

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL RIVERA,

Defendant.

1:22-cr-00017-2-WAL-EAH

TO: Melissa P. Ortiz, Esq., AUSA
Lisa L. Brown Williams, Esq., AFPD

ORDER DENYING MOTION FOR DETENTION PENDING TRIAL

THIS MATTER came before the Court on the Government's Motion for Detention Pending Trial. Dkt. No. 43. The Court held a detention hearing on October 5, 2022. Dkt. No. 47. AUSA Melissa P. Ortiz appeared on behalf of the government, and AFPD Lisa L. Brown Williams represented Defendant Samuel Rivera, who was also present. This Order sets forth the reasons for the Court having denied the motion and ordering Rivera's release on conditions.

PROCEDURAL BACKGROUND

In November 2022, the Government charged Rivera in an Information with three offenses: Assault on an Officer with Physical Contact, in violation of 18 U.S.C. § 111(a)(1); Assaulting, Resisting and Impeding an Officer, in violation of 18 U.S.C. § 111(a)(1)); and Resisting and Impeding an Officer, in violation of 18 U.S.C. 111(a)(1).¹ The charges arose

¹ On September 28, 2022, the Government issued a Complaint in case number 22-mj-00045 which charged Rivera with Assaulting, Resisting and Impeding an Officer, in violation of 18 U.S.C. § 111(a)(1) and Assault on an Officer with Physical Contact, in violation of 18 U.S.C. §

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after an incident between Rivera and some companions and two National Park Service (“NPS”) Rangers. As described in the affidavit in support of probable cause executed by Ranger Travis Herbert, on August 19, 2022, at approximately 11:05 a.m., Ranger Stuart Beaudry was assisting other NPS employees in launching a government vessel at Altoona Lagoon on St. Croix. Dkt. No. 43-1 ¶ 9. While Beaudry stood on the dock watching the launch, a vessel with three males (Rivera, Jesus Munoz, and Enrique Velazquez III) approached. *Id.* ¶ 10. Munoz made threats to Beaudry. *Id.* ¶¶ 11-13. Once the vessel was close to the dock, Munoz jumped off, took an aggressive stance a few inches from Beaudry’s face, and continued to threaten him. *Id.* ¶ 14. Beaudry told Munoz to calm down. *Id.* ¶ 15. At that time, Rivera and Velazquez joined Munoz in yelling at and threatening to beat up Beaudry, who pushed Munoz away and ordered all three men to back up. *Id.* Munoz continued to step forward and threaten Beaudry. *Id.* ¶¶ 16-17.

Another male joined the group, and, all four men, including Rivera, with clenched fists, bouncing on their toes, positioned themselves in fighting stances and continued to follow Beaudry down the dock while yelling profanities *Id.* ¶ 18. Beaudry yelled to Herbert for assistance, and the four men surrounded the Rangers. *Id.* ¶¶ 19, 20. Rivera threatened to slap Herbert, saying he was “supposed to be a local” and pressed on Herbert’s ballistic armor with his body, making fists. *Id.* ¶ 22. One of the males grabbed Herbert’s wrist. At that time, Herbert was wearing his NPS uniform, which included 30-35 pounds of gear, a taser and

111(a)(1). On November 1, 2022, the Government filed the Information in the instant case.

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firearm, and he was less than five inches away from the edge of the dock. *Id.* ¶¶ 22-23. The Rangers ordered the men to the ground, but they failed to comply. *Id.* ¶ 24. Herbert instructed Munoz that he was not free to leave; Rivera then pointed to the NPS Rangers and stated, “I GON SLAUGHTER [sic] AYO. . .” *Id.* ¶¶ 24-25. Approximately, five minutes later, Ranger Gabriel Laurencin arrived as backup and assisted Herbert in “inform[ing] Rivera that he was being placed under arrest.” *Id.* ¶ 26. Rivera jumped off the dock onto the vessel, and otherwise refused to comply with the arrest. *Id.* At that time, the Rangers decided they could not safely take Rivera into custody. *Id.* Rivera again threatened to fight the Rangers. *Id.* ¶ 27.

The affidavit also mentioned an April 2021 encounter between Rangers Laurencin and Beaudry and Rivera and Munoz when the Rangers investigated a vessel occupied by Rivera and Munoz for suspected illegal fishing. *Id.* ¶ 5. During that incident, both Munoz and Rivera made verbal threats towards the Rangers. *Id.* ¶¶ 6-7.

