PKC:AG:RJN
F.#2007R01082

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

- against - Cr. No. 08-571(JG)

ISRAEL WEINGARTEN,

Defendant.

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MEMORANDUM OF LAW IN SUPPORT OF
THE GOVERNMENT'S MOTION FOR A PERMANENT ORDER OF DETENTION

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PRELIMINARY STATEMENT

The government hereby moves for a permanent order of detention pursuant to the Bail Reform Act with respect to the defendant ISRAEL WEINGARTEN. The defendant was indicted on August 18, 2008, in a five-count indictment. He is charged with two counts of knowingly and intentionally transporting a minor in foreign commerce with the intent to engage in a sexual activity for which he could be charged with a criminal offense, pursuant to 18 U.S.C. § 2423(a), and three counts of knowingly and intentionally traveling in foreign commerce for the purpose of engaging in a sexual act with a minor, pursuant to 18 U.S.C. § 2423(b). The defendant faces up to ten years in prison on each count. If convicted at trial, based on a conservative estimate of the advisory Sentencing Guidelines, he faces a range of imprisonment of 168-210 months.

Detention is appropriate because, as described in detail below, 1) a presumption in favor of detention, pursuant to the Bail Reform Act, 18 U.S.C. § 3141 et seq., applies; and, in any event, 2) the relevant facts and circumstances establish that no condition or combination of conditions will reasonably assure the defendant's appearance or the safety of others and the community. First, there is a serious risk that the defendant will flee. See 18 U.S.C. § 3142(f)(2)(A). Second, there is a serious risk that the defendant will attempt to obstruct justice

or attempt to threaten, injure, or intimidate a prospective witness. See 18 U.S.C. § 3142 (f)(2)(B). Finally, releasing the defendant on bail would pose a danger to the safety of the community. See 19 U.S.C. § 3142(e).

I. THE DEFENDANT'S CRIMINAL CONDUCT

The government hereby proffers the following facts relevant to the charges filed against the defendant and his pretrial detention. See United States v. LaFontaine, 210 F.3d 125, 130-131 (2d Cir. 2000)(government entitled to proceed by proffer in detention hearings); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995)(same).

In October 2003, the victim, who was born in 1981, informed the Federal Bureau of Investigation ("FBI") that her father, the defendant ISRAEL WEINGARTEN, had sexually abused her from around nine years old until she reached the age of 18. In September 1999, the victim left her parents and siblings, and the Sat Mar Jewish community to which the family belonged. The Sat Mar community is a conservative sect of Hasidic Judaism, with communities throughout the world including the United States, Canada, Europe, Israel, and South America. Although the defendant was born in the United States and is an American citizen, he has lived for extended periods of time with his wife and eight children in Sat Mar communities in England, Israel and Belgium.

The defendant began sexually abusing the victim in or about 1990 while the family was living in Belgium. The abuse, which initially consisted of the defendant forcing the victim to manually stimulate him, progressed to much more invasive sexual acts, including the defendant penetrating the victim vaginally and anally with his fingers and forcing her to perform oral sex on him. This abuse occurred on a weekly, and sometimes almost daily, basis.

In 1997, the defendant traveled with the victim on several occasions between Israel, Belgium and the United States. Specifically, on April 14, 1997, the defendant moved his family from Antwerp, Belgium to the Bet Shemesh community in Israel. The defendant moved from Belgium because he feared that leaders and other individuals in the community were aware of his abusive behavior and would report him. The family remained in Israel until May 13, 1997, during which time the defendant continued to sexually abuse the victim.

Between May 13 and July 30, 1997, the defendant moved his wife and some of their children, including the victim, back and forth between Belgium and Israel, in part, it appears, to have more freedom to sexually abuse the victim.

On July 30, 1997, the defendant took the victim from Israel to New York, where his father was gravely ill and dying. However, the defendant did not bring any of his other family

members, including his wife, so that he could continue to sexually abuse the victim without interference.

On August 19, 1997, the defendant took the victim from New York to Belgium under the pretense that they needed to pack the rest of the family's belongings that had been left behind in April. The defendant kept the victim in Belgium for almost a month, until September 12, 1997. The abuse the victim suffered while alone with her father in Belgium was the worst she endured.

In 1999, while the victim was attending school in England, the defendant insisted that she return home for the holidays and, when she refused, he attempted to kidnap her from a family that tried to protect her.[1] During the attempted kidnaping, the defendant forced his way into the home of the head rabbi of the school and physically assaulted the rabbi and his wife.

II. THE PRESUMPTION IN FAVOR OF DETENTION

Because the defendant is charged with sexually abusing a child, this case triggers a presumption under the Bail Reform Act, 18 U.S.C. § 3141, et seq. that no condition or combination of conditions are sufficient to assure the defendant's appearance

[1] Towards the end of 1996, with the help of some community members, the victim managed to enroll in a school in Manchester, England, which provided her with a measure of protection from her father. However, her father insisted that she return to Belgium in April 1997 for the Passover holidays. The defendant then began traveling with the victim as described above.

and the safety of the community. On April 30, 2003, Congress passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act ("PROTECT" Act). See 108 P.L. 21 (2003). The PROTECT Act addresses many concerns regarding the prevention of child abduction and the sexual exploitation of children. It amends the Bail Reform Act by creating, in 18 U.S.C. § 3142(e), a rebuttable presumption that, in a pretrial detention hearing, "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense...involving a minor victim under section 2423 of this title." See 18 U.S.C. § 3142(e).

