON: That's all.

MS. GEDDES: No, Judge.

THE COURT: All right. Based on what I can ascertain from the various indictments, the defendant's accused of a multitude of crimes spanning the time period from as early as 1997 through 2018, at the latest, and they're not minor charges. Many of them are incredibly serious charges of sexual abuse of minors, coercion of minors, child pornography. The defendant has a history of similar allegations, dating back more than a decade. The defendant has access to financial resources. It's not clear exactly what level of financial resources, but he certainly has made a considerable amount of money from his employment. He's also had frequent

international travel, giving him an opportunity to flee, and given the serious nature of the charges against him, both in this indictment and in Chicago, he has a significant incentive to flee, given the long prison term that he would be subject to if he's convicted of any of these offenses.

I'm also extremely troubled by the issues of potential obstruction in prior cases and the possibility -- strong possibility that there could be potential witness tampering in this case if he's released. And the fact that he allegedly committed some of the charged offenses here while he was on bail in another case strongly argues that the defendant cannot be relied upon to comply with the conditions of release.

Under the circumstances, I find that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of the community. So I am ordering him to be detained pending trial.

When's the next status conference before the district judge?

MS. GEDDES: Today at 1:00 p.m.

THE COURT: If you want to appeal the decision, you can certainly bring it up to the district judge at this afternoon's conference.

MR. ANTON: Thank you.

THE COURT: Anything further from the other side?

MS. GEDDES: No, Judge. Thank you.

MR. ANTON: Thank you, Your Honor.

THE COURT: Thanks, everyone.

(WHEREUPON, at 10:57 a.m. the proceedings were concluded.)

* * * * *

REPORTER'S CERTIFICATE

I, ANNETTE M. MONTALVO, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 29th day of August, 2019.

/s/Annette M. Montalvo
Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter

EXHIBIT C

United States District Court
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
V.

ORDER OF DETENTION PENDING TRIAL

Robert Sylvester Kelly

Case Number: 19 CR 286 (AMD)

In accordance with the Bail Reform Act. 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

___ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (State or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- __ a crime of violence as defined in 18 U.S.C. §3156(a)(4).
- ___an offense for which the maximum sentence is life imprisonment or death.
- ___an offense for which a maximum term of imprisonment of ten years or more is prescribed in_____ .
- ___a felony that was committed after the defendant had been convicted of two or more prior federal offense described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.

____(2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.

____(3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).

____(4) The defendant has not rebutted the presumption established by finding Nos.(1), (2) and (3) that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community.

Alternative Findings (A)

____ (1) There is probable cause to believe that the defendant has committed an offense
- ____ for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. § _____ .
- ____ under 18 U.S.C. §924(c).

____ (2) The defendant has not rebutted the presumption established by finding (1) that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings (B)

____ (1) There is a serious risk that the defendant will not appear.

____ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by a *preponderance of the evidence/clear and convincing evidence* that no conditions will reasonably assure *defendant's appearance/the safety of the community* because
- __ defendant lacks substantial ties to the community.
- __ defendant is not a U.S. citizen and an illegal alien.
- __ defendant has no stable history of employment.
- __ defendant presented no credible sureties to assure his appearance.
  - __ but leave is granted to reopen and present a bail package in the future.
- __ defendant's family resides primarily in_____.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: August 2, 2019
Brooklyn, New York

s/ Steven Tiscione

UNITED STATES MAGISTRATE JUDGE

EXHIBIT D

GREENBERG TRIAL LAWYERS
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September 30, 2019

Honorable Ann M. Donnelly
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Robert Kelly, 19-286 (S-1) (AMD)

Dear Judge Donnelly:

My firm, along with others, represents Robert Kelly in this matter. Pursuant to Magistrate Judge Steven L. Tiscione's August 2, 2019 Order, Mr. Kelly was denied pre-trial release as a risk of flight and because he believed there was a possibility of obstruction. (*See* August 2, 2019 Transcript, attached hereto as Exhibit A, at pp. 15-16). Mr. Kelly similarly remains incarcerated pursuant to a July 16, 2019 Order of detention entered by Judge Harry D. Leinenweber in the Northern District of Illinois. A request to reconsider that Order is pending. (A copy of the Motion to Reconsider is attached hereto as Exhibit B).

We are respectfully asking this Court to review, *de novo*, Magistrate Tiscione's decision. The Government failed to prove by a preponderance of the evidence that Mr. Kelly poses a serious risk of flight or that he is a danger to commit obstruction. The Magistrate erred in concluding otherwise, based upon the applicable facts and the governing legal standard.[1] Mr. Kelly is presumed innocent, his case is defensible, and

[1] There are serious questions as to whether the present Indictment will even stand. As to the racketeering allegations, many of them arguably do not even fall within the definitions found at 18 U.S.C. 1961. The Indictment essentially alleges that Mr. Kelly's music career was a racketeering enterprise, designed to obtain sexual partners. This ignores the fact that he actually made successful music and won several Grammy awards. It suggests that things such as the issuance of backstage passes and engaging in meet-and-greets with fans

he does not have *any* criminal record. The Government's argument that, given the "Defendant's lengthy and wide-ranging history of obstruction, there are no conditions that can overcome this presumption and mitigate the risk of danger, flight and obstruction," is predicated upon a presumption of guilt, and requires the absolute acceptance of every factual inference, without any consideration of the time period, prior testimony, lack of corroboration, or the adversary process.

The Government's argument for detention was also rooted in its claim Mr. Kelly has a "lengthy and wide-ranging history of criminal conduct." (*See* Ex. A, at p. 5). This is unquestionably false and misleading, given the fact that Mr. Kelly has never been convicted of any crime. The Magistrate completely failed to consider this circumstance when Mr. Kelly was denied bail.[2] Equally important, he gave no meaningful discussion to "reasonable conditions."

In purporting to set forth the applicable law in its July 12, 2019 letter to the Court, the Government incorrectly conflated the various factors to be evaluated under the Act. In reality, the Act mandates a simple two-step inquiry, and a defendant may be detained pending trial *only* if both prongs are satisfied. *See* 18 U.S.C. §§ 3142(e), 3142(f).

First, the Government must demonstrate the defendant has been charged with one of the crimes enumerated in Section 3142(f)(l), or that he presents a *serious* risk of flight or of obstruction. *See* 18 U.S.C. § 3142(f); *see also United States v. Friedman*, 837 F.2d 48 (2d Cir. 1988). Thus, no matter how dangerous an individual may be, he cannot be detained unless one of these initial conditions is

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constitute criminal activities. The Indictment further claims that role-playing is illegal on its face.

In the other counts, the Indictment alleges a violation of the Mann Act, based upon consensual sexual activities, because a willing partner claims to have caught a sexually transmitted disease. It is a perversion of the purpose of the Act, and surely extends the "…or in any sexual activity for which any person can be charged with a criminal offense" (*see* 18 U.S.C.A. § 2421) language far beyond its intended use. *See also* Gebardi v. United States, 287 U.S. 112, 118 (1932) ("Transportation of a woman or girl whether with or without her consent, or causing or aiding it, or furthering it in any of the specified ways, are the acts punished, when done with a purpose which is immoral within the meaning of the law.").

[2] The Government advised the Magistrate that there was little, if any, overlap between Mr. Kelly's cases. To-date, the Government has not identified each of the individuals within its Indictment. However, considering the time period and the allegations, it appears that there is in fact a significant overlap between the two Federal Indictments, and the related State court Indictments. Of course, defense counsel cannot say this conclusively without knowing the identities of the individuals behind each of the alleged offenses – information that the Government thus far has been unwilling to share. If the Government does not identify these individuals, then there is no risk of tampering with these unidentified individuals.

satisfied. *See Friedman*, *supra*, 837 F.2d at 49. Here, the Government contended there was a presumption of both a serious risk of flight and a danger to the community. That is wrong; Mr. Kelly does not present a serious risk of either flight or obstruction.

Second, even where the Government satisfies its burden as to the first prong, detention may be ordered *only* if no condition or combination of conditions can reasonably assure the defendant's presence and the safety of the community. In this case, any alleged potential risks that could conceivably exist can be sufficiently addressed through detailed conditions of release.

In support of this application, we clarify and, in some cases correct, information that was presented or omitted, and then relied upon by Magistrate Tiscione as the basis for his detention Order. We also present new facts and additional legal arguments that we believe were not sufficiently addressed during Mr. Kelly's detention hearing.

To summarize, the Magistrate explained that a basis for his decision was that Mr. Kelly has access to financial resources and had engaged in frequent international travel "giving him an opportunity to flee." The Magistrate also opined that, given the serious nature of the charges, he had "a significant incentive to flee."

The fact is that Mr. Kelly possesses almost no financial resources, and no evidence was presented to the Court to the contrary. Indeed, there is nothing in the record to support such an inference. Likewise, Mr. Kelly is *not* a frequent international traveler. His passport is presently in the custody of authorities in Cook County, Illinois in connection with Illinois State court proceedings. That passport was issued approximately eight years ago and does not contain a single stamp for travel. Mr. Kelly does not travel outside of the United States. Further, whatever "incentive to flee" Mr. Kelly had existed during his previous trials and current State court charges – these charges, each of which carried a six-year mandatory minimum prison sentence, did not cause Mr. Kelly to flee; in fact, he showed up at each and every court date over a period of years.

Equally important, it is a "serious risk of flight," not an "incentive to flee" that is required to be considered. *See Friedman*, *supra* at 49 (rejecting a similar argument: "[T]he government contends that Friedman presents a serious risk of flight because of the nature of the charges against him, the strength of the government's case, the long sentence of incarceration he may receive, his age and the obloquy that he faces in his community").

The Magistrate also expressed concern about potential future obstruction, predicated upon the Government's allegations of past obstruction. If the Government was referring to the NDIL Indictment, the most recent alleged obstruction occurred nearly five years ago, and is plainly mischaracterized within the charge - it was a civil settlement with a former manager following a lawsuit.

Beyond that, those allegations are just that, allegations, and allegations not charged in the present Indictment. To give them credibility and to detain Mr. Kelly based upon them, is to incarcerate him for a different charge, without a trial.

More to the point, the law speaks to the future, i.e., "a serious risk that such person will…", *not* that they have been. *See* 18 U.S.C. 3142(2)(B). Regardless of the past, any evidence or concern of future obstruction is unsupported. Notwithstanding years of rumors that Mr. Kelly was being investigated, television shows dragging him through the mud, and the filing of serious charges earlier this year in Illinois State court, the Government cannot identify any instances where Mr. Kelly has tried to influence, intimidate, or tamper with a single witness or potential witness. To be sure, if there are any concerns about Mr. Kelly going forward, they can be addressed by way of conditions of release that bar Mr. Kelly from having contact with witnesses, either directly or through third parties.

Since Mr. Kelly poses neither a serious risk of flight nor of obstruction, he respectfully requests that the Court set bail and release him upon satisfying the conditions imposed by your Honor. Mr. Kelly is prepared to consent to conditions of release that would substantially mitigate any potential risk and "reasonably assure" his continued presence before the Court and the safety of the community. *See* 18 U.S.C. § 3142(e).

I. Mr. Kelly Is Well Outside the Class of Individuals for Whom Pretrial Detention Is Warranted

Courts should always "bear in mind that it is only a 'limited group of offenders' who should be denied bail pending trial." *United States v. Shakur*, 817 F.2d 189 (2d Cir.1987) (*quoting* S. Rep. No. 225, 98th Cong., 1st Sess. 6-7, reprinted in 1984 U.S.C.C.A.N. 3182, 3189 ("Senate Report"). The Bail Reform Act (hereinafter the "Act") was expressly *not* intended to apply to *all* defendants charged with serious crimes, but only to that "small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or of other persons." *Id.* at Senate Report, at 3189 (emphasis added). The Supreme Court has cautioned that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno,* 481 U.S. 739, at 755.

Mr. Kelly's continued detention is not justified on the facts. It marks a substantial departure from the class of cases in which pretrial detention has been deemed necessary. To gather a sense of the type of "particularly dangerous" individuals whom Congress had in mind under the Act, one need look no further than the line of Second Circuit cases on pretrial detention, and contrast those with the facts here. These cases confirm that Mr. Kelly is clearly *not* the type of person

for whom pretrial detention was intended or is warranted.[3] Mr. Kelly is in his 50's, does not have any criminal history, has never missed a court date, could not hide or evade surveillance given his fame, now has no passport, has posted a substantial bond in State court, has voluntarily turned himself in on all charges, and made no attempt to flee in the face of imminent Federal charges, and is presumed innocent. He clearly is *not* within the "limited group of offenders" who should be denied bail pending trial.

II. The Government Cannot Satisfy the First Requirement for Pretrial Detention Under the Bail Reform Act

A. Mr. Kelly Presents No Risk of Flight

There is zero evidence from which this Court can infer that Mr. Kelly is a risk of flight, let alone the required "serious" risk. To the contrary, Mr. Kelly's history directly undermines the Government's unsupported assertions of flight risk. Perhaps most significant is Mr. Kelly's record of appearance. Mr. Kelly faced prior criminal

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[3] *See, e.g., United States v. Ciccone*, 312 F.3d 535 (2d Cir. 2002) (denying bail for alleged organized crime boss charged with supervising multiple acts of extortion, loansharking, money laundering and witness tampering); *United States v. Ferranti*, 66 F.3d 540 (2d Cir. 1995) (reversing district court's order releasing defendant charged with arson resulting in death and witness tampering; defendant also allegedly shot a criminal associate and directed others to intimidate tenants at a building he owned and to terrorize and kill a tenants' rights activist who was later found murdered); *United States v. Millan*, 4 F.3d 1038 (2d Cir. 1993) (reversing district court's order releasing defendant who had ordered numerous shootings, beatings, and a contract murder, and had issued threats against the families of witnesses who testified adversely to him at trial); *United States v. Orena*, 986 F.2d 628 (2d Cir. 1993) (overturning district court order releasing alleged acting boss and captain of the Colombo crime family who were charged with murder, conspiracy to murder and illegal possession of weapons; evidence showed that plans existed for further murders); *United States v. Rodriguez*, 950 F.2d 85 (2d Cir. 1991) (vacating district court's order releasing defendant who was introduced to an undercover agent as a hitman, agreed to perform a murder in exchange for one kilogram of cocaine, and allegedly shot someone in the kneecap over a $60 debt); *United States v. Shakur*, 817 F.2d 189 (2d Cir. 1987) (reversing district court order releasing defendant charged with 19 separate predicate acts of racketeering, including three murders, two of which were murders of law enforcement officers, three armed robberies of armored trucks, one bank robbery, seven attempted armed robberies and two armed kidnappings); *United States v. Colombo*, 777 F.2d 96 (2d Cir. 1985) (overturning district court order releasing defendant who operated his own "crew" within the Colombo crime family and directed crew members to rob large-scale drug dealers and distribute narcotics, to abduct a drug dealer, assault the manager of a car dealership, to extort a restaurant owner, to attempt to murder a government informant, and to rob passengers on a flight to Atlantic City); *see also United States v. Gotti*, 385 F. Supp. 2d 280 (S.D.N.Y. 2005) (affirming order of detention for alleged leader of Gambino crime family who was charged with three murder conspiracies and attempted murders, as well as extortion and other crimes).

charges in Illinois State court in the early-2000s for which he was released pending trial and never missed a single court appearance. He was acquitted by a jury on all charges, after weeks of trial. Mr. Kelly appeared dozens of times in that matter. He was never even late. Additionally, he was allowed to travel, always returning.

Here, the fact that he was being investigated by the federal government was well known. Certainly, he knew. In the face of that, Mr. Kelly went about his normal activities. There was never any concern that Mr. Kelly was going to flee, notwithstanding the swirl of rumors of investigation and looming indictment. When the agents arrested him, he was walking his dog. He was fully cooperative, and never attempted to flee.

Equally, or perhaps even more importantly, when he was indicted for very serious charges in Cook County, Illinois in the Spring of 2019, he voluntarily surrendered the same day.[4] When charges were added to that action, and he was told that he had to appear in court for an arraignment on those additional charges, he promptly and voluntarily did so. Notably, the Illinois prosecutors did not even ask to increase or change any condition of his bond at that time. Last, instead of using the last of his money to flee, Mr. Kelly posted a $100,000 bond in the case.

Additionally, it was misreported to the Magistrate that Mr. Kelly travels internationally. He does not. His last international travel was approximately eight years ago. Plus, because his passport has been surrendered, he cannot.

None of the typical indicia of flight risk exist in this case. Discussing the types of factors that might support a finding of flight risk, the Second Circuit in *Friedman* pointed to *United States v. Coonan*, 826 F.2d 1180, 1186 (2d Cir. 1987), where the defendant had been a fugitive for close to four months on the very charges for which he was incarcerated, and his fugitive status ended only by his capture, and *United States v. Jackson*, 823 F.2d 4, 6-7 (2d Cir. 1987), where the defendant had shown skill in avoiding surveillance, had lived from hotel to hotel, had hidden assets, and had used a number of aliases.[5] Neither of those cases bears even a remote resemblance to the facts presented in this case.

Finally, there are various levels of monitoring, or even home detention, that would ameliorate any conceivable risk.

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[4] The Cook County, Illinois State court charges include what are referred to as class X felonies. These charges require a minimum sentence of six years in the Illinois Department of Corrections.

[5] *See also Shakur*, *supra*, 817 F.2d 189 (finding serious risk of flight where defendant, who was charged with multiple murders and armed robberies, had eluded capture for four years, despite being on the FBI's "Ten Most Wanted" list, by moving from city to city and living under a fictitious name).

B. Mr. Kelly's Personal History and Characteristics

By way of further background, Mr. Kelly is a lifelong resident of Chicago. Prior to his detention, he resided in a one-bedroom (plus modest den) condominium with his two lady friends. The building in which he resided is the Trump International Tower, a highly secure building with a 24-hour doorman, and vast security.

Mr. Kelly has a number of health issues which need to be addressed and for which he is not presently receiving adequate medical care. This includes numbness in his hand, anxiety, and an untreated hernia. His conditions of confinement, even after he was moved out of the special housing unit, remain stifling. He is limited to 300 minutes on the telephone, per month. His visits are severely restricted; presently, he is only allowed one unrelated person to visit. In other words, although he lives and has lived with two lady friends, only one of them is allowed to be on his visiting list, and after 90 days he is required to switch. No other friends or professional colleagues are allowed to visit. That is not right.

C. Mr. Kelly Presents No Genuine Risk of Obstruction

Despite the Government's burden of demonstrating that Mr. Kelly poses a "serious" risk of danger to the community, the Government relied upon just one alleged instance of obstruction in its July 12, 2019 letter that it submitted to this Court. The Government relied exclusively on a letter that is related to a civil case. If there is a letter, Mr. Kelly did not write it; he can only write phonetically (although he does not deny someone may have asked him to sign something, he does deny he ever intended to threaten anyone). Mr. Kelly has never knowingly expressed any anger towards the individual in those materials. Moreover, Mr. Kelly has never engaged in any threatening or violent conduct towards her.

