U.S. Department of Justice

United States Attorney
Eastern District of New York

FJN:AA
F.#2024R00143

271 Cadman Plaza East
Brooklyn, New York 11201

April 1, 2024

By E-mail and ECF

The Honorable Lois Bloom
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Michael Kuilan et al.
Criminal Docket No. 24-130 (BMC)

Dear Judge Bloom:

The government respectfully submits this letter in support of its application for the entry of a permanent order of detention for defendants Michael Kuilan and Antonio Venti. As described below and in the four-count indictment, the defendants distributed fentanyl-laced heroin that killed Cecilia Gentili. Kuilan also illegally possessed a firearm in the course of his drug dealing. For these reasons and the reasons set forth below, the government respectfully submits that the defendants cannot rebut the presumption that they are a danger to the community and a flight risk and that no condition or combination of conditions can reasonably secure their appearance at trial or the safety of the community.

I. Background

A. Gentili's Overdose

On February 6, 2024, Cecilia Gentili was found dead in her Brooklyn home. Gentili's longtime partner called 911, and told law enforcement that Gentili left home between 5:30 p.m. and 6 p.m. on February 5, 2024 and returned around 9 p.m. He further stated that when Gentili returned home, she said that she was not feeling well and laid down. When he checked on Gentili the morning of February 6, 2024, he saw that she was unresponsive. Gentili was pronounced dead shortly thereafter. The New York Office of Chief Medical Examiner ("OCME") conducted an autopsy and toxicology analysis of Gentili. The OCME concluded that Gentili died from acute intoxication caused by the combined effects of fentanyl, heroin, xylazine, and cocaine. Gentili's blood reflected lethal concentrations of fentanyl and heroin.

B. The Investigation and Evidence Establish that Venti and Kuilan Sold the Lethal Narcotics to Gentili

1. Phone Evidence Shows that Gentili Purchased Narcotics from Venti and Kuilan Prior to Her Death

Text message evidence shows that Gentili purchased heroin laced with fentanyl from Venti that had been supplied by Kuilan. Specifically, text messages from Gentili's phone showed that she exchanged several messages with a contact saved in her phone as "Antonio Venti" in the days prior to her death. Between January 30, 2024 and February 5, 2024, Gentili requested from Venti a "bundle" in exchange for "100 dollars," and discussed payment and a time to meet.[1] Venti and Gentili met in the evening of February 5, 2024 to complete the transaction.

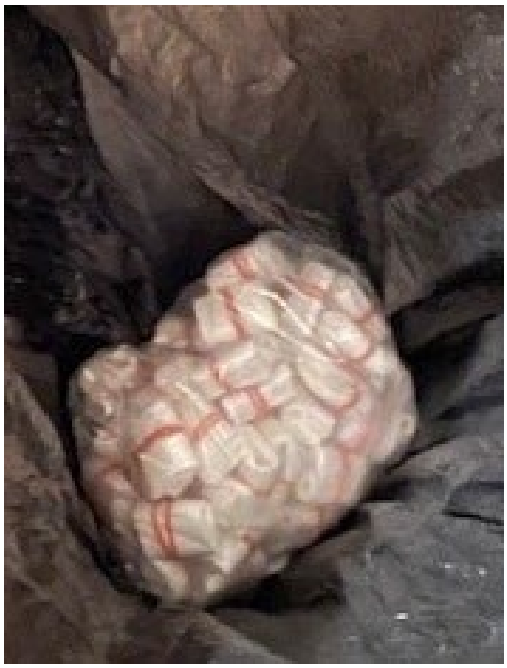
In addition, law enforcement searched Venti's phone pursuant to a search warrant and identified deleted texts where Venti communicated with Kuilan about narcotics transactions. On January 30, 2024, Venti and Kuilan discussed purchasing "5" of "the yellow ones" and paying "same as last time … 460." On February 1, 2024, Venti increased his request to "6 of the yellow" and later stated "Don't forget it's 6 not 5. Have to get something for a friend." This timing corresponded with Gentili asking Venti to purchase a bundle for her on January 30, 2024. Later on February 1, 2024, Kuilan wrote "Lmk when to come down meet on [a block from Kuilan's home], and about 15 minutes later, Venti writes "Ok by [location]."

