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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America, Plaintiff, v. Andy Li, Defendant.	CASE NO. CR 14-196 CRB (JCS) **NOTICE OF MOTION AND MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION** **Hearing:** Date: August 22, 2014 Time: 10:30 AM Judge: Hon. Joseph C. Spero

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TO THE GOVERNMENT; AND THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on August 22, 2014 at 10:30 AM in the courtroom of Magistrate Judge Joseph C. Spero, or as soon thereafter as this matter can be heard pursuant to Criminal Local Rule 47-2, defendant Andy Li ("Mr. Li") will move for an order granting the following Motion to Reopen Detention Hearing and Reconsider Detention in the above-captioned case.

This motion is based upon the Bail Reform Act, 18 U.S.C. § 3141 *et seq*. Specifically, Mr. Li asks this Court to reopen his detention hearing and reconsider the order of detention pursuant to 18 U.S.C. § 3142(f), on the grounds that he has discovered new, material information not previously available to him that bears on whether the court can fashion conditions of release that will reasonably assure the safety of the community.

I. INTRODUCTION

On April 8, 2014, this court presided over Mr. Li's detention hearing and ordered him detained pending trial in this matter, finding that the court could not fashion any conditions of release that would reasonably assure the safety of the public. Reporter's Transcript of April 8, 2014 detention hearing, attached hereto as Exhibit A, at 18:23-19:1 ("Tr."). According to the written order of detention, the facts of the instant case – including that Mr. Li "discussed a variety of violent acts with an undercover agent" – and the presence of a shotgun and a ballistic vest at Mr. Li's residence both served as a basis for the order of detention. May 7, 2014 Order of Detention Pending Trial, attached hereto as Exhibit B, at 2 ("Detention Order").

Based on the existence of material information not known to Mr. Li at the time of his detention hearing, he now moves this court pursuant to 18 U.S.C. § 3142(f) to reopen his detention hearing and reconsider the order of detention. First, the shotgun and the ballistic vest did not belong to Mr. Li, nor was he aware of their existence or presence at his residence prior to his detention hearing. After the hearing, Mr. Li ascertained that the shotgun belonged to his landlord, Doug Walker, and that the ballistic vest belonged to his friend, Michael Kim, an employee of the San Francisco Sheriff's Department. The former fact was known to the government during the detention hearing but, inexplicably, never disclosed to the court or Mr. Li. Second, recordings obtained through

discovery after Mr. Li's detention hearing demonstrate that the government cherry-picked inflammatory statements of supposedly "violent acts" to present to the court without providing information about the context or tone of these conversations.

Given that the court cited the shotgun, the ballistic vest, and Mr. Li's discussion of "violent acts" as reasons for detaining Mr. Li, this new information has a material bearing on whether the court can fashion conditions of release that will reasonably assure the safety of the community. Accordingly, Mr. Li respectfully requests that this court reopen his detention hearing and ultimately grant him pretrial release.[1]

II. BACKROUND

Following Mr. Li's initial appearance, the government moved to detain him pending trial as both a flight risk and a danger to the community. Tr. at 2:11-12. On April 8, 2014, the prosecution and Mr. Li submitted arguments in favor and against detention. In arguing for pretrial detention, the government noted Mr. Li's aged prior record, his membership in the Chee Kung Tong organization – even though the government's own affidavit acknowledges that Mr. Li "may no longer be a CKT member" – and the instant charges against Mr. Li, listing multiple examples of Mr. Li merely discussing, but not engaging in, various acts. *See generally* Tr. at 2-9. The government's affidavit in support of the complaint in this matter did not include allegations related to the majority of the discussions cited by the government at Mr. Li's detention hearing, and thus, Mr. Li and defense counsel had no prior knowledge of these supposed discussions. Finally, the government cited their recovery of a 12-gauge shotgun from Mr. Li's residence and a ballistic vest from his wife's vehicle as evidence of Mr. Li's dangerousness. *Id.* at 9:3-6. The government did not make any arguments regarding Mr. Li's supposed flight risk.

The defense argued that Mr. Li had turned his life around since his last conviction 13 years ago, so much so that his former parole officer wrote a letter for him in support of a job application.

[1] Due to the extensive volume of discovery in this case, the defense has not had the opportunity to review all documents and recordings produced by the government. The defense therefore reserves the right to bring additional evidence relevant to Mr. Li's pretrial release to the court's attention at a later date.

Id. at 15:17-16:6. We stated that Mr. Li owns a hair salon with his wife and worked as a bouncer in the Bay Area. *Id*. at 11:9-13. We explained that prior to these pursuits, Mr. Li had worked as a youth counselor for at-risk youth through the Community Youth Center in San Francisco and ran a licensed florist business. *Id*. at 11:14-18. We noted that, according to the Pretrial Services Report, Mr. Li previously had been granted pretrial release at least three times, and had always appeared in court. *Id*. at 11:19-24. We explained that the government has not charged Mr. Li with any crimes of violence, and that the colorful discussions cited by the government amounted to simply "loose talk" that did not culminate in any action. *Id*. at 12:15-17; 14:4-15. Moreover, the defense noted that it was not aware of these conversations prior to the detention hearing, nor did it know anything about the context of these discussions. *Id.* The defense also observed that the government allowed Mr. Li to live freely for years after these supposed discussions took place, contradicting the government's current position that Mr. Li poses a threat to the community. *Id*. at 14:16-18. Finally, we pointed out that even the government acknowledges that Mr. Li is not affiliated with the Chee Kung Tong organization, and that the government or the court had agreed to the release of other similarly situated defendants in this matter. *Id*. at 14:19-15:16.

As to his risk of flight, the defense noted that Pretrial Services found that Mr. Li presented a low risk of flight, and that the court could set conditions to mitigate any risk. *Id*. at 10:5-8. We explained that Mr. Li has lived in California for 36 years, and has significant family ties to the Bay Area, acting as the primary caretaker for his two minor children and his elderly, ailing father. *Id*. at 10:16-11:6. The defense also introduced four individuals that were willing to act as sureties for Mr. Li. *Id*. at 11:25-12:14.

After hearing the arguments, the court ordered detention of Mr. Li, stating that it had found by clear and convincing evidence that no combination of release conditions could reasonably assure the safety of the community. *Id*. at 17:22-18:2. The court noted that Mr. Li's possession of a shotgun and a ballistic vest when arrested was "of particular concern to the court" in making the detention determination. *Id*. at 18:12-14. It also predicated its decision on the instant charges of the case and the testimony of the undercover agents. *Id*. at 18:15-19:1. While the court noted Mr. Li's prior record, it acknowledged that "the last event occurred in 2001[.]" *Id*. at 18:4-5. The court entered the written

order of detention on May 7, 2014. *See* Exhibit B. The written order notes that "the court considers the facts of the instant case to be the least important factor in its determination regarding detention." Detention Order at 2. Similarly, although the written order mentions Mr. Li's prior record, it acknowledges that this history is "somewhat old," and therefore presumably less relevant. *Id.* Thus, the court's detention order rested largely on Mr. Li's supposed possession of a shotgun and a ballistic vest, and his discussions with undercover agents.

III. ARGUMENT

A. This Court Should Reopen Mr. Li's Detention Hearing Based on the Existence of Material Information Not Known to Him at the Time of the Hearing.

The court may reopen a detention hearing if it finds that information exists that was not known to the movant at the time of the hearing, and that such information has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of other persons and the community. 18 U.S.C. § 3142(f). Here, information relating to Mr. Li's supposed possession of a shotgun and a ballistic vest and information relating to his discussions with undercover agents was not known to him at the time of his original hearing. This information is material because the court cited Mr. Li's supposed possession of a shotgun and ballistic vest and his discussion of "violent acts" with undercover agents as reasons for detaining him. Furthermore, this information tends to prove that he does not pose a risk of danger to the community, and thus, that the court should release him pending trial in this matter.

At the time of his original hearing, Mr. Li did not know that agents had found a shotgun at his residence or a ballistic vest in his wife's vehicle, as neither of these items belonged to him. He has since learned that the shotgun belonged to his landlord, Doug Walker (Pastora Decl., attached hereto as Exhibit C, ¶ 6; Li Decl., attached hereto as Exhibit D, ¶ 11)—a fact known to the government at the time of hearing but never disclosed—and that the ballistic vest belonged to Officer Michael Kim of the San Francisco Sheriff's Department. Kim Decl., attached hereto as Exhibit E, ¶ 4-8.

Similarly, when his detention hearing took place, Mr. Li lacked knowledge of the specific conversations in which he allegedly discussed "violent acts," as well as the specific comments he or others allegedly made. This information was not available until the government's May 12, 2014

production of discovery, which revealed that the government did not provide context for many of Mr. Li's comments. All of this information is new and material. Accordingly, the court should reopen Mr. Li's detention hearing and find that the government has not presented clear and convincing evidence warranting the pretrial detention of Mr. Li as a danger to the community.

1. The Shotgun Found in Mr. Li's Residence Did Not Belong to Him, Nor Was He Aware That it Existed.

At the time of his arrest, Mr. Li resided at [redacted] in a home that he rented from an individual named Doug Walker. Li Decl. ¶ 1. Mr. Li did not know that there was a shotgun at this residence until the government introduced this information as evidence of Mr. Li's dangerousness at his initial detention hearing. Pastora Decl. ¶ 3. Although the agents who searched Mr. Li's home left a Receipt for Property Seized ("Receipt"), the Receipt was and is illegible, rendering it impossible to discern what the agents seized from the residence and insufficient to notify Mr. Li that they had found a shotgun. Pastora Decl. ¶ 4, Ex. 1. The agents arrested Mr. Li and took him away at the beginning of the search. Li Decl. ¶ 7. His wife, Mimi Li, left the home during the search because the agents did not allow her to move about the premises freely. Li Decl. ¶ 5. The agents left the illegible Receipt on the Li's coffee table. Li Decl. ¶ 8. After the hearing, Mr. Li learned that the shotgun uncovered by the agents belonged to his landlord and owner of the home, Mr. Walker.

The Li's moved into their rented residence in South San Francisco in November 2013. Li Decl. ¶ 1. In January 2014, Mr. Walker informed the Li's that he would be storing some of his personal belongings – previously left in the garage of the residence – in a small crawl space beneath the home. Li Decl. ¶ 3. The Li's did not object, and never entered the crawl space while they resided in the home. Li Decl. ¶ 3-4. Therefore, they did not know that Mr. Walker had stored a shotgun in the crawl space. Li Decl. ¶ 10.

Just prior to Mr. Li's detention hearing, Mr. Walker called Ms. Li to inform her that he had spoken to the FBI to request the return of his shotgun. Li Decl. ¶ 9-11. He said that the FBI had called him to notify him of the search of the property. Li Decl. ¶ 11. Prior to that telephone call, as previously explained, Ms. Li had no knowledge that Mr. Walker had stored a shotgun at the residence

he rented to the Li's. Li Decl. ¶ 10. Ms. Li was not able to relay this information from Mr. Walker to defense counsel or her husband prior to his detention hearing. Li Decl. ¶ 12.