One of the Jane Doe's named in the Indictment, number five, filed a civil suit against Mr. Kelly last year. Her original attorney was convicted of fraud and it appears at this point that Jane Doe is unrepresented. It is believed this is the individual who the Government claims Mr. Kelly threatened. More to the point, after he was served with the civil complaint, an individual he knows prepared a series of documents, had him sign them, and then filed them on his behalf with the court. To the extent the Government may have been referring to those documents, a copy is attached as Exhibit C. They are plainly nonsensical.[6]

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[6] As to another Jane Doe, this appears to be one of Mr. Kelly's present lady friends. There is no suggestion that he has done anything to obstruct justice with respect to her and the Government has not otherwise expressed any concern. Beyond that, as previously indicated, the defense has been given virtually no materials regarding the remaining alleged victims, and their identities remain a secret, so there can be no concern of potential obstruction, serious or not.

In its presentation to the Magistrate, the Government referred to the potential that Mr. Kelly had potential witnesses or alleged victims write letters with false allegations that could be used against them. As with other allegations, no discovery has been produced that supports that claim, and thus it is difficult to respond to this alleged concern.[7] Nor is there any evidence that, if such letters in fact exist, Mr. Kelly has ever used them. In sum, the Government appears to claim that Mr. Kelly had people generate evidence to dissuade persons from cooperating with the Government, or to punish such persons if they cooperated with the Government, but that such materials were never actually used to dissuade them or punish them? Likewise, the Government claimed that Mr. Kelly threatened physical harm. However, again, there is no evidence of this nor is there evidence that anyone was ever physically harmed, or even any details providing the basis for such alleged threats. Lastly, the Government claimed that Mr. Kelly created numerous recordings of minors and kept them at his disposal so that he could release them to deter the witnesses from cooperating with law enforcement. Apparently, this argument is "so if you accuse me of doing something wrong, I will release the video evidence to prove it in order to punish you." This logic is nonsensical and has no basis in the record.

The Government also claimed that Mr. Kelly continued to commit crimes while he was released on bail in his 2002 Illinois case, referencing allegations of kidnapping and sexual assault. As support for those allegations, the Government references "Jane Doe Number Two" in the Indictment, who appears to be an adult. Notably, this individual never complained about her interactions with Mr. Kelly until quite recently, two decades after the conduct allegedly occurred. Given the secretive nature of the Government's disclosures to-date, defense counsel cannot further respond because they do not know the identity of this individual. But again, Mr. Kelly is presumed innocent of the charges in the Indictment, and such conduct cannot form the basis of his detention.

In the interest of full disclosure, the Illinois Federal court Indictment alleges that Mr. Kelly engaged in certain activities while he was previously out on bail in the Illinois State court case in the 2000's. An individual made a complaint against Mr. Kelly known during the pendency of that case. That complaint was, at that time, fully investigated by the Chicago police and Cook County prosecutors. Ultimately, no charges were ever brought against Mr. Kelly in response to those allegations. Those allegations, now being re-made some fifteen years later, do not appear to have any new or additional basis.

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[7] There have been searches of Mr. Kelly's home and storage facility, and his phone and computers have been seized. Surely, if the evidence existed it would be known. To the extent the analysis of electronics is ongoing, it is not right to say "well we might find something so keep him detained in case we do."

Significantly, Mr. Kelly's co-defendants in the Illinois Federal case, who have also similarly been charged with the very same alleged obstruction activities as Mr. Kelly, have been released from custody. One is in Las Vegas.

In any event, to the extent the Court believes that a significant risk of obstruction exists, that risk can be adequately alleviated, as discussed below, through conditions of release, such as a prohibition on contacting co-defendants and potential witnesses, as well as tight restrictions on Mr. Kelly's travel.[8]

II. The Government Cannot Satisfy the Second Requirement for Pretrial Detention Under the Bail Reform Act

Even in cases in which the Government can demonstrate a serious risk of flight or danger to the community, the Act instructs courts to order pretrial release "subject to the least restrictive further condition, or combination of conditions, that [the court] determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." *See* 18 U.S.C. § 3142(c)(l)(B). Pretrial detention is permitted only if the court finds that no "condition or combination of conditions" of release would "reasonably assure" the defendant's appearance and the safety of the community. *Id.* at 18 U.S.C. § 3142(e). This is plainly *not* such a case. Ample conditions exist that would assure Defendants' appearance and Court and would mitigate whatever risk exists to the community.

In evaluating whether conditions exist to reasonably assure a defendant's presence and the safety of the community, the Act requires the Court to consider: (i) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, (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 posed by the person's release. 18 U.S.C. § 3142(g). These factors weigh heavily in favor of Mr. Kelly's release.

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[8] Compare *United States v. Lafontaine*, 210 F.3d 125 (2d Cir. 2000) (finding a serious risk of obstruction where defendant lied to the court at her detention hearing, tampered with a witness and blatantly violated an express condition of her release by contacting a government witness she was prohibited from contacting); *United States v. Gotti*, 385 F. Supp. 2d 280 (S.D.N.Y. 2005) (finding risk of obstruction where defendant ordered the attempted murder of Curtis Sliwa merely because he criticized the defendant's family); *United States v. Cantarella*, 2002 WL 31946862 (E.D.N.Y. 2002) (denying pretrial release for defendant who allegedly participated in the murder of a potential witness against his father); *Millan*, *supra*, 4 F.3d 1038 (denying pretrial release where defendant repeatedly threatened to harm any witnesses who might testify against him, and their families); *Ferranti*, 66 F.3d 540 (denying pretrial release where defendant tampered with a witness in the pending case and had a history of intimidating and terrorizing people).

First, since the July 12, 2019 detention hearing, no evidence has been disclosed to the defense showing that substantial evidence supports the Indictment. Defendant can only guess that the Indictment is merely a holding charge for a Pending Superseding Indictment charging an actual RICO conspiracy involving more than one person, and thus that the current Indictment was issued for the sole purpose of attempting to arrest Mr. Kelly prior to federal prosecutors in Chicago.

Second, with respect to the history and characteristics of Mr. Kelly, he has strong family ties in the community, has lived in the community for over 50 years, and has a perfect, unblemished "record concerning appearance at court proceedings." *See* 18 U.S.C. § 3142(g)(3)(A). Moreover, at the time of the current offense or arrest, he was not on probation. *See* 18 U.S.C.§ 3142(g)(3)(B).

Third, as to the nature and seriousness of the "danger" purportedly posed by his release, the Pretrial Services Department is perfectly capable of monitoring Mr. Kelly and preventing him from contacting alleged victims. Moreover, the Government likely has its witnesses tightly under wraps, being monitored closely by FBI agents and by victim specialists. Should Mr. Kelly even attempt to contact one of them, assuredly they would immediately tell the FBI or the coordinator, causing this Court to revoke his pretrial release.

Fourth, Pre-Trial Services in the NDIL recommended *release*, with conditions. While Pre-Trial in the EDNY did not, there does not appear to be any reason – they did not explain one and do not appear to have one.

Finally, because of the fundamental importance of Mr. Kelly's interest in liberty (*see Salerno*, *supra*, 481 U.S. at 750), this Court also should consider the anticipated length of his pretrial detention. *See United States v. Kashoggi*, 717 F. Supp. 1048 (S.D.N.Y. 1989); *United States v. El-Gabrowny*, 35 F.3d 63 (2d Cir. 1994) (noting that a substantial delay may require the Government to make a heightened showing of dangerousness or risk of flight). This too weighs strongly in favor of Mr. Kelly's release pending trial. Mr. Kelly already has been detained for approximately three months, and a trial, which will likely last more than one month, is unlikely to begin any sooner than sometime in early to mid-2020. Thus, if the Court continues to deny his pretrial release, Mr. Kelly undoubtedly will suffer a prolonged period of detention before a determination ever is made about his innocence or guilt. Notably, the Bail Reform Act is expressly *not* intended to affect the presumption of innocence. 18 U.S.C. § 3142G).

III. Conclusion

Fully consistent with the intent of the Bail Reform Act, as well as Constitutional limitations on the deprivation of an individual's liberty, pretrial detention is reserved only for those defendants who are particularly dangerous and who pose a serious, cognizable risk of flight or danger to the community. Mr. Kelly does not fall into this narrow category of people. Because conditions of release exist in this case that would realistically eliminate any purported risk of flight or danger to the community, the Court should release Mr. Kelly subject to whatever conditions it deems appropriate.

Thank you for your consideration of this application.

Respectfully submitted,

/s/ *Steve Greenberg*

Steven A. Greenberg

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Government,	Criminal No. 19-286 (AMD)
vs.	ARRAIGNMENT
ROBERT S. KELLY, Defendant.	Brooklyn, New York Date: August 2, 2019 Time: 10:30 a.m.

TRANSCRIPT OF ARRAIGNMENT
HELD BEFORE
THE HONORABLE MAGISTRATE JUDGE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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(Appearances continued on the next page)

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Kathy Rodriguez, US Pretrial Services

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

Court Reporter: Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter
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(WHEREUPON, commencing at 10:33 a.m., the following proceedings were had in open court, to wit:)

THE COURTROOM DEPUTY: Criminal cause for arraignment, Case No. 19-CR-286, *United States of America v. Robert Sylvester Kelly*.

Counsel, your names for the record.

MS. GEDDES: Elizabeth Geddes, Nadia Shihata, Maria Cruz Melendez, and Kyra Wenthen, for the government. Good morning, Your Honor.

THE COURT: Morning.

MR. ANTON: Good morning, Your Honor. Douglas Anton, Hackensack, New Jersey, on behalf of Mr. Kelly.

MR. GREENBERG: Good morning, Your Honor. Steve Greenberg on behalf of Mr. Kelly.

MR. LEONARD: Good morning, Judge. Mike Leonard on behalf of Mr. Kelly.

THE COURT: Good morning.

Good morning, Mr. Kelly.

THE DEFENDANT: Good morning.

THE COURT: All right. The purpose of the proceeding is to make sure you understand the charges that have been brought against you, to advise you of certain rights that you have, and to address the questions of whether you can be released on bail.

First, you have the right to an attorney in this

case. If you cannot afford an attorney, the court will provide one to you at no cost.

I assume you are all retained counsel in this case.

MR. ANTON: Yes.

MR. GREENBERG: Yes.

MR. LEONARD: Yes.

THE COURT: You have the right to remain silent. You are not required to make any statements. If you have made any prior statements, you need not say any more.

If you decide to make a statement, you can stop at any time. But any statements you do make, aside from statements you make to your attorney, can be used against you.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. The grand jury in this district has returned a superseding indictment against you. Have you seen a copy of that, sir?

THE DEFENDANT: Yes.

THE COURT: Counsel, does your client waive a public reading of the indictment?

MR. ANTON: Yes, Judge.

THE COURT: And is he prepared to enter a plea at this time?

MR. ANTON: Plead not guilty at this time, Judge.

THE COURT: All right.

MS. GEDDES: Your Honor, there's also an underlying indictment that the defendant should be arraigned on as well.

THE COURT: Okay. Have you seen a copy of the original indictment that was filed in this case?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And how does your client plead to those charges?

MR. ANTON: Not guilty, Judge.

THE COURT: All right. Having seen the detention letters on both sides, obviously, I know the government's position with respect to detention here, but if there's anything you want to add to the position expressed in your letter, feel free to do so.

MS. GEDDES: Yes, Judge.

The government does seek a permanent order of detention in this case. As set forth in our detention memo, if the defendant were released, it is our position that he poses both a risk of flight, a risk of danger, as well as the fact that there's a serious risk that he will attempt to obstruct justice. The charges include certain offenses involving minors, so there is a presumption of both a risk of flight and danger here. But regardless of the presumption, given the defendant's lengthy and wide ranging history of criminal conduct here, including obstruction, there are no conditions that can overcome this presumption and mitigate the

risk of danger, flight, and obstruction.

THE COURT: Let me ask you this, because it is not quite clear from the indictment and from your letter. What, if any, overlap is there between this case and the other cases that are in Chicago?

MS. GEDDES: There is no overlap with the federal case. There may be some minor overlap with the state case, however, there are at least four additional victims in our case.

THE COURT: So between those cases, how many total victims are alleged to have --

MS. GEDDES: 13.

THE COURT: 13, okay.

The other thing that I am interested in, for purposes of the bail determination, is the obstruction of justice allegations, not, you know, the general arguments as to why obstruction is an issue, but there were some allegations about actual obstruction that the defendant was involved in in prior cases.

Can you tell me a little bit more about that.

MS. GEDDES: I can, Judge.

So with respect to the 2002 case, which the defendant was acquitted of after trial in Chicago, the defendant is charged in federal court in Chicago with obstructing that investigation. He is charged with paying off

witnesses, intimidating witnesses, such that they did not appear and such that they falsely testified.

In addition to the --

THE COURT: Intimidating how?

MS. GEDDES: Well, let me speak specifically about the government's evidence in this case. The defendant had, essentially, an inner circle who assisted him with a lengthy attempt at obstruction by paying off witnesses who indicated any interest in cooperating with law enforcement. He allowed -- or he had potential witnesses write letters containing false allegations that he would have at his disposal to use to embarrass witnesses who potentially turned against him. He told witnesses that they had the option of choosing his side or the other side and made witnesses feel as though if they did not -- if they were to cooperate against him, they could be subject to physical harm, both themselves and their family members.

He did this over a course of decades, and he did it with many women and children. He also created numerous recordings of minors and kept them at his disposal, such that they were available if he wanted to release them, and that served as an additional mechanism to deter witnesses from cooperating with law enforcement.

I would also note, when he was on bail in the 2002 case, the defendant continued to commit crimes,

notwithstanding the serious charges that were pending against him. In the indictment returned here in the Eastern District of New York, the defendant, one of the allegations contained in the racketeering charge, is kidnapping and sexual assault.

Those -- that conduct occurred while he was on bail. So he has shown a history of not being able to comply with the Court's conditions of release, and, you know, even more significantly perhaps, he has engaged in this pattern of obstruction by ensuring that witnesses would not be available to testify and were not willing to testify.

THE COURT: Thank you.

MR. ANTON: Judge, with respect to counsel's arguments, I'll start with the last one first. Counsel indicates that while out on another case, he committed crimes.

Well, he's been alleged to commit crimes, is what's being said. In fact, everything that makes up the predicate for the proffer before the Court today are the allegations that make up this indictment and/or -- and the superseding indictment and/or the Chicago case.

We have to talk about whether he's a flight risk. I have known Mr. Kelly for a period of time. We have gone to court on a number of issues where he's been free to appear in court. I have never known him not to appear in court. We do not have his passport anymore, that's been turned over, so he can't go anywhere out of the country, either to perform or to

flee the jurisdiction of this court, nor would it be his intention.

Obstruction of justice. We are dealing with an issue where there was a trial by a court, jury of his peers, and a lot of eyes on that case. Not after the verdict came back, not in the months or the years that followed did any of these things rear their ugly head, as they do now, that there was some level of obstruction of justice back then.

Now, along with this enterprise, which the Court knows from my letter, knows my feeling on what the government is calling an enterprise. When the government states he did these things, I don't know if the government is saying the enterprise did these things and, therefore, it is attributable to him, or that he specifically would say these things.

There is video that allegedly exists, but we don't have it before the Court nor is it indicated in the superseding indictment that the video exists as evidence in this case, or that video allegedly was taken of certain acts alleged to be committed by the defendant.

Danger to others. Outside of the accusations that exist here in this indictment and in the indictment in Chicago, which are unproven accusations for which our client has the right to remain not -- he's not convicted of. So there's nothing that can point the finger at him that should be used against him. Outside of allegations, we don't have

any obstruction of justice charge, we don't have any danger --

THE COURT: But because it is just an allegation, he hasn't been convicted of it yet, I should just ignore it for purposes of dangerousness of the defendant?

MR. ANTON: Definitely not. But the Court has the right to require a little more than just the government say so that this exists. And I ask the Court to look at the time period between the alleged obstruction, the alleged danger to others, the alleged issues in this case, and today, and look at what's happened between that time period.

The allegations that are mostly contained in this indictment date back some years. Only one of which Jane Doe No. 5 is a more recent thing, 2017 to '18. And that issue has different parts to it. But the Court certainly can require, if the government is going to say obstruction took place, for some level of -- a document, some level of identification of obstruction rather than videos were made and there was a wink-wink and a, hey, if you don't say this or say this, this is going to happen. Otherwise, it is completely -- the entire proffer then is based on just allegations, and not one piece of evidence that this Court can rely on in taking away my client's freedom and not letting him come out and cooperate with counsel and be able to fully participate in his defense.

THE COURT: I understand that this is a separate case. But when you talk about allowing your client his

freedom, as a practical matter, he's already in custody on another case. So even if I theoretically release him on a bail in this case, he is not going anywhere.

MR. ANTON: Without question. However, Mr. Greenberg has filed a motion for reconsideration yesterday in the federal matter in Chicago, and that's going to be addressed hopefully within the next couple of weeks. I do believe Mr. Greenberg can speak a little more intelligently about this. There are overlapping issues in this case and the other case. So that's another issue that would be addressed.

But we certainly don't want to have a situation where -- we want -- we would ask this Court to make an independent determination about his flight risk and about his danger to society, based on -- or to others, based on the presentation made by the government here, or, in our opinion, lack thereof, outside of we say these things took place many years after.

If there's jury tampering in the case, usually somebody complains about it right after. But in this case, there was -- not that the victim -- alleged victim or the person on the tape --

THE COURT: I don't think there was an allegation of jury tampering, was there?

MS. GEDDES: There's not, Judge.

THE COURT: There's an allegation of witness

tampering.

MR. ANTON: Witness tampering. That the witness was not supposed to appear.

But the witness -- parents did communicate, they did have communication with the parents of the witness. It is not like the witness just disappeared and then surfaced years later.

So there was communication. Prosecutor did have access to the witness, and the parents, and the witness just decided that they weren't going to testify because of their opinion about what the video was.

So it is a long stretch from Mr. Kelly made a witness disappear on threat of X, Y, Z. And that, I think, is what's trying to be proffered here, and it just is not true.

And this Court, as I stated in the letter I had sent, this Court has the right to ask for independent evidence that can be presented to it before it denies my client his ability to get out of jail. And, again, we'd like this Court to make a determination here, because if Mr. Greenberg is successful on that motion, we would then have to come back here, and, certainly, Your Honor shouldn't be swayed one way or another by what another court does, but do it independently so then we can use that in the further case.

MR. GREENBERG: Your Honor, may I just --

THE COURT: Sure. I mean, look. I am going to

continue to consider this independently, notwithstanding the fact that he's in custody on another case anyway. So if that's your concern, you don't have to spend more time arguing it.

MR. GREENBERG: No. No, that wasn't what I was going to argue. But Mr. Anton, I just wanted to correct something. The young lady in the prior state case did testify before the grand jury that it was not her in the video. So she did provide some level of cooperation. We have not gotten all the discovery in that matter. We haven't gotten any, in fact.

What I was perhaps going to suggest -- I filed this motion yesterday when I was at the airport. Mr. Anton brought a hard copy. I also have an additional copy of the transcript, and I don't know if it would assist if I shared that copy of the transcript.

THE COURT: Transcript of what?

MR. GREENBERG: Of the hearing in Chicago, the bail hearing, and perhaps we took a few minutes, and the Court could see the motion and reconsider, which we think -- we think that the Judge -- the Judge never reached -- he said that because the grand jury had found guilt, that Mr. Kelly wasn't entitled to bail, and I think that was the wrong analysis. He never reached the point of conditions, which were recommended in Illinois. Release was actually

recommended by pretrial services there.

