Exhibit A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14724

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EVERETT TRIPODIS,

Defendant-Appellant.

MOTION IN SUPPORT OF APPEAL OF DISTRICT COURT'S DETENTION ORDER

MARK A. CAMPBELL
3300 Hamilton Mill Road
Suite 102-124
Buford, Georgia 30519
(404) 345-2593
mcampbell.atty@gmail.com
Georgia Bar No. 384028
Attorney for Everett Tripodis

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,	:	
	:	
Respondent-Appellee,	:	
	:	APPEAL NO. 20-14724
v.	:	
	:	
EVERETT TRIPODIS,	:	
	:	
Defendant-Appellant.	:	

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Counsel hereby certifies that the following have an interest in the outcome of this case:

Bentley Atlanta, Victim

Berry, Quentin, Codefendant,

Campbell, Mark A., Appellant's Attorney

Clerk, Phyllis, Assistant United States Attorney

Erskine, Kurt, Acting United States Attorney

Favors, Jamil A., Wilson's Defense Counsel

Hall, Jamila M., Wilson's Defense Counsel

Harvey, Bruce S., Payne's Defense Counsel

Jones, Paul R., Assistant United States Attorney

Kearns, Stephanie A., Executive Director, Federal Defender Program

Kincaid, Meredith C., Wilson's Defense Counsel

Nocharli, Rebecca M., Wilson's Defense Counsel

Ojeda, Rebeca M., Assistant United States Attorney

Payne, Janell, Codefendant

Pierson, Holly A., Payne's Defense Counsel

Secret, Akil K., Tate's Defense Counsel

Silas, Kendal D., Appellant's Former Defense Counsel

Strongwater, Jay L., Tyler's Defense Counsel

Tate, Kakawana R., Codefendant

Thrash, Jr. Hon. Thomas W., United States District Judge

Timmers, Sarah M., Berry's Defense Counsel

Traynor, William G., Assistant United States Attorney

Tripodis, Everett J., Appellant

Tyler, Antonio, Codefendant

United States of America, Appellee

Walker, Linda T., United States Magistrate Judge

Wilson, Mark A., Codefendant

No publicly traded company or corporation has an interest in the outcome of the case or appeal.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,	:	
	:	
Respondent-Appellee,	:	
	:	APPEAL NO. 20-14724
v.	:	
	:	
EVERETT TRIPODIS,	:	
	:	
Defendant-Appellant.	:	

DEFENDANT TRIPODIS'S MOTION APPEALING THE DISTRICT COURT'S DETENTION ORDER

The Petitioner, EVERETT TRIPODIS, hereby files this motion appealing the Honorable Thomas W. Thrash, Jr.'s order (Doc. 297, attached hereto as Exhibit #1) denying Defendant's motion for review of the magistrate's order of detention. (Doc. 287).

PROCEDURAL HISTORY

A grand jury sitting in the Northern District of Georgia returned an indictment on June 26, 2018 charging Mr. Tripodis with one count of conspiracy in violation of 18 U.S.C. § 371, ten counts of mail fraud in violation of 18 U.S.C. §§ 1343 and 2, three counts of wire fraud in violation of 18 U.S.C. §§ 1341 and 2, and one count of altering or removing VINs in violation of 18 U.S.C. §§ 511 and 2. (Doc. 1). On July 10, 2018, the Government filed a motion for detention. (Doc. 25). The magistrate

held a detention hearing on July 13, 2018 (Doc. 36) and entered an Order of Detention Pending Trial. (Doc. 37).

Mr. Tripodis filed numerous pretrial motions on May 2, 2019 including a motion to dismiss the mail and wire fraud counts (Doc. 97), motion to suppress evidence seized from a motor vehicle (Doc. 98), motion to suppress evidence seized from a residence (Doc. 99), motion to dismiss for lack of venue (Doc. 100), motion to dismiss for lack of venue and jurisdiction (Doc. 101), motion to strike surplusage (Doc. 102), motion for bill of particulars (Doc. 103), and motion to dismiss for multiplicity (Doc. 104). Evidentiary hearings were held on Mr. Tripodis's motion to suppress evidence seized from a motor vehicle (Doc. 98) on July 31, 2019 and October 1, 2019. (Docs. 155 and 170). The Government conceded the motion to dismiss for multiplicity (Doc. 104) and declared that no evidence from the search of the residence would be admitted, thus rendering the motion to suppress evidence seized from a residence (Doc. 99) moot.