On April 22, 2014, defense counsel called Mr. Walker to procure an affidavit confirming that he owned the shotgun seized from the property he owned and rented to the Li's. Pastora Decl. ¶ 5. Mr. Walker informed defense counsel that the seized shotgun was an antique that belonged to his uncle. Pastora Decl. ¶ 6. He further informed defense counsel that he had notified the FBI twice already that the antique shotgun belonged to his uncle and not to Mr. Li. Pastora Decl. ¶ 7. He then stated that he would not sign an affidavit attesting to his uncle's ownership of the shotgun because he had spoken to the FBI again, and an agent had told him not to sign anything related to the shotgun. Pastora Decl. ¶ 7. Although the government knew prior to Mr. Li's detention hearing that the shotgun seized from his rented home did not belong to him, it nevertheless argued that the court should detain Mr. Li as a danger to the community based on the recovery of the shotgun. Moreover, the court relied on the recovery of the shotgun in finding that clear and convincing evidence existed that no combination of conditions could ensure the safety of the community if it released Mr. Li pending trial. In fact, the court noted that Mr. Li's possession of a shotgun was of "particular concern" in making the detention determination. Tr. at 18:12-14. And although it is troubling that the government relied on the shotgun as a basis for detention despite its knowledge that the shotgun did not belong to Mr. Li, even more concerning is the apparent attempt by the government to prevent Mr. Walker from claiming ownership of the shotgun. Given that Mr. Li did not, in fact, possess a shotgun and had no knowledge prior to his detention hearing that the government had recovered a shotgun that his landlord stored on the premises – unbeknownst to him – the existence of the shotgun cannot support a finding that Mr. Li is a danger to the community. Thus, Mr. Li requests that this court reopen his detention hearing and reconsider the order of detention.

2. The Ballistic Vest Agents Recovered Did Not Belong to Mr. Li, and He Had No Knowledge That the Vest Was in His Wife's Vehicle.

Similarly, Mr. Li did not know that agents had recovered a ballistic vest from his wife's vehicle until the government introduced this information at his detention hearing. He did not learn the circumstances surrounding his wife's possession of the ballistic vest until after his original detention

hearing. Because the court also noted Mr. Li's possession of a ballistic vest as a "particular concern" in deciding to detain him, this new information is material and warrants a reopening of the detention hearing.

As the government noted at the hearing, agents found the ballistic vest in Ms. Li's vehicle. Tr. at 9:5-7. The ballistic vest did not belong to Ms. Li, but rather to Michael Kim, a friend of the Li's who is employed by the San Francisco Sheriff's Department. Kim Decl. ¶ 1, 9. The vest was provided by that agency to Mr. Kim in connection with his employment. Kim Decl. ¶ 2. On February 2, 2014, Mr. Kim's wife had an appointment at Ms. Li's hair salon, and Mr. Kim left his government-issued ballistic vest with his wife, with the intention that she would bring it home for him. Kim Decl. ¶ 3-5. However, Mr. Kim's wife forgot the vest at the salon. Kim Decl. ¶ 6. Rather than leave the vest unattended at the salon, Ms. Li placed it in her car, intending to return it to Mr. Kim. Kim Decl. ¶ 7; Li Decl. ¶ 18. However, she did not have an opportunity to return the vest to Mr. Kim prior to Mr. Li's arrest and the search of their residence. Kim Decl. ¶ 8; Li Decl. ¶ 19. Ms. Li never took the ballistic vest out of her vehicle prior to the search. Li Decl. ¶ 20. Mr. Li did not learn that Mr. Kim had left his validly-issued vest at his wife's salon – and that his wife subsequently placed it in her vehicle – until after his detention hearing. It is also worth noting that in executing the search of Ms. Li's vehicle, the agents left behind one of their gun clips. Li Decl. ¶ 21. Thus, law enforcement has on at least two occasions caused Ms. Li to store law enforcement property in her vehicle until she was able to return it. Li Decl. ¶ 22-23.

Because the government relied on Mr. Li's possession of a ballistic vest in arguing for his detention, this information demonstrating that Mr. Li did not possess a ballistic vest is material to the issue of whether conditions of release exist that will reasonably assure the safety of the community. At the time of his detention hearing, Mr. Li did not know that agents had recovered a ballistic vest from his wife's vehicle, nor did he know who owned the vest. This information supports a finding that Mr. Li does not pose a risk of danger to the community. Thus, the court should reopen Mr. Li's detention hearing and revoke his order of detention.

3. The Government Provided No Context for Mr. Li's Discussion of "Violent Acts."

Putting aside the fact that the government pointed only to *discussions* – and not *acts* of violence – in an attempt to paint Mr. Li as a dangerous person, and that Mr. Li had no knowledge of allegations related to these discussions prior to his detention hearing, a review of recordings from the government's May 12, 2014 production demonstrates that in many instances, the government took Mr. Li's allegedly "violent" statements out of context. The government based the information it presented at Mr. Li's detention hearing mainly on an undercover agent's summary of a lengthy, raucous dinner party attended by undercover agents, Mr. Li, and many others. Powell Decl., attached hereto as Exhibit F, ¶ 3, Ex. 1. After the dinner party, Mr. Li, the undercover agents, and others continued the revelry at a hotel bar. The government further relied on summaries of five shorter conversations between undercover agents, Mr. Li, and others that also took place in social environments, either at nightclubs or restaurants. The recordings of these conversations, not available to Mr. Li until May 16, 2014, demonstrate that most of Mr. Li's comments were merely tough talk or exaggerated tales from his younger days incited by the undercover agents' sharing stories of a similar nature. In general, the tone of these crowded dinners and nights out was festive and dominated by laughter. The recorded participants regaled each other with stories of past ordeals and triumphs, attempting to "one-up" each other with descriptions of their outlandish (and exaggerated) feats. It was in this context and in these environments that Mr. Li made supposedly "violent" comments to the undercover agents and others. In fact, Mr. Li and others explicitly state on various occasions that the supposed "violent" talk amounted to no more than a trading of stories. For example, in the segment of the recordings where Mr. Li is allegedly discussing different ways to "inflict pain," the conversation participants laugh repeatedly, indicating that this was not a serious discussion. Someone mentions that they are "trad[ing] stories," in a lighthearted tone, and other individuals state, "Oh, to be young again," and "[w]e're gonna be doing this all night" while breaking out in laughter, referring to the facetious musings. Someone later acknowledges outright, "No, we're just talking… stories," and later, "we're just trading stories… just stories." *See* 1D233.20130329.1810 (1 of 2) at 03:03:00 to 03:07:00. Similarly, regarding the government's claim that Mr. Li "discussed the best holidays on which . . . you could kill someone," citing Halloween, the 4th of July, or Christmas (Tr. at 8:20-25),

the recordings clearly indicate that Mr. Li made these statements as jokes, with other conversation participants laughing, contributed their own ideas, and repeating Mr. Li's jokes amongst themselves. 1D233.20130329.1810 (2 of 2) at 00:25:40. Thus, the government mischaracterized Mr. Li's statements and took them out of context in an attempt to convince the court that Mr. Li uttered these statements seriously.

Perhaps the most telling indication that Mr. Li made these statements in jest is the fact that they remained merely statements. Although the government recorded conversations with Mr. Li for more than two years, he never followed up these statements with any action. The government has not charged him with any crimes related to these colorful conversations. Indeed, the undercover agent appears never to have solicited Mr. Li in any proposed violent crime, in contrast to some of Mr. Li's codefendants, most likely because the undercover realized that such an attempt was not a fruitful investigatory avenue. While Mr. Li's comments may reflect a vivid imagination and a dark sense of humor, these traits are quite common and do not amount to criminal or dangerous conduct. Mere statements, made in jest, are not chargeable offenses and do not demonstrate that Mr. Li is a danger to the community. In fact, the government effectively conceded that these comments did not warrant detention and that they did not believe Mr. Li intended to act on these statements by allowing Mr. Li to roam free for one to two years after uttering these statements. Thus, when placed in context through the recorded evidence, Mr. Li's discussions of "violent acts" followed by no action do not support a finding that Mr. Li is a danger to the community.

The government also claimed that Mr. Li "discussed doing collections through use of physical harm and intimidation…. indicat[ing] he did that with Mr. Chanthavong, and that they would use a good guy/bad guy routine, and when Li gave a signal, Chanthavong would slap the person." Tr. at 7:10-15. However, the recording that corresponds to this conversation undermines this claim. First, it is barely audible and does not serve to confirm Mr. Li's supposed statements. Second, to the extent that it is audible, Mr. Li offers to help the undercover agent retrieve money owed to him, advising the undercover agent, "You've just gotta be nice." 1D207.20130123.1335 at 01:13:43. The undercover agent asks, "I assume you're the good guy?" Mr. Li replies, "Yeah. I'm good at negotiating." *Id.* There is no audible mention whatsoever of Mr. Li committing physical harm or using intimidation. In

fact, the opposite is true. He talks about being nice and negotiating. And again, Mr. Li did not follow up the offer to collect with any action.

Finally, the government claimed that James Pau "informed the UCEs that Mr. Li's number within the Triad was 426, which identifies him as a fighter," and "Pau advised that he – Pau – would be responsible for making a call when it came to killing someone; and Li would be responsible for physically carrying out the act of violence." Tr. at 6:14-20. However, the audio recording corresponding to this conversation again belies this claim. The recording reflects a conversation between the undercover agent and James Pau, who resides 3,000 miles away from Mr. Li and speaks English poorly. In the section of the recording pertaining to Mr. Li, the undercover agent encourages Pau to discuss Mr. Li and supplies all of the relevant words. Pau says, "Andy is old school," to which the undercover agent replies, "He's old school Hop Sing Tong." 1D726.20130718.1300 at 00:20:02. Pau says, "No matter how good Andy dresses, he still looks like a--" The undercover agent interjects, "A thug." Pau says, "I'm the one that make phone call, he's the one that go --" The undercover agent interjects, "right, do it," and laughs. Pau only describes Andy as a lieutenant after the undercover states, "You need to bring Andy out when you really need some work done, because he's a good soldier, man." Although Pau claims that Mr. Li's number is 426, he does not describe any acts of violence committed by Mr. Li, or state that the number 426 identified him as a fighter.

Leaving aside the fact that this is a third-party discussion of Mr. Li, Mr. Li did not commit any acts in more than two years of monitoring by the undercover agents that would support the statements that the undercover agents encouraged Mr. Pau to make. Similarly, while the government alleges that Mr. Li was an "enforcer" for the Chee Kung Tong, the government has not alleged that Mr. Li engaged in any violence in that supposed role. Unsupported statements about Mr. Li's past reputation or supposed role in an organization he does not belong to cannot form the basis of a finding that Mr. Li poses a risk of danger to the community.

B. <u>This Court Should Release Mr. Li Because He Is Not A Danger To The Community</u>

The new, material information described in Section A *supra*, along with evidence presented at Mr. Li's original detention hearing, demonstrates that Mr. Li does not present a danger to the community. Thus, he should be released from detention pending trial.

In determining whether to detain a defendant before trial, a judicial officer must consider (1) the nature and circumstances of the offenses charged (including whether the offense is a crime of violence or involves sex trafficking, terrorism, a minor victim, a controlled substance, or a firearm); (2) the weight of the evidence against the defendant; (3) the defendant's history and characteristics; and (4) the nature and seriousness of the danger to other persons or the community posed by release. 18 U.S.C. § 3142(g). Although Mr. Li's case involves a presumption in favor of detention, "the ultimate burden of persuasion rests upon the government." Detention Order at 2. In order to rebut the detention presumption, Mr. Li "need only produce some credible evidence forming a basis for his contention that he will appear and not pose a threat to the community[.]" *United States v. Chen*, 820 F. Supp. 1205, 1207 (N.D. Cal. 1992).