So I am making that offer --

THE COURT: You have seen the addendum. It is not recommended in this district.

MR. GREENBERG: Right. I have seen that, just before court this morning. But if that would assist --

THE COURT: I am happy to look at whatever you want to submit, as long as you submit a copy to the other side.

MR. GREENBERG: Sure. Can I e-mail it? Would that be okay? I only have one copy of the motion.

MS. GEDDES: I have your motion.

MR. GREENBERG: You do?

MS. GEDDES: Yes.

MR. GREENBERG: But the transcript I've got on my computer, Your Honor. Unless there's some way someone can print it. It is about 30 pages. It is not very long. Thank you.

(WHEREUPON, said document was tendered to the Court.)

(Short pause.)

MR. ANTON: Judge, I have one thing to add that is not an allegation, but is a fact that I think the Court would be concerned with. Although I wasn't a part of that earlier case, it was a 2002 case that the government had referenced. The case resolved itself in 2008, approximately, by way of

acquittal. Mr. Kelly was free on bail that entire time, never fled anywhere, and he could have. He appeared at every one of his court appearances. And I think that history of this defendant and how he addresses the legal matters before him, as well as even his most recent stint that he's been doing in the Cook County case, should speak volumes of his desire to address issues, appear in court every time, and his lack of desire to flee any jurisdiction, but to always live up to his obligations with any court, and I believe that he will do so, and his history shows that he will do so in this case, Your Honor. Thank you.

THE COURT: Anything further?

MR. ANTON: That's all.

MS. GEDDES: No, Judge.

THE COURT: All right. Based on what I can ascertain from the various indictments, the defendant's accused of a multitude of crimes spanning the time period from as early as 1997 through 2018, at the latest, and they're not minor charges. Many of them are incredibly serious charges of sexual abuse of minors, coercion of minors, child pornography. The defendant has a history of similar allegations, dating back more than a decade. The defendant has access to financial resources. It's not clear exactly what level of financial resources, but he certainly has made a considerable amount of money from his employment. He's also had frequent

international travel, giving him an opportunity to flee, and given the serious nature of the charges against him, both in this indictment and in Chicago, he has a significant incentive to flee, given the long prison term that he would be subject to if he's convicted of any of these offenses.

I'm also extremely troubled by the issues of potential obstruction in prior cases and the possibility -- strong possibility that there could be potential witness tampering in this case if he's released. And the fact that he allegedly committed some of the charged offenses here while he was on bail in another case strongly argues that the defendant cannot be relied upon to comply with the conditions of release.

Under the circumstances, I find that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of the community. So I am ordering him to be detained pending trial.

When's the next status conference before the district judge?

MS. GEDDES: Today at 1:00 p.m.

THE COURT: If you want to appeal the decision, you can certainly bring it up to the district judge at this afternoon's conference.

MR. ANTON: Thank you.

THE COURT: Anything further from the other side?

MS. GEDDES: No, Judge. Thank you.

MR. ANTON: Thank you, Your Honor.

THE COURT: Thanks, everyone.

(WHEREUPON, at 10:57 a.m. the proceedings were concluded.)

* * * * *

REPORTER'S CERTIFICATE

I, ANNETTE M. MONTALVO, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 29th day of August, 2019.

/s/Annette M. Montalvo
Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No.: 19 CR 567-1
v.	)	
	)	
ROBERT KELLY,	)	
	)	Hon. Harry D. Leinenweber
Defendant.	)	

MOTION TO RECONSIDER BAIL

NOW COMES the Defendant, ROBERT KELLY, through counsel, and respectfully requests that this Court reconsider its decision holding Defendant without bond pending trial. In support, Defendant, through counsel, states as follows:

I. The Bail Reform Act is Designed to Permit Bail Pending Trial

Bail pending trial has long been a part of this nation's criminal process, because every defendant is presumed innocent until proven guilty. Thus, under the Bail Reform Act, courts "shall hold" detention hearings when the case involves any one of the enumerated serious offenses outlined in §3142(f)(1), or cases involving allegations of particularly dangerous criminal activity, or when there are "serious" concerns about risk of flight or obstruction of justice are present, §3142(f)(2), and determine whether there are conditions

upon which a defendant can be released.[1] The key question at the detention hearing is "whether any condition or combination of conditions . . . will reasonably assure the appearance of such person as required and the safety of any other person and the community." Id. § 3142(f). Detention is only proper where, after this hearing, "the judicial officer finds that no condition or combination of conditions will reasonable assure the appearance of the person as required and the safety of any other person and the community." Id. §3142(C).

In United States v. Byrd, the court cautioned "even after a hearing, detention can be ordered only in certain designated and limited circumstances, irrespective of whether the defendant's release may jeopardize public safety." United States v. Byrd, 969 F.2d 106, 109-10 (5th Cir. 1992); United States v. Chavez-Rivas, 536 F. Supp. 926 (E.D. Wisc. 2008), at 966.

In this case, given Defendant's lack of resources, willingness to submit to electronic monitoring, and lack of contact with minors, history of appearance, substantial monetary bond posted in State Court, and

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[1] "The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes. See 18 U.S.C. § 3142(f) (detention hearings available if case involves crimes of violence, offenses for which the sentence is life imprisonment or death, serious drug offenses, or certain repeat offenders)."

United States v. Salerno, 481 U.S. 739, 747 (1987).

demonstrated ability to comply with bail restrictions, conditions could easily be fashioned. Unfortunately, at the hearing here the Court never contemplated "whether any condition or combination of conditions . . . will reasonably assure the appearance of such person as required and the safety of any other person and the community." Id. § 3142(f).

II. The Court Incorrectly Applied the Bail Reform Act

This Court must reconsider its decision to detain because it was based on a flawed legal framework and a failure to apply the correct roadmap.[2] The inquiry required deliberation of the factors set forth in 18 USC §3142(g). Instead, this Court was only focused on the nature of the charged crimes, rather than Defendant's risk of flight or danger to the community, when evaluating whether there are reasonable conditions for bail. Rather than considering the conduct as simply starting the process by shifting the burden of persuasion, the Court applied it as the endpoint.

Even in a rebuttable presumption case, the overall burden remains with the government, not the Defendant:

> We turn now to the effect this presumption has on the court's analysis. We join the rest of the circuits, which have considered

[2] A motion for reconsideration is an appropriate means to correct manifest errors of law or fact. *Publishers Resource, Inc. v. Walker Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985). Further, the Court has yet to enter the formal detention order required by 18 U.S.C. § 3142(i), so the detention order is not final.

> this issue in concluding that the presumption shifts the burden of production but not the burden of persuasion to the defendants. Jessup, 757 F.2d at 381-89; Chimurenga, 760 F.2d at 405; Fortna, 769 F.2d at 251. This approach is consistent with the presumption of innocence enjoyed by a criminal defendant.

United States v. Portes, 786 F.2d 758, 764 (7th Cir. 1985).

This Court wrongly presumed the allegations themselves justified detention. They do not; they simply define the burden(s):

> The Bail Reform Act prescribes different burdens of proof depending on whether the question involves the efficacy of conditions to assure attendance at trial or the safety of the community. If the former, the standard is a preponderance of the evidence; if the latter, it is proof by clear and convincing evidence. 18 U.S.C. 3142(f)(2)(B). The burden of proof by clear and convincing evidence is a greater burden of proof than preponderance of the evidence. Maynard v. Nygren, 332 F.3d 462, 469 (7th Cir.2003). Clear and convincing evidence is evidence that places "in the ultimate fact-finder an abiding conviction that the truth of… [the] factual contentions are 'highly probable.'" Colorado v. New Mexico, 467 U.S. 310, 316, 104 S. Ct. 2433, 81 L. Ed. 2d 247 (1984). See also United States v. Boos, 329 F.3d 907, 911 (7th Cir.2003).

United States v. Meschino, No. 10 CR 588-1, 2010 U.S. Dist. LEXIS 72055, at *27 n.8 (N.D. Ill. July 19, 2010). The law required the government to demonstrate, by clear and convincing evidence, that there were no release conditions that would ensure the safety of the community or the appearance of the defendant. But the Court never reached that point, nor did the government.

As reflected by the attached transcript, the Court did not consider whether there were conditions which would overcome the rebuttable

presumption of detention. It erroneously relied upon the fact that a grand jury indictment had been returned, commenting that "the grand jury found probable cause of guilt." Detention Transcript at pg. 31. Of course, a grand jury does not do that, the grand jury only finds probable cause regarding whether a crime has been committed. And it does so in a one-sided presentation, not an adversary hearing. A grand jury finding of probable cause is far from guilt. It certainly cannot substitute for clear and convincing evidence.

Here, the government argued defendant should be detained as a danger to the community and as a flight risk. The United States Probation Officer recommended release, with conditions that would reasonably assure the safety of the community and Kelly's appearance, namely home incarceration with electronic monitoring and other conditions. Based on the Court's statements, it appears that the Court never considered those proposed conditions of release. See, e.g., United States v. Sabhani, 493 F.3d 63, 74-75. (Court must consider and explicitly state why conditions offered by Defendant would not ensure his appearance.)

Having stopped after the first step of the requisite analysis, the Court skipped the critical second step, determining whether there were conditions of release:

> A defendant cannot be detained as dangerous under §3142 (e), even if the presumption is not rebutted, unless a finding is made that no release conditions" will reasonably assure . . . the safety of the community . . . That finding cannot be based on evidence that he has been a danger in the past, except to the extent that his past conduct suggests the likelihood of future misconduct. This is, indeed, the very import of the presumption of dangerousness in § 3142(e)… To rebut this presumption they need not necessarily show that they are not guilty of the charged crimes in the first place. They could also show that the specific nature of the crimes charged, or that something about their individual circumstances, suggests that "what is true in general is not true in the particular case . . ." United States v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985). Any evidence favorable to a defendant that comes within a category listed in § 3142(g) can affect the operation of one or both of the presumptions, including evidence of their marital, family and employment status, ties to and role in the community, clean criminal record and other types of evidence encompassed in § 3142(g)(3).

United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986)

The burden for the defendant is low, all that is required is "some evidence that he will not flee or endanger the community if released." Dominguez at 707.

The evaluation of bail requires a balance: liberty interests versus public safety. That is why there only a narrowly crafted set of circumstances ever require detention. After all, pretrial detention impacts a defendant's ability to prepare a defense, restricts his contact with friends and family, subjects him

to draconian conditions and rules, and bars him from making a living or supporting others. [3]

Notably, the Court did not hear the specifics to any future dangerousness in the proffered evidence. "A defendant cannot be detained as dangerous under § 3142(e), even if the presumption is not rebutted, unless a finding is made that no release conditions "will reasonably assure . . . the safety of the community . . ." (Emphasis added). That finding cannot be based on evidence that he has been a danger in the past, except to the extent that his past conduct suggests the likelihood of future misconduct." Dominguez, 783 F.2d 702, 706-07 (7th Cir. 1986).

Here, the best evidence that Defendant is not a current danger is the indictment itself. Let's look at the dates of the offenses:

Count 1: 1998-1999

Count 2: 1998-1999

Count 3: 1998-1999

Count 4: 1998

[3] Mr. Kelly is being held in the "Special Housing Unit" (SHU) because of who he is, not what he has done. That unit is also known as the "hole". Accordingly, the conditions are harsh. He is always locked up. There is no daily shower, no day room, no television or radio, no contact with other inmates, no recreation, and phone privileges are severely restricted. While others have face-to-face visits, in the SHU they are not. He has had to request to terminate his child support obligation and his girlfriends, with whom he lived, will have to move as a result of this incarceration.

Count 5: Conspiracy (obstruction) beginning in 1997;

Overt Act A: 2007

Over Act B: 2007

Over Act C: 2008

Overt Act D: 2013

Over Act E: 2014

Overt Act F: 2014

Overt Act G: 2015

Over Act H: 2015

Count 6: 2001-2007

Count 7: 2001-2002

Count 8: 2007

Count 9: 1999

Count 109: 1997-1998

Count 11: 1996

Count 12: 199-2000

Count 13: 1997-1998

With the exception of some minor overt acts in 2015, over four years ago, the allegations are decades old and as stale as used gym socks. To the extent the government argued a serious risk of obstruction (18 U.S.C. 3142(f)(2)(B)) they offered no facts. The concern is a present or future risk. The charged

conduct, from the past, merely triggers the application of (f)(2)(B). It does not provide the proof.

Speculating, the Court commented that it would have been likely that, had the prosecutors known about additional tapes at Mr. Kelly's 2008 state trial, they would have prevailed. That statement is without any basis in fact. It presupposes the tapes were admissible. It also discounts the fact that the alleged victim in that case, who admittedly the federal prosecutors now say is cooperating with them, and her parents, who are apparently not, all testified before the state grand jury, under oath, that she was no not the lady in the video.

Moreover, any suggestion Mr. Kelly should be detained because of obstruction is impeached by the government's own agreement that Mr. McDavid and Mr. Brown, the co-defendant, did not have to be detained. It is also impeached by the fact that although these federal investigations were no secret and there have been pending state charges, no one has said anyone associated with Mr. Kelly or Mr. Kelly himself has tried to influence them with respect to any current investigation or charges.

Further, the Court must look to see what conditions can be set to mitigate this risk and it has not even attempted to do so. Mr. Kelly no longer has the money or the entourage he once did to help him in his endeavors. Home incarceration with close monitoring by pretrial services and limited access to

the internet will make it virtually impossible to attempt to contact any witnesses without being caught. The idea that Mr. Kelly has the means and wherewithal to obstruct any witness against him is frankly preposterous.

The court also disregarded that any accusations of sex with a minor dated back two decades.[4] Notably, although the government alleges four videos exist, they all involve the same person and relate to the same time frame—the 1990s. There is no suggestion Mr. Kelly ever distributed child pornography. Nothing was found when a search warrant was executed at Mr. Kelly's condominium. Nothing was found at his studio when he was arrested on state charges. Nothing was found because there is nothing to find.

Likewise, Mr. Kelly presents no risk of flight. He is a lifelong resident of Illinois. Mr. Kelly never missed a single court date, from 2002 to 2008, on his previous case. The court did not consider that Mr. Kelly appeared for each and every day of his trial and was present when the jury's verdict was read. The court never considered that Mr. Kelly has been aware of these federal investigations and yet did not abscond. The court never considered that Mr. Kelly boasted a substantial bond ($100,000.00) in connection with the now pending state court proceedings. The court never considered that Mr. Kelly

[4] When previously charged Mr. Kelly was found not guilty by a jury after a lengthy trial. https://www.nytimes.com/2008/06/14/arts/music/14kell.html)

does not have a passport. The court never considered that Mr. Kelly could be monitored by an electronic monitoring bracelet or GPS bracelet.

III. Conclusion

Simply put, despite the present allegations, there are conditions of release for Mr. Kelly, who has no previous convictions, that can be fashioned that eliminate nearly any risk of flight or danger to the community. He can be confined to his home with electronic monitoring, given limited access to the internet, no contact with minors, and monitored by closely by pretrial services. Accordingly, bail should be set.

WHEREFORE, the defendant respectfully requests for this Honorable Court to order the defendant to be released on bond during the pendency of this case, subject to whatever conditions the Court deems to be necessary.

Respectfully submitted,
/s/ Steven Greenberg

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 CR 00567-1
	)	
ROBERT SYLVESTER KELLY,	)	Chicago, Illinois
	)	July 16, 2019
Defendant.	)	1:02 p.m.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE HARRY D. LEINENWEBER

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(Proceedings heard in open court:)

THE COURT: Good afternoon.

THE CLERK: Good afternoon, Judge.

19 CR 567, United States versus Kelly.

THE COURT: Good afternoon.

MS. KRULL: Good afternoon, your Honor. Angel Krull, Abigail Peluso, and Jeannice Appenteng on behalf of the United States.

MR. GREENBERG: Good morning, your Honor. Steve Greenberg, Mike Leonard, and Chris Grohman -- who promises he's going to electronically file his appearance today --

THE COURT: All right.

MR. GREENBERG: -- on behalf of Mr. Kelly who's present.

PRETRIAL SERVICES OFFICER: Good afternoon, your Honor. Jeffrey Arias on behalf of Pretrial Services.

THE COURT: Okay. This is the defendant's petition for bond.

MR. GREENBERG: Yes.

THE COURT: Okay. The government has -- I've received the pretrial services report. I think I have two of them, one for the New York case and one for this case. And it's my understanding, we've consolidated the matter for hearing today. Is that correct?

MS. KRULL: Yes, your Honor.

MR. GREENBERG: Yes, your Honor.

THE COURT: And it's my understanding that -- further that the government contends that some of the counts require the presumption of -- there are no conditions, which would then make the burden on the defendant.

Do you agree with that, Mr. Greenberg?

MR. GREENBERG: I agree that some of the counts do, yes.

THE COURT: And how do you wish to proceed? If you -- let me ask this. Does the government intend to call live witnesses, or are you going to proffer, or what?

MS. KRULL: We do not intend to call live witnesses. We intend to proceed by proffer and a joint presentation on both cases.

THE COURT: All right. And do defendants intend to provide -- call any witnesses?

MR. GREENBERG: No, your Honor. We're going to rely on the recommendations of the pretrial services report and argument.

THE COURT: Okay. And so the government then would proceed then.

MS. KRULL: Thank you, your Honor.

MR. GREENBERG: Your Honor, do you want us to stay here or --

THE COURT: Well, probably seat --

MR. GREENBERG: Thank you.

THE COURT: A proffer is not quite the same as testimony.

MR. GREENBERG: Right. But I'm guessing it will be lengthy.

THE COURT: So there won't be cross-examination. Let me ask this. How long do you think the proceeding will take?

MS. KRULL: Your Honor, my argument is less than a half an hour long.

THE COURT: All right.

MR. GREENBERG: I'll be seated.

THE COURT: Very good.

MR. GREENBERG: Thank you.

MS. KRULL: Thank you, your Honor.

THE COURT: Ms. Krull, you may proceed.

MS. KRULL: The defendant, Robert Sylvester Kelly, should be detained pending his trial because, first, he is an extreme danger to the community, especially to minor girls. Second, he poses a serious risk of obstruction of justice in his current case which also makes him a danger to the community. And third, he poses a serious risk of flight now that he's facing more serious charges with mandatory prison time.

In this case, as you noted, your Honor, detention is presumed under the Bail Reform Act because the defendant is

charged with producing child pornography, among other things. So detention, your Honor, is our starting point, and it's the defendant's burden to rebut that presumption of detention, which it simply cannot do.

The defendant here is charged with incredibly serious crimes involving the sexual abuse of young teen girls, some as young as being in middle school at the time. Middle school. We're talking seventh and eighth-grade girls. And it didn't happen once or twice. He sexually abused them hundreds of times before they turned 18.

And that's just two of the victims. Between the Illinois state court charges, the case in the Eastern District of New York, and the case right here in the Northern District of Illinois, there are 12 unique victims identified in those cases, and the vast majority of them are minors.

And that's just the tip of the iceberg. Our investigation has identified many more girls who were sexually abused by the defendant, and our investigation is far from over. The evidence against the defendant is overwhelming. It includes hard evidence, direct evidence in the form of three videos showing this man, Robert Kelly, sexually abusing a young girl who was only 14 years old at the time.