Cell phone location data confirms that Kuilan and Venti supplied the lethal drugs to Gentili. Specifically, the data shows: (1) Venti and Kuilan's phones in the same location around the time they met on February 1, 2024 to buy and sell narcotics; and (2) Venti and Gentili's phones in the same location when, on February 5, 2024, Gentili picked up the narcotics she had requested from Venti.

2. A Search of Kuilan's Apartment Revealed a Significant Stash of Fentanyl and a Firearm and Ammunition

On or about March 12, 2024, pursuant to a search warrant, law enforcement agents entered and searched Kuilan's apartment in Williamsburg, Brooklyn. Law enforcement agents searched Kuilan's room and found a handgun, ammunition, hundreds of baggies of suspected narcotics, a digital scale, and identification documents for Kulian, as pictured below. Subsequent laboratory testing revealed that the narcotics were approximately 30 grams of fentanyl and that the firearm was an operable .45 caliber handgun.

[1] A "bundle" is a common street term for a certain quantity of heroin.



C. Criminal History

Kuilan has two prior felony convictions. On or about April 26, 2005, Kuilan was convicted of criminal possession of a controlled substance in Kings County Supreme Court, and sentenced to between two- and four-years' imprisonment. On or about February 11, 2002, Kuilan was convicted of criminal possession of a controlled substance in the third degree with intent to sell in Kings County Supreme Court, and sentenced to between three- and nine-years' imprisonment.

Venti has two criminal convictions. On or about April 9, 2007, Venti was convicted of petit larceny in Queens County Criminal Court and sentenced to a term of conditional discharge and ten days of community service. On January 11, 2008, after violating his term of conditional discharge, Venti was sentenced to five months' imprisonment. Also, on or about June 15, 2000, Venti was convicted of attempted criminal sale of a controlled substance in the third degree in New York County Criminal Court and sentenced to five years of probation.

In November 2019, Venti and Kuilan were arrested together for being in possession of 12 glassine bags containing heroin.

II. Legal Standard

Under the Bail Reform Act, 18 U.S.C. § 3141 et seq., federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. 18 U.S.C. § 3142(e). A finding of dangerousness must be supported by clear and convincing evidence, United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995), and risk of flight must be proven by a preponderance of the evidence, United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987).

Where, as here, there is probable cause to believe that the defendant committed offenses under the Controlled Substances Act punishable by terms of imprisonment of ten years or more, it is presumed that no condition or combination of conditions will reasonably assure the appearance of the defendant or the safety of the community. See 18 U.S.C. § 3142(e)(3)(A).

Where a presumption of detention is applicable, a defendant bears the burden of rebutting that presumption by coming forward with evidence "that contradicts notions of flight risk or dangerousness." United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001). A bail package sufficient to overcome a presumption of flight may not be enough to overcome a presumption of dangerousness. United States v. Rodriguez, 950 F.2d 85, 89 (2d Cir. 1991). Moreover, even if a defendant can meet his burden to rebut this presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight, the presumption favoring detention "does not disappear entirely, but remains a factor to be considered among those weighed by the district court." United States v. Mercedes, 254 F.3d 433 (2d Cir. 2001); see also United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986) (presumption of risk of flight); Rodriguez, 950 F.2d at 88 (presumption of dangerousness).

The concept of "dangerousness" encompasses not only the effect of a defendant's release on the safety of identifiable individuals, such as victims and witnesses, but also "'the danger that the defendant might engage in criminal activity to the detriment of the community.'" United States v. Millan,4 F.3d 1038, 1048 (2d Cir. 1993) (quoting legislative history).

Whether detention is sought on the basis of flight or dangerousness, the Bail Reform Act lists four factors to be considered in the detention analysis: (1) the nature and circumstances of the crimes charged, including whether the offense involved a controlled substance or a firearm; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the seriousness of the danger posed by the defendant's release. See 18 U.S.C. § 3142(g).

