

**10IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 06-19
	:	
ANTHONY MARK BIANCHI	:	

MEMORANDUM AND ORDER

Kauffman, J.

August 10 , 2006

On May 4, 2006, a grand jury sitting in the Eastern District of Pennsylvania issued a Superseding Indictment charging Defendant Anthony Mark Bianchi (“Defendant”) with conspiracy to engage in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(e) (count one,); traveling with the intent to engage in illicit sexual conduct in violation of 18 U.S.C. § 2423(b) (counts two, four, six, eight, and nine); engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c) (counts three, five, seven, and ten); and using a facility in foreign commerce to entice a minor to engage in sexual activity in violation of 18 U.S.C. § 2422(b) (counts eleven and twelve). Now before the Court is Defendant’s Motion for Revocation of Detention Order. For the reasons that follow, the Motion will be denied.

I. BACKGROUND

Defendant was first taken into federal custody in this matter on January 11, 2006. The initial Indictment, filed on January 12, 2006, charged him with various offenses arising out of his travel to Eastern Europe, where he allegedly had illicit sexual relations with two underage boys and attempted to seduce a third. According to the Indictment, Defendant’s modus operandi was to have his co-conspirator and translator, Ion Gusin, introduce him to the boys. He would shower them with gifts and treats to induce them to engage in illicit sexual relations and then compensate them in United States dollars. See Indictment at 2-6.

On January 13, 2006, Magistrate Judge David R. Strawbridge ordered that Defendant be detained pending trial because he presented a risk of flight and a danger to the community.

Defendant thereafter filed a motion with this Court seeking review of that Order. After a hearing, this Court found that Defendant had failed to rebut the presumption that no condition or combination of conditions of pretrial release would reasonably assure his appearance at trial and the safety of the community. See Bail Reform Act, 18 U.S.C. § 3142(e).¹ Accordingly, Magistrate Judge Strawbridge’s pretrial detention order was affirmed.

On February 22, 2006, this matter was declared complex pursuant to 18 U.S.C. §§ 3161(h)(8)(A) and 3161(h)(8)(B)(ii), and Defendant’s trial was continued beyond the time limits established by the Speedy Trial Act. On May 4, 2006, the Government filed a Superseding Indictment adding six additional counts and increasing the number of alleged underage victims to twelve. On July 3, 2006, Defendant renewed his Motion for Revocation of Pretrial Detention. After a hearing on July 10, 2006, the parties were granted time to submit additional briefing.

II. ANALYSIS

Defendant’s renewed Motion is based on due process grounds. In United States v. Accetturo, 783 F.2d 382 (3d Cir. 1986), the Third Circuit recognized that “at some point due process may require a release from pretrial detention or, at a minimum, a fresh proceeding at which more is required of the government than is mandated by Section 3142. Thus, a determination under the Bail Reform Act that detention is necessary is without prejudice to a defendant petitioning for release at a subsequent time on due process grounds.” Accetturo, 783 F.2d at 388. The due process analysis “should reflect the factors relevant in the initial detention decision” as well as “the length of the detention that has in fact occurred, the complexity of the case, and whether the strategy of one side or the other has added needlessly to that complexity.” Id.

A. Initial Detention Decision

¹ 18 U.S.C. § 3142(e) provides in pertinent part: “Subject to a rebuttal by the person [charged], it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person 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 ... 2422, 2423[.]”

Accetturo directs that the due process determination “should reflect the factors relevant in the initial detention decision.” Accetturo, 783 F.2d at 388. The governing standard is whether there exists some “condition or combination of conditions [that] will reasonably assure the appearance of the [defendant] as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). This Court has determined that no such combination of conditions exists. See United States v. Bianchi, No. 06-19 (E.D. Pa. Feb. 6, 2006). Defendant now offers a new argument, which, he contends, should alter the analysis.² The argument is that 18 U.S.C. § 2423(c) is unconstitutional and that the “serious questions regarding the constitutional validity of the offense charged” require pretrial release.

However, in addition to the charges under Section 2423(c), Defendant is charged with the violation of 18 U.S.C. § 2423(b) (traveling in foreign commerce with intent to engage in illicit sex) and 18 U.S.C. § 2422 (using a facility in interstate and foreign commerce in an effort to engage in illicit sex), the constitutionality of which has not been challenged. See United States v. Tykarski, 446 F.3d 458, 470 (3d Cir. 2006) (“[B]oth § 2423(b) and § 2422(b) represent constitutional exercises of Congress’s Commerce Clause power to regulate the use of the channels and instrumentalities of ... commerce.”). Thus, Defendant’s limited constitutional argument, even if valid, would not affect the present issue of bail and the Court will not consider it at this time.

B. Length of Detention

At the July 10, 2006 hearing on Defendant’s renewed Motion for Revocation of Pretrial Detention, counsel reported that they do not expect trial to commence until early 2007. Although the Government agreed to proceed to trial in September 2006, Defense counsel was unable to do so because of his commitments in other cases. Thus, much of the unusual length of pretrial detention is attributable to Defendant himself and not to any strategy of delay by the Government.

² Defendant has offered no new evidence to rebut the presumption that no condition or combination of conditions of pretrial release would reasonably assure his appearance at trial and the safety of the community.

C. Complexity of the Case

Acceturro also directs the district court to consider whether the complexity of the case justifies the length of pretrial detention. As this Court stated in its Order declaring the case complex, the Government intends to call as witnesses a number of foreign nationals from Romania and Moldova. To obtain their presence, the Government must use the Mutual Legal Assistance Treaty between the United States and Romania and other diplomatic procedures. In light of this time consuming task, the Government cannot be accused of needlessly prolonging pretrial detention.

III. CONCLUSION

Under the circumstances, the Court concludes that continued pretrial detention would not violate any due process right of Defendant. Accordingly, Defendant's Motion for Revocation of Detention Order will be denied.

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ORDER

AND NOW this 10th day of August, 2006, upon consideration of Defendant's Motions for Revocation of Detention Order (docket nos. 34 and 36), the Government's responses, and after argument by counsel for the Government and Defendant, it is **ORDERED** that the Motions are **DENIED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.