These videos are extremely disturbing to watch, and they show defendant's sadomasochistic abuse of a 14-year-old girl. These videos also show defendant's particular sexual

interest in young girls because he repeatedly tells the girl to refer to her body parts, specifically her genitalia, as being only 14 years old. And he does so in such a way that shows his sexual interest to girls that particular age. The girls' age is repeated at least 15 times on this video, these videos, including by the defendant's own mouth. Also on these videos, the defendant makes the girl call him "daddy" over and over again.

And there is no question that it is the defendant on these videos. There are extreme close-ups of the defendant's face on these videos. Two of the videos are filmed in very distinctive rooms at his former home. And the victim in all three of these videos, she herself has testified under oath that it was Robert Kelly in all three videos sexually abusing her when she was 14 years old. There are at least five witnesses who will corroborate that victim.

That evidence is overwhelming, your Honor. The defendant repeatedly sexually abused a 14-year-old girl. He filmed it, and we have the videos to prove it. That weighs in favor of detention.

But that's not all, your Honor. In addition to the sexual abuse of at least five minors, several victims reported defendant's physical abuse in addition to the sexual abuse: Hitting, slapping, punching, and spanking. And beyond the physical harm, there's the psychological harm that also must

be considered in determining whether the defendant is a danger to the community.

Both the Illinois and the New York indictments list examples of the defendant's manipulative and controlling behaviors that impose lasting harm to the victims in cases like this. And that's particularly so when the defendant is not in custody, because these victims fear him. All of this makes the defendant a further danger to the community.

But what sets this case apart from so many others and what makes the defendant even more of a danger to the community is the defendant's extensive history of obstruction of justice -- the threats, the intimidation, the witness tampering, the hush money payments -- all outlined in Count 5 of the indictment.

And these just -- these aren't just mere arguments from a prosecutor. This is what the defendant is actually charged with. A grand jury found probable cause that the defendant obstructed justice in all of those ways. This risk of obstruction is real. This risk is ongoing. And this risk of obstruction is heightened by the defendant's fame and power which emboldens him to give a -- and gives him a unique ability to influence and intimidate witnesses and victims, and that continues to this day.

Now, I expect the defense will argue that the defendant should be released because this conduct is old and

dates back to the 1990s. First, that's factually just not true. Count 5 of the indictment, the conspiracy to obstruct justice, that count alleges conduct right up to the present day. And the New York indictment includes conduct in 2015 against a minor and in 2018 against an adult victim. So it's just wrong to say that these cases deal only with old conduct.

But second, and perhaps more importantly, so what? There is no statute of limitations for producing child pornography and enticing a minor to engage in sexual activity. If the defendant was sexually attracted to middle-school girls, to eighth-grade girls in 1999, then he is still attracted to middle-school girls and eighth-grade girls right here in the present. He sexually assaulted those girls hundreds of times.

Being sexually attracted to young girls is not something that you can just turn on and turn off like a light switch. It hasn't just magically gone away. It's who the defendant is. It's what he's been doing for most of his adult life and that, your Honor, makes him a danger today.

The defendant's team has also argued that these new federal charges in Illinois and in New York are just for the same conduct that the defendant was acquitted of in 2008. Again, not true. There are 13 counts in the Illinois indictment and five counts in the New York indictment. That's 18 total counts. Only one of those 18 total counts is the

same as his state court trial in 2008. That means that the defendant is facing 17 new criminal counts that he has never faced before.

And what about that one count that does overlap with the old state case? That's Count 1 of the Illinois indictment. The United States Department of Justice very deliberately charged Count 1 of the indictment even though the defendant was acquitted of state charges based on the same conduct, and that's because the defendant obstructed justice and he ensured that the state trial was not a fair trial. He threatened and he intimidated Minor One's family and other witnesses. He provided hush money payments, and he manipulated and controlled minor victims into lying about their abuse.

Charging this conduct in the Illinois indictment sends a message that no one is above the law, not even a famous musician with lots of money and power.

Now, the defendant will say that he's not a flight risk because he has showed up to all of his court hearings in the past, but the stakes have significantly changed. He is now for the very first time facing a mandatory minimum of 10 years' imprisonment and up to a maximum of 195 years on the Illinois indictment alone. On top of that, New York has a possible sentence of up to 80 years. And that changes everything.

And before last Thursday, the defendant faced only the same court system at the same courthouse where he illegally obtained an acquittal by obstructing justice, and he likely thought that he would do it again. Now he has federal charges. He had little incentive to flee then. Now he does. The very obstruction of justice that saved him last time is charged in this new indictment. And so he knows it won't work this time because this time, his victims are cooperating with law enforcement. And that, your Honor, is his incentive to flee.

There are no release conditions that can mitigate these dangers. Electronic monitoring and home incarceration are just insufficient here. Electronic monitoring does nothing about the obstruction of justice. It does nothing to prevent witness tampering. Defendant could easily obstruct justice from the comfort of his own home even if he has an ankle bracelet, but not so from the MCC where his communications will be monitored.

And on top of that, the defendant can entice girls to his own doorstep. He doesn't have to leave his home to do that, especially when he has assistants and other workers who enable him as alleged in the New York racketeering charge. So electronic monitoring and home incarceration are insufficient to protect the public, to protect the victims, and to protect witnesses from defendant's obstruction of justice.

Finally, your Honor, the defendant has already shown his intention to disrespect this court by not being fully upfront with Pretrial Services. When Pretrial Services asked him about his prior marriages, defendant conveniently left out his very first marriage in 1994, and that's because that marriage was to a minor girl who was only 15 years old at the time and the defendant was 27 years old. That marriage happened right here in the Northern District of Illinois, and the defendant knew that the girl was only 15 years old when he married her.

Defendant was not upfront and truthful with Pretrial Services during his interview. Defendant mentioned only his second marriage, and he conveniently left out that first marriage because it incriminates him. He could have simply -- he could have simply declined to answer that question if he didn't want to disclose it but instead, he chose to lie and only talk about his second marriage.

MR. GREENBERG: Judge, I'm sorry. I don't mean to interrupt, but I'm going to object to that. And maybe I'll be a witness. He did decline to answer the question. I was there.

THE COURT: That, I don't know. The record will be --

MR. GREENBERG: I --

THE COURT: Okay. You've established the record.

Whether that's true or not, I don't know.

MS. KRULL: All I know, your Honor, is that's not reported in the pretrial services report that the government received that it was a declination to talk about his first marriage.

Your Honor, the defendant is a danger to the community. He is a risk of flight. And he poses a serious risk of obstruction of justice. For all of the reasons that I've just laid out, the government respectfully requests that this Court detain the defendant pending his trial here in the Northern District of Illinois and then also for any transport to New York to face the charges there. Thank you.

THE COURT: Is New York going to make a presentation of its own?

MS. KRULL: No, your Honor. They are not.

THE COURT: Okay. So your presentation covers both so --

MS. KRULL: Correct.

THE COURT: Mr. Greenberg?

MR. GREENBERG: Thank you, your Honor. Your Honor, first of all, I just do want to address the pretrial services report. I sat in on the interview the other day, which is not something that we typically, I guess, do. But as I indicated, in response when they asked about marriage, he declined to answer certain questions at my suggestion.

Beyond that, Judge, Mr. Kelly is 52 years old. He's been a lifelong resident essentially of Illinois except for brief stints in other jurisdictions. He lived in Miami when he was recording an album for a time. He lived in Atlanta for a couple of years.

He lives here with two young ladies. In the media, they've referred to these ladies as -- somehow as hostages or slaves or whatever. They move freely about. They live their lives. It may not be how -- you or I or some other people may not choose to live with two girlfriends at the same time. That's how they choose to live. And, in fact, they're here in court today to support him. They're back here in the first row, your Honor. So they're certainly not hostages. They're certainly not being held kidnapped.

And that's sort of how this started. Late last year when the father of one of them was claiming that he couldn't see his daughter, we set up numerous meetings since I've been involved with Mr. Kelly, and they've never shown up for those meetings.

He has children. He's estranged from his children, his children who live here. Even though he's estranged from his children, he pays child support every month. At one point, Judge, he's -- he fell behind on child support. He got jailed until he came up with the money. He came up with the money. He paid the child support. His child support is

current and being paid. Even though he doesn't see his kids, even though his career is not what it was, he's still paying that.

He doesn't travel. In connection with the Illinois proceedings, I turned in his passport. I looked at the passport before I turned it in. It was seven or eight years old. It didn't have a single stamp in it. He hadn't been anywhere, hadn't been anywhere, hasn't traveled around the United States for the last years.

Every once in a while, he goes to play a concert somewhere, and he'll travel to the concert. And unlike -- and I've said this before. Unlike the song, his most famous song which is, "I Believe I Can Fly," Mr. Kelly doesn't fly. He doesn't like to fly. He drives to concerts unless it's somewhere he can't fly to.

So, for instance, if he has a concert in California, he may have to take a plane. He gets medicated. He goes on the flight. That's one of the reasons he never travels to do concerts internationally because he doesn't like to fly. He's got a van. He travels in his van. So he's not a risk to go to the airport and take off. And frankly, he would be recognized anyway. He's not going anywhere.

He has no family or friends that reside outside the United States. He has no contact with people under 18. No one under 18 lives with him. No one under 18 lives around

him.

And they had to ask questions about internet and so forth. He has internet. He records on a computer. And he records -- obviously, you have to use the internet to do anything with the computer. And right now, your Honor, he lives in a small -- it's essentially a one-bedroom, I think they call it, plus den unit in Trump Tower on the 48th floor; a secure building, obviously.

He lives there, and he records there. He's taken the den. He's got some computer equipment in there, and with today's technology you can make a guitar and he can make keyboards and all of that, and that's what he does. And he basically stays in that unit unless he's walking his dog or going outside as he likes to do from time to time and smoking a cigar. He has no criminal record. And I'll get into the earlier case in a minute. But he has no criminal record.

These are the third and fourth cases that Mr. Kelly has been charged with of real substance. Actually, they're the fourth and fifth. He got charged with a case in Florida that was dismissed back when the other charges were pending here in Illinois back in 2002-2003.

He had a case from 2002 to 2008. It was pending in state court here in Illinois. There were dozens of court dates, dozens upon dozens of court dates. He was required to appear, the best I've been able to determine, at each of those

court dates. He appeared each of those court dates. He was facing extraordinarily serious charges at that time, your Honor.

The prosecutors maybe want to look down on the state court or the integrity of the state court proceedings. Those were extraordinarily serious. They were child pornography charges. He was facing, by my reading of the charges, possible consecutive time. And he went to trial on over 10 charges. He was looking at significant, significant jail time. And he went to trial. He had to go to trial.

I keep hearing this, you know, from the prosecution, and I see what they've done in their indictment. Obviously, I'm not privy to the evidence at this point, but they say that the case was somehow rigged. He went to trial. He wasn't, if it was -- he didn't take a bench trial. He had a jury. He didn't -- no one says he paid off the jurors or anything. He had 12 people. Those 12 people watched the video in that case. The video in that case got played, the same video they're talking about here.

The witness in that case that they've got here testified before the grand jury, her parents testified before the grand jury back then that that wasn't her. The jury heard all the evidence. The jury heard from other people. And the jury watched the video. And the jury acquitted Mr. Kelly. If the fix was in, he went through an awful lot because the fix

was in. He was definitely at jeopardy in that case.

Now, I don't know what their evidence is. I don't know what people who maybe knew Mr. Kelly was. He had fine attorneys. He had the Sam Adam, Junior and Senior. He had Mr. Genson on the case. I don't know what they're saying was going on with that case because I haven't seen it. But Mr. Kelly had to go to trial. He had to face those jurors. He had to sit through a closing argument and a rebuttal closing argument where someone pointed their finger at him and said, "Based on the evidence here, we think you're guilty."

They thought that they had presented enough evidence. If they had such problems with their evidence on that case, they wouldn't have gone to trial, the prosecutors. And I've talked to those prosecutors about that case. They certainly never suspected that anything was untoward in that case. He never missed a court date, never was late for a court date.

Charged again here in Illinois this year. And again, they pooh-poohed those charges. He's charged with Class X felonies here in Illinois and, again, facing potential consecutive time on Class X felonies. He showed up for court. The State indicted him. The State called me up, they said, "We're going to add charges on the case. When do you want to come to court and be arraigned?"

We picked a date. He showed up. He showed up on time. He pled not guilty to those charges, and the State

didn't even ask the judge to raise the bond on the case because there's no reason to believe that he is not going to show up.

On the state case, Judge, he posted $100,000. They had 25,000 he had to post, a $250,000 D bond on each of the four cases. So it's $100,000 total that's posted on that case. He's being monitored by pretrial services in the state court. They've never had a problem. They check on him. He does what he's supposed to do. They tell him to call, he calls when he's supposed to call. They tell him where to be, he's where he has to be. There's not any problem there.

The fact that Mr. Kelly was getting charged in state court was no surprise to anyone. It was -- there was this, as they like to call it, documentary. I don't really think it was a documentary, but they call it that. And he gets charged. He turns himself in. They called me up. They said, "Hey, we charged" -- this is original, not on the increased charges, the original charges. They called me up. "We charged him with felonies. We'll give him 24 hours to turn himself in."

We made arrangements, went to the police station, went to the police station, turned himself in, cooperated with them. They wanted to take a DNA sample. Sure, take the DNA sample, all that.

He did that knowing that when I talked to the

prosecutors about bond, they would not agree to a bond with me. So he did that full well knowing that he could be held without bond on the state charges. And had they called me on this -- and they knew I was representing him. Had they called me on this, they wouldn't have had to pull up and arrest him walking his dog outside of Trump Tower. If they would have said, "Bring him in," we would have brought him in just like before.

They argue that he's a flight risk when every single time, every single time, he has voluntarily appeared. He hasn't fled. He hasn't missed court. He hasn't been late for court.

It was no secret he was under investigation here, Judge. It's been common knowledge he's under investigation here. He's under investigation in the Eastern District of New York. There may even be a second investigation in the Southern District of New York that I've heard about. It's a well-known fact.

If Mr. Kelly was going to flee, he would have left then. He would have already left. He's not a flight risk at all. And I'm shocked that they even argue that, that they would even argue that. When they pulled up to arrest him on Wabash, he didn't try and run. He texted me shortly before. He saw the cars out there. I can show the government the text message. He saw the cars out -- that were out there, your

Honor. He didn't go back into Trump Tower. He didn't go lock himself -- he stood there smoking a cigar and walking his dog. He was polite. He was cooperative. There was absolutely no reason to believe that he would flee.

How could he flee? He has no money. Mr. Kelly filed for bankruptcy four, five years ago. He doesn't, to the best of what I've been able to determine, own the royalties to his songs. Those were stolen from him. He would get small checks from time to time because, my understanding -- I've learned a little about the business now in this case -- they don't make money from selling the music anymore because you can go on a streaming service, and the streaming service charges a small monthly fee. So the money's in concerts. And he doesn't play any concerts these days. He hasn't played any concerts for a while.

So every once in a while, he'll get a check. It might be 30,000, 40,000. I think he got one that was a little bit bigger than that for royalty payments. He got a check when Sony, I think it was Sony canceled his contract. There was an agreement as to how much it was. That money is gone.

What did he do with that money? He didn't put the money when he got it -- he got almost $400,000 right around the time of the state charges, I think right after the state charges. He didn't put that money in a safe in his house or in a hidden box somewhere. He put that money in a bank

account under his own name. And what happened? He had gotten evicted from his recording studio, and the people who evicted him seized the money in his bank account. And a big chunk of it went to pay because he owed back child support, so he paid it to back child support. And some of it went to pay his state court bond. And then there was nothing left.

He prepaid his apartment. I believe it's paid for close to either until December or to January 1st in Trump Tower. He's prepaid that. And he has no other money to live on. He's got no money to flee on. He'll get a little check here and a little check there, and maybe some friends will help him.

They say that he lives a lavish lifestyle, but he doesn't live a lavish lifestyle. They say that he faces a mandatory minimum sentence of ten years now so he's in some grave danger. He was facing a mandatory minimum sentence of six years before, and he was showing up. I don't see that as a sea change in what he's facing.

They claim, your Honor, that Mr. Kelly is a danger to minors. The way the indictment is written is very typical. It's vague as to what things are. And I understand why they write the indictments that way, but the dates are in there. So except for one allegation which I can't figure out what they're really saying in it, the allegations date back to the '90s, to the '90s.

Now, I understand statutes of limitations and all of that, but they date back to the '90s. They've been investigating him, state. They've been investigating him, federal. They've gone on TV and said, "Call us if you've had a problem with R. Kelly."

They've gone on TV, other people, not the law enforcement, have said, you know, "We'll pay you for your story if something has happened with R. Kelly," yet we're still dating back two decades on allegations regarding minors except for one very vague thing that they've put in one of the indictments.

There's no evidence that he's a risk to minors at all at this point. And they talk about the psychological risk or something like that. I don't -- I don't know what that is, but whatever it is, detaining Mr. Kelly isn't going to fix someone if someone's got some kind of psychological issues because of something happening to them. Those aren't connected at all. In fact, the only proof here is that he isn't a danger to minors. The fact that it's been two decades since there were these allegations shows that he isn't.

They say that he's a danger because he's going to obstruct justice in this case just like he did before. And I don't have whatever their evidence is, but I can tell you a little bit. And these are not secrets. This is well known about Mr. Kelly and Mr. Kelly's business. Mr. Kelly had a

business manager. He had a lawyer. He had an accountant. He had people who worked for him, other people working for him, all of whom have a lot of money now. All of them have a lot of money now, but Mr. Kelly doesn't. He doesn't have any money.

It's not a secret that Mr. Kelly doesn't read. He doesn't write. Now, if other people did something when he was facing trial before because they wanted to protect, you know, the money tree, I don't know about that, and I haven't seen the evidence on that, but he wasn't doing it. He wasn't doing it. And let me tell you why, even if the government says he's a danger because of the obstruction charges, why their argument impeaches itself.

He's charged in that count with two other people: Derrel McDavid -- and everyone has always told me Derrel McDavid was the guy who ran it, he was the business guy; he was the accountant, but he was the business guy, he was the guy who handled all Mr. Kelly's affairs -- and a guy named June Brown.

The government agreed to recognizance bonds for Derrel McDavid and June Brown. June Brown, I think, turned himself in in Las Vegas. My understanding is, he got a recognizance bond. Derrel McDavid turned himself in here and got a recognizance bond, but he's charged with obstruction. If obstruction is such a danger and such a risk to everybody,

then why did the government agree to a recognizance bond for Derrel McDavid? And I'm sure they've got -- they've got their reasons, but it certainly shows that that charge doesn't imply that anyone's a danger.

Frankly, Mr. Kelly -- well, there's no evidence, your Honor, at this point and there's no evidence because it hasn't happened that since Mr. Kelly has heard these rumors swirling around which have been around now for probably a year and a half, two years about criminal charges and so forth, that he's done anything to any witness, to anyone he thinks might be a witness, taken any action at all.

There's no suggestion that since the state court charges were filed that Mr. Kelly has done anything wrong at all, anything. Hasn't talked to a witness. Hasn't interfered with a witness. And I don't even think that was a condition of his state court bond. I might be -- was that a condition, Steve, that he not have contact with anyone? Was it a condition?

