UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-20354-CR-COOKE/TORRES

UNITED STATES OF AMERICA

v.

GERALD SLOANE WALLACE,

Defendant.
_____/

DETENTION ORDER

On June 12, 2017, this Court held a hearing pursuant to Title 18 U.S.C. § 3142(f) in the above-entitled case to determine whether Defendant GERALD SLOANE WALLACE should be detained prior to trial.[1] Based on 18 U.S.C. § 3142(f)(1)(A), 18 U.S.C. § 3156(a)(4)(A), and case law, this Court finds "that no condition or combination of conditions will reasonably assure . . . the safety of any other person and the community . . . ." 18 U.S.C. § 3142(e). Therefore, it is hereby **ORDERED** that Defendant GERALD SLOANE WALLACE be detained prior to trial and until the conclusion thereof.

I. NATURE AND CIRCUMSTANCES OF THE OFFENSE

Defendant was charged by indictment with one Count of Interstate Transmission of a Threat to Injure under 18 U.S.C. § 875(c). [D.E. 1 at 4].

[1] The indictment [D.E. 1 at 1] and the Defendant's Motion to Continue Detention Hearing [D.E. 8 at 1] display Defendant's name as "Gerald Sloane Wallace." However, the pretrial services report displays Defendant's name as "Gerald Sloanne Wallace." This Order will refer to Defendant as "Gerald Sloane Wallace."

Defendant was later charged by a Grand Jury in a superseding indictment with a second Count for the Obstruction of Persons in the Free Exercise of Religious Beliefs under 18 U.S.C. §§ 247(a)(2) and (d)(3). [D.E. 12 at 1].

II. WEIGHT OF THE EVIDENCE

The weight of the evidence against Defendant is sufficient to establish probable cause and to support pretrial detention in this case. The government proffered the following facts that were supported by the testimony of Federal Bureau of Investigation Special Agent Andrew Mercurio. On December 12, 2015, Defendant sent an email to a mosque in Miami Gardens, Florida that included language about wanting to kill every Muslim. On February 22, 2017, Defendant called and left a voicemail at the same Miami Gardens mosque. The voicemail included the sentence: "I'm gonna go down to your center, I'm gonna shoot all ya'll." The government did not recite the remainder of the voicemail because of its profane language. The government cited this language in both Counts for which Defendant was indicted. [D.E. 12 at 1-2].

Special Agent Mercurio testified that Defendant only threatened the mosque and did not take any additional steps to harm anyone. However, Defendant emailed and/or called five mosques in Miami-Dade and Broward Counties between December of 2015 and February of 2017. Additionally, the government stated at the detention hearing that Defendant has said that, if he saw a Muslim on the street, he would beat the Muslim until the Muslim had "had enough."

III. DEFENDANT'S HISTORY AND CHARACTERISTICS

According to the Pretrial Services Report, Defendant was born in New York on February 26, 1982, and moved with his family to South Florida when he was five-years-old. He has lived at the same address in Miami, Florida for approximately twenty years. Defendant lives with his brother at this Miami address. Defendant completed high school and was enrolled in college at the time that the Pretrial Services Report was written.

Prior to being arrested in February of 2017, Defendant was employed as a security officer and he earned $1,000 monthly. Defendant's two bank accounts show a total of $28. Defendant has no reported physical or mental health issues and has no known history of substance abuse.

A factor favoring a bond is that Defendant has no material criminal history. On December 22, 2007, Defendant was arrested and charged for soliciting prostitution, but that charge was ultimately dropped following Defendant's completion of a pretrial diversion program.

As to Defendant's mental state, at the detention hearing Special Agent Mercurio testified that Defendant appeared competent and cooperative during his taped interview. One of Defendant's attorneys from the Federal Public Defender's Office said that Defendant has never been tested for competency and that such a test was not necessary. However, Defendant's attorney added that Defendant was hospitalized as a child for eating paint and was treated for lead poisoning. Further,

Defendant's attorney stated that Defendant took classes for emotionally handicapped children during high school.

Defendant does not own a registered firearm. There is no evidence that he owns an unregistered firearm. Nevertheless, the danger to the community still arises from the nature of the pending charge, which involves persistent threats of intimidation and violence arising from religious hatred or bigotry. Defendant's counsel argued that the Court should measure those threats against Defendant's legitimate First Amendment rights, which are also substantiated by the current political climate that includes distrust and fear of Muslims in general, even at the highest levels of the government. Even assuming, however, that the current political climate were relevant to this detention determination, a fear or distrust of Muslims that may be fostered by reckless politicians does not give license to anyone threatening violence against anyone, for whatever reason. And the fact that such threats of violence in this case have triggered federal criminal jurisdiction means that this Court must respect and enforce Congress's existing policy judgment that such conduct warrants great care and attention notwithstanding whatever defenses may be legitimately raised in the process.

IV. ANALYSIS

We find, based on clear and convincing evidence in this case, that Defendant would pose a danger to the community if released. As the statute is relevant to this case, 18 U.S.C. § 3142 provides that a magistrate judge can order pretrial detention of a defendant who has committed "a crime of violence[.]" 18 U.S.C. § 3142(f)(1)(A).