The Government moved to detain Rivera for the August 2022 incident under 18 U.S.C. § 3142(f)(2)(B), which provides that a judicial officer shall hold a detention hearing if a serious risk existed that the defendant “will threaten, injure, or intimidate, or attempt to threaten, injure or intimidate a prospective witness or juror.” Dkt. No. 43 at 3. It presented the following arguments in its motion in response to the detention factors a Court must consider under 18 U.S.C. § 3142(g):

1. Nature and Circumstances of Offense: The offenses were serious because they included a felony assault on an officer with a penalty of up to eight years’ incarceration. *Id.* at 4. Further, the matter was “exacerbated by the fact” that

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Rivera was on pretrial release from the Superior Court for serious charges including Assault in the First Degree with Intent to Commit Murder.² The Government argued that the instant offense indicated that Rivera had violated multiple Superior Court conditions of release, including that he not commit a further crime and to have his third-party custodian present when leaving his residence. *Id.* Moreover, the circumstances of the offenses indicated “blatant disregard for the law and [the] court’s orders.” *Id.*

2. Weight of Evidence: The Government asserted the weight of the evidence was strong and showed that “defendant failed to comply with orders, assaulted an officer, and refused to be arrested.” *Id.* at 5. Thus, the Government maintained that “the evidence of guilt against defendant [was] substantial.” *Id.*
3. History and Characteristics: While Rivera had ties to the community in that he resided here, he also had a serious criminal history consisting of the aforementioned territorial charges and the instant federal offense. *Id.* at 5. The Government noted Rivera’s employment history as a fisherman. *Id.*

² In May 2022, Rivera was charged in the Superior Court of the Virgin Islands with Assault in the First Degree with Intent to Commit Murder. Dkt. Nos. 43 at 5; 43-3. The Superior Court’s pretrial release order listed his offense as “Assault 1st Degree With Intent To Commit Murder.” Dkt. No. 43-3. However, the Supplement Report authored by the Virgin Islands Police Department stated that the original charge was “Attempted Murder in the First Degree.” Dkt. No. 43-4. The arrest warrant charged Rivera with both Attempted Murder in the First Degree and Assault in the First Degree, separately, as well as Mayhem, Unauthorized Possession of a Firearm During the Commission of a Crime of Violence, Assault in the Third Degree, Discharging or Aiming Firearms, Reckless Endangerment in the First Degree, and Possession of Ammunition. *Id.*

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4. Danger to Community: The facts established probable cause that Rivera committed a serious offense with a potentially lengthy sentence while on pretrial release for another serious offense. *Id.* at 5-6. Moreover, the instant offense showed Rivera's failure to abide by officers' orders. *Id.* at 6. This failure to comply, "coupled when allegedly done under the Defendant's pre-existing release conditions in Superior Court, show that Defendant cannot abide by rules set forth by a Court." *Id.* In addition, "Defendant poses a danger to the community in that he now has two pending separate felony matters," both involving assault. *Id.* Finally, the Government "intends to call several witnesses in its case . . . with the concern being that with Defendant's seemingly hairpin-trigger violent temper, coupled with his criminal history, he poses a risk to the witnesses (not all of which are law enforcement) in that he will attempt to threaten or intimate them." *Id.*

Rivera opposed the motion. Dkt. No. 45. He argued that there were certain inconsistencies in the affidavits in support of probable cause and the motion to detain, noting that he was named as the individual who grabbed Herbert's wrist only in the later affidavit in support of the motion to detain. *Id.* at 2-3. Additionally, the Government's motion to detain, describing the background of the offense, stated that "Samuel Munoz, one of the males on the approaching vessel, made aggressive threats to USPSR Beaudry and took an aggressive stance a few inches away from Beaudry's face." Dkt. No. 43 at 2. This detail conflicted with the affidavit in support of the motion to detain which identified Jesus Munoz as the initial aggressor. Dkt. No. 43-2 ¶ 15. Rivera contended that there was no presumption of detention

