



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

ABS:RMS

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 30, 2022

By Hand and ECF

The Honorable Ramon E. Reyes, Jr.
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Isaiah Dukes
Case No. 22-CR-1059

Dear Judge Reyes:

Later today, defendant Isaiah Dukes will appear before Your Honor for arraignment upon the above-referenced complaint (the “Complaint”). The United States respectfully submits this letter in support of its application for a permanent order of detention against the defendant because he is a danger to the community and a flight risk, and no combination of conditions can mitigate these risks. Accordingly, he should be detained.

I. Background

As described in the Complaint, the defendant—a convicted felon—carried a loaded pistol affixed with a switch device, rendering the gun to be a machine gun.¹

On September 29, 2022, a rideshare driver (the “Driver”) picked up the defendant and several associates at a hotel in New York, New York. As the defendant sat in the vehicle, the Driver noticed that the defendant was holding a firearm, which was later identified as a loaded Glock model 22 .40 caliber pistol bearing serial number BTSD713, with a switch device affixed (the “Firearm”). After dropping off the defendant and his associates at a recording studio in Queens, New York, the Driver observed that the defendant had left the Firearm in the vehicle. After law enforcement responded, the Driver identified the defendant as the individual who had been carrying the Firearm.

¹ A “switch,” also known as “auto sear,” is a small device that when affixed to the back of a handgun converts the firearm into a fully automatic weapon.

The Joint Firearms Task Force of the Bureau of Alcohol, Tobacco, Firearms and Explosives and the New York City Police Department (the “Task Force”) examined and field-tested the Firearm, which indicated that the Firearm can automatically fire more than one round with a single function of the trigger. The Task Force also determined that the Firearm contained one round in the chamber and nine rounds in the magazine.

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).

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) (internal quotation marks omitted).

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 involves 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).

The possibility of a severe sentence is an important factor in assessing a defendant’s likelihood of flight. See United States v. Khusanov, 731 F. App’x 19, 21 (2d Cir. 2018) (“[A] district court does not clearly err in concluding that a defendant facing a potentially lengthy prison sentence possesses a strong motive to flee.”); United States v. Martir, 782 F.2d 1141, 1147 (2d Cir. 1986) (explaining that the lengthy maximum combined term of imprisonment faced by the defendant “created potent incentives to flee”); United States v. Dodge, 846 F. Supp. 181, 184–85 (D. Conn. 1994) (explaining that the possibility of a “severe sentence” heightens the risk of flight); accord United States v. Cisneros, 328 F.3d 610, 618 (10th Cir. 2003) (finding that the 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.”).

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; rather, 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

Every § 3142(g) factor counsels heavily in favor of the defendant’s detention. As outlined below, the United States more than meets its burden of showing by clear and convincing evidence that the defendant poses a danger to the community based on his possession of a particularly dangerous firearm. Moreover, his criminal history, the evidence of his criminal conduct, and the penalties he faces all demonstrate by a preponderance of the evidence that the defendant poses a flight risk.

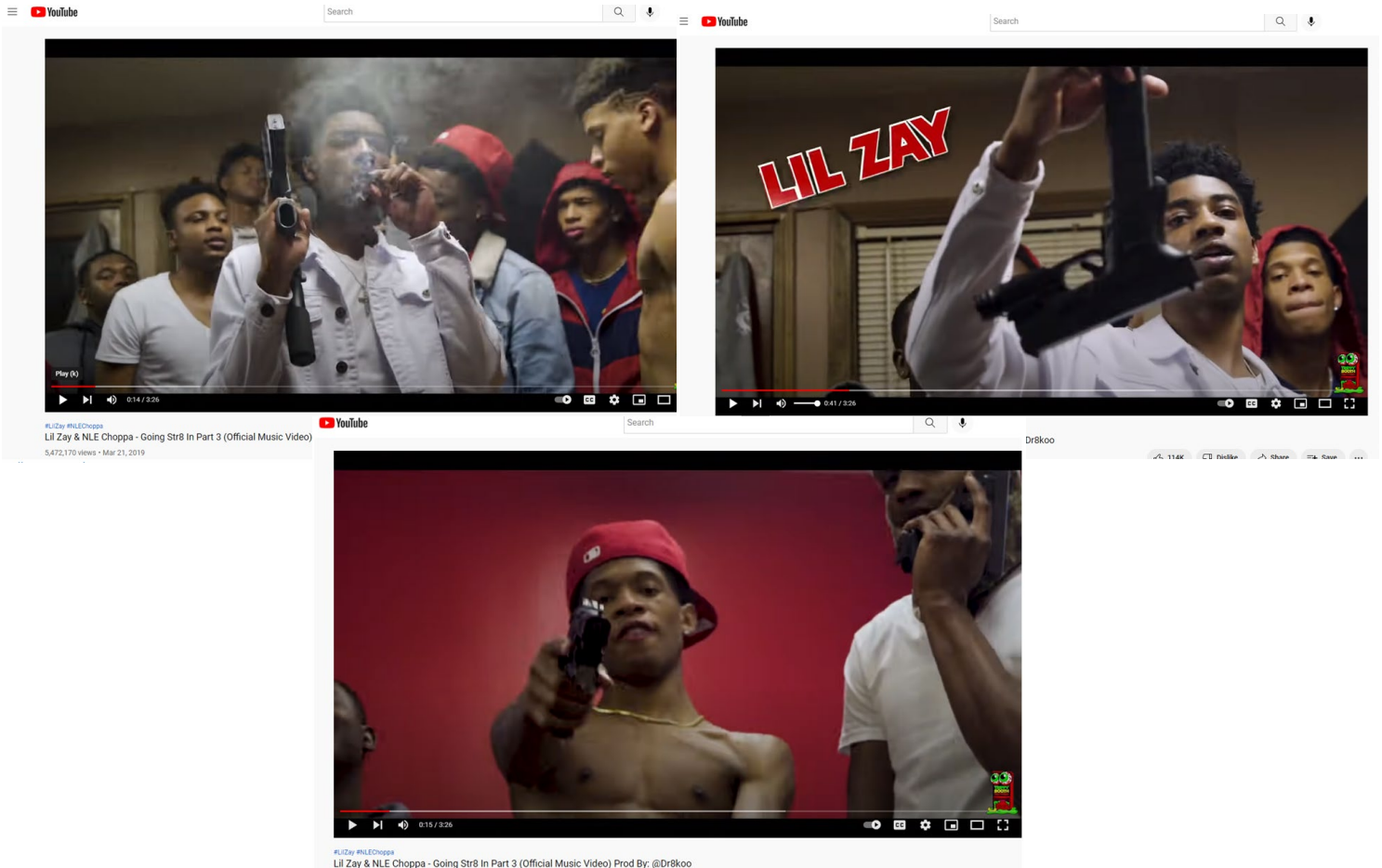
A. The Defendant’s Danger to the Community

