UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	S1 16 Cr. 629 (SHS)
- v. -	:	
SHIMEN LIEBOWITZ,	:	
Defendant.	:	

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO THE DEFENDANT'S MOTION FOR BAIL PENDING SENTENCING

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The Government respectfully submits this memorandum of law in opposition to defendant Shimen Liebowitz's motion for bail pending sentencing pursuant to 18 U.S.C. § 3143(a). For the reasons set forth below, it should be denied.

BACKGROUND

Shimen Liebowitz has been detained since his September 6, 2016 arrest based upon the findings first of a magistrate judge and then of this Court that he poses a risk of flight and danger to the community due to his participation in a kidnapping conspiracy. This Court's order of detention was then appealed to the Second Circuit and affirmed. Liebowitz then pled guilty and agreed not to ask this Court to impose a sentence of less than 33 months. He now seeks bail pending sentencing.

A. The Offense Conduct

As detailed in the criminal complaint *United States* v. *Liebowitz & Goldberg*, 16 Mag. 5666 (the "Complaint"), and the documents and recordings submitted to the Court in connection with the bail hearing, the charges against the defendant arise from his involvement in a conspiracy to kidnap, torture, and ultimately to kill a particular individual (the "Intended Victim") in order to release the Intended Victim's wife from their marriage in a way that would be recognized by Jewish religious teachings.

According to Jewish religious law, as observed in certain communities, in order to effect a divorce, a husband must provide his wife with a document known as a "*get*." A woman whose husband will not consent to a divorce by giving her a *get* is known as an "*agunah*." In the absence of the husband's issuing a *get*, an *agunah* may be released from her marriage only through the husband's death. D.I. 1 at 3.[1]

[1] Citations to "D.I." refer to docket items in this case.

In or about July 2016, the defendant, who is an orthodox Jew and a member of the Satmar Hasidic community in Kiryas Joel, New York, began working with at least two other individuals, Binyamin Gottlieb and Aharon Goldberg, to orchestrate the kidnapping of the Intended Victim. The purpose of the kidnapping was to imprison and torture the Intended Victim until he agreed to give his wife a *get*. To assist in the plot, Gottlieb recruited a private investigator (the "CS"), who Gottlieb believed would be willing to personally carry out the kidnapping and torture in exchange for payment. Unbeknownst to Gottlieb, Goldberg, and the defendant, however, the CS reported the plot to the FBI and recorded several of his meetings with the defendants. D.I. 1 at 3-4.

In July, the CS met with Gottlieb and Goldberg to discuss the kidnapping plot. Although the defendant was not present at the beginning of the meeting, he arrived and joined the conversation after several minutes. The CS made an audio recording of the meeting using a hidden recording device. During the meeting and after the defendant arrived, the parties discussed, among other things, the logistics of the kidnapping plot, including the possibility of kidnapping the Intended Victim in the United States and holding him captive in a cage, or kidnapping him in Ukraine and transporting him to Israel. The defendant also provided the CS with details to assist the CS in carrying out the kidnapping plot. Among other things, the defendant informed the CS of: (1) the Intended Victim's address, (2) the fact that the Intended Victim lives with his father and other family, (3) the fact that the Intended Victim comes home late at 2 and 3 AM, (4) the fact that the Intended Victim works at an illegal car service, (5) the names of some of the Intended Victim's friends, (6) the occupation of the Intended Victim's father, (7) the fact that the Intended Victim appears at his father's workplace on Mondays, and (8) the fact that the Intended Victim planned to travel to Ukraine for the Jewish New Year. The

defendant also offered to provide the CS with the license plate number of the Intended Victim's car. D.I. 1 at 4; *see also* D.I. 71-1 (defense draft translation submitted by codefendant Goldberg).

