

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, } Case No. 21CR1115-H
Plaintiff, }
v. } ORDER DENYING DEFENDANT'S
JULIUS GREENOGE, } MOTION TO REVOKE DETENTION
Defendant. } ORDER AND SET BAIL, OR FOR
TEMPORARY RELEASE
(Doc. No. 30.)

Pending before the Court is Defendant Julius Greenoge's ("Defendant") motion to revoke the Magistrate Judge's detention order. (Doc. No. 30.) Magistrate Judge Andrew G. Schopler granted the Government's motion to detain the Defendant based on risk of flight and based on danger to the community. (Doc. No. 14.) The Defendant now moves this Court to revoke the Magistrate Judge's detention order and set bail, or alternatively, temporarily release the Defendant. The Government has filed a response in opposition to the Defendant's motion. (Doc. No. 32.) The Court has also received and reviewed the Pretrial Services Officer's Bail Report. This Court has jurisdiction to hear this matter under Title 18 U.S.C. § 3145(b) and is required to determine the Defendant's motion promptly. A district judge reviews *de novo* a magistrate judge's decision to detain a defendant without deference to the magistrate judge's ultimate

1 conclusion. United States v. Koenig, 912 F.2d 1190 (9th Cir. 1990). However, “the
2 district court is not required to start over in every case, and proceed as if the magistrate’s
3 decision and findings did not exist.” Id at 1193.

4 The Bail Reform Act (“BRA”), Title 18 U.S.C. § 3142, requires the Court to
5 consider certain factors in determining whether to detain or release a defendant: (1) the
6 nature and circumstances of the offense charged, including whether the offense is a
7 crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves
8 a minor victim or a controlled substance, firearm, explosive, or destructive device; (2)
9 the weight of the evidence against the person; (3) the history and characteristics of the
10 person, including the person’s character, physical and mental condition, family ties,
11 employment, financial resources, length of residence in the community, community
12 ties, past conduct, history relating to drug or alcohol abuse, criminal history, record
13 concerning appearance at court proceedings, and whether, at the time of the current
14 offense or arrest, the person was on probation, on parole, or on other release pending
15 trial, sentencing, appeal, or completion of sentence for an offense under Federal, State,
16 or local law; and (4) the nature and seriousness of the danger to any person or the
17 community that would be posed by the defendant’s release.

18 When considering the nature of the offenses charged, the Court also considers
19 the penalties associated with the charges. United States v. Townsend, 897 F.2d 989, 995
20 (9th Cir. 1990). Additionally, “the weight of the evidence is the least important of the
21 various factors.” United States v. Motamed, 767 F.2d 1403, 1408 (9th Cir. 1985)
22 (internal citations omitted). The Defendant is charged in an indictment with one count
23 of being a felon in possession of a firearm in violation of Title 18 U.S.C. §§ 922(g)(1)
24 and 924(a)(2). If convicted, the Defendant faces a possible maximum imprisonment
25 term of 10 years.

26 The Government bears the burden of showing by a preponderance of the evidence
27 that a defendant poses a flight risk. Id at 1406. While a finding that a defendant is a
28 danger to any other person or the community must be supported by clear and convincing

1 evidence. United States v. Hir, 517 F.3d 1081, 1086 (9th Cir. 2008) (citing 18 U.S.C. §
2 3142(f)(2)(B)). Furthermore, the Court is prohibited from imposing a financial
3 condition that would result in the de facto detention of a defendant. 18 U.S.C. §
4 3142(c)(2); See also United States v. Diaz-Hernandez, 943 F.3d 1196, 1199 (9th Cir.
5 2019) (Affirming the district judge's detention order based on the district court's finding
6 that the defendant would not be able to post bond in the amount that the district judge
7 theorized would reasonably assure the defendant's appearance.).