The crimes charged in this case are extremely serious and confirm that the defendant is a danger to the community. For one, the defendant possessed a particularly deadly weapon that had been converted from a handgun capable of shooting just one bullet each time the trigger is squeezed to having the capability of firing until the trigger is lifted. Moreover, the possession of a firearm by a convicted felon like the defendant presents a legitimate risk of danger for the self-evident reason that the firearm can cause substantial amounts of harm. See United States v. Dillard, 214 F.3d 88, 104 (2d Cir. 2000) (finding that illegal possession of a firearm by a convicted felon is a crime of violence because it involves a substantial risk of violence).

Despite his criminal history, which includes a prior conviction relating to the unlawful possession of a firearm, the defendant has not been deterred from such conduct. In fact, the defendant—a rapper known as “Lil Zay Osama”—has revealed in possession of firearms and made clear that he is well aware of the significance of a switch device. Below is an excerpt from one of his songs, released in 2021:

Every day a different Glock
Pussy boy know how I play it
I hope this song right here don’t get in the hands of the feds (Hope it don’t get to the feds, man)
Ayy, I just got a brand new Glock
With a fifty and a switch (With a fifty and a switch)

Various music videos posted to YouTube show the defendant in possession of what appear to be different firearms, as shown in the screenshots below.



B. The Defendant's Risk of Flight

1. Defendant's History and Characteristics

First and foremost, the defendant has demonstrated that he is a risk of flight precisely because he already has shown a disregard for court orders. There currently are two outstanding warrants for his arrest, issued by two different jurisdictions.

Moreover, at just 25 years old, the defendant already has a number of felony and misdemeanor convictions, including the below.

- In 2014, he was convicted of, inter alia, two counts of robbery (felony) and one count of aggravated battery (felony) in Illinois.
- In 2013, he was convicted of one count of robbery (felony) and one count of aggravated discharge of a firearm (felony) in Illinois.

2. Severe Penalties

As a result of his criminal history and the nature of the offenses with which he is charged, the defendant faces significant penalties prescribed by law, giving him substantial incentive to flee. “When faced with the possibility of a significant prison term, defendants have a strong incentive to flee.” United States v. Edwards, 2021 WL 796089, at *2 (E.D.N.Y. Mar. 2, 2021). The Second Circuit has held that the possibility of a severe sentence can establish flight risk. See, e.g., United States v. Scali, 738 F. App’x 32, 33 (2d Cir. 2018) (“The court reasonably determined that [the defendant]’s Guidelines range of 87-108 months’ imprisonment was significant enough to provide an incentive to flee.”).

3. Weight of the Evidence

There is significant evidence of the defendant’s commission of the charged offenses. Law enforcement recovered the Firearm, and an eyewitness positively identified the defendant as the individual who had been carrying the weapon. 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); accord United States v. Palmer-Contreras, 835 F.2d 15, 18 (1st Cir. 1987) (per curiam) (explaining that where “the evidence against defendants is strong, the incentive for relocation is increased”).

IV. Conclusion

For the foregoing reasons, the United States respectfully requests that the Court issue a permanent order of detention against the defendant.

Respectfully submitted,

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cc: Clerk of Court (by email)
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