Subsequently, on August 9, 2016, the defendant again met with the CS and Goldberg to discuss the kidnapping plot. Again the meeting was recorded. During this second meeting, the defendant and Goldberg discussed in Yiddish the expenses associated with carrying out the kidnapping. The defendant also volunteered the fact that the Intended Victim goes to Ukraine every year and that the Intended Victim would be in court the entire day that Thursday. The defendant suggested that someone follow the Intended Victim and observe his activities so that a determination could be made about whether to carry out the kidnapping in the United States or abroad. The defendant also had a conversation in Yiddish with Goldberg, during which they discussed the merits and demerits of carrying out the kidnapping in the United States. The defendant agreed to undertake the task of identifying a place in the United States where the Intended Victim could be held captive and where a rabbinical court could be convened to witness the Intended Victim's agreement to give the *get* to his wife. At the end of the conversation, the defendant asked the CS whether Gottlieb had requested his assistance in a different case in which Gottlieb was following someone. *See* D.I. 1 at 4-5.

On August 12, 2016, the CS again met with the defendant and Goldberg, at which time they provided the CS with an additional payment of over $20,000 for use in making arrangements for the kidnapping. During the meeting, which was also recorded, the parties settled on a plan to kidnap the Intended Victim in the United States. D.I. 1 at 5.

Subsequent to the August 12, 2016, meeting, the CS had additional conversations with Goldberg, while both the CS and Goldberg were traveling in Israel. In those conversations,

Goldberg discussed his desire not merely to kidnap the Intended Victim, but also to kill him. D.I. 1 at 5.

On or about August 24, 2016, at approximately 2:33 p.m., the CS spoke with the defendant by telephone. During the call, which was recorded, the CS demanded additional, advance payment for facilitating the kidnapping of the Intended Victim. The defendant agreed to advance the CS additional payment, but explained that there might be some delay because he would need to obtain the money for the kidnapping from another individual. The parties arranged to meet the following day so that the defendant could provide the CS with a payment. D.I. 1 at 5.

On August 25, 2016, the defendant and the CS met as planned. During the meeting, the defendant paid the CS approximately $12,000 cash. While he was with the defendant, he CS used the speakerphone function of his cellphone to call Goldberg, who was in Israel at the time. During the conversation that followed, the CS made reference to Goldberg's plan to have the Intended Victim killed. Goldberg cautioned the CS that, "this is between you and me," and implied that the defendant had no knowledge of the murder plan. D.I. 1 at 6.

Despite Goldberg's representation that the defendant was not part of the murder plan, on September 2, 2016, the CS had a conversation with the defendant, during which the defendant indicated his understanding that the murder of Intended Victim was an object of the conspiracy. During the meeting, which was recorded, the parties spoke in English about the kidnapping plot. The CS then went on to inquire of the defendant whether the Intended Victim's family would grow concerned if the Intended Victim did not return home for several days. The defendant responded that the Intended Victim, who drives a taxi and sometimes travels to Montreal, could

"miss a night, or even two or three" without his family growing concerned about his whereabouts. The following exchange then took place, in substance and in part:

The defendant:	I can tell you in the back of my mind, it looks like, his parents will be happy when it happens.
CS:	If he's fucking dead? Okay.
The defendant:	[Laughing]
CS:	Fine . . . . That makes me calm. I feel better if he is disappearing. Let me ask you another questions. With the rabbi going back to Israel and you and me staying over here. If someone finds him, it's going to start to be a big thing . . . . We have to have a plan. Rabbi Goldberg is going back to Israel. . . . Okay, I did what I did, whatever is the case. They're going to find him eventually. It's going to start to be a big thing. He's a Satmar Hasid?
The defendant:	Yes
CS:	It's going to start to be a big thing in your community. . . . So is there anything that you've thought about how we play the game after?

The defendant responded, in substance, that he would continue to go about his business as though he knew nothing. The CS then said, "The parents are going to be upset. Someone lost a son. The parents are going to point to some people, right? I'm assuming." The defendant responded that the family would most likely point to Goldberg and that they most likely did not know his (the defendant's) name, saying, "I think if anything, he would be the first person, probably." The defendant also speculated that the police would suspect the wife's family. After further discussion regarding the defendant's plan to deny knowledge of the fate of the Intended Victim, the following exchange took place:

The defendant:	Why does the rabbi not just want to make a get? . . . Because I think it brings a lot more pressure.