8 The following factors weigh in favor of setting bail: (1) the Defendant is a citizen
9 of the United States; (2) the Defendant has ties to the community and no ties to any
10 foreign country; and (3) the Defendant has strong family support. The Court considers
11 the following factors to be neutral: (1) the Defendant's mental health condition
12 including depression which is being address by prescribed medication and, other than a
13 prior suicide attempt five years ago, no current suicidal attempts; and (2) the
14 Defendant's employment history which has been affected by the COVID-19 pandemic.
15 The following factors weigh in favor of detention based on risk of flight: (1) the
16 Defendant has a history of using illicit drugs, including methamphetamine; (2) the
17 Defendant has significant criminal history which include but are not limited to felony
18 drug offenses, attempting to escape from prison; preventing or dissuading a witness or
19 victim, making fictitious checks, destroying and concealing evidence; identify theft, and
20 firearm offenses; (3) the Defendant has failed to appear for court proceedings on prior
21 occasions; (4) the Defendant has a history of non-compliance while on supervision
22 including numerous probation violations; (5) the Defendant has a history of committing
23 crimes while on supervision; (6) the Defendant if facing a substantial penalty if
24 convicted due to the nature of the offense and because the Defendant has a significant
25 criminal history; and (7) the evidence that the Defendant committed the instant offense
26 is strong but the Court gives this factor the least weight.

27 The numerous factors weighing in favor of detention based on risk of flight
28 outweigh the few factors weighing in favor of setting bail. The Defendant has numerous

1 prior failures to appear for court proceedings which is concerning to the Court and
2 directly addresses whether he is a risk of flight. United States v. Santos-Flores, 794 F.3d
3 1088, 1092 (9th Cir. 2015) (“Consideration of a defendant's record concerning
4 appearance at court proceedings and other past conduct is proper under [the BRA,] 18
5 U.S.C. § 3142(g)(3)(A).”); See also United States v. Bennett, No. CR 08-441-RE, 2009
6 WL 3061999, at *4 (D. Or. Sept. 21, 2009) (Redden, J.) (“[F]ind[ing] that no condition
7 or combination of conditions will reasonably assure the appearance of defendant due
8 to... defendant's multiple supervision failures, including at least three instances in
9 which defendant failed to appear as required[.]”). Additionally, the Defendant has
10 numerous probation violations which leaves the Court with little confidence that the
11 Defendant will comply with the terms and conditions of bail and appear for court
12 proceedings when ordered. See United States v. Wero, No. CR09-8056-PCT-DGC,
13 2009 WL 1797853, at *3 (D. Ariz. June 24, 2009) (Campbell, J.) (“[T]he Court is
14 concerned that a defendant who so routinely disregards court orders... will fail to appear
15 in a matter where he might face a significant prison sentence.”).

16 The Court notes that the Defendant's ties to the community and family support
17 were not enough to dissuade the Defendant from failing to appear for prior court
18 appearances and from violating the terms and conditions of his probation. At this
19 juncture, the Court has no reason to believe that the Defendant's community ties and
20 family support would alleviate the Defendant's risk of flight. Therefore, the Court
21 concludes that the Government has met its burden of proving by a preponderance of the
22 evidence that the Defendant is a flight risk and orders the Defendant detained based
23 solely on risk of flight. Cf. United States v. Twine, 344 F.3d 987 (9th Cir. 2003)
24 (Holding that the Bail Reform Act does not authorize pretrial detention without bail
25 based solely on a finding of dangerousness.). Furthermore, the Court declines to order
26 the Defendant detained based on danger to the community in light of the Ninth Circuit's
27 holding in Twine. Id. at 988 (“[W]e hold that 18 U.S.C. § 922(g)-felon in possession of
28 a firearm-is not a crime of violence for purposes of the Bail Reform Act.”).

