UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION/

UNITED STATES OF AMERICA,

Plaintiff, Case No. 15-20652

v. Magistrate Judge David R. Grand

KEITHON PORTER,

Defendant.
_____/

ORDER OF DETENTION PENDING TRIAL

After conducting a detention hearing under the Bail Reform Act, 18 U.S.C. § 3142(f), I conclude that these facts require that Defendant be detained pending trial.

Part I – Findings of Fact

A. Eligibility. This case is eligible for a Detention Hearing (18 U.S.C. § 3142(f)), for the reasons checked below in this Part I A:

☒(1) Under 18 U.S.C. § 3142(f)(1), upon the government's motion in a case that involves

☒(a) a crime of violence, a violation of section 1591, or an offense listed in 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**

☒(b) an offense for which the maximum sentence is life imprisonment or death; **or**

☐(c) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46; **or**

☐(d) any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**

☐(e) any felony that is not otherwise a crime of violence but involves:

☐(i) a minor victim, **or**

☐(ii) the possession or use of a firearm or destructive device (as defined in section 921), **or**

☐(iii) any other dangerous weapon, **or**

☐(iv) involves a failure to register under 18 U.S.C. § 2250.

☐(2) Under 18 U.S.C. 3142(f)(2), upon the government's motion or the court's own motion in a case that involves:

☐(a) a serious risk that such person will flee; **or**

☐(b) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

B. Rebuttable Presumption. A rebuttable presumption for detention exists in this case if reasons are checked below in this Part I B.

(1) Defendant on Release Pending Trial (18 U.S.C. § 3142 (e)(2)): A rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of another person or the community arises when:

☐(a) Defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1), and has previously been convicted of a crime listed in 18 U.S.C. § 3142(f)(1), or comparable state or local offense; **and**

☐(b) The offense was committed while Defendant was on release pending trial for a federal, state, or local offense; **and**

☐(c) A period of less than five years has elapsed since:

☐(i) the date of conviction, **or**

☐(ii) Defendant's release from prison.

(2) Probable Cause Findings (18 U.S.C. § 3142(e)(3)): A rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community arises when there is probable cause to believe that Defendant has committed an offense:

☐(a) for which a maximum prison term of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46; **or**

☒(b) under 18 U.S.C. § 924(c) (use of a deadly or dangerous weapon or device in relation to a crime of violence or drug trafficking crime), 18 U.S.C. § 956(a) (conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country), or 18 U.S.C. § 2332b (acts of terrorism transcending national boundaries); **or**

☐(c) listed in 18 U.S.C. § 2332b(g)(5)(B) (federal crimes of terrorism) for which the prison term is 10 or more years; **or**

☐(d) under Chapter 77 of Title 18, United States Code, for which a maximum term of imprisonment of 20 years or more is prescribed (i.e., 18 U.S.C. §§ 1581, 1583, 1584, 1589, and 1594)(slavery); **or**

☐(e) involving a minor victim as listed in 18 U.S.C. § 3142(e)(3)(E).

Part II – Statement of the Reasons for Detention

I find that the testimony and information submitted at the detention hearing establishes:

☐ by clear and convincing evidence that, for the reasons set forth below, there is no condition or combination of conditions which will reasonably assure the safety of the community; **or**

☐ by a preponderance of the evidence that, for the reasons set forth below, there is no condition or combination of conditions which will reasonably assure Defendant's appearance; **or**

☒ both of the above.

Statement of reasons for detention pursuant to 42 U.S.C. § 3142(i):

Keithon Porter is charged in a Fourth Superseding Indictment with fourteen separate charges, including, *inter alia*: Assault with a Dangerous Weapon in Aid of Racketeering in violation of 18 U.S.C. § 1959(a)(3); Use and Carry of a Firearm During and in Relation to a Crime of Violence in violation of 18 U.S.C. § 924(c); Murder in Aid of Racketeering in violation of 18 U.S.C. § 1959(a)(1); Use of Firearm in Furtherance of a Crime of Violence Causing Death in violation of 18 U.S.C. §§ 924(c) and (j); and Attempted Murder in Aid of Racketeering in violation of 18 U.S.C. § 1959(a)(5).

The government moved for Porter's detention, and the Court held a detention hearing on December 28, 2016. At the hearing, the government proffered facts about shootings committed by rival Detroit gangs against each others' members. Although Porter is not alleged to be a member of one of those gangs, he is alleged to be an "associate" of Billy Arnold, who is a member of the 7 Mile Bloods gang. In indicting Porter, the grand jury found probable cause that he was involved in two separate shootings which took place on May 1 and 8, 2015, at least one of which resulted in the victim's death. When Arnold was later arrested, officers recovered an assault rifle, and ballistics reports matched that rifle to the shootings. Other evidence indicated that the May 8, 2015 shooting involved multiple shooters who arrived on the scene in multiple cars, and implicated Porter as one of the shooters. First, the government proffered that witnesses will testify that Porter was one of the shooters. Second, telephone records and cell tower analysis show that Porter was in contact with Arnold both immediately before and after the shooting, and was physically in the vicinity of the shooting at the time of the shooting.