CS:	No. It's not. Let me tell you something. I think it's the same pressure. If he's coming beating up and is going in the street, somebody find him all broke into pieces, and he says, "I remember I gave a get." I he remembers the rabbis that come there . . . . What happens if he remembers the name of the rabbis?

After further discussion, the CS stressed the importance that he meet any of the individuals involved obtaining the *get* from the Intended Victim, if the Intended Victim were allowed to survive. The following exchange then took place:

CS:	Now if he's dead, we don't need the rabbis. We don't need the *beth din*. . . . If he's dead, I don't know what will happen. You know, I don't care if he's dead. It's better off like that, because if he's injured, he's gonna say, "I know this guy. I remember this guy. There was one guy that was a tall guy." He's gonna start to talk. I don't know what's gonna happen. You work on this homework that I gave you today. Let's keep in touch on Sunday. And let's see where we're going. . . . It's a lot of pressure.
The defendant:	I know.
CS:	I have no problem. I did it before. It's okay. But here it's a little different.
The defendant:	Yeah, 'cause he himself is more . . .
CS:	It's because the Satmar community, you know, the police have interest to go after your people, you understand? . . . Here, it's Satmar, you know how the news is gonna jump. A Satmar Hasid found dead, think, everybody is going to start to dig in. Every newspaper is going to start to dig in. . . .

The defendant did not respond to this statement, and at no point during the conversation did he indicate that he would not go forward with the kidnapping if the plan was to kill the Intended Victim. D.I. 1 at 7-8.

Subsequently, on September 6, 2016, the defendant and Goldberg again met with the CS. During that meeting, the defendant and Goldberg paid the CS an additional $16,000. The CS led

the defendant and Goldberg to believe that the CS had captured the Intended Victim, had tortured the Intended Victim in order to force him to provide a *get*, and that the Intended Victim had so far refused to do so. The conversation took place in Hebrew, Yiddish and English. During the conversation, Liebowitz confirmed that he understood some Hebrew, though he and the CS primarily communicated in English. D.I. 16-1 at 1.

During the September 6 meeting, the CS discussed options for what to do with the Intended Victim given his unwillingness to give the *get*. Goldberg replied, in Hebrew, by referencing his prior directive to the CS to kill the Intended Victim: "I've told you whatever I've told you, and I even got an okay from one of the rabbis. He [the Intended Victim] cannot slip out of your fingers." The defendant then interjected, in English, "I'm on his side, whatever he says I'm with him." The parties continued to discuss the plan in a mixture of Hebrew, Yiddish and English. Goldberg resolved that the only way forward was to put a bullet in the Intended Victim. The defendant interjected, in Yiddish, that if the defendant were to be killed, arrangements would have to be made to ensure that there was a witness who could verify that the Intended Victim was dead (and that the wife could remarry) without leading back to the defendant and his co-conspirators. The defendant later stated, in English, "Somebody is going to need to tell a rabbi that I have saw" with respect to the death of the Intended Victim. Goldberg and the CS then discussed in Hebrew the possibility of burying the Intended Victim and seeing to it that his body was exhumed and identified using DNA. The defendant interjected, again in English, "There is no way to put him out on the street somewhere?" The CS replied "If you put him dead, today, tonight on the street, it's too early people are going to find, you know. Maybe finger… I don't know what's left of him. But if you want three months he left with bones, left with bones, and no one, you is a link to something, an anonymous phone for the police in Israel, in a

Scrambler phone to tell them go to this location to find the body . . . listen there is a way how to do it later on." Later during the discussion, the defendant suggested, again in English, "There's no way to take him overseas, is there?" D.I. 16-1 at 3-5.[2]

The September 6 conversation ended with FBI agents arresting the defendant and Goldberg. At the time of his arrest, the defendant was in possession of $3,000 in crisp bills, despite his indication to Pretrial Services that he subsists on public assistance and that he earns only $1,000 per month. In total, prior to their arrest, the defendant and his co-conspirators paid the CS slightly more than $75,000 to carry out the plot.