On December 20, 2019, the magistrate issued a report and recommendation to deny all but the motion for a bill of particulars (in part) and certified the case ready for trial. (Doc. 196). However, on February 26, 2020, the District Court overruled the report and recommendation, in part, and granted Mr. Tripodis's motion to dismiss the mail and wire fraud counts. (Doc. 210). In addition, the District Court granted, in part, Mr. Tripodis's motion for bill of particulars. (*Id.*). The District

Court ordered that the "authentic" VIN and the "fraudulent" VIN for the 2016 Bentley Continental GT V8S convertible referenced in Count 5 (previously Count 17), be provided. (See Doc. 196 at 40). The Government has not produced this information. Moreover, additional information concerning whether the VINs specified in the original indictment for the motor vehicles were the "authentic" or the "fraudulent" ("cloned") VINs and/or whether the motor vehicles identified were simply the subject of internet searches, that is, not stolen vehicles, was also ordered to be produced. (See *Id.* at 47). The Government has not produced that information, either (although those counts were dismissed, several of the vehicles are referenced in the new conspiracy count in the First Superseding Indictment). (See Doc. 242).

A grand jury sitting in the Northern District of Georgia returned a superseding indictment on August 11, 2020 charging Mr. Tripodis with one count of conspiracy in violation of 18 U.S.C. § 371, three counts of interstate transportation of stolen vehicles in violation of 18 U.S.C. §§ 2312 and 2, and one count of altering or removing VINs in violation of 18 U.S.C. §§ 511 and 2. (Doc. 242). Mr. Tripodis pleaded not guilty to the charges on August 20, 2020 (Doc. 257).

On September 29, 2020, Mr. Tripodis filed a motion for reconsideration of magistrate's order of detention. (Doc. 272). The magistrate denied this motion on October 22, 2020. (Doc. 286). Mr. Tripodis moved the District Court for review of the order on October 23, 2020. (Doc. 287).

On November 12, 2020, the District Court held a hearing on the motion. The District Court entered an order denying the motion on December 14, 2020. (Doc. 297). On December 17, 2020 filed a timely notice of appeal. (Doc. 303). Mr. Tripodis remains detained at the Robert A. Deyton Detention Facility in Lovejoy, Georgia.

THE LEGAL STANDARD

The Bail Reform Act allows either party to seek review of a magistrate judge's order on pre-trial detention. 18 U.S.C. § 3145 (b). Appellate review of detention orders is both factual and plenary. The factual findings are reviewed under the clearly erroneous standard, the legal determinations are reviewed *de novo*. *United States v. Hurtado*, 779 F.2d 910 (11th Cir. 1985). Here, the District Court erred by ordering Mr. Tripodis detained on the grounds of dangerousness, by finding Mr. Tripodis's continued detention does not violate due process, and by using a higher standard than required by the Bail Reform Act.

THE DISTRICT COURT ERRED BY ORDERING MR. TRIPODIS DETAINED ON THE GROUNDS OF DANGEROUSNESS

The Government brought the detention motion pursuant to 18 U.S.C. §§ 3142(e) and (f). (Doc. 25 at 1). Specifically, the Government argued that Mr. Tripodis was eligible for detention because his case involved serious risks that he would flee and that he would obstruct, or attempt to obstruct, justice. (*Id.*). The Government alleged, "The Court should detain [Mr. Tripodis] because there are no conditions of release that will reasonably assure [his] appearance ... and the safety of any other person and the community. (*Id.*).

At the detention hearing, the Government listed the charges alleged in the indictment, described the alleged conduct of the various defendants, identified some of the evidence in the case, and detailed Mr. Tripodis's criminal history. (Doc. 59 at 2 – 6). Counsel for the Government argued:

> It is clear from the record, Your Honor, that there are no conditions or set of conditions that [could] be set for [Mr. Tripodis] to not violate the law if he were to be released on bond. And we're asking this Court to detain him given his record and his history, Your Honor, and the fact that he continues to engage in this exact same conduct despite being convicted and revoked on supervised release.