Okay. It's a condition of his bond, that he's complied with that. But he complied with it before it was a condition of his bond. He didn't do anything.

Now, they say that all of this is different and all of it is different charges, different victims and all that. We respectfully disagree, your Honor. We think that there is great overlap. And we think that some of the case is, in

fact, overreaching. For instance, where they've got predicate acts in a RICO prosecution because you could have transmitted a sexually transmitted disease in violation of state law, they're making it into a RICO case. I know they've got other allegations, but they've got things like that in their case.

We think that it's terrible overreaching. We think that they're trying to criticize how consenting adults, consenting adults who never complained for years and years all of a sudden say, "Oh, no, I didn't want to be in that kind of a relationship. There was something about that relationship."

These people who are their witnesses have been on a greatest hits tour since this first hit. They've been on TV. They went to the awards in Las Vegas, the MTV awards, and got an award for the documentary. They went to some other award show and they -- we've got this, they Tweet and they video and they, "Oh, this is great. My mom has never been" -- the one girl who is charged, she's one of the people in the state case. "My mommy's never been to anything like this. I'm so happy I got to bring my mother to this." I mean, give me a break. That's what this has turned into.

They've got in here that he was forcing people to do labor. I have no idea what they're talking about. Was he forcing a girl to collect tickets? Was he forcing her to record? What is it? It's so vague, we can't -- we can't respond, we can't attack it, but we're going to attack it.

Mr. Kelly's conditions, Judge, another factor I think the Court can take into consideration, he is in the SHU, which is the special housing unit. He's in the SHU because, frankly, for the MCC or any other institution, Mr. Kelly is a difficult prisoner to have there because of other prisoners; not because of anything Mr. Kelly is going to do but because of his notoriety.

Mr. Kelly -- there's going to be an enormous amount of discovery in this case. He can't read and he can't write. Someone's going to have to sit down with him hour after hour after hour, day after day, and go through the discovery. That's virtually impossible to do if he's in custody.

In the SHU, he gets 15 minutes a week to speak on the phone, not like other inmates. There's no dayroom. There's no television because that's normally the hole. That's where they take people who are in trouble. There's no television there. And he can't read, so there's no books to read. There's no anything. So he literally sits there in isolation all day long.

And if we go to meet with him, the attorneys on the case, we went over there yesterday. What would you guys say? The room is six by eight?

Probably a six-foot by eight-foot room, and we'll all crammed in there. That's the room that we have to meet with him, and they have to shut everything else down while we do

it. They have to shut everything else down while we do it. Now, whatever you may think of the charges, whatever the government may think or the public may think of the charges, the man's going to have to prepare for trial, and the man's entitled to be held in a humane situation.

We have reviewed all of the conditions listed in the pretrial services report. He doesn't have a passport. That's been taken by the State. We have no objection to any of the conditions that are listed in the report. And we believe that it's perfectly appropriate in this case that he should be allowed to return home, whether it's on electronic monitoring or home detention or whatever the -- I know there's various levels of federal detention when you're kept at home, but that that is, in fact, appropriate, commensurate with the presumption of innocence and the proper bail that should be set in this case.

May I have one moment, Judge?

THE COURT: Yes, sir.

(Pause.)

MR. GREENBERG: And Mr. Grohman has pointed out to me also that they executed a search warrant on Mr. Kelly's residence after he was arrested. I believe that I read somewhere they found two bullets, I think, which were in a cup with change. He had weapons. Those were all turned in to the State when he was arrested on the state charges. Those were

probably buried under the change. But they found nothing that I'm aware of during that search.

THE COURT: Thank you.

MR. GREENBERG: Thank you.

THE COURT: Ms. Krull?

MS. KRULL: Thank you, your Honor. I just briefly want to address a couple of the things raised by Mr. Greenberg. First of all, Mr. Greenberg raised the fact that Mr. Kelly's co-defendants were released on bond. And yes, that is true, and here's why.

There are zero allegations against Mr. McDavid and Mr. Brown that they have ever sexually abused a minor. They are not charged in the most serious counts in this indictment, and they are not charged with counts that carry that presumption of detention.

And second of all, with respect to the charges relating to the obstruction of justice, Mr. Kelly was the leader of that conspiracy to obstruct justice. And whatever his co-defendants did in furtherance of that obstruction of justice they did at his behalf.

And I want to make clear, with respect to the count of receiving child pornography, that conspiracy to receive child pornography that both McDavid and Mr. Brown is charged in, their role in receiving that child pornography was not because they enjoyed viewing child pornography. It was

because the defendant instructed them to obtain these sex tapes with minors that the defendant was on. And so it's not like they had an interest in minors. They were doing what the defendant told them to do. That's why they're charged in that count. And so we did not seek detention for those individuals because we did not see them as the extreme danger to minors that the defendant is.

The other thing I'd like to mention, your Honor, is that throughout Mr. Greenberg's presentation here, he never once mentioned Minor One. He never once mentioned the strength of our evidence regarding Mr. Kelly's sexual interest in middle-school kids. He never once mentioned that she has now gone on record that, yes, that is her on three videos.

And I want to emphasize, it's not just the same video from 2008. We have three videos showing the defendant sexually abusing Minor One. And the other two videos were not part of that 2008 trial. So these charges are much more severe than what he was facing before.

And the other thing I'd like to say, Mr. -- Mr. Greenberg liked to focus on a lot of the adult victims in the case, and he was not focusing on the minors. And I'd like to make clear that the eighth-graders that I mentioned including Minor One, never have they appeared before a TV camera. Never have they been seeking fame and fortune. They have cooperated with the United States government because we

reached out to them. They are not on TV seeking money from the defendant.

That's all, your Honor.

THE COURT: Anything further?

MR. GREENBERG: No, your Honor.

THE COURT: All right. Under the law, the charge, the specific charge of child pornography, creating and possessing child pornography, does require a presumption of detention that there are no conditions that would be sufficient. And it would be up to the defendant to demonstrate that there -- to get away from this presumption.

And I do not believe based on the allegations that have -- of the indictment which bear the imprimatur of the grand jury, which means that the grand jury, after hearing evidence certainly produced by the government, found probable cause for guilt of all of the specific counts in both the indictment here in Chicago and the indictment in -- from New York, in the Eastern District of New York.

The charges are extraordinarily serious. The one specific one, Count 1, 2, and 3, carry a mandatory ten-year penalty which is a very, very -- which indicates how serious those specific charges are and, in addition, they carry the detention presumption.

The -- as far as the obstruction of justice, according to the specific count in the indictment that the

acquittal was at least in some part obtained because of obstruction of justice which involved allegedly paying off of witnesses and threatening witnesses and buying back certain evidence in the forms of the videos that even though apparently there was one that was played, there were several other videos. And if all three videos or four videos, one of which apparently has not surfaced yet but must be out there somewhere, had all three of them, who knows how the case could have come out.

Supposedly, according to the indictment -- again, I go by the fact that a grand jury found that there's probable cause -- that witnesses were paid and witnesses were threatened in order to either change testimony or not appear at all.

So it appears to me that the defendant has failed to overcome the presumption of requiring detention in both the case here in Chicago and the case in New York.

Although, does the presumption apply in the New York case?

MS. KRULL: Yes, it does, your Honor.

THE COURT: All right. So the presumption in both cases, that there are no conditions that will assure the defendant's attendance at trial and no conditions that will protect the public and certain individuals, accordingly, the Court denies the motion for bond. Thank you.

MS. KRULL: Your Honor, I believe that we also have to take care of the defendant's arraignment. He was unable to be arraigned the very first day that he was arrested.

THE COURT: All right. Mr. Greenberg, has the defendant received a copy of the indictment?

MR. GREENBERG: He has, your Honor.

THE COURT: Have -- you've advised that he can't read it, but have you read it to him?

MR. GREENBERG: We've gone over the charges with him, yes. We'll enter pleas of not guilty, and we'll waive formal reading.

THE COURT: All right. Would the government put on the record the maximum penalties?

MS. KRULL: Yes, your Honor. For Counts 1 through 4 of the indictment, the maximum possible penalties are 20 years' imprisonment with a mandatory minimum of ten years; supervised release of not more than five years; a fine of up to $250,000; and a special assessment of $100 along with restitution.

With respect to Count 5, the conspiracy to obstruct justice, the maximum term of imprisonment is five years; supervised release of not more than three years; a fine of up to $250,000; and a special assessment of $100.

With respect to Count 6, conspiracy to receive child pornography, and also Counts 7 and 8, the actual receipt of

child pornography, there's a mandatory minimum of five years' imprisonment on each of those counts; a statutory maximum sentence of 20 years on each count; supervised release of at least five years and up to lifetime supervised release; a fine of up to $250,000; and a special assessment of $100.

And finally, with respect to Counts 9 through 13, enticement of minors to engage in criminal sexual activity, there's a statutory maximum of ten years' imprisonment on each count; up to five years of supervised release; a fine of up to $250,000; a special assessment of $100; and also restitution.

THE COURT: He's been arraigned on the New York charges already?

MS. KRULL: Yes, he has.

THE COURT: All right. Mr. Kelly, your attorney -- I understand that he tells me that you cannot read. And so do you feel that you understand the nature of the charges of the indictment?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. The Court accepts the -- let the record show that the defendant is in court in person through his counsels. The government's present through its counsel. The defendant acknowledges that he has received a copy of the indictment, that it has been read to him, that he is familiar with the contents of the indictment, and he waives the -- excuse me. He pleads to all of the counts not

guilty.

The rule -- as far as discovery is concerned, the government will proceed immediately to furnish discovery; is that correct?

MS. KRULL: Your Honor, we were going to ask for some time to be able to work out a protective order with all three defendants because a lot of the materials that we'll be producing involve minors. And we are working on a protective order before we produce anything. So we would like maybe an extension of a week to your normal schedule for the Rule 16 conference.

THE COURT: Is that acceptable?

MR. GREENBERG: I don't know what -- what a week means. Give me a day that they're talking about.

THE COURT: Are you talking about two weeks for the production?

MS. KRULL: Right. Normally, we get two weeks to produce the Rule 16 materials. We're asking for an extra week because Mr. Brown's not even in town yet. We're not sure of his attorney situation, and we'd like to produce -- to work out this protective order with all three defendants in the case before we produce anything.

THE COURT: So you want three weeks to produce?

MS. KRULL: Correct.

MR. GREENBERG: Judge, given that Mr. Kelly is going

to be in custody, we -- you know, we can look over whatever they propose as a protective order, and it will be binding on us. And if they want to work out another protective order -- I mean, what happens if Mr. Brown gets here and says he needs time to find counsel. I don't want to be at Mr. Brown, who is out, his leisure.

THE COURT: Well, we're talking about three weeks max. Now, if they can't work out a protective order, he doesn't get counsel in time, they will proceed with discovery --

MS. KRULL: Correct.

THE COURT: -- within -- after three weeks even though they have not. So they would have to do it piecemeal, I guess, to -- is that acceptable, I guess the question is?

MR. GREENBERG: I'm not trying to be difficult --

THE COURT: No, I --

MR. GREENBERG: -- but how difficult is it to do a protective order? The protective order is going to say, don't show it to anyone other than the lawyers --

THE COURT: I don't know.

MR. GREENBERG: -- and people working on the case.

THE COURT: I don't know.

MR. GREENBERG: It seems pretty simple. I would think they've got one on their word processor.

THE COURT: Normally, you'd think it might be simple,

but then I've been here long enough to know that it isn't -- that isn't always the case, that people come up with objections.

I guess I repeat the question: You object to three weeks?

MR. GREENBERG: I do.

THE COURT: All right. I'll make it two weeks.

Let's see. What else do we need to do? Discovery in two weeks. Do you wish to file pretrial motions?

MR. GREENBERG: I'm sure we will.

THE COURT: How much time? Would you like to do it now, or do you want to look at them and then we can have a --

MR. GREENBERG: I'd like to look at the discovery.

THE COURT: All right. Why don't we do this. We'll come back in 30 days, and we'll set a schedule for motions.

And is there objection to excluding time?

MR. GREENBERG: No, your Honor.

THE COURT: All right. To the next status, will be 30 days after you get the discovery.

THE CLERK: September 4th at 10:00 o'clock a.m.

THE COURT: September 4th. The time will be excluded without objection to September 4th for the purpose of the interest of justice and for the -- in the interest of justice and for pretrial motions which counsel advises that there definitely will be. So okay, without objection, time will be

so excluded.

MS. KRULL: Thank you.

THE COURT: September 4th at 9:00 o'clock.

MR. GREENBERG: Thank you.

THE COURT: Anything --

MR. GREENBERG: What about --

MS. KRULL: Your Honor, I imagine that New York is going to want to have an arraignment in New York on their charges.

THE COURT: Hasn't he been arraigned? I thought you said he --

MS. KRULL: I misspoke earlier. He had his initial appearance on the removal proceedings, but he needs to be arraigned before --

THE COURT: Oh.

MS. KRULL: -- the district judge there.

And so I do believe, though, September 4th should give us enough time for him to have his appearance there and be brought back to Chicago for your September 4th date. I'll work with the marshals on that to make sure that that's okay.

THE COURT: All right.

MS. KRULL: But it sounds like it should be enough time to get him to New York and back.

MR. GREENBERG: Which is a whole another complication, Judge.

THE COURT: Are you representing him in the New York case?

MR. GREENBERG: We very well may be, but he does -- he has a lawyer there.

THE COURT: Does he have one there?

MR. GREENBERG: Right. Because we're not -- I'm not licensed --

THE COURT: All right. Well --

MS. KRULL: We can also talk about videoconferencing with New York to see if that is a possibility.

THE COURT: All right. Work that out.

MR. GREENBERG: Can we -- we can't arraign him here now? We've reviewed those charges with him, also, but --

THE COURT: I don't know.

MS. KRULL: He's entitled to appear before the district judge there.

THE COURT: Well, is that a waiveable?

MS. KRULL: I can work on that to see if that's acceptable to the judge in New York and the prosecutors in New York.

THE COURT: All right. If you want to do -- arraign him in front of me on the New York charges, then just schedule it with the clerk, and we can do that.

MS. KRULL: Thank you, Judge. I'll work on that.

MR. GREENBERG: Thank you.

THE COURT: Anything further?

MR. GREENBERG: No, your Honor.

MS. KRULL: No, your Honor.

THE COURT: All right. We'll stand adjourned.

THE CLERK: All rise.

(Proceedings adjourned at 1:56 p.m.)

* * * * * * *

C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable HARRY D. LEINENWEBER, one of the judges of said Court, at Chicago, Illinois, on July 16, 2019.

/s/ Judith A. Walsh, CSR, RDR, CRR July 20, 2019

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division

FILED: NEW YORK COUNTY CLERK 03/07/2019 04:15 PM INDEX NO. 154756/2018
NYSCEF DOC. NO. 7 RECEIVED NYSCEF: 03/07/2019

October 22, 2018

Lydia C. Hills, Esquire
Law Office of Lydia C. Hills
300 Cadman Plaza West, 12th Floor
Brooklyn, NY 11201

Dear Ms. Hills,

This is to enlighten you concerning the presumption of court appearances that you may not be aware of since attorneys are taught a coloring of law and not Canon or Common Law. Color-of-Law is NOT law. It's fiction for corporate fictions of which I am not.

Canon 3228 (v): The Presumption Of Summons

A summons, when unrebutted, stands as *Truth in Commerce*. Attendance in a Court is usually invoked by invitation and therefore one who attends Court initiated by a summons, warrant, subpoena or replevin bond, is presumed to accept the position of a (defendant, juror, witness or thing) and the (jurisdiction) of the Court.

If these instruments are not rejected and returned, with a copy of the rejection filed clearly on the Public Record (jurisdiction) the presumed position and the presumption of guilt also stands as *Truth in Commerce*.

The answer/response/reply to the subpoena is now rebutted via my notarized, sixteen-word statement of across the face of the summons refusing the invitation, which states: I DO NOT ACCEPT THIS OFFER TO CONTRACT AND I DO NOT CONSENT TO THESE PROCEEDINGS and filed with the State's Attorney and the Clerk of the Court placing it on the Public Record.

Please advise Ms. Rodgers, your client to abandon this heartless effort to try to destroy my musical legacy for selfish, personal enrichment. If she persists in court action she will be subjected to public opinion during the discovery process. For example, my law team is prepared to request the production of the medical test results proving the origin of her STD claim, as well as 10 personal male witnesses testifying under oath about her sex life in support of her claim and complete records of her text/face time message exchanges, which will be reviewed to match and be authenticated by the recipient to insure there are no omissions or deletions.

If Ms. Rodgers really cares about her own reputation she should cease her participation and association with the organizers of this negative campaign. Counter actions are in the developmental stages and due to be released soon.

Sincerely,

Robert Sylvester Kelly

FILED: NEW YORK COUNTY CLERK 03/07/2019 04:15 PM INDEX NO. 154756/2018
NYSCEF DOC. NO. 7 RECEIVED NYSCEF: 03/07/2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FAITH A. RODGERS

Plaintiff

v. INDEX NO: 0000

ROBERT SYLVESTER KELLY a/k/a R. KELLY

Alleged Defendant

NOTICE OF DELIVERY

TO: THE LAW OFFICE OF LYDIA C. HILLS, P.C. 300 Cadman Plaza West, 12th Floor Brooklyn, New York 11201

I, June Barrett, declare that I caused the foregoing Notice of Delivery to the Clerk of the Court including attachments: I DO NOT ACCEPT THIS OFFER TO CONTRACT and I DO NOT CONSENT TO THESE PROCEEDINGS on the face of the Summons and Verified Complaint and Demand For Jury Trial, Living Testimony in the Form of An Affidavit and an Faith Rodgers pictures and text messages to be served upon the persons listed below by having a copy of said Notice of Delivery and attachments electronically delivered to Supreme Court of the State of New York located 60 Centre Street New York, NY 10007 on November 19, 2018

By: _____

June Barrett
c/o 1826 South Millard Avenue
Chicago, Illinois State CF60623CF
Phone: 312/513-1020
Email: junespointofview@yahoo.com

FILED: NEW YORK COUNTY CLERK 03/07/2019 04:15 PM INDEX NO. 154756/2018
NYSCEF DOC. NO. 7 RECEIVED NYSCEF: 03/07/2019
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 05/21/201

INDEX NO.:

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

By: _____
Autograph

FAITH A. RODGERS,

All Rights Reserved, Without Prejudice

Plaintiff,

- against -

Notary

ROBERT SYLVESTER KELLY a.k.a. R. KELLY, Oct 29, 2018
Date

Defendant.

JUNE A BARRETT
Official Seal
Notary Public - State of Illinois
My Commission Expires Nov 15, 2020

SUMMONS

Signature (Rule 130-1.1-a)

Lydia C. Hills, Esq.

LYDIA C. HILLS, ESQ.
Attorney for Plaintiff, Faith A. Rodgers
THE LAW OFFICE OF LYDIA C. HILLS, P.C.
300 CADMAN PLAZA WEST, 12TH FLOOR
BROOKLYN, NEW YORK 11201
347-674-8338 (OFFICE)
347-694-8338 (FAX)
LHills@TheHillsFirm.com

I DO NOT ACCEPT THIS OFFER TO CONTRACT AND I DO NOT CONSENT TO THESE PROCEEDINGS

To:

Service of a copy of the within is hereby admitted

Dated:

Attorney(s) for

FILED: NEW YORK COUNTY CLERK 03/07/2019 04:15 PM INDEX NO. 154756/2018
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 03/07/2019
NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 05/21/201

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

FAITH A. RODGERS,

Index No.