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accompanying his offense and that the Government had failed to show that he was a serious risk to potential witnesses or jurors. *Id.* at 3-6. He discussed his strong community ties, including that he has lived on St. Croix for his entire life and that he financially supported a girlfriend and son who live on the island. *Id.* at 5. He noted that, despite the serious territorial charges, he had made all territorial court appearances and could successfully abide by any conditions this Court would set. *Id.* at 5-6. Further, he argued that the weight of the evidence was the least important factor to consider and that any generalized danger to the community could not justify detention. *Id.* at 6-7. He requested that he be released with conditions including: (1) that his father act as his third-party custodian; (2) he would be accompanied by his third-party custodian at all times except when fishing; (3) a curfew of 7:30 p.m.- 4:30 a.m.; (4) placement on home confinement when he was not fishing; (5) he would report to Probation as ordered; (6) he would maintain his occupation of fishing; (7) he would stay outside the boundaries of Buck Island for any and all activities; (8) he would avoid all contact with designated witnesses/victims; and (9) he would be prohibited from possessing a firearm or destructive device, and from using any illegal narcotic drugs. *Id.* at 7.

The Government proceeded at the October 5, 2022 detention hearing by proffer. It relied on the affidavit filed in support of the complaint, the affidavit filed in support of detention, both of which were executed by Ranger Herbert, the pretrial release order from the Superior Court, and the Supplement Report by the Virgin Islands Police Department (“VIPD”) for the attempted murder charge. Dkt. Nos. 43-1, 43-2, 43-3, 43-4.

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At the detention hearing, Rivera offered his father, Samuel Rivera Cotto, as his third-party custodian. Mr. Rivera Cotto testified that he lived in Christiansted, and that he understood and would undertake the duties and responsibilities of a third-party custodian. Mr. Rivera Cotto testified that he believed his son was fishing on the day of the federal offense. Rivera testified that he was employed as a fisherman and financially supported his girlfriend and son.

After considering the arguments and evidence, the Court denied the detention motion and ordered that Rivera be released. It set bail at twenty-five thousand dollars and permitted Rivera to post ten percent in cash and to sign an unsecured bond for the remainder. Dkt. Nos. 49, 81. The Court also set certain conditions of release including that: (1) he must not violate federal, state, or local law while on release; (2) he must submit a DNA sample if required; (3) he must advise the Pretrial Services Office before making a change of residence or telephone number; (4) he must appear in court as required and surrender if convicted; (5) he must sign an appearance bond; (6) he must submit to and report for supervision to the Probation Office; (7) he actively seek employment; (8) he cannot obtain a passport; (9) he cannot leave St. Croix without the Court's written permission; (10) he must avoid all contact with victims/witnesses and Francisco Velazquez; (11) he cannot possess a firearm, destructive device or other weapon; (12) he cannot use or unlawfully possess a narcotic drug or other controlled substance; (13) he must submit to testing for prohibited substances; (14) he would be placed on home incarceration, which meant that he was restricted to 24-hour-a-day lock-down at his residence except for medical necessities, court appearances, or other

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Court-approved activities; (15) he must report every contact with law enforcement to pretrial services or his supervising officer; and (16) he would be placed on a home electronic monitoring device to be determined by the Probation Office. Dkt. No. 49. Rivera was not immediately released because he did not post bail.

On November 2, 2022, before Rivera was released, he filed a motion to modify his conditions of release to substitute his girlfriend, Keiana Delande, as his new third-party custodian. Dkt. No. 67. The Court held a hearing on the motion on November 7, 2022, after which it amended his conditions of release to provide for the new third-party custodian. Dkt. No. 80. Defendant was then released on bond. Dkt. No. 81.

APPLICABLE LAW

It is well established that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Bail Reform Act (the “Act”), 18 U.S.C. § 3141 *et seq.*, governs pretrial detention. The Act provides that a defendant must be released on his personal recognizance or upon execution of an unsecured appearance bond unless the court determines that “such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.” 18 U.S.C. § 3142(b). The Act provides a number of conditions of release that a judicial officer may impose to assure the defendant’s appearance and safety of the community. 18 U.S.C. § 3142(c). In assessing whether to impose such conditions of release, the judicial officer must consider the § 3142(g) factors:

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(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including –

(A) the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person’s release . . .