1 The Defendant argues that his continued detention infringes on his Sixth
 2 Amendment right to prepare for and participate in his own defense, due to the distance
 3 between San Diego, CA (where defense counsel resides) and his housing facility in San
 4 Luis, AZ. The Court disagrees. Traveling additional hours to meet with an in-custody
 5 client may be inconvenient to defense counsel but such a scenario does not rise to the
 6 level of infringing on a defendant's Sixth Amendment right. Morris v. Slappy, 461 U.S.
 7 1, 11, 103 S. Ct. 1610, 1616, 75 L. Ed. 2d 610 (1983) ("Not every restriction on
 8 counsel's time or opportunity to investigate or to consult with his client or otherwise to
 9 prepare for trial violates a defendant's Sixth Amendment right to counsel."); See also
 10 Mann v. Reynolds, 46 F.3d 1055, 1060 (10th Cir. 1995) ("[T]he Sixth Amendment does
 11 not require in all instances full and unfettered contact between an inmate and counsel.");
 12 United States v. Otunyo, No. CR 18-251 (BAH), 2020 WL 2065041, at *9 (D.D.C. Apr.
 13 28, 2020) (Howell, C.J.) ("[T]he current limitations on defendant's ability to
 14 communicate with counsel do not justify release."). Furthermore, Magistrate Judge
 15 Schopler's order requires the Attorney General to afford the Defendant "a reasonable
 16 opportunity for private consultation with defense counsel." (Doc. No. 14 at 3.) There is
 17 nothing in the record to suggest that the Defendant was ever denied the opportunity for
 18 private consultation with his counsel.

19 Alternatively, the Defendant argues that he should be temporarily released under
 20 Title 18 U.S.C. 3142(i).¹ "A defendant bears the burden of establishing circumstances
 21 warranting temporary release under § 3142(i)." United States v. Knight, 452 F. Supp.
 22 3d 938, 946 (D. Nev. 2020) (Du, C.J.). Defense counsel's main issue is that the number
 23 of hours needed to drive from San Diego, CA to San Luis, AZ limits the time defense
 24 counsel and the Defendant can spend together working on this case involving

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 26 ¹ 18 U.S.C. § 3142(i) provides:
 27 The judicial officer may, by subsequent order, permit the temporary
 28 release of the person, in the custody of a United States marshal or
 another appropriate person, to the extent that the judicial officer
 determines such release to be necessary for preparation of the person's
 defense or for another compelling reason.

1 voluminous discovery and multiple related cases. Although releasing the Defendant
2 temporarily may be easier for the preparation of the Defendant' defense, it is not
3 necessary. See United States v. Keeton, 457 F. Supp. 3d 855, 860 (E.D. Cal. 2020)
4 (Mueller, C.J.), aff'd, No. 20-10162, 2020 WL 4805479 (9th Cir. June 17, 2020)
5 ("Courts have routinely rejected temporary release under § 3142(i) for preparation of a
6 defense alone."); See also United States v. Leake, No. 19-CR-194 (KBJ), 2020 WL
7 1905150, at *4 (D.D.C. Apr. 17, 2020) (Jackson, J.) ("[I]f every pretrial detainee is
8 entitled to temporary release under that statute 'just because it would aid a defendant's
9 ability to work with counsel,' then 'the exception in section 3142(i) would swallow all
10 detention orders.'") (quoting United States v. Villegas, No. 2:19-CR-568-AB, 2020 WL
11 1649520, at *2 (C.D. Cal. Apr. 3, 2020)). Accordingly, the Court declines to temporarily
12 release the Defendant under § 3142(i) and on Sixth Amendment grounds, and concludes
13 that no compelling reasons exists to grant temporary release.