Additionally, the possibility of a severe sentence is an important factor in assessing a defendant's likelihood of flight. See United States v. Jackson, 823 F.2d 4,7 (2d Cir. 1987); United States v. Martir, 782 F.2d 1141, 1147 (2d Cir. 1986) (defendants charged with serious offenses whose maximum combined terms created potent incentives to flee); United States v. Cisneros, 328 F.3d 610, 618 (10th Cir. 2003) (defendant was a flight risk because her knowledge of the seriousness of the charges against her gave her a strong incentive to abscond); United States v. Townsend, 897 F.2d 989, 995 (9th Cir. 1990) ("Facing the much graver penalties possible under the present indictment, the defendants have an even greater incentive to consider flight."); United States v. Dodge, 846 F. Supp. 181, 184-85 (D. Conn. 1994) (possibility of a "severe sentence" heightens the risk of flight).

Evidentiary rules do not apply at detention hearings and the government is entitled to present evidence by way of proffer, among other means. See 18 U.S.C. § 3142(f)(2); see also United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000). In the pre-trial context, few detention hearings involve live testimony or cross-examination. Most proceed on proffer. LaFontaine, 210 F.3d at 131. This is because bail hearings are "typically informal

affairs, not substitutes for trial or discovery." Id. (internal quotation marks omitted); see also United States v. Mercedes, 254 F.3d 433, 437 (2d Cir. 2001) ("[The defendant] has twice been convicted of weapon possession—one felony conviction, and one misdemeanor conviction. We find the district court committed clear error in failing to credit the government's proffer with respect to [the defendant's] dangerousness.").

Where a judicial officer concludes after a hearing that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial." 18 U.S.C. § 3142(e)(1).

III. Argument

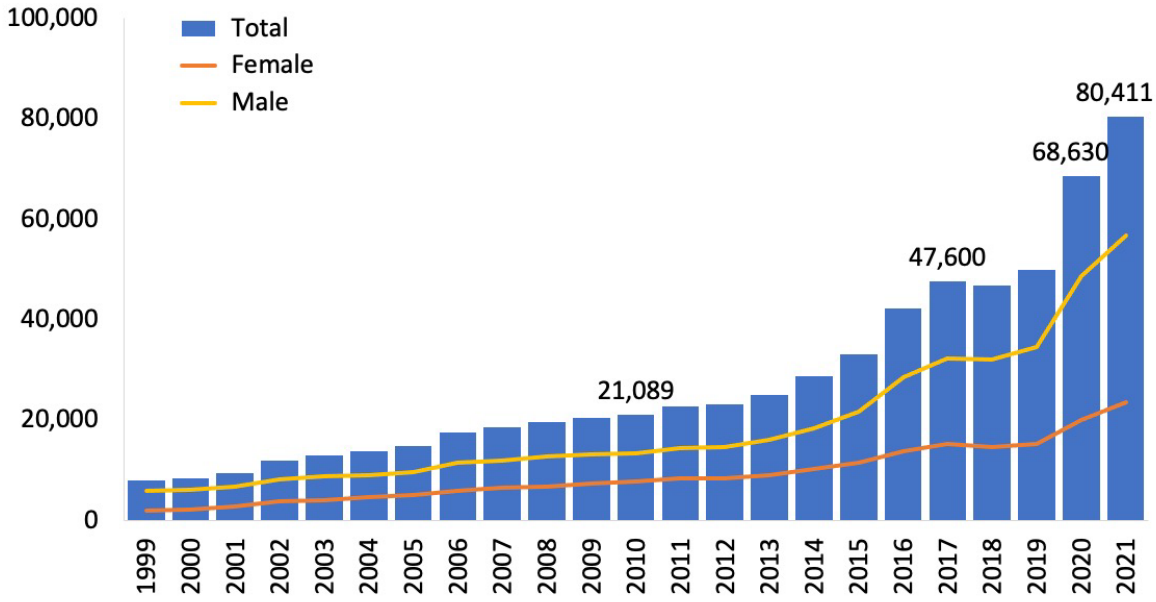
The Bail Reform Act counsels in favor of the defendants' detention here. The defendants cannot overcome the presumption that no condition or combination of conditions is sufficient to protect the community or ensure their appearance in court. See 18 U.S.C. § 3142(e)(3)(A).