(*Id.* at 6).

The magistrate considered the Government's argument that Mr. Tripodis was a flight risk but ordered him detained solely on the ground that the court "did not have any confidence that [he] would not continue to violate the law if he were

released and would pose a danger to the community ...." (*Id.* at 20). Thereafter, the magistrate entered an Order of Detention Pending Trial where the court found, "By clear and convincing evidence that no condition or combination of conditions or release [would] reasonably assure the safety of any other person and the community." (Doc. 37 at 2). The magistrate expressly did not hold that no condition, or combination of conditions, of release would reasonably assure Mr. Tripodis's appearance as required. (see *id.*). The order noted that it was in response to the Government's motion brought pursuant to 18 U.S.C. §§ 3142(f)(1).

18 U.S.C. §§ 3142(f) lists two categories of grounds on which the Government can request a detention hearing. 18 U.S.C. §§ 3142(f)(1) provides that a detention hearing shall be held:

> [U]pon motion of the attorney for the Government, in a case that involves –
>
> (A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
>
> (B) an offense for which the maximum sentence is life imprisonment or death;
>
> (C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;
>
> (D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses

> described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
>
> (E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code[.]

18 U.S.C. §§ 3142(f)(2) provides that a detention hearing shall be held:

> [U]pon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves –
>
> (A) a serious risk that such person will flee; or
>
> (B) 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.

Notably, the Government's motion claimed Mr. Tripodis was *eligible* for detention pursuant to 18 U.S.C. §§ 3142(f)(2) but that the *reason* for detention concerned the "safety of any other person and community." (See Doc. 25 at 1). In contrast, the magistrate's Order of Detention Pending Trial stated that the Government's motion was brought pursuant to 18 U.S.C. §§ 3142(f)(1). (Doc. 37 at 1). The magistrate explicitly stated that Mr. Tripodis was "detained as a danger to the community." (*Id.* at 3). The District Court ruled:

> I think for the reasons stated by [the magistrate] in his Order of October 22nd, dangerousness is a factor that can be considered. And based on the Defendant's extensive record of committing the same types of crimes, two convictions for it, repeated violations of the conditions of supervised release, that he is a danger to the community if he would be

released, and that there are no conditions that can assure the safety of the community if he was released.

Transcript at 20.

However, as Mr. Tripodis is not charged with one of the offenses listed in 18 U.S.C. §§ 3142(f)(1), he cannot be detained on the basis of danger to the community. *See United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986); *United States v. Ploof*, 851 F.2d 7, 11 – 12 (1st Cir. 1988); *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988); *United States v. Byrd*, 969 F.2d 106, 100-11 (5th Cir. 1992); *United States v. Twine*, 344 F.3d 987 (9th Cir. 2003).

This Court has yet to issue an opinion on the issue of whether someone can be detained on a finding of dangerousness absent being charged with one of the offenses listed in 18 U.S.C. §§ 3142(f)(1). Therefore, this Court should adopt the holdings of other circuits considering the same issue.

The reasoning of the other circuits is compelling and persuasive. In *Himler*, *supra*, the Third Circuit considered whether, under the Bail Reform Act of 1984, a defendant could be detained prior to trial based on danger to the community where, like the instant case, the detention hearing was justified only by an alleged serious risk of flight pursuant to 18 U.S.C. Sec. 3142(f)(2)(A). *Himler*, *supra*, 797 F.2d at 156.

In *Himler,* the Third Circuit noted, "The hallmark of the Bail Reform Act of 1984 is its requirement that an arrested person be admitted to bail only under

conditions which will 'reasonably assure both the appearance of the person as required and the safety of any other person and the community.'" *Id.* at 158 (internal citation omitted). The court further noted that the Bail Reform Act marked a "radical departure from former federal bail policy and that prior thereto, "consideration of a defendant's dangerousness in a pretrial release decision was permitted only in capital cases." *Id.* (internal citation omitted).