A "crime of violence" is "an offense that has an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another[.]" 18 U.S.C. § 3156(a)(4)(A).

Several United States District Courts have addressed whether threats like those at issue here constitute "crimes of violence" for purposes of the Bail Reform Act. *See, e.g.*, *United States v. Stevens*, 2017 WL 2362852, at *2 (N.D. Okla. May 31, 2017); *United States v. Choudhry*, 941 F. Supp. 2d 347, 351 (E.D.N.Y. 2013); *United States v. Petersen*, 557 F. Supp. 2d 1124, 1126 n.1 (E.D. Cal. 2008). In *Stevens*, for instance, the defendant sent several threats through the local police department's Internal Affairs Investigations Division website. 2017 WL 2362852, at *1. A grand jury indicted the defendant and charged him with ten counts of violating 18 U.S.C. § 875(c) for using interstate communications to make threats with intent to injure. *Id.* The defendant never threatened to harm anyone personally, but said several times that officers, judges, prosecutors, and their family members would "be killed." *Id.* The opinion later stated that "Defendant was convicted of sending threatening communications, which he admits is a crime of violence . . . ." *Id.* at *2. The court denied the defendant's Motion for Release Pending Appeal. *Id.*

In *Choudhry*, the defendant made several threats in consensually recorded phone calls. 941 F. Supp. 2d at 351. The defendant threatened to personally shoot and kill an entire family and to then kill himself. *Id.* at 357. Defendant was charged by indictment with violating 18 U.S.C. § 875(c) for using interstate communications to make threats with intent to injure. *Id.* at 351. At the bail hearing, the magistrate

judge found that the defendant posed a danger to the community and ordered him detained. *Id.* at 349. The court held that "communicating a threat in violation of 18 U.S.C. § 875(c) constitutes a 'crime of violence,' warranting detention under the Bail Reform Act." *Id.* at 351. The court looked to 18 U.S.C. § 3156(a)(4)(B) for the definition of "crime of violence." *Id.* at 357. Further, the court concluded that the "evidence of explicit and chilling threats to kill numerous people in Pakistan is sufficient, on its own, to warrant pre-trial detention for being charged with a violent crime." *Id.* at 354. *See also Petersen*, 557 F. Supp. 2d at 1126 n.1 (noting that a "section 875 violation (transmitting threatening communications) constitutes 'a crime of violence' under the Bail Reform Act to which a statutory rebuttable presumption of flight and danger arises.")

Although these three cases come from other jurisdictions, each court interpreted "crime of violence" in the manner advocated by the government here with respect to pretrial detention in cases involving charges under 18 U.S.C. § 875(c). Based on the language of 18 U.S.C. § 3156(a)(4)(A), a "crime of violence" includes the "threatened use of physical force against the person or property of another[.]" Defendant's threats to shoot all those found at the mosque in Miami Gardens constitute a "crime of violence" and Defendant poses a danger to the community.

The circumstances convince us that Defendant presents a serious danger to the community. *See* 18 U.S.C. § 3142(f). There are no conditions or combination of

conditions that may reasonably assure the safety of the community, making detention appropriate. *See* 18 U.S.C. § 3142(e).[2]

IV. CONCLUSION

Pursuant to these findings, the Court hereby directs that:

a. Defendant be detained without bond;

b. Defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

c. Defendant be afforded reasonable opportunity for private consultation with counsel;

d. On order of a Court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which defendant is confined, shall deliver defendant to a United States Marshal for the purpose of an appearance in connection with any court proceeding.

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[2] Defendant's supplemental briefing also addressed whether Defendant could be detained for a crime of violence, analogizing this case with those affected by *Johnson v. United States,* 559 U.S. 133 (2010). We have reviewed this issue and determined that it has no application here. To put this in *Johnson* terms, Defendant's threats constituted a "crime of violence" because they fall within the elements of the relevant statute – the Bail Reform Act – and do not simply fall within the type of "residual clause" that *Johnson* addressed. *See, e.g., United States v. Horsting,* 2017 WL 462100, at *2 (11th Cir. Feb. 3, 2017) (bank robbery by intimidation charge categorically qualifies as a crime of violence because threatened use of force was an element of the offense) (citing *In re Sams,* 830 F.3d 1234, 1237-39 (11th Cir. 2016)). Here, the text of the statute clearly encompasses an element of the offense. *See* 18 U.S.C. § 3156(a)(4)(A). Further, Defendant's reliance on *United States v. Johnson,* 399 F.3d 1297 (11th Cir. 2005) (holding that a violation of § 922(g), being a felon in possession of a firearm, is not categorically a crime of violence for pretrial detention purposes), is not relevant precisely because the statute was amended to include that type of offense within the scope of eligible offenses for detention purposes.

DONE AND ORDERED at Miami, Florida this 26th day of June, 2017.

/s/ *Edwin G. Torres*
EDWIN G. TORRES
United States Magistrate Judge

Copies to:
Counsel of Record
Pretrial Services (Miami)