A. The Defendants Pose a Serious Danger to the Community

The defendants should be detained pending trial because they pose a serious danger to the community. See 18 U.S.C. § 3142(g). The defendants sold fentanyl-laced heroin without regard for the toll that these deadly opioids have on customer-victims or the community at large. The defendants distributed fentanyl-laced heroin that caused Cecilia Gentili's death. Further concerning is that narcotics sales happened in a dense residential area of South Williamsburg, near schools and childcare establishments. Further, Kuilan himself possessed a significant amount of fentanyl in his home—hundreds of baggies of pure fentanyl weighing approximately 30 grams. A two-milligram dose, similar to 5-7 grains of salt, can be lethal for an average size adult. Thus, Kuilan possessed thousands of lethal doses in his bedroom in an unregulated and unsafe manner.

The overdose death caused by the defendants is not an aberration. Opioids like fentanyl are killing a staggering number of Americans—with the number of deaths climbing each year. According to the National Institutes of Health, overdose deaths from opioids rose to more than 80,000 people in 2021.

Figure 3. National Overdose Deaths Involving Any Opioid*, Number Among All Ages, by Gender, 1999-2021



*Among deaths with drug overdose as the underlying cause, the "any opioid" subcategory was determined by the following ICD-10 multiple cause-of-death codes: natural and semi-synthetic opioids (T40.2), methadone (T40.3), other synthetic opioids (other than methadone) (T40.4), or heroin (T40.1). Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2021 on CDC WONDER Online Database, released 1/2023.

See National Institutes of Health, Overdose Death Rates, https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates.

In addition to drug sales, Kuilan also possessed a handgun and ammunition, which he was not permitted to possess as a prior felon. Guns and drugs are a potent mix, and disputes over deals or territory can and do lead to violence in our community.

The history and characteristics of the defendants further demonstrate their danger. The defendants have been involved in the sale of drugs for decades. Further, Kuilan does not have any legitimate employment. He thus presents a greater risk of reoffending and selling fentanyl, heroin, and other drugs for profit.

B. The Defendants Pose a Flight Risk

The defendants should also be detained pending trial because they are flight risks.

First, each defendant faces significant punishment. Both are charged with an overdose-related offense that carries a term of imprisonment of between 20 years and life imprisonment. See 21 U.S.C. § 841(b)(1)(C). Kuilan is also charged with unlawfully possessing a firearm, which itself carries a separate penalty of up to 15 years' imprisonment. See 18 U.S.C. §§ 922(g)(1), 924(a)(8). While the defendants previously self-surrendered to law enforcement for prior charges in this case, they had not yet been charged with causing a fatal overdose charge,

which carries a significant minimum sentence. The likelihood of a lengthy term of imprisonment now gives the defendants a strong incentive to flee. See United States v. Blanco, 570 F. App'x 76, 77 (2d Cir. 2014) (affirming district court's order of detention where defendants face lengthy term of imprisonment). It also minimizes any risk that pre-trial detention would result in an over-served sentence.

Second, the weight of the evidence also heightens the incentive to flee. The evidence of the defendants' involvement in the alleged conduct is overwhelming. The defendants' sales of the lethal fentanyl-laced heroin is clear from text message evidence, corroborating financial transactions, and cell site location data that places them at the time and place of the transactions. Moreover, both defendants gave admissible statements to law enforcement that confirmed their guilt. Where, as here, the evidence of guilt is strong, it provides "a considerable incentive to flee." United States v. Millan, 4 F.3d 1038, 1046 (2d Cir. 1993); see also United States v. Palmer-Contreras, 835 F.2d 15, 18 (1st Cir. 1987) (per curiam) (where "the evidence against defendants is strong, the incentive for relocation is increased").

Third, Kuilan's actions have demonstrated that he poses a serious risk of flight. After Kuilan's home was searched pursuant to a warrant, he ignored attempts by federal agents to contact him went into hiding for several days. Kuilan has also destroyed cell phones to avoid search by law enforcement. His actions confirm an intent and willingness to defy court and law enforcement instructions. United States v. Hoey, No. S3 11 CR 337 PKC, 2014 WL 572525, at *1 (S.D.N.Y. Feb. 13, 2014) (ordering detention in a drug overdose case in which the defendant was accused of attempting to destroy evidence).

IV. Conclusion

For the foregoing reasons, the government respectfully requests that the Court issue a permanent order of detention.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/Adam Amir
Adam Amir
Assistant U.S. Attorney
(718) 254-7000

cc: Clerk of Court (LB) (by email)
Defense Counsel (by email)