Similar to the instant case, the government argued that 18 U.S.C. § 3142(e) did not limit detention hearings to those cases specified in subsection (f) and that the only purpose of subsection (f) was to specify those cases in which a hearing is mandated. *Id.* at 160. Again, just like the instant case, the government argued that once a hearing was authorized, any evidence of danger to the community from recidivism could be relied upon to justify pretrial detention. *Id.*

The Third Circuit disagreed, noting:

> If Congress had intended to authorize pretrial detention in all cases where recidivism appears likely it could easily have done so. The legislative history of the Bail Reform Act of 1984 makes clear that to minimize the possibility of a constitutional challenge, the drafters aimed toward a narrowly-drafted statute with the pretrial detention provision addressed to the danger from "a small but identifiable group of particularly dangerous defendants." (Citations omitted).

Id. The court accepted as true that a hearing may be held in connection with any bail decision. *Id.* However, citing the legislative history, the court held that "the requisite circumstances for invoking a detention hearing in effect serve to limit the

types of cases in which detention may be ordered prior to trial." *Id.* (internal citations omitted). Thus, the court reasoned, it was "reasonable to interpret the statute as authorizing detention only upon proof of a likelihood of flight, a threatened obstruction of justice or a danger of recidivism in one or more of the crimes actually specified by the bail statute." *Id.*

Two years later, the First Circuit weighed in. In *Ploof, supra*, that court applied *Himler* to reach a similar result. Considering *Himler*, The First Circuit said:

> [T]he structure of the statute and its legislative history make it clear that Congress did not intend to authorize preventive detention unless the judicial officer first finds that one of the Sec. 3142(f) conditions for holding a detention hearing exists. To conclude otherwise would be to ignore the statement in the legislative history that the "circumstances for invoking a detention hearing in effect serve to limit the types of cases in which detention may be ordered prior to trial[.]" (Citations omitted).

Ploof, supra, 851 F.2d. at 11. The First Circuit agreed with the Third Circuit and held that where detention is based on dangerousness grounds, it can be ordered only in cases involving one of the circumstances set forth in 18 U.S.C. § 3142(f)(1). *Id.* When none of those factors are present, such as in the instant case, pre-trial detention solely on the ground of dangerousness to another person or to the community is not authorized. *Id.*

The Second Circuit considered the same issue that year as well in *Friedman, supra*. Therein, the Second Circuit put it bluntly, "[T]he Bail Reform Act does not permit detention on the basis of dangerousness in the absence of risk of flight,

obstruction of justice or an indictment for the offenses enumerated [in 18 U.S.C. §§ 3142(f)(1)]." *Friedman*, 837 F. 2d at 49.

Moreover, in *Byrd*, the Fifth Circuit opined:

> There can be no doubt that this Act clearly favors nondetention. It is not surprising that detention can be ordered only after a hearing; due process requires as much. What may be surprising is the conclusion that even after a hearing, detention can be ordered only in certain designated and limited circumstances, irrespective of whether the defendant's release may jeopardize public safety.

Byrd, supra, 969 F.2d at 109-10.

Finally, in *Twine*, the Ninth Circuit held, "We are not persuaded that the Bail Reform Act authorizes pretrial detention without bail based solely on a finding of dangerousness. This interpretation of the Act would render meaningless 18 U.S.C. § 3142(f)(1) and (2). Our interpretation is in accord with our sister circuits who have ruled on this issue." *Twine, supra*, 344 F.3d at 987 (internal citations omitted).

As Mr. Tripodis is not charged with one of the offenses listed in 18 U.S.C. §§ 3142(f)(1), he cannot be detained on the basis of danger to the community. This Court has already noted that risk of flight was not a primary concern. (Doc. 59 at 20). Moreover, the detention order does not even address risk of flight. (See Doc. 37). Therefore, the District Court erred by ordering Mr. Tripodis detained on the grounds of dangerousness.