A court may not order a defendant detained as a danger to the community unless the prosecution proves by clear and convincing evidence that no combination of conditions will reasonably assure the safety of others and the community. *United States v. Salerno*, 481 U.S. 739, 739 (1987). In assessing a defendant's dangerousness, the offenses with which he is charged and the weight of the evidence against him are less important than the other 18 U.S.C. § 3142(g) factors because the statute "neither requires nor permits a pretrial determination that the person is guilty." *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985). In determining whether a defendant's criminal history weighs in favor of detention, the Northern District of California considers a recent criminal history more indicative of dangerousness than a dated history. *See, e.g.*, *United States v. Ramos*, 2012 WL 5897415 at *3 (N.D. Cal. Nov. 20, 2012).

In assessing the nature and seriousness of danger to others or the community posed by release, courts consider whether a defendant actually, as opposed to theoretically, poses a danger. *See, e.g.*, *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991). Courts inquire into defendant's demonstrated proclivity to commit violent acts, as well as possession of weapons. However, if it is "unclear that [defendant] was aware of [the] presence" of firearms, their presence does not establish a defendant's danger to the community. *See, e.g., United States v. Adams*, 794 F. Supp. 2d 989, 993 (S.D. Iowa 2011).

Here, the proffer made at Mr. Li's detention hearing and the new information that has since come to light credibly rebut the presumption in favor of detention. Faced with this new information, the government cannot prove by clear and convincing evidence that Mr. Li poses a danger to the community, as the Northern District of California and other courts have interpreted that legal standard.

According to this court, "the Court considers the facts of the instant case to be the least important factor in its determination regarding detention." Detention Order at 2. Even if the court were concerned with the facts of the instant case, these facts do not demonstrate Mr. Li's dangerousness. The government has not charged Mr. Li with any crimes of violence. *See* 18 U.S.C. § 16 (defining "crime of violence" as an offense involving physical force or a felony involving substantial risk of physical force); *see also United States v. Scott*, 642 F.3d 791, 801 (9th Cir. 2011) (violation of RICO is only a crime of violence if underlying predicate offense is a crime of violence); *Downey v. Crabtree*, 100 F.3d 662, 668 (9th Cir. 1996) (violation of 21 U.S.C. § 841(a)(1) – an offense with which Mr. Li is charged as well as the offense underlying his conspiracy charge – is not a violent offense); *United States v. Cantu*, 12 F.3d 1506, 1513 (9th Cir. 1993) (felon's possession of a firearm is not a crime of violence).

Although Mr. Li is charged with conspiring to violate 21 USC § 841(a)(1), an offense involving a controlled substance, the nature and circumstances of this alleged violation do not indicate dangerousness warranting pretrial detention. The Northern District of California recently considered the detention of a defendant with charges similar to those of Mr. Li and found that, although the defendant did not qualify for release on his own recognizance, the government could not meet its burden to prove that no conditions existed that would reasonably assure his appearance and the community's safety. *United States v. Bright*, 2009 WL 111687 at *2 (N.D. Cal. Jan. 15, 2009). After finding that defendant did not pose a flight risk, the Court stated, "With regards to [defendant's] danger risk, the government has seized his weapons, his body armor, and his narcotics. While he may have more elsewhere, if he leaves the halfway house, he will forfeit his bond, a condition he appears unlikely to trigger. Further, in the halfway house, he will be unable to sell marijuana, negating the only danger risk his release would otherwise pose to the community." *Id.* Here too, the government

has seized all offending articles from Mr. Li's home, eliminating any risk of danger his release might pose. As in *Bright*, the government has failed to prove that no combination of conditions exist that will ensure the safety of the community. As such, Mr. Li's narcotics charges are insufficient to justify his pretrial detention.

Similarly, although Mr. Li is charged with possessing firearms as a felon and dealing firearms without a license, the nature and circumstances of these alleged offenses do not suggest that Mr. Li is a danger to the community. Mr. Li is charged with possessing and dealing two firearms: a .40 Ruger and a .357 Magnum, which, by an undercover agent's own admission, was in fact sold to the agent by co-defendant Kongphet Chanthavong. Powell Decl. ¶ 4, Ex. 2. Unlike co-defendant Brandon Jackson, who allegedly trafficked "assault weapons, automatic weapons, stolen weapons, weapons with scratched-off serial numbers, large quantities of ammunition, high capacity magazines, and ballistic vests," July 23, 2014 Order Denying Motion to Revoke Detention Order, attached hereto as Exhibit G, at 3, the firearm offenses with which Mr. Li is charged are limited in quantity and scope.

In addition, Mr. Li's criminal history is very dated. He has not been convicted of a crime in over 13 years. Even this court, when it ordered Mr. Li's detention, acknowledged that his criminal history is "somewhat old." Detention Order at 2. Since that time, Mr. Li has turned his life around and matured into a family man who cares for his two children and ailing father. He co-owns a San Francisco hair salon with his wife, and he has worked as a security guard at the same nightclub in the Bay Area for the past two years. Recently, he returned to school to receive a high-school diploma and complete a formal training course to receive his security-guard license. Prior to his current employment, Mr. Li worked as a youth counselor for the Community Youth Center in San Francisco, where he spoke to young people about the dangers of gang activities. In fact, Mr. Li has demonstrated such strength of character over the last decade that his parole officer wrote him a letter in January of this year in support of his search for additional employment. Powell Decl. ¶ 5, Ex. 3. Similarly, many members of Mr. Li's community can attest to his reformation and have written letters in support of his release. Powell Decl. ¶ 6, Ex. 4. Mr. Li's dated criminal history is insufficient to meet the government's burden of proof regarding detention, and Mr. Li's character weighs in favor of his release.

Furthermore, there is no evidence that Mr. Li poses an actual, rather than a theoretical, danger to others or the community. Although this court noted in its detention order that "individuals reported that Li was an 'enforcer' for the Chee Kung Tong," the government itself acknowledges in the affidavit supporting its complaint that Mr. Li has since had a falling out with Mr. Chow and is very likely no longer part of the Chee Kung Tong organization. Thus, any potential danger Mr. Li posed due to an alleged affiliation with that organization has been eliminated. Moreover, Mr. Li's recent history demonstrates that he has gone so far as to relocate his family in an active effort to avoid violence. Mr. Li resided in Los Angeles when this investigation began because he had received a death threat and preferred to escape the situation rather than resort to violence or enlist anyone associated with a tong to engage in violence on his behalf. Further, as described in detail above, Mr. Li's conversations with undercover agents and third-party discussions regarding violent acts were taken out of context, and, more importantly, remained hypothetical. None of these discussions ever moved beyond the realm of the theoretical. Finally, because it is now clear that Mr. Li was not aware of the presence of the shotgun and ballistic vest at his residence, and that those items did not belong to him, the government's discovery of these items does not indicate that Mr. Li is a danger to the community. *See Adams*, 794 F. Supp. 2d at 993. Because – in light of the new information described herein – the government cannot meet its burden of proof to show that Mr. Li is a danger to the community, this court should reopen the detention hearing and order his release pursuant to 18 U.S.C. § 3142(c). If released, Mr. Li is amenable to complying with any combination of conditions this court deems necessary to reasonably ensure the safety of the community. Moreover, as the defense proffered at Mr. Li's detention hearing, his brother, Richard Li, is willing to act as a surety and secure a bond with his home, worth an estimated $600,000. Tr. at 12:5-9.

IV. CONCLUSION

Because newly discovered information demonstrates that defendant does not pose a risk of danger to other persons and the community, defendant respectfully requests that this court reopen his detention hearing and ultimately grant him pretrial release.

Dated: August 6, 2014

WINSTON Y. CHAN
VANESSA A. PASTORA
JOANNA L. POWELL
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By: */s/ Vanessa A. Pastora*

Attorneys for Andy Li

Pages 1 - 19

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Joseph C. Spero, Magistrate Judge

UNITED STATES OF AMERICA, Plaintiff, vs. ANDY M. LI, Defendant.	NO. CR. 14-00196-12 CRB (JCS) San Francisco, California Tuesday, April 8, 2014 10:43 a.m.

TRANSCRIPT OF PROCEEDINGS

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Reported By: Lydia Zinn, CSR No. 9223, Official Reporter

THE COURT: Mr. Li. The Li bail matter.

MR. CHAN: Your Honor, we owe the Court a financial affidavit. I'll have my client sign it now.

THE COURT: Please go ahead.

(Discussion off the record.)

(Whereupon a document was tendered to the Court.)

THE COURT: All right. I'll confirm the appointment.

All right. This is a contested detention hearing. I'll hear from the United States.

MR. FRENTZEN: Thank you, Your Honor.

The Government is moving to detain Mr. Li as both a risk of flight, and a danger to the community. We would note his Criminal History, which includes a misdemeanor related to arson, and a felony conviction for accessory that relates to a robbery, and a federal conviction for theft from interstate shipments.

We would also note that he has at least one bench warrant issued; violations of parole that were listed that, on federal supervision, he violated on a number of occasions, and that he was apparently detained in connection with those offenses, which was the theft from interstate shipment, and thus at that time, at least, was deemed to be someone who should be detained.

THE COURT: So I don't -- do you have any more information on that? The way I read the record, it looked like

while he was on Supervised Release after he was released from a federal prison on the underlying felony theft in interstate shipments, he violated his supervision and was sentenced to 12 months for another charge of felony theft from interstate shipments, or was there some other conduct that gave rise to the 12 months, other than a new felony theft of interstate shipments?

MR. FRENTZEN: Your Honor, I actually don't know.

THE COURT: Okay. Well, maybe I'll ask the defense whether they know.

MS. PEREZ: We have no further information, Your Honor.

THE COURT: Okay. Go ahead.

MR. FRENTZEN: So in this particular case -- excuse me, Your Honor. This is a presumption case, based on the charges against Mr. Li.

I don't know that we have time to get into the nitty-gritty on all of the offenses and how they were committed, but I'm happy to answer any specific questions from the Court; but basically we have a situation where an interaction with the undercover through an introduction through the Chee Kung Tong, which Mr. Li is a member of, and is a somewhat -- considered to be a somewhat high-ranking member of -- and I'll get into a little bit of that in a little bit. He met the undercover, and they together engaged in a number of criminal activities to

include Mr. Li providing a ballistic vest to the undercover; providing firearms to the undercover, despite the fact that he was a convicted felon and unlicensed to deal in firearms. Mr. Li sold marijuana, and discussed having a much, much larger narcotics-trafficking organization, if you will.

And it eventually culminated in Mr. Li employing the undercover to assist in getting cash back from the East Coast; cash generated as a result of narcotics sales -- from the East Coast back to the West Coast. And in that regard they were collectively, as an organization -- Mr. Li's drug-trafficking enterprise, if you will -- they were laundering sums of well over a hundred thousand dollars at least monthly through the undercover. And so that's -- that's the basics of the charges against Mr. Li.

THE COURT: Can you point to me where it says that he provided --

I know there was discussion of a ballistic vest.

-- where he actually provided a ballistic vest?

MR. FRENTZEN: Your Honor, I'd have to -- I'll have to turn back. If the Court's asking about it in the -- in the Complaint --

THE COURT: Yeah, I'll --

MR. FRENTZEN: Perhaps I misspoke, but I don't think so.