Plaintiff,

- against -

SUMMONS

ROBERT SYLVESTER KELLY a.k.a. R. KELLY, By: _____
Autograph

Defendant.

---X

_____
Notary

To the above named Defendant:

YOU ARE HEREBY SUMMONED to appear in the Supreme Court of the State of New York, County of New York, at the office of said court located at 60 Centre Street, in the County of New York, City and State of New York, within the time provided by law as noted below and to file your answer to the summons and complaint with the Clerk.

Oct 29 2018
Date

JUNE A BARNETT
Official Seal
Notary Public - State of Illinois
My Commission Expires Nov 15, 2020

PLEASE TAKE NOTICE that upon your failure to answer within the time prescribed under applicable law, Plaintiff Faith A. Rodgers shall seek and obtain judgment against you by default for the relief demanded in the Verified Complaint pursuant to Section 3215 of the New York Civil Practice Law and Rules, together with the costs and fees of this action.

I DO NOT ACCEPT THIS OFFER TO CONTRACT
AND
I DO NOT CONSENT TO THESE PROCEEDINGS

Dated: Brooklyn, New York
May 21, 2018

Lydia C. Hills, Esq.

Lydia C. Hills, Esq.
Attorney for Plaintiff
THE LAW OFFICE OF LYDIA C. HILLS, P.C.
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FILED: NEW YORK COUNTY CLERK 03/07/2019 04:15 PM INDEX NO. 154756/2018
NYSCEF DOC. NO. 7 RECEIVED NYSCEF: 03/07/2019
NYSCEF DOC. NO. 2 RECEIVED NYSCEF: 05/21/201

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FAITH A. RODGERS,

Index No.

Plaintiff,

- against -

ROBERT SYLVESTER KELLY a.k.a. R. KELLY,

Defendant.

----------X

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

By: _____
Autograph

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_____
Notary

Oct 29, 2018
Date

JUNE A BARRETT
Official Seal
Notary Public - State of Illinois
My Commission Expires Nov 16, 2020

Plaintiff FAITH A. RODGERS (hereinafter referred to as "Plaintiff"), by and through her attorney, LYDIA C. HILLS, ESQ. of The Law Office of Lydia C. Hills, P.C., as and for her Verified Complaint against the Defendant ROBERT SYLVESTER "R" KELLY (hereinafter referred to as "Defendant" or "R. Kelly"), respectfully alleges as follows:

I DO NOT ACCEPT THIS OFFER TO CONTRACT AND I DO NOT CONSENT TO THESE PROCEEDINGS

THE PARTIES

1. Plaintiff, Faith A. Rodgers, an individual, is a United States citizen and a resident of the State of Texas. Plaintiff traveled to the State of New York, where she had significant interactions with Defendant, which gave rise to the cause of action herein.

2. Defendant, Robert Sylvester Kelly, an individual, upon information and belief, is a United States citizen and a resident of the State of Illinois. Defendant traveled to the State of New York to perform and interact with Plaintiff at times relevant to the subject litigation.

FILED: NEW YORK COUNTY CLERK 03/07/2019 04:15 PM INDEX NO. 154756/2018
NYSCEF DOC. NO. 7 RECEIVED NYSCEF: 03/07/2019

Testimony

I, Robert Sylvester Kelly, an Illinoian of Chicago, Illinois State make oath and say/hereby affirm that:

(1) I DO NOT ACCEPT THIS OFFER TO CONTRACT AND I DO NOT CONSENT TO THESE PROCEEDINGS.

(2) I am exempt and not subject to this court so I don't know why you are even addressing me or why you continue to address me when I do not accept this offer to contract and I do not consent to these proceedings.

(3) I am a flesh and blood, living, breathing American National and native of Illinois.

(4) **Private Agreement** is mutually agreed upon and entered into on the Fourteenth Day of the Ninth Month in the Year of Our Source Two Thousand Seventeen between the juristic person, ROBERT SYLVESTER KELLY©, also known by any and all derivatives and variations in the spelling of said name except "Robert Sylvester Kelly," hereafter jointly and severally "Debtor," and the living, breathing, flesh-and-blood man, known by the distinctive appellation Robert Sylvester Kelly©, hereinafter "Creditor."

(5) **ROBERT SYLVESTER KELLY**. In this Private Agreement the term "ROBERT SYLVESTER KELLY" means ROBERT SYLVESTER KELLY©, and any and all derivatives and variations in the spelling of said name except Robert Sylvester Kelly Common Law Copyright © 1985 Robert Sylvester Kelly©. All Rights Reserved.

(6) **Robert Sylvester Kelly**. In this Private Agreement the term "Robert Sylvester Kelly" means the sentient, living being known by the distinctive appellation "Robert Sylvester Kelly." All rights are reserved re use of Robert Sylvester Kelly©, Autograph Common Law Copyright © 1985 by Robert Sylvester Kelly©.

(7) Since I am not voluntarily involved in any of this and never conscionably was, and since my assets have been or are being dragged into this mess without my knowledge or consent, and since all the other Parties that secretively are benefitting or benefited themselves at my expense are now trying to palm this situation off on me, and since this Court works for those same Parties and is acting in Gross Conflict of Interest and under Color of Law--- any issue related to this complaint that continues to involve me or affect my assets in any way is going to be settled by Private Binding Arbitration and I am going to choose the Arbiter.

(8) Now you've made your "Offer" and I've made mine and it is time for all of you to give me some answers.

By: _____ Date: 10/20/18

_____
Witness

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,	19-CR-00286(AMD)
-against-	United States Courthouse Brooklyn, New York
	Wednesday, October 2, 2019
ROBERT KELLY,	1:00 p.m.
Defendant.	

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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE ANN M. DONNELLY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: RICHARD P. DONOGHUE, ESQ.
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BY: ELIZABETH GEDDES, ESQ.
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BY: DOUGLAS C. ANTON, ESQ.

A P P E A R A N C E S: (Continued)

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oooOooo

Court Reporter: Stacy A. Mace, RMR, CRR, RPR, CCR
Official Court Reporter
E-mail: SMaceRPR@gmail.com

Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

(In open court.)

THE COURTROOM DEPUTY: All rise.

(Judge ANN M. DONNELLY entered the courtroom.)

THE COURT: Everybody can have a seat.

THE COURTROOM DEPUTY: This is criminal cause for a status conference, Docket Number 19-CR-286, USA versus Robert Kelly.

Counsel, state your appearance, Government first.

MS. GEDDES: Elizabeth Geddes, Nadia Shihata and Maria Cruz Melendez for the Government.

Good afternoon, Your Honor.

THE COURT: Hi.

MS. CRUZ MELENDEZ: Good afternoon.

MR. ANTON: Good afternoon, Judge. Douglas Anton on behalf of Robert Kelly.

MR. LEONARD: Good afternoon, Judge. Mike Leonard on behalf of Mr. Kelly.

MR. FARINELLA: Thomas Farinella, Your Honor, on behalf of Mr. Kelly.

MR. GREENBERG: Good afternoon, Judge. Steve Greenberg, also on behalf of Mr. Kelly.

THE COURT: Hi. I think the record is clear on this, but the parties have waived Mr. Kelly's appearance for this proceeding.

Is that right?

MR. GREENBERG: That is correct, Your Honor.
MR. ANTON: That is correct.
THE COURT: All right, so where should we start?
MS. GEDDES: So, Your Honor, I think that we have two issues to address today.
The first is the defendant's bail motion, and then the second is we would like to propose a trial date for this case, and I think we have an agreed upon proposed date, which I think works with Your Honor's schedule.
THE COURT: It may or may not, but the other problem is I just happened to take a look at the docket for the case in Illinois, which is does not seem realistic to me.
Isn't this trial scheduled for April in Illinois?
If you don't mind using the microphone.
MR. GREENBERG: Oh, I'm sorry, Your Honor.
THE COURT: That's great, it's just easier for everybody.
MR. GREENBERG: There is no podium.
THE COURT: I know, it is just a very flawed courtroom.
MR. GREENBERG: It's very nice.
THE COURT: We like it.
MR. GREENBERG: We do not believe that is a realistic trial date in Illinois.
THE COURT: Well, I am not saying anything about

whether that is, that's not my concern, but I don't know how realistic it is to have a trial, I think it's less than a month after the one scheduled.

You all had proposed May 18th. I realize we are taking this a little bit backwards, but I mean the other thing, I think Ms. Greene told me that the estimate was for a three-week trial, which takes us into Memorial Day and things like that. Look, if you all think that is a realistic date, we can try to work with it. I have to say that the likelihood of lawyers being ready that quickly after the trial, assuming it goes, does not seem that realistic to me.

MR. GREENBERG: So, Your Honor, we would like to, is this okay if I --

THE COURT: I just want to make sure I can hear you and the court reporter. You can sit down also if you want, it's fine.

MR. GREENBERG: I'd prefer to stand.

THE COURT: All right.

MR. GREENBERG: Your Honor, that trial date was set because one of the other defendants wanted to set a trial date, actually the two other defendants on the obstruction charge wanted to set a trial date.

I anticipate that there probably will have to be a severance in that case, and because of the technical nature of the evidence against Mr. Kelly, that being some videos and so

forth and the age of the videos, we are going to need to engage experts and so forth.

THE COURT: Well, I --

MR. GREENBERG: I can't realistically see that trial going in April.

THE COURT: Okay, but, as I say, I have enough to do dealing with the case here. So we can talk about the trial date. I suppose we could always move it. I mean my thinking is that June might be a more realistic month to do this, but we can certainly talk about that.

All right, the other matter is the question of the defendant's letter requesting review of Magistrate Judge Tiscione's Order of Detention. And I have read the fairly comprehensive submissions of both sides.

I will certainly hear from you, if you want me to hear you.

MS. GEDDES: Your Honor, one thing I just wanted to raise is a lawyer for certain of the victims has made a request to make a statement to the Court. Under the Crime Victims Right Act I believe the lawyer is, in fact, entitled to be heard at any public proceeding involving release.

So I wanted to raise that with the Court.

THE COURT: Right. Well, I think the right is just to be reasonably heard involving release under the Crime Victims Rights Act.

To the extent that I am considering release, if I need that further input I will surely ask for it, but I do not understand that right to include making a bail application.

So if I need that extra information, I surely will permit it.

All right --

MR. LEONARD: And, Judge, just with respect to that issue, to the degree that you are going to hear from Ms. Alred, we would ask --

THE COURT: Why don't we drive off that bridge when we come to it, okay?

MR. LEONARD: Okay.

THE COURT: So is there anything else that you want to add to your submission?

MR. GREENBERG: Yes, Judge, just a few things.

One, we didn't really address -- well, there's a couple of things. When this case was originally presented for bail hearing, there was a statement made that there were 13 alleged victims between all of the cases. Since we submitted these papers, we've gotten a little more clarity on some of the names. The Government has not disclosed all of the people in this case, but I don't believe that there are 13 different victims that have been alleged. There is overlap.

For instance, based on what the Government told us yesterday, there is overlap between the charges here and, at

least, one of the cases, and possibly two of the cases, in the Circuit Court of Cook County. And on those cases, Mr. Kelly has been released and he is --

THE COURT: I'm sorry to interrupt, in state court?

MR. GREENBERG: In state court, yes.

THE COURT: What has the judge in the other case decided about detention in the federal court?

MR. GREENBERG: So in federal court, Judge Leinenweber originally ordered that Mr. Kelly be detained. We filed a motion asking him to reconsider because, frankly, we didn't feel that he engaged in any analysis. I supplied a copy of that motion.

THE COURT: I have it. I was just wondering has he decided it yet?

MR. GREENBERG: He has not. We have continued that, and I will tell you in full disclosure --

THE COURT: It's okay, no need to.

MR. GREENBERG: Well, I'm not --

THE COURT: Go ahead.

MR. GREENBERG: Because if Mr. Kelly were to get released on that case and not released here, he would then be housed in New York and it would be more difficult for us to prepare for one or two trials, given that the majority of the lawyers are in Illinois.

THE COURT: All right.

MR. GREENBERG: So we have asked --

THE COURT: Well, the bottom line is he has not made any decision about that?

MR. GREENBERG: He has not made any decision, correct.

THE COURT: Okay.

MR. GREENBERG: And the Government has responded to that motion.

THE COURT: Okay.

MR. GREENBERG: That is next up on October 8th.

THE COURT: Okay.

MR. GREENBERG: So there's been a lot said about obstruction, and I didn't want to go into great detail in the written materials. Again, counsel and I, for the Government, we've all spoken. We don't want to refer to anyone by name.

THE COURT: Please don't.

MR. GREENBERG: We have agreed to that. Although, we now have a sense of who these various people are.

So I can tell you that one of the Jane Does who supposedly was a minor in this particular indictment, has admitted on many occasions, including in a book she wrote, that she lied about her age and misrepresented things to Mr. Kelly early on. She also presented false identification to attend his trial.

THE COURT: What I think it would be more profitable

to focus on, if you could, Judge Tiscione concluded that based on the multiple charges in different jurisdictions, as well as the seriousness of the crimes and the allegations spanning a number of years of obstruction, witness tampering, witness intimidation, and I don't know how to describe it, at least to me, the uncertainty of Mr. Kelly's financial resources, there were no conditions or combination of conditions that would ensure -- that could be imposed.

So, that is really more of what I'm thinking.

MR. GREENBERG: Correct. I don't want --

THE COURT: I am sure you can attack a witness' credibility at a trial, but I don't really think that that is helpful here.

MR. GREENBERG: Okay. I am happy to address those issues.

THE COURT: Okay.

MR. GREENBERG: So there is an obstruction indictment in the federal court in Illinois.

THE COURT: Right.

MR. GREENBERG: That obstruction indictment deals with the earlier state case, which had a three-week trial. The video was played and so forth and he was eventually acquitted by the jury in that case.

They have alleged that Mr. Kelly, Mr. McDavid, who was his business manager at that time, and possibly a

gentleman named Mr. Brown, and maybe others, engaged in obstruction. The documents that we've been tendered, and again there's a protective order in that case also, there is no text messages from Mr. Kelly that I'm aware of, there is no phone calls from Mr. Kelly.

THE COURT: Tell me a little bit about these documents that he signed, the agreements and so forth.

MR. GREENBERG: That is a different issue, Judge, than the actual obstruction. So that's a separate issue than the obstruction.

As far as the obstruction, there is nothing coming back to Mr. Kelly. There are documents signed by his manager then and payments made and so forth.

I know the Government says that there's a possible check that was written in 2015, I think, for about a thousand dollars that says in the memo section the word "settlement." I could tell you, and I don't think the Government is going to dispute this, Mr. Kelly does not -- he can -- he can read some words, he can write phonetically, but he does not write those things. Things get put in front of him and he does sign them.

THE COURT: He just signs them?

MR. GREENBERG: He does sign them, yes.

THE COURT: Does he know what's in them?

MR. GREENBERG: He does not many times know what's in them or understand what's in them. He knows he's signing a

check, obviously, or something like that.

As to these agreements that you speak of --

THE COURT: I think you referenced them in your presentation, didn't you?

MR. GREENBERG: I did not.

THE COURT: All right.

MR. GREENBERG: The Government did.

THE COURT: Oh, okay, go ahead.

MR. GREENBERG: I don't believe I did.

But Mr. Kelly was represented for many, many years by the firm Mayer Brown.

THE COURT: Right.

MR. GREENBERG: I don't know if Your Honor is familiar with that firm.

THE COURT: I have heard of them.

MR. GREENBERG: A very prestigious firm. And there was a lawyer in Chicago who advertised, Susan Loggans, who advertised for people to contact her regarding Mr. Kelly. Ms. Loggans would go to Mayer Brown and she would say: I've got this allegation, and Mayer Brown would hammer out some non-disclosure or whatever, and they would have Mr. Kelly sign the agreement. They didn't read the agreement to him. He trusted his lawyers, whatever it was, as many people in that kind of a position do. They have people -- Mr. Kelly was a hugely successful recording artist. He had lots of people who

handled lots of different things for him. And, frankly, he didn't keep his eye on the ball on any of it or he wouldn't be, which brings me to the second point, in the financial condition he's in now.

So, for instance, Mr. Kelly, my understanding is he filed for bankruptcy in the -- about five or six years ago. My understanding is that almost all of the rights to his songs were signed over many years ago and sold to other people. He does not have great financial ability.

Now, he does have this account that the Government speaks of, which is an account that a friend has. And the reason why he set it up that way was because he got a royalty check in the spring of this year when Sony terminated his agreement. He is not getting much in checks these days. Spotify won't play him. Apple Music took him off. Everyone has, essentially, taken him off of their streams. His record contract was canceled.

THE COURT: But why is he using somebody else's bank account?

MR. GREENBERG: I am going to explain that, Your Honor.

THE COURT: Okay.

MR. GREENBERG: So, he got this check, it was for slightly over $400,000. By that point he had been evicted from his -- and I believe this is what the Government is

talking about, he had been evicted from his studio. He deposited that money in a bank account under his own name and it was then seized to satisfy the judgment that he owed to the studio. He paid the back child support that he owed. He paid rent on the Trump Tower prospectively for -- for a period of, I think, six months. And since then, he set up an account or around that time he set up an account in a friend's name so that if he got money, he would have money to live on.

Not -- not the best thing, but, you know, in all candor that's why he did it. And he gets periodically small amounts of money, 10,000, maybe $20,000. He does not have a great deal of money. He sat in the Cook County Jail 'til someone helped him out with the child support, and then he paid them back. He sat in the Cook County Jail waiting for the bail money to be posted for about a week when he was arrested on the Cook County charges. He has since paid that person back is my understanding. Recently, the landlord on their unit at the Trump Tower wanted to evict him because he couldn't pay the rent. They negotiated lesser rent there and he's, hopefully, going to be able to pay that. But he does not have great financial resources. And he doesn't have -- he doesn't have uncertain financial resources either, Judge.

The fact is that he's not touring. In the modern day music industry they make their money from touring. They don't sell albums like they did when I was a kid, they make

their money touring and he can't tour right now.

So I hope that addresses both of those issues.

I would also point out, Judge, if I may, getting back to obstruction, the Government has all of Mr. Kelly's electronics and they make a reference to it in their pleadings. They have all of the electronics that were in his apartment. They searched his storage facility where his equipment was and his tour buses were. They've got all of that information. There is no suggestion that he ever obstructed anyone. You know, he's been dealing with --

THE COURT: That he ever -- I didn't hear that.

MR. GREENBERG: That he ever obstructed.

THE COURT: All right.

MR. GREENBERG: Since all of this firestorm has come to pass, he has been dealing with this situation and the public perception and the well-known fact that he was being investigated for probably a couple of years now, certainly well over -- before the Lifetime documentary he knew things were going on. I knew things were going on. And -- and there's nothing. There's not a text. There's not a phone call. There's not a witness who says he's done anything. There's absolutely nothing to show that he's obstructed.