The presumption clearly applies to this case as a grand jury has already found probable cause to believe that the defendant committed the instant offenses, in violation of 18 U.S.C. § 2423. See United States v. Contreras, 776 F.2d 51, 55 (2d Cir. 1985) ("the presence of an indictment returned by a duly constituted grand jury conclusively establishes the existence of probable cause for the purposes of triggering the rebuttable presumption set forth in [18 U.S.C.] § 3142(e)").

Furthermore, the presumption is well-founded in this case based on the factors that must be considered under the Bail Reform Act. These factors include: (1) the nature and

circumstances of the crimes charged, (2) the evidence of the defendant's guilt; (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). Each of these factors demonstrate that the defendant is both a significant flight risk[2] and a danger to the community,[3] and therefore supports a detention order for the defendant.[4]

III. THERE ARE NO CONDITIONS OR COMBINATION OF CONDITIONS SUFFICIENT TO ASSURE THE APPEARANCE OF THE DEFENDANT AND THE SAFETY OF THE COMMUNITY

A. The Defendant is a Serious Flight Risk

1. The defendant has ties to foreign countries

The defendant has lived abroad, in Europe and Israel, for at least 15 of the last 24 years. There are Sat Mar communities around the world, including communities in Israel and

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[2] A finding of risk of flight must be supported by a preponderance of the evidence. See United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985).

[3] A finding of dangerousness must be supported by clear and convincing evidence. See Chimurenga, 760 F.2d at 405.

[4] Courts have explicitly held that home detention and electronic monitoring are insufficient to protect the community against dangerous individuals such as the defendant. See, e.g., United States v. Marra, 165 F. Supp.2d 478, 486 (W.D.N.Y. 2001) (the Court "finds that electronic monitoring will not reasonably assure defendant's presence as required. At most, electronic monitoring would only reduce defendant's head start should she decide to flee."); United States v. Agnello, 101 F. Supp.2d 108, 116 (E.D.N.Y. 2000) ("the protection of the community provided by the proposed home detention remains inferior to that provided by confinement in a detention facility").

Europe where the defendant has previously lived and into which he could easily integrate or re-integrate himself.

At the same time, the defendant has few ties to the United States. Upon information and belief, the defendant rents his home and appears, based on his receipt of government assistance, to have no substantial assets here in the United States. The fact that his children are here provides no further security that the defendant will remain in the United States. As discussed above, the defendant has frequently moved his children to other countries in the past and apparently has little concern with where they attend school, or even that they attend on a regular basis.

2. The defendant has threatened to flee to avoid prosecution

The defendant has demonstrated his willingness and ability to flee whenever suspicion of his misconduct arises. According to witnesses in Belgium, the defendant moved from Belgium to Israel in April of 1997 out of fear that his sexual abuse would be reported by members in his community. Moreover, when the victim confronted the defendant about the sexual abuse, he told her that he would avoid any prosecution for his conduct by moving to Brazil or Casablanca. He repeated a similar threat to his wife when she initiated child custody and child protection proceedings against him in 2002.

3. The defendant has defied court orders

Between 2002 to 2004, the defendant was the subject of child custody and neglect proceedings brought by his wife and Child Protection Services in Rockland and Orange Counties. In the course of these proceedings, the defendant was ordered to appear in Family Court in Rockland County on October 31, 2003. He failed to appear, and the Family Court Judge entered a temporary order of removal. The defendant hid his children and refused to produce them for a week. Child Protective Services had to contact the police in Rockland, Orange, and Westchester Counties before they finally found the children.[5]

4. The evidence against the defendant is strong

The evidence against the defendant is very strong, increasing the defendant's incentive to flee. 18 U.S.C. § 3142(g)(2). The court may consider the nature and circumstances

[5] Indeed, throughout the child neglect and custody proceedings, the defendant engaged in deceit in an effort to evade justice. According to a petition filed by the victim's mother in connection with the Rockland County child custody action, prior to instituting the custody proceeding, the victim's mother attempted to resolve the matter through a Rabbinical Court, in keeping with the Sat Mar community's rules and customs. She further alleged that the defendant failed to respond or appear following three different summonses issued by the Rabbinical Court in 2003, and pursuant to directions from the Rabbinical Court, filed her application in Family Court. Once in the secular courts, the defendant's deceitful behavior continued. In 2003, in an effort to transfer the case out of Orange County, the defendant misrepresented that he lived in Monsey, New York (Rockland County), when, at the time, he actually lived in Monroe, New York (Orange County).

of the case and the weight of the evidence in making its bail determination. Id. As described above, the defendant began molesting the victim from the time she was nine years old, if not before. He performed acts of sexual abuse on her a weekly, and sometimes daily, basis. While she was attending school in another country, he attempted to kidnap her, physically assaulting at least two other people, and was arrested by the local police.