THE COURT: I'm looking at your colleagues. I

thought that at page 52 --

MR. FRENTZEN: Yeah.

THE COURT: -- there was a discussion about getting a ballistic vest; but I didn't -- maybe I missed it.

MR. FRENTZEN: And we may have left it out, Your Honor, because it's not an actual affirmative charge in either the Complaint or the Indictment.

THE COURT: You left something out of this? I can't believe. It's 137 pages.

MR. FRENTZEN: Your Honor --

THE COURT: It's hard to believe.

MR. FRENTZEN: Your Honor, I hate to tell you and everyone here, but we left a lot of stuff out.

THE COURT: Well, it's, I'm sure --

MR. FRENTZEN: And so I'll take a look for that --

THE COURT: Yeah.

MR. FRENTZEN: -- in a moment.

THE COURT: Okay.

MR. FRENTZEN: And then if I could, just in terms of Mr. Li's history, character, and his danger to the community, I have some additional items that I wanted to highlight.

THE COURT: Mm-hm.

MR. FRENTZEN: Mr. Li was pointed out as an individual who was high in the Chee Kung Tong, as I had indicated, both by himself and by others within the

organization.

Mr. Chanthavong, who is also charged and has been detained, explained that Mr. Li was higher in the organization than Chanthavong; and even though Chow is Chanthavong and Li's boss, Chow treated them like brothers.

Another individual in the case, James Pau, commented to the undercovers that it was mostly Chanthavong and Nieh -- George Nieh -- who looked out for Chow's safety. Pau surmised that Li was "old school," and couldn't show his face publicly because he was a well-known gangster.

The undercover asked if Li was the person to call if someone needed to be hurt or killed.

And Pau said that Li was a lieutenant; had his own flag within the Triad organization. Pau informed the UCEs that Mr. Li's number within the Triad was 426, which identifies him as a fighter. Pau made a hand gesture shaped like a gun, using his thumb and index finger. Pau advised that he -- Pau -- would be responsible for making a call when it came to killing someone; and Li would be responsible for physically carrying out the act of violence. According to Pau, Li was a soldier.

Li, himself, commented to the undercover that he had come back to the San Francisco Bay Area from southern California to help Chow take care of his problems with a certain individual; that Li was going to pretend that he had a falling out with Chow, and try to get next to Chow's enemy. Li explained he

will get rid of all of the bugs, and said he's looking to fuck some idiot up. Bugs. You have to get rid of the bugs.

Li also had commented -- and I bring this up as an area of concern -- that he was -- had access to human growth hormone; that he was going to try to supply it to Chow, and start working out with Chow.

Li commented on a number of different occasions to the undercover about crimes of violence he either had committed or was considering committing, including considering strangling someone over some money. He discussed doing collections through use of physical harm and intimidation. He offered that service to the undercover for 50 percent of the profits; indicated he did that with Mr. Chanthavong, and that they would use a good guy/bad guy routine, and when Li gave a signal, Chanthavong would slap the person.

Mr. Li --

I'm sorry. One moment, Your Honor.

-- had commented that when it came to the Chee Kung Tong, half of the members were gang members and the other half were politicians, and the only people that Li trusted were Chow and Chanthavong. He had told another member of the CKT that he loved him, but he wouldn't hesitate to beat the fuck out of him.

He discussed a man in Los Angeles who stepped in front of his car; and he claimed he intentionally ran the man over with

his car and drove off, because he thought the individual was challenging him by stepping into the street.

He was apparently made head enforcer for the Chee Kung Tong.

At one point, he discussed with the undercover different ways to inflict pain on people who crossed him. He talked about injecting people with tranquilizers. He talked about Super Gluing his victim's penis shut, and force feeding him water. He talked about taking electrodes from a stun gun, placing them up someone's nose, and pulling the trigger.

He said when he gets crossed by someone, he would come up with several ways to retaliate. He would take his time to seek retribution, and said, "Not today. Not tomorrow. Not this year. Three years from now," and that he wouldn't be swayed by time.

He discussed with the undercover a shooting that took place at an unknown nightclub, and indicated that when the -- that an altercation took place. Li shot someone with a .45 in the buttocks, and thought that that individual had survived.

He discussed the best holidays on which you should -- you could kill someone being Halloween or the 4th of July, because you could wear a mask, or because there would be a lot of noise, and gunshots would be misinterpreted as fireworks on the 4th. And Christmas was opportune because people would likely be home on Christmas, and easy to find.

He also discussed that, before dealing drugs, his primary illegal activity to make money was loan-sharking.

And, Your Honor, let me just conclude with when the search was conducted on March 26th of 2014 in Mr. Li's residence, we recovered a 12-gauge shotgun. A ballistic vest was found in a vehicle which I understand to be his wife's vehicle. And -- I'm going now back into the residence. Sorry. My apologies -- 87 marijuana plants.

And unless the Court has other questions -- and I will try to sort out that last little piece for the Court.

THE COURT: Okay.

MR. FRENTZEN: And it may just be that we omitted it, but I will -- let me let me say that I'll withdraw it if it means anything to the Court and if I find it in the interim, I will let the Court know.

THE COURT: All right. Thank you.

MR. FRENTZEN: Thank you.

THE COURT: Let me hear from the defendant.

MS. PEREZ: Your Honor, the Government has not shown that Mr. Li is a flight risk or a danger to the community. And it's certainly not met any sort of standard to establish a presumption of detention.

A lot of the things that the Government just spoke about are not alleged in the Complaint. We have not had an opportunity to discuss them with our client, but the thing --

there were a lot of allegations about things our client may or may not have said. We're not aware of what context he may have said them in, or whether the agent, in fact, coaxed these sorts of discussions out of our client.

Getting back to the flight risk, our client -- Pretrial Services acknowledges that Mr. Li presents a low risk of flight, and, in fact, believes that his flight risk can be mitigated with certain conditions. Mr. Li is a lifelong resident of California. He has been here for 38 years, since immigrating from Macao at the age of three. He's been in the Bay Area for 36 years, and is a U.S. citizen. He's not a citizen of any other country. And he's surrendered his passport to the Government. He has not traveled outside of the U.S. in 22 years, and has no relationship with family or friends abroad.

Mr. Li also has significant family ties in the Bay Area. He has a wife of seven years, and two minor children: A five-year-old daughter, and a 15-year-old son. He's the primary caretaker for both of those children. He takes care of them, makes sure that they get to school, picks them up and drops them off.

Mr. Li also has an ailing father who's 79 years old. He was just released from four months in the hospital for complications related to pneumonia. Mr. Li has planned on becoming his father's full-time caretaker. Of course, he's not

able to do that while he's in detention. There's no one else available to care for his ailing father, as Mr. Li's brother works full time, and his wife is not able to communicate with the father because he speaks Cantonese, and she does not. The wife is also the primary breadwinner for the family, so she's out at work all day, as well.

And the Government makes much of Mr. Li's legal history. However, Mr. Li has not been convicted of a crime in over 17 years. Since then, he really turned his life around. He's co-owner of a business in San Francisco. He and his wife own a hair salon in San Francisco that employs three independent-contractor stylists. He's also been a bouncer at the same club in the Bay Area for the past two years.

Prior to that, he worked as a youth counselor for the Community Youth Center in San Francisco, speaking to youth about gang activities, and trying to turn their lives around.

Prior to that, he was a licensed -- ran a licensed florist's business for six years.

Mr. Li has actually been released from pretrial release at least three times, according to the P.T.S. report. Most recently, he was released on his own recognizance. Mr. Li has never missed a court date, and voluntarily surrendered to the federal correctional institution in Lompoc to serve a sentence back in 19 -- in the late 1990s.

Mr. Li also has four sureties here to support him. He has

his wife, Mimi Li. She has no criminal history. She's in court today, and she has offered to put up their hair-salon business, valued at approximately $30,000, to ensure his release.

He also has a brother, Richard Li, who has no criminal history, and is a bank manager at the East West Bank. Mr. Li was not able to be in court today; he had a business meeting. He's offered to put up his house as part of the bond. His house is worth an estimated value of $685,000.

Also in court today supporting Mr. Li are Nick Espiritu, who's a financial advisor at Charles Schwab, and has been for about 10 years. He has no criminal history.

And also in court today is Adam Hernandez, who is an electrician.

The Government goes into detail about Mr. Li potentially being some sort of danger to the community; but in fact, the Government has not charged Mr. Li with any crime of violence. They point to his firearms. However, the Ninth Circuit has explicitly stated that felons in possession of firearms is not a crime of violence. Furthermore, other defendants charged with firearms offenses in this matter have been released. Mr. Keith Jackson, whose release was just confirmed by Judge Breyer, is -- he is charged with conspiring to sell -- the Complaint mentions that he conspired to sell some shoulder -- sorry -- shoulder-fired missiles. Certainly, these

are infinitely more dangerous than the revolvers and such that Mr. Li is alleged to have --

THE COURT: Were the missiles actually delivered?

MS. PEREZ: Sorry?

THE COURT: Were the missiles delivered?

MS. PEREZ: No, they were not.

THE COURT: Okay. Thank you.

MS. PEREZ: Furthermore, presumption -- so, if anything, you know, Mr. Li has also been presented -- been charged with a narcotics conspiracy. However, we don't believe that the possession of marijuana plants presents a serious danger to the community, as contemplated under The Bail Reform Act. In fact, marijuana has been -- under certain conditions, is legal in California, as well as many other states.

THE COURT: Oh, don't go there.

MS. PEREZ: Sorry?

THE COURT: Don't go there. It's not legal in California in Federal Court.

MS. PEREZ: Well, it's important to -- agreed.

It's important to recognize that certain, you know, local governments have recognized it's not a danger to the community.

You know, The Bail Reform Act only -- only requires the detention of a defendant if no combination of conditions can address safety concerns. And, in fact, we don't believe that that's the case here. We believe that, given the number of

sureties ensuring Mr. -- vouching for Mr. Li here today, and the fact that he is not charged with any crime of violence, we believe that Mr. Li does not present a danger to the community.

The Government goes through a lot of information in its Complaint. Again, this is the first time we've heard a lot of these allegations which were not in the Complaint. The Government's Complaint contains a number of statements which characterize alleged discussions with Mr. Li. However, these are all attributions. It's a lot of loose talk. It's not directed at any one person. It's nothing -- most importantly, nothing came of a lot of these discussions, which is why Mr. Li is not charged with any sort of conspiracy to commit any sort of crime of violence. Certainly these discussions, as colorful as they were, did not rise to the level of conspiracy sufficient to charge Mr. Li.

Furthermore, if the Government thought that Mr. Li was so dangerous, why did they leave him on the -- let him be out on the streets for years after these discussions took place?

In fact, the Government makes -- the Government acknowledges that Mr. Li has since had a falling out with Mr. Chow, and is very likely no longer part of the Chee Kung Tong gang organization.

In fact, to the extent that the -- that the Court is concerned about ongoing dangerousness to the community, it's important to recognize that Mr. Li, according to the

Government, is no longer associated with the Chee Kung Tong organization, and therefore will probably not have any continuing activities with them should he be released prior to trial.

Furthermore, other defendants in this matter have been charged with crimes of violence, and have been released. Keith Jackson -- again, another defendant in this matter -- has been released, and he has been charged with a murder-for-hire plot. Mr. George Nieh, another defendant in this matter, alleged to -- is alleged to have stabbed a man as part of a gang initiation. And, in fact, Mr. Leland Yee and Mr. Keith Jackson also discussed selling shoulder-fired missiles with -- with the undercover agent.