18 U.S.C. § 3142(g). To prove that detention is warranted, the Government must overcome the presumption of release by showing, through clear and convincing evidence, that no condition or set of conditions will reasonably assure the safety of the community, and by a preponderance of the evidence that no condition or set of conditions will reasonably assure the defendant’s appearance when required. *See* 18 U.S.C. § 3142(f); *United States v. Himler*, 797 F.2d 156, 160-61 (3d Cir. 1986); *United States v. Sabhnani*, 493 F.3d 63, 77-78 (2d Cir. 2007); *United States v. Torres*, No. 2:19-cr-583, 2021 WL 183311, at *1 (E.D. Pa. Jan. 19, 2021). If the Government fails to meet its burden of proof at the hearing, the defendant must be released. *United States v. Soriano Nunez*, 928 F.3d 240, 244 (3d Cir. 2019) (“The B[ail]

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R[eform] A[ct] thus requires the pretrial release of defendants unless [the statutory requirements are met].”). If the judicial officer finds that no condition or combination of conditions of release will reasonably assure the defendant's appearance and the safety of the community, detention must be ordered.³ 18 U.S.C. § 3142(e)(1).

The Government moved for a detention hearing under § 3142(f)(2)(B)—that the case involved “a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.” 18 U.S.C. § 3142(f)(2)(B). Because the Government contended that § 3142(f)(2) was applicable, the Court was required to hold a detention hearing and to consider the factors laid out in § 3142(g). *Id.* § 3142(f).

DISCUSSION

I. Consideration of Detention

In analyzing the § 3142(g) factors to be considered in deciding whether to order pretrial detention, the Court concludes that the Government’s motion for detention should be denied.

³ Certain cases raise a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community. 18 U.S.C. § 3142(e)(3). This rebuttable presumption applies, *inter alia*, where there is probable cause to believe that the defendant committed an offense under the Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, for which the maximum term of imprisonment is ten years or more, or an offense under 18 U.S.C. § 924(c). *See* 18 U.S.C. §§ 3142(e)(3)(A), (B). If a defendant is charged with committing an offense enumerated in § 3142(e)(3), that is sufficient to establish probable cause triggering the rebuttable presumption. *United States v. Suppa*, 799 F.2d 115, 119 (3d Cir. 1986). This rebuttable presumption is not at issue here.

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A. Nature and Circumstances of the Offense

Under this factor, a Court should consider “whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device.” Courts have found that these enumerated crimes constitute “serious offenses.” *See, e.g., United States v. Taylor*, 449 F. Supp. 3d 668, 673 (E. D. Ky. 2020) (illegal possession of a firearm); *United States v. Chase*, 2020 WL 2319132, at *4 (D. Md. May 11, 2020) (attempted enticement of a minor); *United States v. Williams*, 2011 WL 5078180, at *2 (N.D. Ill. Oct. 25, 2011) (“Section 3142(g)(1) explicitly lists, and this Court finds, that offenses involving controlled substances and firearms are very serious offenses.”).

Rivera was not charged with a serious offense, i.e., any of the crimes listed in 3142(g)(1). Rather, he was charged with an assault on a law enforcement officer, in violation of 18 U.S.C. § 111(a)(1). This offense provides that:

Whoever—(1) forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties . . . shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

18 U.S.C. § 111(a)(1). When examining the events that led to the charges, as described in the Government’s affidavits, the Court concludes that this factor does not weigh in favor of detention. Rivera’s physical contact with the Ranger was minimal and consisted of pressing into Ranger Herbert’s body armor and possibly grabbing his wrist—actions that could

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support the physical contact charge but do not rise to the level of seriousness that would tilt this factor in favor of detention.⁴

B. Weight of the Evidence

The evidence before the Court to support the charges against Rivera consists of the Herbert affidavit in support of probable cause, Dkt. No. 43-1, and the Herbert affidavit in support of motion for detention, Dkt. No. 43-2. The affidavits are substantially similar, although they differ in critical respects. The affidavit in support of probable cause, signed on September 28, 2022, provides that Herbert “was then forcibly grabbed by *one of the males* on affiant’s right hand just below the wrist and affiant immediately pulled affiant’s hand away.” Dkt. No. 43-1 at 5 ¶ 22. However, the affidavit in support of detention, signed on October 4, 2022, provides that “Affiant was then forcibly grabbed by *one of the males (RIVERA)* on affiant’s right hand just below the wrist and affiant immediately pulled affiant’s hand away.” Dkt. No. 43-2 at 5 ¶ 23. The discrepancy is significant, since the grabbing of the wrist would likely constitute the necessary “physical contact” required in 18 U.S.C. § 111(a)(1) to raise the offense from a misdemeanor to a felony.⁵