So you've got the allegations from years ago. You've got very well respected lawyers who entered into these confidentiality agreements on his behalf and prepared them,

which any litigant faced with that would have signed in his position. I don't think that can be characterized as obstruction. And you've got the fact that for years now these allegations have been swirling around and you have no evidence of any obstruction.

He was charged in Chicago in, I believe, February. Nothing since then. He knows who those people are. There's no suggestion that he tried to reach out to any of those people.

THE COURT: He has been in --

MR. GREENBERG: In Illinois, in state court.

THE COURT: -- in prison, hasn't he?

MR. GREENBERG: No.

THE COURT: Oh, I see.

MR. GREENBERG: He was released after about a week of being in custody. Bond was set at a million dollars. He needed under the rules there a hundred-thousand dollars, and he was released about a week after he voluntarily turned himself in on those charges. And he remained free for some four or five months before he was arrested on these charges. And there wasn't a hint of him trying to do anything improper or anyone on his behalf.

THE COURT: Anything else you want to say in this regard?

MR. GREENBERG: Excuse me one minute.

THE COURT: Yes.

(Pause.)

MR. GREENBERG: No, nothing else at this point, but I may -- I would ask if after the Government speaks, perhaps.

THE COURT: That's fine.

Okay, go ahead.

MS. GEDDES: Your Honor, just briefly, I want to raise a couple of points.

The first is with respect to his current financial situation. In fact, in April of this year he was given to this account, this intermediary, a check for $788,000. In June --

THE COURT: Is that the friend's account?

MS. GEDDES: Yes.

THE COURT: The same account?

MS. GEDDES: Yes.

THE COURT: Okay.

MS. GEDDES: In June he received a check for $98,000. So he does have access to financial resources at this juncture.

THE COURT: Okay.

MS. GEDDES: That's just one sampling.

With respect to the fact that the Government has searched everything, that's not true. Not that I think it's particularly relevant in any respect, but it's also not true.

The Government did obtain a search warrant to search his residence and seized numerous digital devices and is still undergoing its review. Certain of those devices were password protected and the Government has not been able to access, although we are in the process of continuing to try to access those devices.

So there has not been a full accounting of what Mr. Kelly had done over the past several months.

In addition to that, the Government has not searched this storage facility that defense counsel referenced.

In short, the suggestion that there is no evidence that he has obstructed anyone is just disingenuous. He's been charged with obstruction related to the state court proceeding. And in our letter we went through additional evidence of his obstruction.

Based on that -- do you have a question, Your Honor?

THE COURT: No, no, no. I was just wondering, what is the most recent example?

MS. GEDDES: We have information that he was intimidating witnesses in 2018.

THE COURT: And the other question I had was you make a reference in your letter to a search of a device.

Are you anticipating additional charges?

MS. GEDDES: We are continuing to investigate and there may be additional charges.

THE COURT: All right, I'm sorry, go ahead.

MS. GEDDES: No, that's all ask, Judge.

THE COURT: Okay.

MS. GEDDES: Based on everything in our papers, we do not think that the defendant can overcome the presumption in this case and that he should be detained.

THE COURT: Okay.

Go ahead.

MR. GREENBERG: May I have one minute, Judge?

THE COURT: Sure.

(Pause.)

MR. GREENBERG: So, Your Honor, the checks are the royalty checks, I believe, which are the final checks when he was cut off from streaming. Maybe I had the wrong amount, but he spent time in jail. Clearly, he wouldn't have sat in the Cook County Jail, which is, I'm sure, no better than Rikers Island for a week if he had immediate access to funds to get out of jail.

Everything I have seen is that he has little, if any, funds available to him at this point, except for a small amount that comes in.

His passport is in the custody of the state authorities. It didn't show any travel.

My understanding is that the storage facility was searched. It may have been by -- in connection with the

Northern District of Illinois case or the state case, but I can only tell you that that's what I was told. I wasn't there. I've not gotten discovery on it.

And I don't know what information they possibly could have of intimidating witnesses in 2018. I have seen no evidence of that. I have -- it's not in any pleading about that. I don't know if that's just someone saying something. I can't even respond to it because when someone says: We have information in 2018 he may have done something, to me that's well, maybe, maybe not, maybe someone just said something.

THE COURT: Well, I think they refer to it in the letter.

MR. GREENBERG: I'm sorry, I -- is it in the letter? I just got the letter just shortly before court.

THE COURT: It is on page -- I think it was posted somewhat earlier this morning. If we are talking about the same thing, I think the Government refers to it on page 4 of the letter.

Is that what you were talking about?

MR. GREENBERG: Is that what you're talking about, the letter?

MS. GEDDES: It actually was not what I was talking about. That is another instance of something that happened in 2018. I was referring to something that we referenced on page 5.

THE COURT: Okay.

MR. GREENBERG: So -- so, Judge, on page 4 since Your Honor mentioned that, that is what we attached to our -- to our submission. That's an example of someone just preparing something and Mr. Kelly signing it.

I can tell you that that person also prepared, when he was supposed to turn himself in in Cook County, a surety bond for him to take with him that was secured by the currency of the Vatican and signed actually in her blood.

THE COURT: I have no idea what you're talking about.

MR. GREENBERG: The letter that we attached to our pleading --

THE COURT: Yes.

MR. GREENBERG: -- that was sent to the lawyer that the Government refers to on page 4, that was sent in connection with a civil suit that's pending in New York and was sent to the lawyer in that case.

THE COURT: Okay.

MR. GREENBERG: It was sent to the courthouse, I'm sorry.

THE COURT: All right.

MR. GREENBERG: And that letter makes no sense, it's nonsensical. It's like sovereign citizen stuff. I don't know if you've dealt with that yet.

THE COURT: Let's just focus on what we have to focus on.

MR. GREENBERG: Well, that's what --

THE COURT: I don't think sovereign citizens are involved in case yet, so --

MS. GEDDES: They are not. And actually that's not the letter. If I could just have a moment to share with counsel.

THE COURT: Sure.

(Pause.)

MR. GREENBERG: Judge, so you know what we're both talking about.

THE COURT: It's okay, why don't you finish conferring and then you can let me know.

MR. GREENBERG: There was a letter that we have attached to our motion --

THE COURT: Right.

MR. GREENBERG: -- that was sent, signed by Mr. Kelly and signed by this Ms. Brown --

THE COURT: Right.

MR. GREENBERG: -- also, that was sent to the Court in New York and the attorney for the plaintiff in that case.

THE COURT: It's a civil case?

MR. GREENBERG: It's a civil case.

THE COURT: Okay.

MR. GREENBERG: That is what the Government refers to on page 4 of their response as being obstruction, possible obstruction and threatening behavior.

THE COURT: Okay.

MR. GREENBERG: That's why we're bringing it up.

THE COURT: I see.

MR. GREENBERG: And -- and the messages and so forth that were sent with that, there are copies of text messages, which actually are advising the person to dress more modestly, so to speak.

I don't know what the other event that they're talking about in 2018 possibly could be. I have no idea what that is. So I mean I have no idea. That's the best I can tell you.

THE COURT: All right, anything else that you want to say?

MS. GEDDES: No, Judge.

THE COURT: All right.

All right, I have reviewed the lengthy submissions by both sides. I have also reviewed the minutes of the hearing that Judge Tiscione did when the defendant was arraigned.

And this is, just so the record is clear, a qualifying offense because it involves minor victims and, in my view, a serious risk of flight and a history of

obstruction. This defendant faces multiple charges in multiple jurisdictions for extremely serious criminal conduct. They are not isolated occurrences, but what is charged is a course of behavior spanning years of sexual abuse of women and some very young girls.

The allegations also show significant evidence of obstruction, of witness intimidation and witness tampering. I also find that the information about the defendant's financial resources is murky, to say the least. I mean today we were talking about how he's depositing what seems to me like a lot of money in someone else's bank account.

And under these circumstances, the home detention that is proposed, in my view, is just not sufficient. While it may be the equivalent of keeping him in one place, it certainly would do nothing to deter him or people that he directs to obstruct or to intimidate witnesses.

So I find that there is no condition or combination of conditions that will reasonably assure the appearance of the defendant and the safety of the community. So, the defense application is denied.

I guess what else do we have to discuss? Schedule?

MS. GEDDES: Yes, I think we want to discuss the trial date and --

MR. LEONARD: We did have a motion, Judge, for early return of subpoenas. It's by agreement of the parties. We

could file written motions if you want, if there's no objection to that. If we could have that entered.

THE COURT: I don't actually know what you're talking about.

MR. LEONARD: So, the rule requires --

THE COURT: I know what the rule requires, but what are we talking about in this case?

MR. LEONARD: Early return of subpoenas, Judge.

THE COURT: Okay.

MR. LEONARD: Meaning a date, earlier trial date for the purpose of the defense to be able to issue subpoenas --

THE COURT: Oh, I see.

MR. LEONARD: Judge, the purpose of that would be to allow the defense to issue subpoenas for the production of documents that we would get well in advance of the trial date, which would otherwise be the date for return of subpoenas.

THE COURT: Yes, that doesn't seem to me, and that is not a problem for you?

MS. GEDDES: We have no objection.

THE COURT: Okay. I just want to look at our calendar for a minute.

(Pause.)

THE COURT: So you think this trial is going to be a three-week trial?

MS. GEDDES: Yes, Judge.

(Pause.)

THE COURT: Well, what about earlier than the 18th?

Assuming, I guess that is also dependent on your -- I just don't like to run into that Memorial Day weekend, and I have something in the second week of June, but I am not so worried about that.

But what about --

MR. LEONARD: Judge, the earliest we could do was the 11th. We do have a trial that we think will go prior to this case, that's why we suggested the 18th. If need be, I think we could live with the 11th, but we would strongly prefer the 18th.

THE COURT: Okay. How is the 11th for you?

MS. GEDDES: That's fine for us.

THE COURT: I just have found that jurors get very nervous about missing holidays and things, and I really think trials go better if we don't have an interruption of a holiday weekend. Sometimes it just can't be helped, but I --

MR. LEONARD: Well, one issue though, Judge, I think we'll have, which we've talked about with the Government, is that if we selected the 18th as a date, we do anticipate we would be asking for juror questionnaires before that. So that's why we really can't do that before the 11th.

THE COURT: Right, I see.

MR. LEONARD: So that's why we'd like the 18th as a

date, so we can deal with that the week before.

THE COURT: So your proposal is that we do jury screening the week before?

MR. LEONARD: Correct.

THE COURT: All right. So then we probably would be all ready to go on the 18th then? Yes?

MR. GREENBERG: Judge, is the 25th -- I don't have a 2020 book, I just have the calendar.

Is the 25th Memorial Day?

MS. GEDDES: I assume so, yes.

MR. GREENBERG: Oh.

MS. GEDDES: It is.

MR. GREENBERG: My only concern is if we start the 11th and it goes faster than we think, we are going to be in a situation of having them deliberate or possibly over Memorial Day weekend. We might be better off having Memorial Day in the middle of the evidence than around deliberations or closing arguments.

I did a trial a few years ago --

THE COURT: It's all right.

MR. GREENBERG: -- around Christmas, so...

THE COURT: Okay. Why don't we keep it at the 18th for now, and we will factor into that the week before to the extent that jury screening is required.

What about motions?

MS. GEDDES: So we have a proposed motion schedule for motions filed on April 27th; responses on May 4th. We will file our request to charge, voir dire, and a proposed jury verdict sheet on May 11th.

THE COURT: Okay.

And just with respect to motions in limine, are you anticipating motions to suppress or anything like that?

MR. LEONARD: We do believe we'll have motions that relate to the Indictment and to discovery issues. Those will be filed well before that, Judge.

THE COURT: Right, but I'm talking about there are no statements involved?

MR. LEONARD: Oh.

THE COURT: You've got search warrants. You are not going to challenge those, right?

MR. LEONARD: Well, there's a lot of issues, Judge. Number one -- and we've talked about these with the Government preliminarily.

THE COURT: I am just trying to figure out the schedule. So I don't need --

MR. LEONARD: I know, but you asked --

THE COURT: It's like when I ask you what time it is, I don't need to know how the watch is made. I just want to know what the --

MR. LEONARD: Well, you brought up the question of

statements, Judge, so that is one of the issues.

THE COURT: So will be there be a suppression motion on the defendant's statements?

MR. LEONARD: Well, that's the problem, we don't have the complete discovery yet.

MS. GEDDES: There were no post-arrest statements made by the defendant.

THE COURT: Oh.

MS. GEDDES: I think the suppression motion would relate to search warrants.

MR. LEONARD: Correct. But there are, Judge, issues that are responsive to your question, which relate to statements. In that, we've already discussed this with the Government, there are a wide variety of 302s, which we're trying to get agreement on. Could those be produced, our proposal was, 90 days before the trial date? Because it puts us in an incredibly difficult position if we get these statements, 302s, on victims who have yet to even be identified to us 30 days before the trial, that's going to result in a motion for a continuance.

So, we have proposed to the Government that those statements be produced 90 days before the trial date. That relates to your question, Judge.

THE COURT: Well, I guess I wasn't being all that clear.

I am just trying to figure out if I have to do a suppression hearing. I don't think that I do. You may have discovery questions. Happy to hear all that, but I am talking about in terms of just a suppression motion, a Fourth Amendment suppression motion. It doesn't sound like there is anything like that.

MR. LEONARD: At this point, no, based on what's been produced.

THE COURT: That's fine, I'm just trying to figure out a schedule.

MR. LEONARD: Could we, Judge, though, with respect to the motions in limine, and I think it wouldn't be any problem with the Government, move that date up for filing to earlier in April?

THE COURT: That's fine. That's fine. My general practice with motions in limine I must tell you, unless it's something really complicated, I usually just rule from the bench on most of them. But if it's something that requires extensive, lengthy briefing and opinion, we will deal with it at the time.

So I think our next status conference will be on December 9th at 4:30.

MS. GEDDES: That's right.

THE COURT: Does that work for everybody?

MR. ANTON: Yes, Judge.

MR. LEONARD: That's great.

For the record, if we could move that motion in limine date back earlier two weeks in April to the date you anticipate --

THE COURT: Sure, that will be April 13th, I think.

THE COURTROOM DEPUTY: Yes.

MR. GREENBERG: I do not believe I'll be here, but that's fine, Judge.

THE COURT: We will miss you.

MR. GREENBERG: Thank you. It will go quicker.

THE COURT: So this time is going to be excluded in the interest of justice so that the parties can continue with discovery, and just keep me posted on what's happening in the other jurisdictions because that may affect our trial schedule.

MR. GREENBERG: Your Honor, is there an e-mail for the clerk or should we just call?

THE COURT: Well, ECF is what we use.

MR. GREENBERG: So just post a letter online?

THE COURT: Yes.

MR. GREENBERG: Okay.

THE COURT: And then, is there anything else? As I said, the time is excludable.

Anything else that I've missed?

MS. GEDDES: Yes, just to be clear, are you

excluding time between today's date and December 9th?

THE COURT: Yes.

MS. GEDDES: Okay.

And then for our oppositions to the in limine motions, did you want to move that up as well?

MR. LEONARD: That would be great.

MS. GEDDES: So we'll move that up as well.

THE COURT: So that would be the 27th?

MS. GEDDES: Yes.

THE COURT: All right. Okay.

MS. GEDDES: Thank you, Judge.

MR. GREENBERG: Judge, do you want to address Mr. Kelly's appearance or non-appearance on December 9th?

I don't think there is going to be anything substantive, and if there's not we have no objection to waiving his appearance. I know the marshals would prefer that we waive it.

MS. GEDDES: We would prefer to hold off on a ruling on that particular matter until we get closer to knowing what is going to happen on the 9th, and we will work with counsel and file a letter in advance of the December 9th hearing to allow the Court to rule on it and to allow the marshals sufficient time to produce him if Your Honor rules.

THE COURT: I am confident that the marshals can handle whatever comes their way.

So, yes, I will defer ruling on that.

Okay?

All right, thanks so much.

MR. ANTON: Thanks, Judge.

MS. GEDDES: Thank you.

(Judge ANN M. DONNELLY exited the courtroom.)

(Matter adjourned.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Stacy A. Mace — October 2, 2019

STACY A. MACE — DATE

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

UNITED STATES OF AMERICA,

- against -

ROBERT SYLVESTER KELLY,

Defendant.

---------- X

ORDER
19-CR-286 (AMD)

ANN M. DONNELLY, United States District Judge:

The defendant is awaiting trial on charges of racketeering in violation of 18 U.S.C. §§ 1962(c) and 1963, three counts of Mann Act transportation to engage in illegal sexual activity in violation of 18 U.S.C. § 2421(a), three counts of Mann Act coercion and enticement to engage in illegal sexual activity in violation of 18 U.S.C. § 2422(a), one count of Mann Act coercion of a minor to engage in illegal sexual activity in violation of 18 U.S.C. § 2422(b) and one count of Mann Act transportation of a minor with intent to engage in illegal sexual activity in violation of 18 U.S.C. § 2423(a). (ECF No. 43.) On August 2, 2019, the Honorable Steven Tiscione ordered that the defendant be detained pending his trial (ECF Nos. 18 and 19), which I affirmed on October 2, 2019. The defendant also faces multiple charges in the Northern District of Illinois; the Honorable Harry D. Leinenweber has ordered that the defendant be detained pending trial in that case. *See United States v. Robert Sylvester Kelly, et al.*, No. 19-CR-567 (N.D. Ill.). The defendant is currently detained at the Metropolitan Correctional Center in Chicago, Illinois.

On March 26, 2020, the defendant moved for an emergency bail hearing and an order granting his release due to the COVID-19 pandemic. (ECF No. 48.) The government opposes the motion. (ECF No. 51.) For the reasons that follow, the motion is denied.

DISCUSSION

The Bail Reform Act provides that a "judicial officer may, by subsequent order, permit the temporary release of [a] person . . . to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or another compelling reason." 18 U.S.C. § 3142(i). This provision "has been used sparingly to permit a defendant's release where, for example, he is suffering from a terminal illness or serious injuries." *United States v. Hamilton*, No. 19-CR-54-01, 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020) (citing *United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y. 1993) (citation omitted)).

The defendant argues that the ongoing COVID-19 pandemic constitutes a compelling reason for his release because he is at risk of contracting the virus and because the BOP's efforts to prevent an outbreak frustrate his ability to meet freely with his attorneys. (ECF No. 48.) While I am sympathetic to the defendant's understandable anxiety about COVID-19, he has not established compelling reasons warranting his release. At present, there are no confirmed cases of COVID-19 at the MCC in Chicago. (ECF No. 51.) The Bureau of Prisons has announced emergency measures to protect inmates and staff, including suspending all legal and social visits, suspending inmate facility transfers, making soap available to inmates, screening and testing inmates and staff, and modifying operations at detention facilities like the MCC to maximize social distancing.[1]

Moreover, despite his contentions, the defendant has not demonstrated that he is "within the group of people the Centers for Disease Control and Prevention [] has categorized as most-at-risk for contracting COVID-19 . . . ." (ECF No. 48 at 1.) The defendant is fifty-three years old, twelve years younger than the cohort of "older adults" defined by the CDC as at high risk for

[1] *See* "Federal Bureau of Prisons COVID-19 Action Plan," *available at* https://www.bop.gov/resources/news/20200313_covid-19.jsp.

severe illness from COVID-19.[2] Although the defendant has had a surgery during his incarceration, he does not explain how his surgical history places him at a higher risk of severe illness. Moreover, officials in Chicago have advised the government that doctors have completed all treatment for the defendant's recent operation. (ECF No. 51 at 2.)