So, as much as the colorful talk with Mr. Li between Mr. Li and the agent -- also, Mr. Li, you know, none -- none of that actually occurred.

Finally, Mr. Li has had -- you know, the Government has talked a lot about Mr. Li's legal history. He's really turned his life around. He's a married father of two minor children. He has not been convicted of a crime in 17 years. He had no disciplinary record while in prison. He was never written up, and never sent to solitary confinement.

Since then, he has actually worked as a youth counselor at the Community Youth Center in San Francisco, where he went into jails and schools to speak with youth about turning their lives

around and about getting out of the gang life.

He also was such an upstanding parolee that his parole officer wrote him a letter in January of this year supporting his efforts for employment. The parole officer had 24 years of experience on the job, and called Mr. Li a role model and a responsible and reliable person.

Mr. Li has also gone back to school recently to get his high-school diploma, and has completed a formal course of training to receive his security-guard license.

Finally, Mr. Li has no history of drug or gambling addiction; no mental health issues.

Mr. Li's release is crucial to the survival of his family, Your Honor. He -- and again, he's the primary caretaker of two minor children: A Five-year-old daughter and a 15-year-old son. He also plans to become a full-time caretaker for his ailing, 79-year-old father, for whom no one is available to care. His wife is the primary breadwinner, and she works full time in San Francisco. So there is no one at home to take care of the family.

THE COURT: So what are they doing for the past week?

MS. PEREZ: She has had -- Mrs. Li has had to juggle her job. And they've been trying to make ends meet, basically, with caretakers; temporary caretakers --

THE COURT: Okay.

MS. PEREZ: -- but certainly it's not a feasible

situation. In fact, the Government hasn't talked about when this case might finally proceed to trial, but we don't expect that it will be for quite a long time. And, in fact, the family simply isn't able to cope in terms of caretaking responsibilities up until that point.

Finally, we would point out that pretrial release in noncapital cases is the norm, and not the exception; that Mr. Li, as Pretrial Services has recognized, is not a flight risk.

THE COURT: So you're repeating yourself.

MS. PEREZ: Right. I am repeating myself.

THE COURT: Let's not repeat ourselves.

MS. PEREZ: Finally, we point out that Mr. Li is asking for a secured bond commensurate with other defendants. People have put up their houses and their businesses. People with no criminal history have vouched for Mr. Li. He's also -- his wife is willing to act as his custodian, and was willing to report any violations to the Court. Mr. Li is willing to work with the Court on any combination of conditions that will allow him to return to his family, and care for his children and his father.

THE COURT: All right. Thank you. I'm going to order the defendant detained pending trial in this matter. I'll ask the United States to prepare the order. Based on the proffer that the United States made, and especially finding by

clear and convincing evidence that no combination of conditions could reasonably assure the safety of the community.

I would like you to highlight a number of things. While the -- Mr. Li's Criminal History -- the last event occurred in 2001, when he was sentenced to 12 months' custody in the Federal Bureau of Prisons arising out of a violation of Supervised Release for another one. It's still a troubling Criminal History. And it should be accented there is an arson conviction, a robbery conviction, a felony theft of interstate shipments, and then a violation of federal supervision, as well as two other violations of parole.

In addition, when arrested, the defendant had in his possession a shotgun and a ballistic vest, which is of particular concern to the Court.

With respect to the testimony by the undercover agents, as reflected in the Complaint, Mr. Li provided many weapons; not just a weapon or two weapons, but many weapons to the undercover agent, multiple weapons to the undercover agent, including, at page 21, a ballistic vest to the undercover agent, and participated in the laundering of over a million dollars in cash.

He bragged that he was the head of enforcement for the CKT, and wanted to "get rid of the bugs." Under those circumstances, I don't think any conditions could be reasonably assure the safety of the public, and I'll order him detained

until -- pending trial in this matter.

So your next appearance is Friday, at 11:00 a.m.

MR. CHAN: Thank you, Your Honor.

MR. FRENTZEN: Thank you, Your Honor.

(At 11:12 a.m. the proceedings were adjourned.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



June 11, 2014

Signature of Court Reporter/Transcriber Date

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, v. ANDY LI, Defendant.	No. CR 14-196 CRB (JCS) ~~**[PROPOSED]**~~ **ORDER OF DETENTION PENDING TRIAL**

This matter came before the Court on April 8, 2014, for a detention hearing. Defendant Li was present and represented by counsel, Winston Chan and Maia Perez. Assistant United States Attorneys William Frentzen and Susan Badger appeared for the government.

Pretrial Services submitted a report to the Court and the parties that recommended detention, and a representative of Pretrial Services was present at the hearing. The government moved for detention, and defendants opposed. Proffers and arguments regarding detention were

submitted by the parties at the hearing.

Upon consideration of the facts, proffers and arguments presented, the Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community. Accordingly, the Court concludes that defendant must be detained pending trial in this matter.

The present order supplements the Court's findings at the detention hearing and serves as written findings of fact and a statement of reasons as required by 18 U.S.C. § 3142(i)(1).

With respect to all of the subsequent findings, this case involves a presumption in favor of detention pursuant to 18 U.S.C. § 3142(e) because the defendant has been charged by Grand Jury indictment with violating 21 U.S.C. § 846. While the ultimate burden of persuasion rests upon the government, given the presumption, it is the finding of the Court that defendant did not make proffer of facts or information sufficient to rebut the presumption.

The Court makes the following findings as basis for its conclusion that no condition or combination of conditions will reasonably assure the safety of other persons and the community as to defendant Li. First, while the Court considers the facts of the instant case to be the least important factor in its determination regarding detention, this case involves trafficking narcotics as well as allegations that defendant trafficked in firearms and a ballistic vest while being a convicted felon. Li also is charged with laundering money in excess of $1,000,000 total. According to agents, individuals reported that Li was an "enforcer" for the Chee Kung Tong, an organization with allegedly criminal aspects and he discussed a variety of violent acts with an undercover agent. Second, although somewhat old, defendant's adult criminal record includes convictions related to arson, robbery, and a federal conviction for theft from interstate shipment. Third, agents report that when the defendant's residence was searched, they found a shotgun and a ballistic vest. Fourth, the instant charges allege firearm possession and sales. For these reasons, the Court deems defendant Li to present a risk of danger to other persons and the community that cannot be mitigated adequately by conditions of release.

Pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:

1. Defendant is committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

2. Defendant be afforded reasonable opportunity for private consultation with counsel; and

3. 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 in which defendant is confined shall deliver defendants to an authorized deputy United States marshal for the purpose of any appearance in connection with a court proceeding.

SO ORDERED.

Dated: ~~April~~ May 7, 2014

HONORA[illegible]PERO
United St[illegible]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Judge Joseph C. Spero

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF VANESSA A. PASTORA IN SUPPORT OF DEFENDANT'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF VANESSA A. PASTORA

I, Vanessa A. Pastora, declare as follows:

1. I am a member in good standing of the State Bar of California and am one of the attorneys of record for Defendant Andy Li in this matter. I make this declaration in support of Mr. Li's Motion to Reopen Detention Hearing and Reconsider Detention.

2. Shortly after Mr. Li's detention hearing on April 8, 2014, Mimi Li ("Ms. Li"), Mr. Li's wife, informed me that the shotgun referenced by the government at the detention hearing belonged to her landlord, an individual named Doug Walker. Ms. Li further informed me that she was not aware that there was a shotgun at her rented residence until the morning of Mr. Li's detention hearing, and she was not able to inform counsel prior to the hearing.

3. Mr. Li later informed me that he also did not know prior to his detention hearing that there had been a shotgun on the property he rented in South San Francisco or that federal agents had seized that shotgun.

4. Although the FBI agents who searched Mr. Li's home left a Receipt for Property Seized ("Receipt"), the receipt was and is illegible, rendering it impossible to tell what the FBI had seized. A true and correct copy of the Receipt is attached hereto as Exhibit 1.

5. On April 22, 2014, I called Mr. and Ms. Li's landlord, Doug Walker, to procure an affidavit confirming that the shotgun seized from the property he owned at [redacted] belonged to him.

6. Mr. Walker informed me that the shotgun the FBI seized from his property was an antique shotgun that belonged to his uncle.

7. Mr. Walker further informed me that he had informed the FBI twice already that the shotgun belonged to his uncle, and not to Mr. Li. He said that he had spoken with two female FBI agents.

8. Mr. Walker then informed me that he would not sign an affidavit or declaration attesting to these facts because he had spoken to the FBI again, and an agent had told him not to sign anything related to the shotgun.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2014 in San Francisco, California.

Vanessa A. Pastora

FD-597 (Rev 8-11-94)

Page 1 of 1

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # [illegible]

On (date) [illegible]

item(s) listed below were:
- ☐ Received From
- ☐ Returned To
- ☐ Released To
- ☑ Seized

(Name)

(Street Address) [redacted]

(City) [redacted]

Description of Item(s): [illegible]

Received By: _____ (Signature)

Received From: _____ (Signature)

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Attorneys for Defendant ANDY LI

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF MIMI LI IN SUPPORT OF DEFENDANT ANDY LI'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF MIMI LI

I, Mimi Li, declare as follows:

1. My husband Andy Li and I rented our residence at [redacted] from an individual named Doug Walker and moved there in November 2013.

2. At that time, our landlord, Mr. Walker, stored many of his personal belongings in the garage of the house.

3. In January 2014, Mr. Walker moved out some of his personal belongings from the garage and told us that he was leaving the rest of his belongings previously stored in the garage in a crawl space underneath the house. My husband and I did not object to Mr. Walker storing some of his personal belongings in the crawl space while we rented the house because we were not using that space.

4. From January 2014 when Mr. Walker stored his items in the crawl space to March 26, 2014, when the FBI searched our home, my husband and I never entered the crawl space and did not know what items Mr. Walker kept there.

5. On the day of the search, I was told to stay in the living room while the FBI searched the house. An agent had to come with me even to use the restroom. Because I could not walk around the house freely, I asked the FBI agents if I could leave, and they said yes. A girlfriend came to pick me up from the house, and I left.

6. Because I left the house during the search, I did not see what items they took from my car or from the crawl space.

7. My husband was arrested and taken away shortly after the search began.

8. The FBI agents left a receipt of the items taken on my coffee table, but the print was too light to read.

9. On April 8, 2014, the morning of my husband's detention hearing, Mr. Walker called me and asked me when the FBI was returning his shotgun.

10. At that time, I did not know what Mr. Walker was referring to, as I did not know that he had stored a shotgun in the crawl space beneath the home.

11. Mr. Walker explained to me that he had stored an antique shotgun that belonged to his uncle in the crawl space, and that he had called the FBI to inform them that the shotgun belonged to him and request its return. He said that the FBI had initially contacted him to inform him about the search of the house.

12. I was not able to tell my husband's lawyers about the shotgun before the detention hearing because the marshals in the court room would not let me speak to them when I asked permission.

13. I told them and my husband what my landlord had told me after the detention hearing.

14. On February 2, Ms. Bonnie Lam, who is married to Michael Kim, had an appointment at my salon.

15. Mr. Kim works for the San Francisco Sheriff's Department.

16. On that day, Mr. Kim dropped off a bullet proof vest that he used for his job at my salon for his wife to take home for him.

17. After Ms. Lam left the salon, I realized that she had forgotten to take the bullet proof vest, and had left it in the salon.