Applicable Standards and Analysis

In general, "[t]he default position of the law . . . is that a defendant should be released pending trial." *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010). Pursuant to "the Bail Reform Act, 18 U.S.C. § 3142 . . . a defendant may be detained pending trial only if a judicial officer '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[.]'" *Id.* (quoting 18 U.S.C. § 3142(e)). However, where probable cause exists that the defendant violated certain laws, including 18 U.S.C. §924(c) (as is alleged here against Porter), 18 U.S.C. § 3142(e)(3)(B), "a rebuttable presumption arises that no condition or combination of conditions can reasonably assure the safety of any other person and the community…" 18 U.S.C. §3142(e)(3). The presumption is not determinative. As the Sixth Circuit explained in *Stone*:

> As our sister circuits have found, section 3142(e)(3)'s presumption in favor of detention imposes only a "burden of production" on the defendant, and the government retains the "burden of persuasion." *See, e.g., United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001); *United States v. Portes*, 786 F.2d 758, 764 (7th Cir. 1985). A defendant satisfies his burden of production when he "com[es] forward with evidence that he does not pose a danger to the community or a risk of flight." *Mercedes*, 254 F.3d at 436. Although a defendant's burden of production "is not heavy," he must introduce at least some evidence. *United States v. Stricklin*, 932 F.2d 1353, 1355 (10th Cir.1991); *see also United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir.1991) ("[A] defendant must introduce some evidence contrary to the presumed fact in order to rebut the presumption.").
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> Even when a defendant satisfies his burden of production, however, "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. The presumption remains as a factor because it is not simply an evidentiary tool designed for the courts. Instead, the presumption reflects Congress's substantive judgment that particular classes of offenders should ordinarily be detained prior to trial. *See United States v. Jessup*, 757 F.2d 378, 384 (1st Cir. 1985), abrogated on other grounds by *United States v. O'Brien*, 895 F.2d 810 (1st Cir. 1990), ("Congress intended magistrates and judges, who typically focus only upon the particular cases before them, to take account of the more general facts that Congress

> found"); *see also United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir.1986) ("[T]he presumption of dangerousness ... represents Congressional findings that certain offenders ... are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions."). To rebut the presumption, therefore, a defendant should "present all the special features of his case" that take it outside "the congressional paradigm [.]" *Jessup*, 757 F.2d at 387.
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> Regardless of whether the presumption applies, the government's ultimate burden is to prove that no conditions of release can assure that the defendant will appear and to assure the safety of the community.

Stone, 608 U.S. at 945-946. "The government must prove risk of flight by a preponderance of the evidence, and it must prove dangerousness to any other person or the community by clear and convincing evidence." *U.S. v. Hinton*, 113 Fed. Appx. 76, 77 (6th Cir. 2004) (citing *U.S. v. Cisneros*, 328 F.3d 610, 616 (10th Cir.2003)); *U.S. v. Ellison*, 2007 WL 106572, at *2 (E.D. Mich., Jan. 8, 2007).

Here, the grand jury found probable cause that Porter committed the crimes for which he is charged. Accordingly, the rebuttable presumption in favor of detention applies here. After having carefully considered the evidence and arguments, the Court finds that Porter did not rebut the presumption, and that even if he had, the government nevertheless satisfied its burden with respect to Porter's dangerousness and risk of nonappearance.

The Court first considers the nature and circumstances of the charges against Porter, including whether they involve certain enumerated offenses, such as firearms, crimes of violence, or narcotics. 18 U.S.C. §3142(g)(1). Here, the charges involve Porter's alleged involvement in a shooting in which one victim died and others were wounded. Thus, this factor clearly favors detention.

The second factor the Court must consider is the weight of the evidence. 18 U.S.C. §3142(g)(2). While "[t]his factor goes to the weight of the evidence of dangerousness, not the

weight of the evidence of the defendant's guilt," *Stone*, 608 F.3d at 948, given the extremely violent nature of the alleged crimes, evidence of Porter's involvement therein clearly speaks to his dangerousness. This factor favors detention. While Porter is presumed innocent, he has been indicted in connection with the two shootings described above, which means that the grand jury found probable cause to believe he is guilty of those offenses. Moreover, as discussed above, the government proffered evidence that puts Porter at the scene of at least the May 8, 2015 shooting, and links him to Arnold – the man who was caught with a weapon that was used in that shooting – during the precise time of that shooting.

The third factor the court must consider – "the history and characteristics of the person" accused – also weighs in favor of detention. 18 U.S.C. §3142(g)(3). While Porter is a lifelong resident of this district, and has family ties here, he has had no employment since 2009. He has a lengthy criminal record, including a conviction for unlawful driving away in 2008, a narcotics-related conviction in 2008, and four narcotics-related convictions within a span of five months in 2015. While Porter received probation for most of these offenses, he continually violated many aspects of his probation, and failed, on multiple times, to appear when charged with probation violations. When he was arrested on the present charges he had an active probation violation warrant for his arrest. Porter's probation officer described his adjustment to probation as "atrocious."

Finally, the court must consider "the nature and seriousness of the danger to any person or the community that would be posed by [Porter's] release." 18 U.S.C. §3142(g)(4). Here again, the nature and circumstances of the instant charges, coupled with Porter's past criminal record and consistent failure to comply with Court-ordered supervision shows him to be a danger to the community. Thus, this factor also favors detention.

In sum, taking all of the foregoing evidence and arguments into account, the Court finds, by clear and convincing evidence, that no condition or combination of conditions of Porter's release can reasonably assure the community's safety. The Court also finds that the government has shown, by a preponderance of the evidence, that no condition or combination of conditions of Porter's release can reasonably assure his appearance in Court; he is facing a possible death sentence, with mandatory minimums on the § 924 charges which alone aggregate to 55 years, and has a track record of failing to appear in Court.

Accordingly, Detention is Ordered.

Part III – Directions Regarding Detention

Defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or held in custody pending appeal. Defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of a United States Court or on request of an attorney for the Government, the person in charge of the corrections facility must deliver Defendant to the United States Marshal for a court appearance.

Review of this Order is governed by 18 U.S.C. § 3145 and E.D. Mich. L.R. 57.2.

Date: December 29, 2016

/s David R. Grand
David R. Grand
United States Magistrate Judge