THE DISTRICT COURT ERRED BY FINDING MR. TRIPODIS'S CONTINUED DETENTION DOES NOT VIOLATE DUE PROCESS

Mr. Tripodis has been detained for over 31 months on nonviolent charges related to vehicle theft and interstate transportation of stolen vehicles. This violates the Due Process Clause of the United States Constitution. Other circuit courts have applied a four-part test to determine whether the length of pretrial detention has become unconstitutionally excessive. *See, e.g., United States. v. Mohammed,* 213 F.3d 74, 79 (2nd Cir. 1999). These factors include: (1) the length of detention, (2) the extent of the prosecution's responsibility for delay of the trial, (3) the gravity of the charges, and (4) the strength of the evidence upon which detention was based, *i.e.*, the evidence of risk of flight and dangerousness. *Id.* As this Court has noted these factors previously, *see United States v. Quartermaine*, 913 F.2d 910, 918 (11th Cir. 1990), Mr. Tripodis proposes this Court consider them as well.

First, Mr. Tripodis was arrested on the original indictment on July 10, 2018. (Doc. 18). He has been detained for over 31 months and, given the Northern District of Georgia's General Order 20-01 and its ten amendments[1], will not be tried for many more months. Courts have found pretrial detention too prolonged to withstand due process challenge when imposed for periods of time shorter than the 31 months

[1] These orders, issued as a direct result of the COVID-19 pandemic, have mandated that no criminal jury trials in any division of the Northern District of Georgia will be held through April 4, 2021.

that Mr. Tripodis has already endured. *See, e.g., United States v. Zannino*, 798 F.2d 544, 548 (1st Cir. 1986) (noting that, in perhaps most cases, sixteen months would be found to exceed due process limitations); *United States v. Gonzales Claudio,* 806 F.2d 334, 341 (2nd Cir. 1986) (stating "detention that has lasted for fourteen months and, without speculation, is scheduled to last considerably longer, points strongly to a denial of due process." *See also United States v. Ojeda-Rios*, 846 F.2d 167, 169 (2nd Cir. 1988) (ordering the release of member of a paramilitary group charged with robbery after approximately 33 months' detention).

Second, the prosecution is responsible for the delay of the trial. Mr. Tripodis moved for a bill of particulars back on May 2, 2019. (Doc. 103). Therein, he noted that:

> [He could not] properly prepare his defense to the charges without identification of the victims and their property interests. Notably, this information is not indicated in the Rule 16 discovery. Moreover, without identification of whether the identified vehicles in the indictment were stolen cars, cloned VINs, or simply the subjects of internet searches, Mr. Tripodis is similarly thwarted in the preparation of his defense. In addition, Mr. Tripodis has not been informed of the specific material misrepresentations, or the omissions or concealments of material facts calculated to deceive another out of money or property. Finally, Mr. Tripodis cannot prepare a defense to Count 17 without the vehicle being identified by VIN. Therefore, it is essential that the Court order the government to file a bill of particulars identifying the alleged victim(s) and property interest(s) of each count, the material misrepresentations, or the omissions or concealments of material facts calculated to deceive another out of money or property as well as whether the vehicles in the indictment were stolen cars, cloned VINs, or simply the subjects of internet searches.

(*Id.* at 102-03). Mr. Tripodis further advised the District Court that more than 13,000 pages of documents had been produced in discovery and yet:

> The discovery provides little or no guidance due to the hundreds of redacted VINs throughout. It is impossible to determine with any certainty whether the vehicles listed in the Indictment were actually stolen, had their VINs altered or removed, or even existed in the first place. It is virtually impossible to distinguish between vehicles of the same make and model (even the Government confuses the Audi in Count Five and the Bentley in Count 17). Moreover, as the Government only identifies the vehicles as "subject[s] of the scheme to defraud," it is unknown whether the vehicles actually constitute the properties defrauded from the unidentified victims.