14 The Defendant's cursory invocation of the Fifth and Eighth Amendments as
15 grounds to grant release on bail or temporary release are unpersuasive. See generally
16 United States v. Salerno, 481 U.S. 739, 748, 107 S. Ct. 2095, 2102-2104, 95 L. Ed. 2d
17 697 (1987) ("We conclude, therefore, that the pretrial detention contemplated by the
18 Bail Reform Act is regulatory in nature, and does not constitute punishment before trial
19 in violation of the Due Process Clause" and "[w]e think that the Act survives a challenge
20 founded upon the Eighth Amendment."); See also United States v. Torres, 995 F.3d
21 695, 698, 709 (9th Cir. 2021) (Holding that the district court's findings regarding
22 detention under the BRA "support the conclusion that the Bail Reform Act factors
23 weigh strongly against a due process violation."); United States v. Lee, No. 2:17-CR-
24 0030-KJM, 2020 WL 2084812, at *4 (E.D. Cal. Apr. 30, 2020) (Mueller, C.J.) ("While
25 the court readily agrees that 'the Eighth Amendment requires [jails and prisons] to take
26 adequate steps to curb the spread of disease within the prison system,' defendant here
27 has not met his burden of showing his Eighth Amendment rights are violated such that
28 release, as opposed to some other remedy, is warranted" under the BRA.) (citing

1 Coleman v. Newsom, No. 01-CV-01351-JST, 2020 WL 1675775, at *5 (E.D. Cal. Apr.
2 4, 2020)).

3 The Defendant also argues that his history of asthma and the renewed surge of
4 COVID-19 cases are bases to grant bail under the BRA. The Court is cognizant of the
5 current pandemic surrounding COVID-19. However, “as concerning as the COVID-19
6 pandemic is, resolving an appeal of an order of detention must in the first instance be
7 an individualized assessment of the factors identified by the Bail Reform Act[.]” United
8 States v. Martin, 447 F. Supp. 3d 399, 402 (D. Md. 2020) (Grimm, J.); Diaz-Hernandez,
9 943 F.3d 1196, 1199 (9th Cir. 2019) (“[T]he Bail Reform Act mandates an
10 individualized evaluation guided by the factors articulated in § 3142(g.”); See also
11 United States v. Lee, 451 F. Supp. 3d 1, 10 (D.D.C. 2020) (Jackson, J.) (“[T]he
12 generalized risks posed by the COVID-19 pandemic do not alter the individualized
13 balance of the statutory factors that Congress prescribed for determining the propriety
14 of the defendant’s detention in this particular case[.]”). In light of the wide availability
15 of the COVID-19 vaccines and its proven effectiveness in preventing severe disease,
16 the Court concludes that the Defendant’s history of asthma and the renewed surge of
17 COVID-19 cases, and his concern over contracting COVID-19 are not sufficient bases
18 to grant release on bail or temporary release under the BRA. See United States v. Hall,
19 No. 206CR00310HDMPAL, 2021 WL 1239804, at *2 (D. Nev. Apr. 2, 2021),
20 reconsideration denied, No. 206CR00310HDMPAL, 2021 WL 2211682 (D. Nev. June
21 1, 2021) (McKibben, J.) (“While the vaccines may not offer complete protection against
22 COVID-19 and its many variants, it is believed they protect against the most severe
23 outcomes of a COVID-19 infection and offer significant protections against contracting
24 the virus in the first place.”). Additionally, there is no evidence in the record to suggest
25 that the detention facility where the Defendant is being housed is unable to provide
26 adequate medical care. See United States v. Brown, No. 15-CR-60-A, 2016 WL
27 3546026, at *2 (W.D.N.Y. Apr. 22, 2016) (Arcara, J.) (“[T]he Defendant points to no
28 evidence suggesting that he needs to be released [under the BRA] to receive adequate

1 medical treatment.”).

2 After *de novo* review of the current record before the Court and upon considering
3 the factors set forth under the BRA, the Court finds by a preponderance of the evidence
4 that the Defendant is a flight risk and finds that no condition or combination of
5 conditions will reasonably assure the appearance of the Defendant. Accordingly, the
6 Court DENIES the Defendant’s motion to set bail, DENIES the Defendant’s motion for
7 temporary release, and orders the Defendant detained based on risk of flight.

8 IT IS SO ORDERED.

9 DATED: August 30, 2021


10 HONORABLE MARILYN L. HUFF
11 UNITED STATES DISTRICT JUDGE

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