B. Procedural History

On September 6, 2016, the Honorable Debra C. Freeman, United States Magistrate Judge for the Southern District of New York, issued a warrant for the defendant's arrest on the basis of the Complaint, charging him with: (i) conspiracy to kidnap, in violation of Title 18, United States Code, Section 1201(c); and (ii) conspiracy to commit murder for hire, in violation of Title 18, United States Code, Section 1958. *See United States* v. *Liebowitz & Goldberg*, 16 Mag. 5666.

The defendant was arrested in the evening of September 6, 2016, and was presented the following day before the Judge Freeman. After hearing extensive argument from both the Government and defense counsel on the defendant's application for bail, and leaving the bench for an interlude to deliberate privately, Judge Freeman ordered the defendant detained on the ground that no bail conditions could be fashioned that would reasonably assure the safety of the community.

[2] This preliminary draft translation was before the Court in connection with Liebowitz's bail hearing. An additional and more detailed draft translation was submitted to the Court under seal in connection with pretrial motions. *See* Defendant Gottlieb's Pretrial Motions, Exhibit D (filed under seal April 3, 2017).

On September 15, 2016, the defendant appealed from Judge Freeman's detention order to this Court, which was assigned at the time to oversee miscellaneous matters. In advance of the bail review hearing before this Court, the Government provided the Court with recordings of conversations that took place between the defendant and a confidential Government source on September 2, 2016, and September 6, 2016. Because the September 6, 2016 conversation took place in English, Yiddish, and Hebrew, the Government also provided the Court a draft transcript and translation of the September 6 recording. Both the Government and defense counsel also submitted briefing on the issue of bail.

On September 19, 2016, this Court held a bail review hearing. After argument, the Court also found that the defendant should be detained pending trial.[3] The Court found "that there is [n]o condition or combination of conditions that will reasonably assure the safety of any person or the community, and that there is no condition or combination of conditions that will reasonably assure the presence of the defendant," if the defendant were released. D.I. 31 at 32.

The Court noted that the offenses with which the defendant is charged are violent crimes that carry with them "maximum penalties [that] are extremely high as undoubtedly would be the guideline range, even given the fact that [the] defendant has absolutely no criminal history, whatsoever." D.I. 31 at 33. The Court found that the "considerable evidence" that the Government had proffered "permits the conclusion that [the] defendant provided information to the source in regards to the whereabouts of the victim to assist the confidential source in kidnapping the victim." The Court also noted that the evidence indicates that the defendant

[3] Also on September 19, 2016, a grand jury sitting in the Southern District of New York returned indictment number 16 Cr. 629 (SHS) charging the defendant, Aharon Goldberg, and Binyamin Gottlieb with participating in a kidnapping conspiracy, in violation of Tittle 18, United States Code, Section 1201(c). The Indictment also charged the defendant and Goldberg with participating in a conspiracy to commit murder for hire, in violation of Title 18, United States Code, Section 1958. By coincidence, the case was randomly assigned to this Court.

actively participated in the plot in other ways as well, including by providing cash and discussing with his co-conspirators the need to make sure that the Intended Victim's death would become publicly known, so that the wife could remarry.

With respect to risk of flight, the Court observed that, given the evidence that the defendant provided some of the cash that was paid to the CS, it appears that the defendant has access to substantial funds, despite his relatively low-paying job and receipt of public assistance. D.I. 31 at 33-34. The Court also noted that the defendant has family in Australia and community contacts in Israel. D.I. 31 at 34. While acknowledging that the $5 million bond being offered by the defendant was a "very substantial package," the Court found that the size of the bond was somewhat undercut by the fact that the property would not be posted by members of the defendant's "nuclear family." D.I. 31 at 34. The Court also explained that the effectiveness of electronic monitoring would be significantly undercut in this case because of the need for the defendant to "be allowed to attend religious services, which would mean there would be more time outside of the confinement, [] when this electronic system would be off, than is normal." D.I. 31 at 34-35.