(Doc. 175 at 7 – 8). As previously noted, the District Court ordered the Government to provide the "authentic" VIN and the "fraudulent" VIN for the 2016 Bentley Continental GT V8S convertible referenced in Count 5 (previously Count 17). (See Doc. 196 at 40). Moreover, the District Court also ordered the Government to provide additional information concerning whether the VINs specified in the original indictment for the motor vehicles were the "authentic" or the "fraudulent" ("cloned") VINs and/or whether the motor vehicles identified were simply the subject of internet searches, that is, not stolen vehicles, was ordered to be produced. (See *Id.* at 47). The Government has not produced any of this information (although those counts were dismissed, several of the vehicles are referenced in the new conspiracy count in the First Superseding Indictment). (See Doc. 242).

In *United States v. Gonzales Claudio*, the Second Circuit found the government to be responsible for a significant portion of the delay of the trial due to

the government's piecemeal delivery of the voluminous discovery between nine to fourteen months after the defendant's arrest. *Gonzales Claudio,* 806 F.2d at 334, 341-42 (2nd Cir. 1986). The Second Circuit found that it did not have to determine the extent that the government was "at fault" but, rather, must assess the government's responsibility for the delay. *Id.*

In addition to the heavily-redacted discovery and the as-yet unprovided information required by the district court's order, the greatest delay is attributable to the Government's pursuing a flawed theory of mail and wire fraud for nearly two years that was ultimately dismissed by the district court. If the Government had brought the Superseding Indictment in the first place, this case may have been tried and done months ago.

Third, this Court should consider the gravity of the charges. Mr. Tripodis has been charged with fraud offenses with, at most, ten-year statutory maximums. While these are not trivial charges, they are far less significant than the offenses enumerated in 18 U.S.C. § 3142(f)(1) (including crimes of violence, controlled substances, and offenses with minors or firearms and destructive devices).

Fourth, this Court should consider the strength of the evidence upon which detention was based, *i.e.*, the evidence of risk of flight and dangerousness. There is very little evidence of risk of flight and, as noted above, Mr. Tripodis's "dangerousness" is not related to any of the enumerated offenses in 18 U.S.C. §

3142(f). Moreover, the District Court was inaccurately advised that Mr. Tripodis had been convicted of battery, aggravated assault, and carrying a concealed weapon. In sum, Mr. Tripodis is not so "dangerous" that over 31 months' detention is justified. The District Court erred by not finding Mr. Tripodis's continued detention does not violate due process.

THE DISTRICT COURT ERRED BY USING A HIGHER STANDARD THAN REQUIRED BY THE BAIL REFORM ACT

The District Court applied a higher standard to Mr. Tripodis than what is required by statute. As previously noted, the District Court ruled:

> I think for the reasons stated by [the magistrate] in his Order of October 22nd, dangerousness is a factor that can be considered. And based on the Defendant's extensive record of committing the same types of crimes, two convictions for it, repeated violations of the conditions of supervised release, that he is a danger to the community if he would be released, and that *there are no conditions that can assure the safety of the community if he was released.*

Transcript at 20 (emphasis supplied). However, 18 U.S.C. § 3142(f) provides that the purpose of the detention hearing is to determine "whether any condition or combination of conditions set forth in subsection (c) of this section will *reasonably assure* the appearance of such person as required and the safety of any other person and the community ...." (emphasis supplied).

A similar problem arose in *Ploof, supra*, wherein the district court's order also omitted the word "reasonably." *Ploof, supra,* 851 F.2d at 9. The First Circuit remanded the case for a determination of whether "there is a serious risk defendant

will engage or attempt to engage in the conduct set forth in Sec. 3142(f)(2)(B) and that no condition or combination of conditions set forth in Sec. 3142(c) will *reasonably* assure the safety of any other person and the community." (Emphasis supplied).

As it appears from the record that the District Court applied a higher standard than required by the Bail Reform Act, this Court should remand the case with direction to the District Court to apply the proper standard to its findings.

CONCLUSION

The District Court incorrectly applied the law when it denied Mr. Tripodis's appeal of the magistrate judge's detention order. The District Court's order upholding the magistrate court's detention order should be overturned and the matter should be remanded for the District Court to set a reasonable bond. In the alternative, the matter should be remanded for the District Court to apply the proper standard to its findings.

Dated this 17th day of February, 2021.