18. I did not want to leave the vest unattended at the salon, so I took it with me and placed it in my car, intending to return it to Mr. Kim.

19. I planned on returning the vest to Mr. Kim a few times, but our plans fell through, and I did not see him between February 2, 2014 and March 26, 2014.

20. I never took the vest out of my car between February 2, 2014 and March 26, 2014, when the FBI took it from my vehicle.

21. After FBI agents searched my vehicle, I noticed that they had left behind a gun clip.

22. I did not know what to do with the gun clip, so I put it in a plastic bag and left it in my car until I could meet with my husband's lawyers.

23. When I met my husband's lawyers at the court house, I informed them about the gun clip. They arranged for two of the case agents to accompany me that same day to my car in the parking lot and retrieve the gun clip.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2014 in San Francisco, California.

Mimi Li

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Attorneys for Defendant ANDY LI

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF MICHAEL KIM IN SUPPORT OF DEFENDANT ANDY LI'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF MICHAEL KIM

I, Michael Kim, declare as follows:

1. My name is Michael Kim, and I am employed by the San Francisco Sherriff's Department.

2. In or around February 2014, I possessed two ballistic vests issued to me by the Sheriff's Department in connection with my employment.

3. On February 2, 2014, my wife, Bonnie, had an appointment at Mimi Li's hair salon located in San Francisco, California.

4. On that day, I stopped by Ms. Li's salon to drop off my work-issued ballistic vest with my wife because I had to run errands and did not want to leave the vest in my car.

5. I asked my wife to bring the vest home for me when she was done at the salon.

6. Unfortunately, my wife forgot the vest at Ms. Li's salon.

7. Because my wife forgot the vest, Ms. Li informed me that she took the vest and put it in her car, intending to return it to me.

8. Due to miscommunication and timing, I never received the vest back from Ms. Li prior to March 26, 2014. We had made plans for her to drop it off at my house and for me to pick it up from her house, but we both got busy and the plans fell through.

9. The vest that federal agents recovered from Ms. Li's vehicle belonged to me.

10. I did not have an immediate need for the vest after my wife left it at Mimi's salon because I had another vest that I could use in connection with my employment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 6, 2014 in San Francisco, California.

Michael Kim

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Attorneys for Andy Li

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF JOANNA L. POWELL IN SUPPORT OF DEFENDANT'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF JOANNA L. POWELL

I, Joanna L. Powell, declare as follows:

1. I am over eighteen years old, have never been convicted of a felony or a crime involving moral turpitude, and am competent to make this declaration.

2. I am a member in good standing of the State Bar of California and am one of the counsel of record for Defendant Andy Li. I make this declaration in support of Defendant's Motion to Reconsider Detention.

3. Attached hereto as Exhibit 1 is a true and correct copy of Federal Bureau of Investigation summary of March 29, 2013 conversation with Defendant and others, Bates numbered US 609062-66.

4. Attached hereto as Exhibit 2 is a true and correct copy of Federal Bureau of Investigation summary of September 26, 2012 purchase of .357 magnum handgun, Bates numbered US 608903.

5. Attached hereto as Exhibit 3 is a true and correct copy of a letter written by Ken Wong, Andy Li's former parole officer, in support of Mr. Li's search for additional employment.

6. Attached hereto as Exhibit 4 are true and correct copies of letters written by Mimi Li, Richard Li, Eddy Zheng, the Lee family, Caesar Marabuto, Ben Fandinola, and Joseph Phong Chu in support of Andy Li's release from detention.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 4, 2014 in Palo Alto, California.

Joanna L. Powell

Joanna L. Powell

FD-302 (Rev. 5-8-10)

OFFICIAL RECORD

FEDERAL BUREAU OF INVESTIGATION

Date of entry 06/14/2013

On Friday, March 29, 2013, Federal Bureau of Investigation (FBI) Undercover Employees (UCE) 4599, UCE-4881 and UCE-5199 met with RAYMOND CHOW, a.k.a. Shrimp Boy, ALICIA LO, GEORGE NIEH, ANDY LI,, MIMI LI, KONGPHET CHANTHAVONG, a.k.a. Joe, JAMES PAU, LESLIE YUN, KEITH JACKSON, BRANDON JACKSON, MARLON SULLIVAN, MICHAEL MEI, SULULAGI PALEGA,and others at the New Asia Restaurant, 772 Pacific Avenue, San Francisco, California. The UCE(s) were attending an annual event sponsored by the CHEE KUNG TONG (CKT). The conversation was audio recorded. The following is a general summary of the events and conversation:

Upon arriving at the restaurant, UCE-4599 was greeted by LESLIE YUN. UCE-4599 gave YUN an $888.00 donation to the CKT.

ANDY LI advised ALBERT NHINGSAVATH would meet with the UCE(s) after the event.

UCE-4599 asked NIEH if he gave the samples of stolen cigarettes to YUN. NIEH provided the cigarettes to YUN and cautioned her to use the cigarette samples wisely.

CHANTAVONG told UCE-4599 he wanted him to transport approximately $250,000 cash from the east coast to the San Francisco Bay area. CHANTHAVONG introduced the UCE(s) to RICKY Last Name Unknown (LNU) and TOMMY LNU. CHANTHAVONG advised RICKY LNU and TOMMY LNU would be responsible for delivering the cash to the UCE's associates in New Jersey. CHANTHAVONG anticipated the need to transport approximately $500,000 per month. CHANTHAVONG's was sending approximately 100 pounds of outdoor marijuana to the east coast per week.

CHANTHAVONG talked about ANDY LI's propensity for violence. Specifically, CHANTHAVONG said "Andy is the one you have to worry about;Because when he gets pissed off even the Old Man (CHOW) can't even stop him."

KEITH JACKSON and SULULAGI PALEGA greeted the UCE(s). UCE-4599 told PALEGA he owed him money for the gun PALEGA provided to UCE-4599 on March, 21, 2013. PALEGA was working on setting up a meeting with his source of

Investigation on 03/29/2013 at San Francisco , California, United States (, Other (Undercover Operation))

File # [redacted]-UC, [redacted]-UCE Date drafted 06/24/2013

by UCE-4599

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supply for weapons.

The UCE(s) were greeted by ALICIA LO. LO and UCE-4599 talked about STEVEN ABLEMAN (previously identified). LO thought ABLEMAN would be in prison until his birthday. LO's ex-husband owned the warehouse which was raided by Oakland Police Department on October 24, 2012. The warehouse contained a large marijuana cultivation operation which was run by ABLEMAN and CHANTHAVONG.

EMILY SALGADO from SENATOR LELAND YEE's office presented an official proclamation which acknowledged CHOW and other members of the CKT.

UCE-4599 met with SALGADO and KEITH JACKSON. UCE-4599 thanked SALGADO for making the proclamation speech. UCE-4599 told SALGADO to make sure she thanked SENATOR YEE on behalf of UCE-4599.

As a part of the ceremony, different people and groups were being recognized for their attendance. CHANTHAVONG suggested the emcee should introduce LI as the new head enforcer for the CKT.

UCE-4599 gave MIMI LI a sympathy card for the loss of her father. The sympathy card contained $200.00.

UCE-4599 had a brief conversation with MICHAEL MEI. UCE-4599 told MEI he had heard about the recent police raid on MEI's indoor marijuana cultivation operation in Antioch, California. MEI said "it was hectic, it was crazy, it was crazy. Everything is good."

UCE-4599 had a brief conversation with JAMES PAU about the opportunity to sell stolen cigarettes with PAU and YUN. PAU told UCE-4599 he would have his customers lined up for the stolen cigarettes in Los Angeles.

LI was having problems with KEVIN LUU (previously identified). LUU refused LI's request to attend a dinner the previous week to speak with LI. LI told LUU that he directly reported to CHOW and LUU directly reported to LI. LI explained to LUU that if CHOW makes a decision, LUU has to follow that decision regardless if LUU thinks its the wrong decision. With respect to the CKT, LI said half of the members are gang members and the other half are politicians. The only people in the CKT that LI trusted were CHOW, and CHANTHAVONG. LI told LUU that he loves him but he wouldn't hesitate to "beat the fuck" out of LUU.

CHANTHAVONG told the UCE(s) that LI was going to be receiving a promotion to Head Enforcer for the CKT. CHANTHAVONG was working as Head of Security for the CKT.

[redacted]-UC

Continuation of FD-302 of CKT event 03292013 , On 03/29/2013 , Page 3 of 5

LI told the UCE(s) a story about when he was living in Los Angles. According to LI, he was driving in the Los Angeles area and encountered a man who was trying to cross the street. LI thought the man was attempting to challenge LI by stepping into the street as LI was approaching. LI intentionally ran over the man with his car and drove off.

LI told the UCE(s) a story of when he was involved in a fight with a group of unknown individuals. LI said when he fought an opponent, he tried to kill that individual. During this particular fight, he was beating his opponent while encouraging him to "tap out."

While in prison, CHOW taught LI the philosophy of keeping your enemies close to you. Specifically, LI wanted to kill someone after he was released from prison. CHOW advised LI to take the unidentified individual out several times to make it appear LI was his friend. Once the unidentified individual felt close to LI, that would be an opportune time to kill that person.

LI said he has issues when it comes to violence. For example, MIMI LI was having problems with a former unknown female employee (UF). ANDY LI located the UF's boyfriend's car and retrieved the vehicle identification number (VIN) and license plate. LI made a spare key to the unknown male's vehicle. ANDY LI's friend advised him not to kill the unidentified man.

LI talked about different ways to inflict pain on individuals who crossed him. LI talked about injecting people with tranquilizers. LI talked about super-gluing his victim's penis shut and force feeding him water. LI also talked about taking electrodes from a stun gun and placing them up someone's nose and pulling the trigger.

UCE-4599 walked SULULAGI PALEGA to his vehicle. During their walk, UCE-4599 told PALEGA the gun he provided UCE-4599 was a little old. PALEGA was working on introducing UCE-4599 to his source of supply for weapons.

When LI is crossed by an individual, he comes up with several ways to retaliate. LI would take his time to seek retribution and said "Not today, not tomorrow, not this year, three years from now." LI's intent to hurt people would not be swayed by time.

The UCE(s) had a conversation with BRANDON JACKSON and MARLON SULLIVAN about the distribution of cocaine. SULLIVAN and JACKSON were looking to obtain a source of supply for cocaine. SULLIVAN indicated he had narcotics customers in Boston, Connecticut, and Delaware. SULLIVAN said he could get kilograms of cocaine from Los Angeles for approximately $28,000 but was worried about the transportation of the narcotics to the northeast.

UCE-4599 told the other UCE(s) that BRANDON JACKSON was working on providing weapons to UCE-4599. JACKSON and SULLIVAN's payback would come in the form of a connection to the UCE(s) cocaine supplier.

CHOW introduced the UCE(s) to CLIFTON LEUNG. CHOW told LEUNG that UCE-4599 has been a loyal supporter of CHOW.

The UCE recalled a conversation with CHOW when he told UCE-4599 that "His Dai Lo never had to ask him to do anything." CHOW replied I never asked my brothers to do anything, it's sort of a family, it's not about the work; it's your heart."

CHANTHAVONG told the UCE(s) that his cousin, ALBERT NHINGSAVATH recently had two of his marijuana cultivation operations raided by law enforcement which netted a loss of approximately $300,000-$400,000. Additionally, NHINGSHAVATH and ANDY LI lost approximately $220,000 in Philadelphia, Pennsylvania when one of their associates was arrested.