Weighing all of these factors, and considering the fact that the defendant has "no criminal history whatsoever, absolutely no run-ins with the law that the Court is aware of or as reflected in the Pretrial report," the Court nonetheless concluded that the defendant should be detained pending trial. D.I. 31 at 35. On September 20, 2016, the Court issued a written order memorializing that decision.

On October 4, 2016, the defendant moved before the Second Circuit for bail pending appeal. On October 31, 2016, after receiving briefing and oral argument, the Second Circuit affirmed this Court's order of detention, finding that "the evidence is sufficient to support the

district court's factual findings that no condition or combination of conditions of release will reasonably assure Liebowitz's appearance at trial or the safety of persons in the community," *United States* v. *Liebowitz*, 669 F. App'x 603, 604 (2d Cir. 2016). The Circuit noted that the record contained "compelling evidence of Liebowitz's participation in the charged crimes and his knowledge and acquiescence in the use of violence to commit them." *Id.* The Second Circuit also affirmed this Court's finding that Liebowitz was a flight risk, noting the lengthy sentence that could be imposed, the defendant's ties to Australia, and the defendant's access to substantial resources despite his professions of lack of assets. *Id.* at 605. The Second Circuit also noted the limitations of home confinement and electronic monitoring, particularly in light of the frequent exceptions to home confinement sought by Liebowitz. *Id.*

On July 27, 2017, Liebowitz pled guilty to a superseding information charging one count of conspiracy to commit Travel Act extortion. Liebowitz pled guilty pursuant to a plea agreement in which both parties agreed not to suggest that the Court impose a sentence outside the Stipulated Guidelines Range of 33 to 41 months. Plea Agreement (D.I. 95-1) at 3. In his plea allocution, Liebowitz admitted that he agreed to a plan to extort the Intended Victim and agreed to pay the CS to carry it out, with the understanding that the CS would threaten force and might commit kidnapping. D.I. 88 at 22-23. Though Liebowitz contended at his plea that he said no when the CS discussed committing murder, *id.* at 23, Liebowitz admitted that he "reach[ed] an agreement with others to use force, if necessary," *id.* at 24.

ARGUMENT

I. Liebowitz Has Not Shown Any Reason to Revisit the Rulings of this Court and the Court of Appeals

Liebowitz acknowledges that the burden of proof is on him to show by clear and convincing evidence that he is not a risk of flight or danger to the community—that is, to

disprove by clear and convincing evidence what the Government has proved.[4] 18 U.S.C. § 3143(a). He cannot do so. The Court's findings that the defendant is a risk of flight and danger to the community were affirmed by the Second Circuit and are in no way undermined by the facts adduced by Liebowitz.

Liebowitz essentially offers the following reasons to revisit the bail order: (a) the fact that he accepted a plea offer carrying a lower statutory maximum and guidelines exposure than he would have faced at trial, D.I. 94 at 7-8; (b) the fact that no evidence of prior criminal activity came to light, D.I. 94 at 11; (c) an August 25, 2016 recording that Liebowitz claims shows his refusal to participate in murder, D.I. 94 at 9-10; and (d) the fact that his family moved to New York from Australia, D.I. 94 at 8-9. Liebowitz also renews his argument that a bail package involving home confinement and electronic monitoring will be sufficient to ameliorate the risk of flight. D.I. 94 at 9.