Respectfully submitted,

/s/ Mark A. Campbell
MARK A. CAMPBELL
3300 Hamilton Mill Road
Suite 102-124
Buford, Georgia 30519
(404) 345-2593
mcampbell.atty@gmail.com
Georgia Bar No. 384028
Attorney for Everett Tripodis

CERTIFICATE OF COMPLIANCE AND SERVICE

This Certificate complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word processing software in 14-point Times New Roman. This document was served today by filing it using the Court's CM/ECF system, which automatically notifies all parties and counsel of record.

Dated: This 17th day of February, 2021.

/s/ Mark A. Campbell
MARK A. CAMPBELL

Exhibit B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14724-D

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EVERETT JEROME TRIPODIS,
a.k.a. Everett Tripodis,

Defendant - Appellant.

On Appeal from the United States
District Court for the Northern District of Georgia

BEFORE: WILSON, ROSENBAUM, and LUCK, Circuit Judges.

BY THE COURT:

Before the Court is Appellant's "Motion in Support of Appeal of District Court's Detention Order." The district court determined that no conditions of release will reasonably assure the safety of the community. Upon plenary review, we conclude that this was not erroneous. *See United States v. Hurtado*, 779 F.2d 1467, 1471–72 (11th Cir. 1985). Appellant's motion is DENIED.

The Clerk is directed to close this appeal.

Exhibit C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14724-D

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EVERETT TRIPODIS,

Defendant-Appellant.

MOTION FOR RECONSIDERATION

MARK A. CAMPBELL
3300 Hamilton Mill Road
Suite 102-124
Buford, Georgia 30519
(404) 345-2593
mcampbell.atty@gmail.com
Georgia Bar No. 384028
Attorney for Everett Tripodis

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,	:	
	:	
Respondent-Appellee,	:	
	:	APPEAL NO. 20-14724
v.	:	
	:	
EVERETT TRIPODIS,	:	
	:	
Defendant-Appellant.	:	

MOTION FOR RECONSIDERATION

The Petitioner, EVERETT TRIPODIS, hereby files this motion for reconsideration of this Court's March 25, 2021 opinion denying his Motion in Support of Appeal of District Court's Detention Order. Therein, this Court upheld the District Court's finding that no conditions of release would reasonably assure the safety of the community as not erroneous (using the plenary review standard). (Mar. 25, 2021 opinion). Mr. Tripodis asks this Court to reconsider its opinion as it failed to address the significant issues Mr. Tripodis raised.

On appeal, Mr. Tripodis did not question the District Court's determination that no conditions of release would reasonably assure the safety of the community. Rather, Mr. Tripodis argued that as he is not charged with one of the offenses listed in 18 U.S.C. §§ 3142(f)(1), he cannot be detained on the basis of danger to the community. *See United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986); *United*

States v. Ploof, 851 F.2d 7, 11 – 12 (1st Cir. 1988); *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988); *United States v. Byrd*, 969 F.2d 106, 100-11 (5th Cir. 1992); *United States v. Twine*, 344 F.3d 987 (9th Cir. 2003).

Mr. Tripodis noted that this Court has yet to issue an opinion on the issue of whether someone can be detained on a finding of dangerousness absent being charged with one of the offenses listed in 18 U.S.C. §§ 3142(f)(1) and suggested that this Court should adopt the compelling and persuasive holdings of other circuits considering the same issue. By failing to address this issue in its March 25, 2021 opinion, this issue remains unresolved in the Eleventh Circuit.

In addition, Mr. Tripodis raised a viable Due Process claim. Mr. Tripodis has been detained for over 32 months on nonviolent charges related to vehicle theft and interstate transportation of stolen vehicles. This Court's March 25, 2021 opinion did not even mention that issue, let alone address it. Given that other circuits have found pretrial detention too prolonged to withstand due process challenge when imposed for periods of time shorter than the 32 months that Mr. Tripodis has already endured., s*ee, e.g., United States v. Zannino*, 798 F.2d 544, 548 (1st Cir. 1986) (noting that, in perhaps most cases, sixteen months would be found to exceed due process limitations); *United States v. Gonzales Claudio,* 806 F.2d 334, 341 (2nd Cir. 1986) (stating "detention that has lasted for fourteen months and, without speculation, is scheduled to last considerably longer, points strongly to a denial of due process";

see *also United States v. Ojeda-Rios*, 846 F.2d 167, 169 (2nd Cir. 1988) (ordering the release of member of a paramilitary group charged with robbery after approximately 33 months' detention), a constitutional question of this magnitude (given the extended detention for a nonviolent offense with little opportunity for trial in the near future) begs for resolution by this Court so that reasonable outer limits on pretrial detention in the Eleventh Circuit can be established.