CHANTHAVONG expressed his extreme loyalty to CHOW. When CHANTHAVONG came out of prison, CHOW made sure CHANTHAVONG was given money every week to get back on his feet financially. Ever since then, CHANTHAVONG has been loyal to CHOW.

CHANTHAVONG told the UCE's if they needed any one killed, they could call CHANTHAVONG. Whatever request CHANTHAVONG could not handle he had a team of people called his "Black Ops." CHANTHAVONG stated these individuals are "niggas that can take you out from 500-1000 yards."

LI and RODRIGO RUIZ (previously identified) talked about a shooting which took place in an unknown nightclub. RUIZ was a bouncer in the unknown nightclub at the time of the shooting. LI and his gang members were in an altercation when gun fire erupted. According to LI and RUIZ, there were several people shot. LI shot someone with a .45 in the buttocks. LI thought the individual survived.

LI told the UCE(s) the best time to kill someone was either on Halloween or July 4th. LI thought these holidays were opportune because you could wear a mask on Halloween and gunshots could be misinterpreted as fireworks on July 4th. LI also thought Christmas was an opportune time to kill someone because the intended targets would always be home on Christmas day.

The UCE(s) and ANDY LI collectively decided to meet NHINGSAVATH at the Four Seasons Hotel in San Francisco.

ANDY LI, MIMI LI, and NHINGSAVATH arrived at the Four Seasons. LI

[redacted]-UC

explained that he "works" for CHOW. CHANTHAVONG and NIHINGSAVATH report to LI.

NHINGSAVATH asked UCE-4599 for assistance in transporting approximately $200,000 per month from the east coast to the San Francisco Bay Area. UCE-4599 told NHINGSAVATH his fees would be 4% for anything under $100,000 and 3% for anything over $100,000.

LI told the UCE(s) he had a connection for "Molly" (MDMA) LI was weighing out the risks associated with shipping the "Molly" to the east coast. The UCE(s) and LI agreed to talk about distributing "Molly" at a later time.

The UCE(s) and LI talked about the importance of conducting illegal business in the safest way possible. LI stated he did not want to "eat instant noodles or tuna out of a can." The UCE(s) understood that LI was talking about not going back to prison. LI wanted to focus on setting up a productive safe business arrangement with the UCE(s).

UCE-4599 told NHINGSAVATH he would need at least a week notice in advance when NHINGSAVATH wanted to launder money with the UCE(s).

At the conclusion of the meeting, the UCE(s) deactivated the recorders and relinquished custody of the devices to Special Agent Emmanuel Pascua.

FD-302 (Rev. 5-8-10)

OFFICIAL RECORD
Document participants have digitally signed. All signatures have been verified by a certified FBI information system.

FEDERAL BUREAU OF INVESTIGATION

Date of entry 09/26/2012

On Wednesday, September 26, 2012, Federal Bureau of Investigation (FBI) Undercover Employee [redacted] (hereinafter UCE), purchased a Smith & Wesson .357 magnum handgun from KONGPHET CHANTHAVONG. [redacted] paid CHANTHAVONG $600.00 for the aforementioned handgun.

Investigation on 09/26/2012 at San Francisco, California, United States (, Other (Undercover meeting))

File # [redacted] Date drafted 09/26/2012

by [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

DIVISION OF ADULT PAROLE OPERATIONS
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KEN WONG, PAROLE AGENT III
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San Francisco, CA 94103
Tel: (415) 703-3164 EXT. 229. Fax# 415-703-3162

01-10-2014

To: Whom It May Concern

Re: MR Andy Li

I have been employed by the state Department of Corrections for over 27 years and as a State Parole Agent for 24 years in San Francisco. I write this letter urging your support to Andy.

During my time here in San Francisco, I have had the opportunity to work with Andy and his CYC Community Response Network Team. I found that Andy has served as a role model for the San Francisco Bay Area youth who were afforded second chances by the court.

Andy was there during a lot of community service events that I was involved with. His action shown that he is a responsible and reliable person. Any consideration in this matter is greatly appreciated.

Sincerely,

Ken Wong
Parole Agent III
Unit Supervisor

To whom it may concern:

My name is Mimi Li, wife to Andy Li. Andy and I have been married for almost 9 years. In these past 9 years I have seen Andy develop and grow.

He has a 16 year old son whom he is developing a father and son relationship with. He missed most of his son's earlier years due to wrong decisions made in his late teens to early/mid 20's. He is now trying to be the father that his son needs.

He now has a beautiful 5 year old girl who has a strong bond with. Andy is a good father to her and she needs her father in her life. She is traumatized from seeing her father taken from her and I am seeking child counseling due to nightmares and not understanding why she is unable too see her father every day.

Andy is also the primary person who cares for his father. His father's health is not very good and he needs to be there for his father to tend to his needs.

Since andy's detainment we were evicted out of our south san francisco home and moved to concord. It has been very hard due to the fact that I need to work and have very little means to find a sitter for my daughter. In addition the renters that were renting a station at my salon have now left. I am now in a position where I have to work more and am need of child care for my daughter. At this time I have family members help but this is also hard. My mother who is helping me is still mourning my father's passing.

I know that Andy has made some poor choices/decisions in his past but I have seen Andy change and grow. I ask for his release on bail as he very much needed in his family. I would not want my daughter to grow up without her father. She has already seen enough, more than any child should see. Andy plays an integral part in our lives and being without him not only will be detrimental but will cause more hardship and trauma to my/his daughter.

Thank you,

Sincerely

Mimi Li

July 9, 2014

RE: Andy Li

Dear Sir/Madam,

My name is Richard Li, and I am the older brother of Andy. Although my brother has not been the model citizen in the past. After serving time for his last offense, he has since remarried and started a new family with a very young daughter and a loving wife.

During that time, he had stayed away from the activities that had gotten him in past trouble, so he can devote his time to the raising of his daughter and the caring of our elderly father. On January 1, 2014, our father was admitted to the emergency room for pneumonia and was not released until the latter part of April. In the meantime, my father is too weak to take care of himself and requires our assistance to care for him. With my crazy workload, Andy is the primary care for him.

With my sister-in-law's salon, she is not able to attend to Aliyah's daily needs. She has since moved from South San Francisco to Walnut Creek, so Aliyah is being taken care of by a family member. She now makes a daily commute to San Francisco for her business.

Since his detention in March, this has place a hardship on our family. We are not able to attend our regular day-to-day functions and this has strained us mentally, physically, and most of all financially.

Please accept this letter as a plead to allow Andy bail. I am willing to use my home as a collateral for his bail and will personally make sure he will attend all court appearances and that he stays on the right track and will not get involve with any activities that would jeopardize his release. By allowing his bail, this will help with our family tremendously.

Sincerely,



Richard Li

July 9, 2014

Re: Letter of support for Mr. Andy Li

Dear your Honor:

My name is Eddy Zheng. I am writing this letter to express my support for the Mr. Andy Li, who is currently in custody pending criminal proceedings.

I work in the Community Youth Center of San Francisco (CYC) as a Project Director. Since 1970, CYC has set the standard for awareness and activism in the Asian community. Originally founded to address the problems of juvenile delinquency and gang violence in Chinatown, CYC has grown to encompass behavioral health, education, intervention, leadership development, special projects and workforce development in all our programs. We offer services directed at responding to the complex set of issues the youth in our community face including acculturation, difficulties in school, economic hardship, substance abuse, and gang involvement. Our educational enrichment, leadership building, and job-readiness programs have earned CYC a unique reputation as a key agency for Asian youth services in San Francisco.

I have known Mr. Li since 1993 and became good friends since then. Throughout our friendship, Mr. Li has always been loyal and supportive in all of my challenges. I am aware that he had gotten in trouble with law when he was a young man. However, since his release from prison, he has been doing his best to change his ways and become a contributing member of society. Mr. Li has held different jobs to provide for the family, especially supporting his elder father for many years. I had hired him to work as an outreach worker to do violence prevention and conflict mediation on the street and in the schools. He was always respectful and responsible. He is married and had two beautiful children. Mr. Li is the breadwinner for the family. He is a great husband to his wife and an awesome father to his children. We all make mistakes in life, some bigger and others smaller. Mr. Li has definitely made significant changes in his life.

I understand that Mr. Li is being held in custody awaiting discovery and criminal proceedings. However, I do not know how long this process is going to take. Each day it goes by, Mr. Li is separated from his family. His wife and children misses and needs him desperately.
I plead with your honor to consider giving bail to Mr. Li so he can be united with his family. I know that he will obey all the rules and regulation that is set forth by the court.

Thank you very much for your consideration in my request. Please contact me if you have any questions.

Sincerely,

Eddy Zheng
Project Director
Community Youth Center of San Francisco
Email and Phone

To Whom It May Concern:

My name is Helen Yoo-Lee and my husband's name is Frank Lee. My husband has known Andy Li for 30 years now. They have known each other since 6th grade, so Frank knows Andy very well. Andy is very close to us like family and Andy is not any danger to the community. He is always caring, he puts others first, and always there if you need him. He is a loving husband and father. His interaction with his daughter is very loving and caring. Andy has cared for my daughter many times when we needed a babysitter. I completely trust him and feel very safe. Even to this day my daughter absolutely adores Andy, and calls him Uncle Andy.

Andy is very dedicated, and commits his time in anything he puts his mind to. He is not a threat to society and has never been. He comes from a family that is broken but he has grown to have honest values. Andy is a good human being. We would have no hesitation in speaking up for Andy.

Thank you!

Yours Sincerely,

Lee Family

To Whom it May Concern,

I have known Andy Li for 27 years. We have been friends since high school. I was there when his mother died from a tragic car accident. He was only 16 years old at the time. I have watched him grow from a reckless self destructing young man to a caring father and a loving husband to his wife Mimi. In the past few years, he has tried hard to be a good role model for his teenage son Ryan. He is also the primary care giver for his 5 year old daughter Aliya. His 79 year old father Peter is in poor health and requires care or assistance most days of the week. It's Andy that they all depend on. He is the one that is always there for them. His past will always be apart of him but I know it does not define him. Its difficult for people to believe someone can truly change, but I know Andy has changed. He has strong ties with his family and friends here in the bay area and is not a flight risk if bail is granted. Andy is a close friend and a great father who has been trying hard for many years to better his life and the lives of his family. Please let him come home to his family and friends during this difficult time in his life.

Sincerely,
Caesar Marabuto

May 6, 2014

RE: Andy Li

To Whom It May Concern:

I have known Andy Li for 9 years. He has been married to my best friend since 2006 and have always known him to be a family man providing all he can to the best of his abilities. He has been nothing but caring and has provided support for his family and friends when in need.

I am currently on a military deployment. While I was on my previous deployment in 2010 and even currently on my 6 month military deployment now, Andy has offered and provided assistance on multiple occasions to help in the care and transportation needs for my mother back home since she has suffered from limited mobility and paralysis since 2002. His willingness, care, and support has helped me from having to worry and has helped assured me of her safety and daily needs. I know he also does the same for his father who is physically declining due to old age, but has maintained a reasonable status of fair health otherwise. He provides for his father just as anyone would for their family member.