Liebowitz's claim that his plea agreement constitutes a reason to revisit the detention order is unpersuasive. As an initial matter, the fact that he faces less sentencing exposure than he would have after trial applies only to his risk of flight, and does not affect in any way his danger to the community, which is an independent basis for detention. Regardless, however, it is

[4] In fact, even this standard is favorable to him, as the mandatory detention provision of 18 U.S.C. § 3143(a)(2) may arguably apply in this case. Under section (a)(2), detention is mandatory if the defendant committed a crime of violence under 18 U.S.C. § 3156(a)(4). The defendant's charged offense is conspiracy to commit Travel Act extortion, and the information charges him with participating in the conspiracy through discussing "using force and threats of force" to extort the intended victim. D.I. 86 ¶¶ 2-3. It is thus arguable that even if the categorical approach applies to this offense (which the Second Circuit has not held, *United States* v. *Dillard*, 214 F.3d 88, 92 (2d Cir. 2000)), the underlying state extortion offense is divisible and the defendant was convicted under a crime of violence using the modified categorical approach. However, the underlying conduct and facts make quite clear that detention is warranted in any event, and thus the Government does not ask the Court to reach that issue. *See Dillard*, 214 F.3d at 92 ("Because we conclude the defendant in this case is eligible for detention regardless how we answer that question, we need not decide it in this case.").

commonplace for defendants to enter plea agreements under which they reduce their sentencing exposure. In any but the most extraordinary circumstance, however, to view this as a changed circumstance justifying release from detention is to turn the Bail Reform Act on its head. In fact, a defendant's decision to plead guilty and surrender his presumption of innocence greatly strengthens the case for detention. *Compare* 18 U.S.C. § 3142(e), (f) (before trial, placing burden of proof for detention on government, subject to certain presumptions) *with* 18 U.S.C. § 3143(a) (before sentencing, placing burden of proof for pre-sentencing release on defendant by clear and convincing evidence, with mandatory detention in some cases); *cf. United States* v. *Abuhamra*, 389 F.3d 309, 318 (2d Cir. 2004) ("[O]nce a defendant is afforded the considerable process and constitutional protections of a jury trial and found guilty beyond a reasonable doubt, the substantive interest in avoiding punitive detention essentially disappears, and any continued expectation of liberty pending formal sentencing depends largely on statute," noting statutory "presumption in favor of detention" before sentencing). In any event, although the plea agreement provides Liebowitz with reduced exposure, the fact that he admitted to a conspiracy and involving the use or threat of force and agreed not to seek a sentence of less than 33 months indicates the serious sentence he faces for his conduct. It certainly does not undermine the Court's finding of flight risk, much less negate it by clear and convincing evidence.

The fact that additional information did not come to light regarding prior criminal activity by Liebowitz is not a changed circumstance. The Court did not base its detention decision on any prior criminal activity of the defendant, so Liebowitz's denial of such activity is not a reason to revisit the decision. *See* D.I. 31 at 35 ("Mr. L[ie]bowitz as I said, absolutely, no criminal history, whatsoever, absolutely no run-ins with the law that the Court is aware of or as reflected in the Pretrial report.").

Liebowitz's claim of newly discovered evidence that purportedly undermines his participation in the murder conspiracy rings hollow. Liebowitz points to evidence he claims indicated he disclaimed intent to murder on August 25, 2016. But this is entirely cumulative with the evidence already before the Court—as early as the Complaint—that on August 25, Goldberg asked the CS not to discuss the murder plot with Liebowitz, *see* D.I. 1 at 6, and that on September 2, 2016, Liebowitz expressed opposition to the idea of murdering the intended victim, D.I. 1 at 8-9; *see also* D.I. 11 at 5 (defense letter arguing that Liebowitz statements in September 2, 2016 meeting showed his objection to committing murder). These additional August 25 statements thus add little to the record already before the Court. Moreover, all of this evidence of reluctance—the August 25 and September 2 statements in the Complaint, and the additional August 25 statement now urged by the defense—predates the September 6, 2016 meeting at which Liebowitz explicitly discussed with his coconspirators the prospect of murdering the intended victim and then releasing his wife from her marriage by arranging for DNA testing of the intended victim's remains. It is that later evidence—which was hardly significantly undermined by any reservations Liebowitz expressed earlier—that the Court noted in making its dangerousness finding and that the Second Circuit referenced in affirming it. *See* D.I. 31 at 34 ("He obviously knows that a possibility and the conspiracy is that the victim would be dead because he's talking about DNA," referencing September 6, 2016 conversation); *see also United States* v. *Liebowitz*, 669 F. App'x 603, 605 (2d Cir. 2016) ("The record contains compelling evidence of Liebowitz's participation in the charged crimes and his knowledge and acquiescence in the use of violence to commit them," citing to discussion of DNA). In any event, the undisputed conduct to which Liebowitz admitted in his guilty plea—agreeing to use force or threats of force to extort an intended victim into granting a divorce as part of a kidnapping plot—