The essence of the defendant's motion is that the BOP's protective measures interfere with his ability to prepare for his defense with counsel. (ECF No. 52 at 2-6.) First, as the defendant points out, it appears unlikely that the trial will proceed as scheduled on July 7, 2020; as conditions return to normal, the defendant and his lawyers will have additional time to prepare for trial. In any event, the defendant can continue to contact his attorneys by phone and email during this crisis, and the government informs me that the defendant has continued to meet with his attorneys, including as recently as March 18, 2020, pursuant to a case-by-case approval process at the MCC. (ECF No. 51 at 4.)

Finally, release is appropriate only if a defendant can also demonstrate that he is not a flight risk or a danger to the community. The defendant is currently in custody because of the risks that he will flee or attempt to obstruct, threaten or intimidate prospective witnesses. The defendant has not explained how those risks have changed. In fact, in *United States v. Stephens*, the case upon which the defendant relies in arguing for his release due to the COVID-19 pandemic (*see* ECF No. 52 at 3-5), the court granted release in equal part due to the pandemic *and* new evidence undermining the danger the defendant posed to the community. No. 15-CR-95, 2020 WL 1295155, at *1 (S.D.N.Y. Mar. 19, 2020) ("[T]he Court has since learned that the arresting officer . . . initially identified a *different* individual as holding the bag that contained the firearm."). The defendant here has not demonstrated an analogous change in circumstances that

[2] *See* "Coronavirus Disease 2019 People Who Are At Higher Risk," *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html.

would alter the Court's conclusion that he is a flight risk and that he poses danger to the community, particularly to prospective witnesses.

Accordingly, the defendant's motion for a bail hearing and an order granting his temporary release is denied.

SO ORDERED.

s/Hon. Ann M. Donnelly

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
April 7, 2020

EXHIBIT G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

UNITED STATES OF AMERICA,

- against -

ROBERT SYLVESTER KELLY,

Defendant.

---------- X

ORDER
19-CR-286 (AMD)

ANN M. DONNELLY, United States District Judge:

On April 7, 2020, I denied the defendant's motion for a bail hearing and an order granting his temporary release. (ECF No. 53.) The defendant renews his motion on the basis that six detainees at the MCC Chicago, including one on his floor (ECF Nos. 59 and 60), have been diagnosed with COVID-19. (ECF No. 55.) The government continues to oppose the defendant's release. (ECF No. 56.)

The essence of the defendant's renewed motion is that conditions at the MCC have deteriorated and that this Court can fashion terms of release that minimize the risks that he will flee or obstruct justice. As to the former, it is undeniable that conditions at the MCC have worsened despite the best efforts of the BOP, prison staff and the inmates themselves to prevent an outbreak of COVID-19. While phases five and six of the BOP Action Plan, as well as the specific measures adopted at the MCC, may well control the spread of the disease, the risk of infection—and the stress and anxiety about COVID-19—will remain. At the same time, however, the defendant does not dispute this Court's prior finding that he is not uniquely at risk for contracting severe illness from COVID-19.

As the defendant recognizes, the entire BOP population cannot be released because of COVID-19. (ECF No. 58 at 2.) He claims, however, that he should be released, while others should not, because the Court can fashion conditions to defray the assertedly negligible risk that he might flee or obstruct justice. (*Id.* ("Certainly, there are detainees at the MCC Chicago, or elsewhere, for whom a combination of conditions *cannot* be fashioned that will reasonably assure a court that they will appear, and that they will not pose a danger to the community. Mr. Kelly is *not* one of those individuals.").) I disagree.

First, the risks associated with the defendant's release have not changed. The defendant continues to downplay the risk that he might flee, citing his attendance record in connection with the 2002 state criminal charges against him. (ECF No. 55 at 3 ("This court . . . should also strongly weigh the fact that, years ago and prior to his acquittal on all then pending State charges, Mr. Kelly did exactly as he was ordered to do by that court while on bond, including but not limited to appearing for each and every court appearance."); ECF No. 58 at 2 ("[I]t bears repeating that, in Mr. Kelly's prior case, he never once failed to appear for any of his court appearances – over a period of years.").) Of course, the defendant is now charged with tampering with the witnesses in that case. In any event, his attendance record from a decades-old proceeding provides insufficient assurance that he would not attempt to flee if he were released. His circumstances and incentives are vastly different; he is now facing serious charges in multiple federal and state jurisdictions.

Even aside from the risk of flight, the risk that the defendant would try to obstruct justice or intimidate prospective witnesses has not dissipated, and poses a danger to the community. *See United States v. Zherka*, 592 F. App'x 35, 35 (2d Cir. 2015) (summary order) ("A serious risk of obstruction of justice may qualify as such a danger to the community.") (citation omitted).

The defendant has been charged with obstructing justice in the Northern District of Illinois—specifically, with coercing, threatening and bribing potential witnesses. *See United States v. Robert Sylvester Kelly*, No. 19-CR-567 (N.D. Ill.), ECF No. 93 at 5-16. The defendant maintains that any risk can be mitigated through a combination of measures imposed on his release, including restrictions on social media, internet and telephone use. (ECF No. 58 at 3.) Even under normal circumstances, these measures are imperfect; for example, they cannot stop a defendant from using an unauthorized telephone or digital device to contact potential witnesses, or from inducing someone else to do so. Given the pandemic, where the judicial system's oversight capabilities are curtailed, these measures simply are not viable—they cannot ensure that a defendant with a history, incentive and opportunity to interfere with potential witnesses will not do so.

Accordingly, the defendant's motion for release is denied.

SO ORDERED.

s/Ann M. Donnelly

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
April 21, 2020

EXHIBIT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

ROBERT SYLVESTER KELLY,

Defendant.

ORDER
19-CR-286 (AMD)

ANN M. DONNELLY, United States District Judge:

On May 1, 2020, the defendant made his third request for temporary release. (ECF No. 63.) The defendant argues that he is entitled to bail because medical tests demonstrate that he is "likely diabetic." (*Id.* at 1.) Raising most of the same arguments pressed in his previous applications, the defendant continues to contest the Court's findings—and presumably, the same findings by other courts—that "no condition or combination of conditions will reasonably assure [his] appearance as required and the safety of any other person and the community." 18 U.S.C. § 3142(e). The Government opposes. (ECF No. 64.) For the reasons that follow, the defendant's motion is denied.

18 U.S.C. § 3142(e) permits a district court to order pretrial detention if it concludes that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e)(1). When a defendant has been charged with a qualifying crime involving a minor, as this defendant has, there is a rebuttable presumption of pretrial detention under Section 3142(e)(3). The defendant has been charged in this District with violating 18 U.S.C. §§ 2251, 2421, 2422 and 2423 (*see* ECF No. 43 ¶¶ 14, 19, 21-30, 39-42), and in the Northern District of Illinois with

violating 18 U.S.C. §§ 2251, 2422 and 2252A(a)(2) (*see United States v. Kelly et al.*, 19-CR-567, ECF No. 93), all of which are qualifying crimes involving a minor (*see* § 3142(e)(3)(E)); therefore, there is a rebuttable presumption of pretrial detention.

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)). "Once a defendant has met his burden of production relating to these two factors, the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court." *Mercedes*, 254 F.3d at 436 (citation omitted). "Even in a presumption case, 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.* (citations omitted).

As relevant here, temporary release of a defendant is governed by 18 U.S.C. § 3142(i), which permits a court to order temporary release for a "compelling reason." In this case, the defendant must rebut the statutory presumption of pretrial detention under Section 3142(e)(3) or show that a "compelling reason" calls for his release under Section 3142(i).[1] The defendant has done neither.

[1] It is not entirely clear whether the defendant is moving for reconsideration of prior bail determinations under Section 3142(e) or for temporary release under Section 3142(i). The distinction is not merely academic. *See United States v. Perez*, No. 19-CR-297, 2020 WL 1329225, at *2 (S.D.N.Y. Mar. 19, 2020) ("The Court intends to terminate the defendant's temporary release and return the defendant to pretrial detention as soon as the Court concludes that the defendant no longer faces the acute health risk posed by the current circumstances," specifically, the COVID-19 pandemic.). Accordingly, I address both statutory grounds for release separately.

I. Release Under Section 3142(e)

In determining whether a defendant has rebutted the presumption that he is dangerous and a flight risk, a court is obligated to consider certain factors, including the nature of the charges against the defendant, the weight of the evidence against him, his history and characteristics and the extent to which his release would pose a risk to any person or the community. 18 U.S.C. § 3142(g); *see also Mercedes*, 254 F.3d at 436 (The district court considers the Section 3142(g) factors "[t]o determine whether the presumptions of dangerousness and flight are rebutted.").

Both indictments charge the defendant with serious crimes that span years. In this District, the indictment charges that for almost twenty-four years, the defendant led an enterprise, the purposes of which were to promote the defendant's music, to recruit women and girls to engage in illegal sexual activity with the defendant and to produce child pornography. (ECF No. 43 ¶¶ 2, 12.) In the Northern District of Illinois, the defendant is charged with participating in a long-running conspiracy to obstruct justice and a conspiracy to receive child pornography. (*United States v. Kelly et al.*, 19-CR-567, ECF No. 93 at 5-17.)

In connection with the obstruction charge, the defendant is alleged to have secured witnesses' silence, and in at least one instance to have suborned perjury, through bribes, blackmail, threats and intimidation. (*Id.*) This conduct strikes at the heart of the integrity of the trial process and "has been a traditional ground for pretrial detention by the courts." *United States v. LaFontaine*, 210 F.3d 125, 134 (2d Cir. 2000) ("In *Gotti*, we held that a single incident of witness tampering constituted a 'threat to the integrity of the trial process, rather than more generally a danger to the community,' and was sufficient to revoke bail.") (quoting *United States v. Gotti*, 794 F.2d 773, 779 n.5 (1986)).

The defendant takes issue with the Court's consideration of the charges in evaluating his dangerousness and risk of flight. (ECF No. 63 at 5 ("What is more troubling from the defense's perspective is that this court accepts the *allegations* regarding obstruction as true and as evidence that he would obstruct now if released, but completely discounts the *factual and historical evidence* of appearance.").) However, because "an indictment returned by a proper grand jury 'conclusively determines the existence of probable cause,'" *Kaley v. United States*, 571 U.S. 320, 326 n.6 (2014) (citations omitted), a court does not "unfairly skew[] things" (ECF No. 63 at 1) against a defendant when it takes the charges into account. Nor does it mean that a judge is simply accepting the Government's position without critical analysis, as the defense argues.

The other judges who have considered the question of bail—the Honorable Harry D. Leinenweber, United States District Judge for the Northern District of Illinois, where the defendant is currently being held, and Magistrate Judge Steven Tiscione, to whom the defendant made his first application for bail in this District—also found that the defendant was a flight risk and a danger to the community. Judge Leinenweber characterized the charges against the defendant as "extraordinarily serious," and emphasized the obstruction of justice charge:

> [A]s far as the obstruction of justice, according to the specific count in the indictment that the acquittal was at least in some part obtained because of obstruction of justice which involved allegedly paying off of witnesses and threatening witnesses and buying back certain evidence in the forms of the videos. . . [A]ccording to the indictment – again, I go by the fact that a grand jury found that there's probable cause – that witnesses were paid and witnesses were threatened in order to either change testimony or not appear at all. So it appears to me that the defendant has failed to overcome the presumption of requiring detention in both the case here in Chicago and the case in New York.

(*United States v. Kelly et al.*, No. 19-CR-567, ECF No. 40 at 31:19-32:17.)[2]

[2] The defendant filed a motion for temporary release in the Northern District of Illinois, but requested that Judge Leinenweber "defer any ruling until after the New York court has acted on his request."

Judge Tiscione likewise denied bail because the defendant posed a risk of flight and dangerousness. Judge Tiscione observed that the defendant faced "incredibly serious charges of sexual abuse of minors, coercion of minors, [and] child pornography," and that the defendant "has a history of similar allegations, dating back more than a decade." (Bail Hr'g 15:15-22, Aug. 2, 2019.) Judge Tiscione was "extremely troubled by the issues of potential obstruction in prior cases" and the "strong possibility that there could be potential witness tampering in this case if he's released." (*Id.* at 16:6-16.)[3]

In an effort to rebut the presumption of detention, the defendant cites, as he has before, his history of returning to court in the 2008 Illinois state court case. The significance of that record is substantially undermined by the grand jury's probable cause finding in the Illinois federal case that the defendant obstructed justice during that trial. The defendant is presumed innocent of the charges, but, as explained above, the grand jury's probable cause finding that he obstructed justice in the past as well as the nature of the other charges are relevant factors in the pretrial detention analysis under Section 3142. *See Kaley*, 571 U.S. at 329 n.6 ("The grand jury's unreviewed finding similarly may play a significant role in determining a defendant's eligibility for release before trial under the Bail Reform Act of 1984, 18 U.S.C. § 3141 *et seq.*").

Nor are the defendant's proposed measures—that he be kept on home confinement and monitored by pretrial services—sufficient to eliminate the danger to the community. These

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(ECF No. 115 at 1-2.) The defendant moved to reargue Judge Leinenweber's order of pretrial detention on August 1, 2019 (ECF No. 54), but later withdrew the motion (*see* ECF No. 115 at 1).

[3] During that hearing, the defendant acknowledged that the Court could rely on the allegation of obstruction in deciding bail. (*Id.* at 10:2-10 (THE COURT: "But because it is just an allegation [of obstruction], he hasn't been convicted of it yet, I should just ignore it for purposes of dangerousness of the defendant? MR. ANTON: "Definitely not. But the Court has the right to require a little more than just the government say so that this exists . . . .").) In fact, of course, it is not just the Government's "say so" upon which the Court relied, but the grand jury's finding of probable cause that the defendant obstructed justice.

measures can be "circumvented by the 'wonders of science and of sophisticated electronic technology,'" and the "monitoring equipment can be rendered inoperative." *United States v. Orena*, 986 F.2d 628, 632 (2d Cir. 1993) (quoting *United States v. Gotti*, 776 F. Supp. 666, 672-73 (E.D.N.Y. 1991)). Without the "confidence of security" assured by a detention facility, *United States v. Millan*, 4 F.3d 1038, 1049 (2d Cir. 1993) (citing *Gotti*, 776 F. Supp. at 672), the danger to the community cannot be eliminated, especially where, as here, the proposed measures are powerless to stop a defendant from inducing others to interfere with witnesses. *See United States v. Choudhry*, 941 F. Supp. 2d 347, 359 (E.D.N.Y. 2013) ("It is well established that home detention and electronic monitoring may be insufficient to protect the community against dangerous individuals, particularly where those individuals have the ability to command others to do their bidding.") (citations omitted); *see also United States v. Sindone*, No. 01-CR-517, 2002 WL 48604, at *1 (S.D.N.Y. Jan. 14, 2002) ("The stakes in a criminal case are high, and temptations of perjury, subornation and intimidation are ever present.").

The circumstances that led Judge Leinenweber, Judge Tiscione and me to conclude that the defendant has not rebutted the presumption of detention have not changed: the defendant is charged in Illinois and New York with extraordinarily serious crimes, for which he faces a long prison term if convicted. That prospect makes him a flight risk. The nature of the charges—which include crimes against minor victims, threats against potential witnesses and paying bribes to keep witnesses from cooperating—make him a danger to the community, including that he could attempt to tamper with prospective witnesses.

For these reasons, the Government sustained its burden of proving by clear and convincing evidence that the defendant poses a danger to the community, and by a

preponderance that he is a flight risk.[4] There are no conditions or combination of conditions that "will reasonably assure the appearance of the [defendant] as required and the safety of any other person and the community." 18 U.S.C. § 3142(e).

II. Temporary Release Under Section 3142(i)

As he did in a previous application, the defendant cites the global coronavirus pandemic as a compelling reason justifying his release. In my prior rulings, I have found that the defendant has not presented compelling reasons for his release under Section 3142(i) in part because he is not uniquely at risk for contracting severe illness from COVID-19. (ECF Nos. 53, 61.) The defendant argues that he is now uniquely at risk because he has been diagnosed as prediabetic.[5] (ECF Nos. 63, 66.)

I do not agree that a diagnosis of prediabetes presents a compelling reason for the defendant's release. While the CDC has identified diabetes as a risk factor for COVID-19, the same is not true for prediabetes, a condition that affects nearly one in three American adults. *See* "Groups at Higher Risk for Severe Illness," *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html; *see also* "Diabetes and Prediabetes,"

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[4] In a second reply, submitted "solely and exclusively on the issue of obstruction," the defense describes various people that it suspects are the Jane Doe victims, and posits reasons why they would not be amenable to "any overture from the Kelly camp." (ECF No. 67.) Witness tampering can take many forms—including blackmail, threats and intimidation—that do not require the target's receptiveness to a defendant's overtures. The defendant has been charged in the Northern District of Illinois with using "physical abuse, violence, threats of violence, blackmail, and other controlling behaviors against victims so that [he] could maintain control over them, prevent them from providing evidence to law enforcement, and persuade them to continue to abide by prior false statements relating to [his] sexual contact and sexual acts with minors and videos of such conduct." (*United States v. Kelly et al.*, No. 19-CR-567, ECF No. 93, Count 5, ¶9.)

[5] The defendant's argument that he should be released because he "is at substantial risk and in danger *regardless* of whether his diagnostic numbers firmly put him in *any* defined medical category" and "is at risk and in danger *because* he is housed at the MCC Chicago" (ECF No. 66 at 3), is inconsistent with his previous disclaimers: "Furthermore, to be crystal clear, Mr. Kelly's counsel is not asking this Court to 'release the entire BOP population,' as claimed by the Government in its Response . . . That is a false and straw man argument." (ECF No. 58 at 2.)

available at https://www.cdc.gov/chronicdisease/resources/publications/factsheets/diabetes-prediabetes.htm. My review of the defendant's medical records reflect that he is receiving more than adequate care to manage this condition. The health care professionals at the MCC see him regularly, and are working with him to implement lifestyle changes so that his condition improves. (ECF No. 65 at 1-6.) Those recommendations include diet, weight loss and exercise. (*Id.*)

Section 3142(i) "has been used sparingly to permit a defendant's release where, for example, he is suffering from a terminal illness or serious injuries." *United States v. Hamilton*, No. 19-CR-54, 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020) (collecting cases). The defendant's diagnosis of prediabetes—a relatively common and treatable condition—is not a "compelling reason" for his release. *See United States v. Deutsch*, No. 18-CR-502, 2020 WL 1694358, at *1 (E.D.N.Y. Apr. 7, 2020) (finding no compelling reasons where a defendant has a prediabetes diagnosis but "does *not* have Type 1 or Type 2 diabetes, he does not suffer from any pre-existing respiratory issues, he is young, and his medical condition appears well managed throughout his pretrial detention").

CONCLUSION

Accordingly, the defendant's motion for reconsideration of the Court's pretrial detention orders and his motion for temporary release are denied.

SO ORDERED.

s/Ann M. Donnelly

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
May 15, 2020