In addition to the victim's testimony, there are numerous witnesses to whom the victim made "outcry" statements, contemporaneous to the events, which corroborate her testimony. See Fed.R.Evid. 803(2); United States v. Bercier, 506 F.3d 625, 629 (8th Cir. 2007)(holding that a victim's statement regarding sexual abuse she suffered was admissible as an excited utterance); see also United States v. Tocco, 135 F.3d 116, 127 (2d Cir. 1998)(holding that a statement made several hours after the incident occurred qualified as an excited utterance because the stress of the incident had not subsided). There are also other witnesses, including family members, whose observations of the defendant's conduct and interactions with him corroborate the victim's account regarding the abuse and attempted kidnaping of the victim. Moreover, the government has evidence regarding the defendant's possible sexual abuse of other relatives. See Fed.R.Evid. 413(a) (in a case charging sexual assault, evidence

of defendant's commission of another sexual assault is admissible); United States v. Larson, 112 F.3d 600, 604 (2d Cir. 1997) (holding that testimony regarding uncharged sexual abuse the defendant committed years before the trial was admissible).

B. The Defendant is Likely to Obstruct Justice or to Threaten, Injure, or Intimidate Prospective Witnesses

The defendant has a history of intimidating and manipulating family and community members who threaten to expose his abusive behavior. He branded the victim with the nickname "Fantasizer" at an early age to ensure that any allegations she made about his sexual abuse would be viewed as the fantasies of a young child. The defendant also tricked the victim's older brother into recording an inaccurate statement to the effect that the victim had a history of engaging in inappropriate sexual acts.

The defendant has lied and used force to prevent any inquiries into the welfare of his children. For example, while living in the Sat Mar community of Kiryas Joel in Monroe, New York, the defendant and his friends forcibly removed the Kiryas Joel Public Safety Director from the Weingarten home when he attempted to investigate a tip that one of Weingarten's daughters (not the victim) was screaming in pain. The defendant then refused to allow the police to take his daughter to the hospital. Subsequently, the Public Safety Director and his family received threatening phone calls intended to discourage him from

investigating the matter further. Similarly, after the defendant's sister-in-law filed assault charges against him in 2002, she received threatening phone calls telling her that she would be arrested unless she dropped the charges.

The defendant continues to live with six of his children, two of whom are minors, and three of whom are girls, ages 16, 19, and 22, in the same community as his estranged wife. Unless he is detained, he will continue to threaten, intimidate, and physically abuse them to prevent them from cooperating with the investigation.

C. The Defendant Poses a Danger to His Community

The charges at issue, sexual exploitation of a minor, favor detention. They are defined in the Bail Reform Act as crimes of violence. 18 U.S.C. § 3156(4)(C)(including in the definition of "crime of violence," any felony under Chapter 117). Not only did the defendant sexually abuse his daughter on a weekly, if not daily, basis, he attempted to kidnap her when she refused to come home with him and assaulted those who tried to protect her. As noted above, the defendant has exhibited his violent nature on other occasions. In 2002, he assaulted his sister-in-law who tried to remain in the Weingarten home to assist her sister, and in 2003, he forcibly removed the Kiryas Joel Public Safety Director from his home.

Furthermore, Child Protective Services, the Public

Safety Director for Kiryas Joel, as well as the victim and other community members believe that the defendant has abused at least one of his other daughters, and several neglect complaints have been filed against the defendant relating to his children. The Public Safety Director for the Kiryas Joel community was so concerned for the safety of the defendants' children that he alerted the federal authorities in 2003 when it appeared to him that Child Protective Services were unable to sufficiently protect the children.

Finally, the defendant poses a danger to other children in the Sat Mar community as well because he has a history of working in yeshivas for young children. In Belgium, he ran his own Sat Mar school, and in the United States in 2002 he was employed by the Yeshiva and Mesivta Torah Temimah, an elementary and secondary school in Brooklyn. Unless he is detained, it will be difficult to prevent him from seeking such employment because the Sat Mar schools do not operate under governmental control.

CONCLUSION

For at least seven years, the defendant sexually abused his daughter on a weekly, and sometimes daily, basis. He moved her to different countries in order to continue the abuse and to escape any threat that he would be apprehended as word of his abuse began to spread. He has resorted to threats and violence to intimidate those who tried to protect the victim and other

members of his family and has refused to comply with a court order regarding the safety of his children. He has substantial ties to foreign countries, where he will likely flee unless he is detained. A presumption in favor of detention applies in this case and the evidence further demonstrates that there are no conditions or combination of conditions short of pretrial detention sufficient to ensure his return to court or the safety of the community. Thus, the defendant should be remanded pending trial.

Dated: Brooklyn, New York
October 6, 2008

Respectfully submitted,

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