is itself a serious, violent, and dangerous offense, even leaving aside Liebowitz's relevant conduct related to the murder plot.

Liebowitz's other arguments fare no better. Although Liebowitz notes that his family has moved from Australia to the United States following his arrest, this fact does not materially impact his risk of flight. This decision by his family members to relocate does not erase the fact that Liebowitz has Australian citizenship, no doubt contacts in Australia due to the fact that his family lived there until after this case began, and a plainly greater ability to flee there than an individual without such ties.

Finally, this Court has already noted the insufficiency of home confinement, particularly in light of the accommodations the defendant requested, D.I. 31 at 34, a finding that was specifically affirmed by the Second Circuit, *Liebowitz*, 669 F. App'x at 605 ("Liebowitz's willingness to submit to electronic monitoring and home confinement did not compel the district court to find those conditions sufficient to order bail release particularly where, as here, Liebowitz sought frequent exceptions to home confinement."). Liebowitz provides no reason to revisit this conclusion.

In sum, Liebowitz has by no means undermined—let alone disproven by clear and convincing evidence—the findings of this Court that the Government proved Liebowitz's risk of flight by a preponderance of the evidence and dangerousness by clear and convincing evidence. To the contrary, those findings remain wholly sound.

II. Liebowitz's Stated Reasons for Requesting Release Are Not Bases for Release Under the Statute

Although Liebowitz expresses his wish to be at liberty to observe religious holidays, this is not a basis in the statute to overcome the need for an order of detention. Any defendant may have significant religious, family, or other personal commitments they may wish to attend to

during the pendency of a case. The Bail Reform Act, however, provides that the defendant's appearance in court and the safety of the community must take priority when the statutory factors are met. 18 U.S.C. § 3143(a).

The Court and the Second Circuit were doubtless aware that the defendant's pretrial detention would burden his ability to observe religious holidays. The Court ordered Liebowitz's detention on September 19, 2016, shortly before the 2016 Jewish holidays, and despite the desire of the Court and the parties to move swiftly there was always a significant likelihood, in a criminal case of this nature, that the proceedings would last through the 2017 Jewish holidays.

Under his own calculations, Liebowitz—who agreed not to seek a sentence outside of the stipulated Sentencing Guidelines range of 33 to 41 months in connection with his guilty plea to conspiracy to commit Travel Act extortion—is likely to serve no less than 16 to 23 additional months of his sentence following sentencing. This time period will encompass at least two additional autumn periods in which Jewish religious holidays are scheduled. Accordingly, incarceration will necessarily impose some burden on Liebowitz's ability to observe these holidays, just as it may for any defendant impose some burden on their ability to attend important personal or family events. This fact does not, however, carry Liebowitz's burden of showing by clear and convincing evidence that—contrary to the findings of Magistrate Judge Freeman, this Court, and the affirmance of the Court of Appeals—he is not a risk of flight or danger to the community.

CONCLUSION

For the foregoing reasons, the Government respectfully submits that the defendant's motion for bail pending sentencing should be denied.

Dated: New York, New York
September 15, 2017

Respectfully submitted,

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