While the Government insists that the weight of the evidence is “strong,” and evidence of Rivera’s guilt is “substantial,” the Court concludes that the evidence as presented by one

⁴ The Government’s affidavit in support of probable cause and affidavit in support of detention presented a significant inconsistency, discussed below, whether it was Rivera who actually grabbed Herbert’s wrist. Dkt. Nos. 43-1; 43-2.

⁵ It is unclear, without briefing, whether touching Herbert’s ballistic vest, which both affidavits indicate that Rivera did during the incident, would by itself suffice to raise the offense from a misdemeanor to a felony.

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witness involving a significant discrepancy is not as convincing on the felony charge as the Government contends it is, and that this factor does not weigh in favor of detention.

C. Defendant's History and Characteristics

This factor considers, among other things, “the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, [and] past conduct[.]” 18 U.S.C. § 3142(g)(3)(A).

On the one hand, Rivera has strong ties to the community. In his opposition, his attorney indicates that he was born and raised on St. Croix and has resided nowhere else. Dkt. No. 45 at 5. His father testified that Rivera lived with him on St. Croix. Dkt. No. 47. Rivera testified that he supports his girlfriend, and one year old son, who also live on St. Croix and that he is employed as a fisherman. *Id.* His opposition indicated that he had no history of substance abuse or addiction. Dkt. No. 45 at 5. His criminal record consists only of the alleged charges pending in the Superior Court. Dkt. Nos. 43 at 5; 43-4.

On the other hand, although Rivera's criminal record consists of one prior arrest, the charge is very serious: attempted murder in the first degree. While the Superior Court documents attached to the Government's detention motion do not provide much detail, the charges arose as a result of a physical altercation in May 2022 involving Rivera and Marcelino Rivera, where the victim was shot. Dkt. No. 43-4. The report does not indicate which of the defendants pulled the trigger.

This factor also requires the Court to consider “whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial,

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sentencing, appeal, or completion of sentence for an offense under federal, state, or local law.” 18 U.S.C. § 3142(g)(3)(B)). As indicated above, even given the serious local charge, Rivera had been released on conditions after posting a bond, Dkt. No. 43-3, and he committed the federal charge while on pretrial release on the local charge. Among the conditions of release were that he should remain employed, that he was permitted to go fishing or sell fish and otherwise was required to be in the presence of his third-party custodian (his father) when he left his residence. *Id.* He was also ordered not to violate any laws of the Virgin Islands and the United States, and to appear in court for each scheduled appearance. *Id.*

The Government contends that the absence of his third-party custodian at the time of the alleged federal offense showed Rivera’s failure to abide by the Superior Court’s conditions of release. However, the federal incident occurred when the boat Rivera was on approached a dock. Rivera may very well have been fishing (his father testified at the detention hearing that he believed Rivera was fishing during the day of the federal offense, and the Government has not produced any evidence to the contrary). In such circumstances, his third-party custodian did not need to be with him. *See* Dkt. No. 43-3. The Government asserts that the federal charges prove his failure to abide by the Superior Court condition that he not violate the laws of the United States, which in turn shows his “blatant disregard for the law and court’s orders.” Dkt. No. 43 at 4. *See United States v. Stevens*, 454 F. Supp. 3d 472, 478 (E.D. Pa. 2020) (holding that the defendant should remain in detention pending imposition of sentence, in part because he committed crimes while on parole, which “demonstrates that being under supervision did not prevent him from committing a

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[crime.”). Certainly, being charged with this serious local crime, and then being charged with the instant federal offenses while on pretrial release for the first crime, weighs in favor of detention. But the Government’s conclusion that Rivera has shown a “blatant disregard for the law and court’s orders” overstates the record. Rivera’s counsel noted in his opposition that Rivera has attended every court appearance in Superior Court. Dkt. No. 45 at 5. His attendance record weighs in favor of release. *See Himler*, 797 F.2d at 162. In addition, the Government produced no evidence that Rivera violated the condition of release in Superior Court that he have no contact with any victim or witness in that case. Considering the circumstances in totality, the Court concludes that, on balance, this factor tips in favor of detention.