I know Andy to be extremely dependable, responsible, honest and courteous. His vast, long-term friendships have exemplified who he is as a person ... extremely trustworthy. I absolutely have no reservations and I strongly feel confident Andy is someone who will always be there for you. His best friends rely on his ability for guidance and moral support. He had actually worked as a guidance counselor for troubled youth for a few years. His mentorship had helped misguided delinquents overcome their unfortunate circumstances to learn from their mistakes and steer them into a more positive path enabling them to gain confidence and hope for a better future.

Andy is an asset to society providing hope and support for his family and friends. I am confident and have complete faith he will achieve moral direction and overcome his circumstances to correct his ways on a more enlightening path to a productive and conducive lifestyle.

Please do not hesitate to call me if you would like to discuss this reference further.

Sincerely.



Ben Fandinola

[redacted]

To Whom It's May Concern

My name is Joseph Phong Chu I am the owner of the Red Lotus Asian cuisine restaurant and La Sensi Nails & Spa in Twentynine Palm Ca.

I've had the opportunity to know Mr.Andy Li since High School. Since then Mr.Li has changed for the better. Mr.Li had run ins with the law in the past, but since then he has become a family man and a hard working individual.He is now a devoted Father to a wonderful daughter and devoted Husband to a lovely wife.Please give Mr.Li an opportunity to show you that he has changed for the good.

Thank you

Joseph Phong Chu

July 29, 2013

Dear your honor,

I am contacting you about Andy Li, my nephew and a defendant in one of your upcoming court cases. I am writing to express about Andy Li's relationship in my life and character. To me, Andy Li has shown great character as a family man; a caring father and a loving husband. Since he has moved back from Los Angeles to San Francisco, I have seen him grown in to a family man. For example, Andy Li has taken on responsibility of taking care of his ill father. I also had a heart attack last year and Andy Li was there at the hospital by my bedside. He is also a caring father. You will always see him holding his daughter where ever you see him as you will see clearly she is daddy's little girl. This was a tough year for the family as we lost my mother; Andi Li's grandmother. He helped out a lot and has been a big part of being there for the family.
I ask for your consideration on Andy Li who has been taking care of his family, a responsible person, and his family truly needs him.

Sincerely,

Evins Li and family

To whom it may concern,

I am writing to you in regards to Andy Li. Somehow he has gotten himself involved in such a horrible situation and I feel that you should know about the person he truly is. I have known Andy for over a decade and although we are not related, I address him as my brother. My name is Jenny and I live in Los Angeles and have a few businesses that I started from scratch and have for the most part been very successful. I am a new mother and have a great family. I am writing you to tell you about the person Andy is. Although as you read the documentation in front of you, it portrays a monster of a person which he is not. He is an amazing father, good husband and amazing friend. Andy has had a difficult time throughout his life because of his younger days, he is the type of man who would go into a burning building to save a friends life, later to suffer from 3rd degree burns and scares but still live his life with no regret of saving someone. I can't begin to explain how loyal of a friend he is, everyone I know cannot say that he is not a loyal friend, to a fault, that is what probably got him into the trouble he is in now. He is not evil nor a bad person. He just wants to help whoever he can regardless of what it is. Andy has a big heart and doesn't think of himself but only his family and friends. I know that there are things in our judicial system that have laws to be followed, and sometimes people

don't pay attention to what they get themselves into. There are criminals out there who hurt people and small children and get a slap on the wrist and probation. Not fair to our society to have to allow those people to be free, and punish the ones who try to do better in life. I know this letter is just to try to explain the type of person that Andy is and to try to help someone understand and allow leniency to give a man a chance to raise his second child and not lose the chance again like he did the first time. He has tried to better himself in society, because he is such a loyal friend, he has a hard time of separating himself from those who will do him no good. He knows he should, but doesn't know how to tell people no or stay away. I'm sure that if you asked the person who has collected the evidence against Andy, what type of person he was, I bet he wouldn't say he was a bad guy at all. That I know for a fact. Please take into consideration each and every letter that you receive and take the time to understand the person you have in front of you.

Thank you for your time and consideration,

Jenny Santos

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KWOK CHEUNG CHOW, a/k/a "Raymond Chow," a/k/a "Hai Jai," a/k/a "Shrimpboy," et al.

Defendants.
/

No. CR 14-00196 CRB

ORDER DENYING MOTION TO REVOKE DETENTION ORDER

Following a detention hearing on April 21, 2014, Magistrate Judge Joseph C. Spero ordered Defendant Brandon Jackson detained pending trial. See Order of Detention (dkt. 277). Defendant now appeals that decision to this Court pursuant to 18 U.S.C. § 3145(b). See Mot. (dkt. 343); see also Reply (dkt. 360). The government opposes that appeal. See Opp'n (dkt. 354). As Defendant's Motion does not raise any new evidence that was not before Judge Spero, this Court VACATES the hearing currently set for July 24, 2014, see United States v. Koenig, 912 F.2d 1190, 1193 (9th Cir. 1990), and DENIES the Motion.

Defendant was charged by complaint filed on March 24, 2014 with violations of federal law. See Compl. (dkt.1); Affidavit of Special Agent Emmanuel V. Pascua (dkt. 1-1). On April 3, 2014, a Grand Jury returned a fifty count indictment, charging Defendant with four counts: (1) conspiracy to distribute narcotics, in violation of 21 U.S.C. § 846; (2) two

counts of trafficking in firearms without a license, in violation of 18 U.S.C. § 922(a)(1); and (3) murder for hire, in violation of 18 U.S.C. § 1958. See Indictment (dkt. 113).

The Bail Reform Act of 1984 permits pretrial detention of a defendant without bail where "no condition or combination of conditions would reasonably assure the defendant's appearance at trial or the safety of the community." United States v. Moore, 607 F. Supp. 489, 497 (N.D. Cal. 1985). A finding that a defendant is a danger to the community must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f). Based on the charge of conspiracy to traffic five kilograms or more of cocaine in this case, pretrial detention is presumed, unless rebutted. See 18 U.S.C. § 3142(e)(3). Nonetheless, "[t]he ultimate burden of persuasion remains on the government . . . and the burden placed on the defendant to rebut the presumption is small." United States v. Chen, 820 F. Supp. 1205, 1207 (N.D. Cal. 1992). Judge Spero found that Defendant "did not make proffer of facts or information sufficient to rebut the presumption." See Order of Detention at 2. This Court reviews Judge Spero's rulings de novo. Koenig, 912 F.2d at 1192.

Like Judge Spero, this Court finds that Defendant is a danger to the community and that no condition or combination of conditions would reasonably assure the community's safety. The Court has considered: (1) the nature and circumstances of the offenses charged; (2) the weight of the evidence against Defendant; (3) Defendant's character, physical and mental condition, family and community ties, past conduct, history relating to drug or alcohol abuse, and criminal history; as well as (4) the nature and seriousness of the danger to any person or the community that would be posed by Defendant's release. See 18 U.S.C. § 3142(g). The Court recognizes that the "weight of the evidence" in support of the charge against the defendant "is the least important of the various factors." See United States v. Motamedi, 767 F.2d 1403, 1407 (9th Cir. 1985).

Defendant's history and characteristics alone would not justify detention. Defendant does not have any work history for the last several years, and he has a recent drug

conviction,[1] but he is a young man, born and raised in San Francisco, with strong family support. See Transcript of Detention Hearing at 15-18. Nevertheless, the nature and circumstances of the offenses charged, the weight of the evidence, and the nature and seriousness of the danger posed in this case all convince the Court that Defendant is a danger to the community.

The government alleges that Defendant was trafficking in firearms without a license, facilitating the provision of assault weapons, automatic weapons, stolen weapons, weapons with scratched-off serial numbers, large quantities of ammunition, high capacity magazines, and ballistic vests, and doing so with the belief that the undercover agent was utilizing such weapons to protect marijuana operations in Mendocino County. Opp'n at 8; Transcript of Detention Hearing at 5-6. The government alleges that Defendant participated in a conspiracy to traffic cocaine. Opp'n at 8; Transcript of Detention Hearing at 4-5. The government alleges that Defendant participated in a proposed murder for hire, telling an undercover agent that defendant Rinn Roeun could do it "or I could do it, too," discussing it in multiple subsequent conversations, telling the undercover agent "I want to keep that [the murder for hire] with us," and "actively trying to get the identity of the individual that the undercover is purporting to want to have killed." Opp'n at 8, Transcript of Detention Hearing at 6-8. The government also alleges that Defendant delivered 25 fraudulent access devices and discussed his ability to obtain fraudulent identification documents. Opp'n at 9, Transcript of Detention Hearing at 9-10 (government also asserts that 39 different credit cards in a variety of names were found at Defendant's residence). Defendant argued at the detention hearing that these charges were "so out of character for who this young man has been throughout his whole life," but this argument falls flat, as Judge Spero observed, because the allegations describe not one aberrant event, but a course of conduct involving dozens of criminal acts over an extended period of time. See Transcript of Detention

[1] The Court finds that Defendant's conviction in Texas in connection with trafficking 5 to 50 pounds of marijuana is relevant (although not dispositive), as it came within months of the time he allegedly began to engage in the currently charged narcotics conspiracy. See Transcript of Detention Hearing (dkt. 343-1) at 3-5, 15-16.

Hearing at 18-20. Moreover, the criminal acts that are alleged suggest that Defendant has access to illegal guns, to drugs, and to money, and a willingness to do great violence, a combination that would pose a serious danger to the community.[2]

Defendant's argument that he should not be detained because his father, who was charged with the same counts, was released, is unpersuasive. See Mot. at 9. Defendant Keith Jackson's detention is not before the Court. The Court is satisfied that the record as to Defendant Brandon Jackson–particularly his role in "actually carrying out the crimes himself"–is clear and convincing. See Opp'n at 7; Transcript of Detention Hearing at 10-12 ("the actual narcotics trafficking . . . was going to be Brandon Jackson"; "In terms of the murder for hire, it was really Brandon Jackson and Marlon Sullivan who knew the guys who were going to do it"; "Brandon Jackson directly had his hands on this stuff.").

For the foregoing reasons, the Court finds that Defendant is a danger to the community, and that such danger cannot be mitigated adequately by conditions of release.[3] Defendant's Motion is therefore DENIED, without prejudice. The Court has ordered extensive discovery in this case. Accordingly, Defendant may, at a later date, bring to the Court's attention any evidence that warrants reconsideration of this Motion.

IT IS SO ORDERED.

Dated: July 23, 2014

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

[2] Defendant objects to what he sees as "a pretrial finding of guilt." Mot. at 9; see also Motamedi, 767 F.2d at 1408 ("Although the statute permits the court to consider the nature of the offense and the evidence of guilt, the statute neither requires nor permits a pretrial determination that the person is guilty."). To be clear: the Court does not (nor could it) comment on the Defendant's innocence or guilt in this case. The Court only discusses the allegations in assessing the likelihood that Defendant will pose a danger to the community. See id.

[3] The Court thereby disagrees with the Pretrial Services Report in so far as that Report found that such risk could be mitigated.

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America, Plaintiff, v. Andy Li, Defendant.	CASE NO. CR 14-196 CRB **[PROPOSED] ORDER GRANTING MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION** **Hearing:** Date: August 22, 2014 Time: 10:30 AM Judge: Hon. Joseph C. Spero

The Court has considered Defendant's Motion to Reopen Hearing and Reconsider Detention and the accompanying declarations of Michael Kim, Mimi Li, Vanessa Pastora, and Joanna Powell. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED.

Dated: _____

_____

Joseph C. Spero