D. The Nature and Seriousness of the Danger to Any Person or the Community

The final factor “encompasses much of [the § 3142(g) analysis], but it is broader in scope as it requires the court to engage in an open-ended assessment of the seriousness of the risk to public safety.” *United States v. Padilla*, 538 F. Supp. 3d 32, 44 (D.D.C. 2021) (internal quotation marks omitted). The alleged felony offense involves an assault on a law enforcement officer involving physical contact. But, as indicated above, it is unclear whether Rivera was the person (out of a group of four people) who grabbed the officer’s wrist. The Government argues that Rivera presents a danger to the community because of his “hairpin-trigger violent temper” and violent criminal history. Dkt. No. 43 at 6. At the hearing, the Government acknowledged that the only evidence it had of his violent temper was his criminal history consisting of the territorial charges and federal charges. While the territorial

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charge of attempted murder is very serious, the analysis here focuses on whether release would pose a serious danger to any person or the community. § 3142(g)(4). The record does not indicate that Rivera, while on release on the territorial charges, posed any danger to the victim of that offense, or that he did not comply with the condition of release not to have any contact with that victim.

The record in this Court (the affidavits of probable cause and in favor of detention) indicates a contentious history between Rivera and certain NPS Rangers, as the affidavits recount a verbal altercation between Rangers Beaudry and Laurencin in April 2021, initiated by Munoz with minor participation from Rivera. Dkt. No. 43-1 ¶¶ 5-8. Similar to the incident that prompted the instant charges, as indicated in the affidavits, Munoz initiated the verbal altercation and threats, with Rivera playing a subordinate role. Under the circumstances of this case, the majority of witnesses would be Park Rangers, who are armed. If Rivera is required to stay on home incarceration, he will not have occasion to encounter any Rangers.

II. Whether Any Conditions Would Assure Rivera's Appearance and Safety of the Community

Following the hearing, the Court must determine whether there are any conditions or combination of conditions that will reasonably assure Rivera's appearance as required and the safety of "any other person and the community." § 3142(e)(1). The Government does not argue that Rivera would not appear or presents a risk of flight. Rather, its focus has been on community and witness safety in arguing that there were no conditions that would satisfy this statute. The Court disagrees.

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The Court has determined that there are conditions of release that can permit Rivera to be placed on pretrial release, including, but not limited to, the following:

- Placement in the custody of a third-party custodian;
- Home incarceration, restricting Rivera to 24-hour-a-day lock-down at his residence except for medical necessities and court appearances or other activities specifically approved by the Court;
- Location monitoring (type of home electronic monitoring device to be determined by the Probation Office);
- Reporting to Probation and Court appearances as ordered;
- Avoiding contact with witnesses and victims in both the local and federal cases;
- Prohibition on possession and use of any firearm or destructive device and any narcotic drug or other controlled substances, unless prescribed by a licensed medical practitioner.

Both the Order Setting Conditions of Release, Dkt. No. 49, and the Amended Order Setting Conditions of Release,⁶ Dkt. No. 80, contain, inter alia, these conditions. Because Rivera is on home incarceration with an ankle monitor, he would not have any contact with NPS Rangers or others, thus assuring witness safety.

⁶ The only different condition in the Amended Order is the named third-party custodian.

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CONCLUSION

As previously noted, in cases like this one, there is a general presumption that a defendant shall be released pending trial unless the Government proves, at a detention hearing, that the defendant should be detained. In assessing the factors under § 3142(g), the Court concludes that three of the factors weigh in favor of release, while one weighs in favor of detention. The Government did not prove that there are no conditions or set of conditions that can be imposed to ensure Rivera's presence and the safety of the community, and the Court concludes that certain conditions of release can satisfy those requirements.

Accordingly, the premises considered, and the Court otherwise being duly advised, it is hereby **ORDERED** that the Government's motion for detention pending trial, Dkt. No. 43, is **DENIED**.

ENTER:

Dated: December 9, 2022

/s/ Emile A. Henderson III

EMILE A. HENDERSON III

U.S. MAGISTRATE JUDGE