Mr. Tripodis moves this Court to reconsider its March 25, 2021 opinion and address the issues of whether, in the Eleventh Circuit, someone can be detained on the basis of danger to the community when not charged with one of the offenses listed in 18 U.S.C. §§ 3142(f)(1) and whether pretrial detention of over 32 months on nonviolent charges violates the Due Process Clause of the United States Constitution.

Dated this 2nd day of April, 2021.

Respectfully submitted,

/s/ Mark A. Campbell
MARK A. CAMPBELL
3300 Hamilton Mill Road
Suite 102-124
Buford, Georgia 30519
(404) 345-2593
mcampbell.atty@gmail.com
Georgia Bar No. 384028
Attorney for Everett Tripodis

CERTIFICATE OF COMPLIANCE AND SERVICE

This Certificate complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word processing software in 14-point Times New Roman. This document was served today by filing it using the Court's CM/ECF system, which automatically notifies all parties and counsel of record.

Dated: This 2nd day of April, 2021.

/s/ Mark A. Campbell
MARK A. CAMPBELL

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14724-D

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EVERETT JEROME TRIPODIS,
a.k.a. Everett Tripodis,

Defendant - Appellant.

On Appeal from the United States
District Court for the Northern District of Georgia

BEFORE: WILSON, ROSENBAUM, and LUCK, Circuit Judges.

BY THE COURT:

Appellant's "Motion for Reconsideration" is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* EVERETT TRIPODIS	Criminal Action No. 1:18-CR-00240-TWT-JFK-1

Order

Defendant Everett Jerome Tripodis has filed a "Motion for Review of Magistrate Judge's Detention Orders," [Doc. 287], in which he requests that the Court review the magistrate court's decision denying his motion for reconsideration of an order for detention and for release on a secured bond. An individual ordered detained by a magistrate judge may file a motion to revoke or amend the detention order in the district court under 18 U.S.C. § 3145(b). The district court's review is *de novo*. Having conducted a *de novo* review of the record, including the parties' briefing and the magistrate judge's order, as well as hearing argument from the parties themselves, the Court finds that continued detention is appropriate.

Magistrate Judge Russell G. Vineyard conducted a bond hearing on July 13, 2018 and, thereafter, granted the Government's motion for detention and ordered Defendant detained pending trial. [Docs. 36, 37]. On September 29, 2020, Defendant filed a motion for reconsideration of bond. [Doc. 272]. The Government opposed the motion and argued Defendant should remain detained. [Doc. 284].

On October 22, 2020, the magistrate court entered a detailed order denying Defendant's motion for reconsideration of bond. [Doc. 286]. Defendant filed a motion requesting the district court to review the magistrate judge's order. [Doc. 287]. On November 12, 2020, Defendant, represented by counsel, and the Government presented argument to the Court regarding the continued detention of Defendant.

For the reasons enumerated in the magistrate court's October 22, 2020 order denying Defendant's motion for reconsideration of bond, the Court finds that dangerousness is a factor that can be considered as grounds for detention in this case. The Court further finds that Defendant is a danger to the community and that no conditions of release will reasonably assure the safety of the community based on Defendant's extensive record of committing similar crimes, with two prior convictions, as well as his repeated violations of the conditions of federal supervised release and state probation. Moreover, the Court finds that Defendant's continued pretrial detention does not constitute a due process violation given the unique current circumstances in which we now find ourselves.

Accordingly, detention remains appropriate and Defendant's Motion for Review of the Magistrate Judge's Detention Order is hereby **DENIED**.

SO ORDERED, this 4th day of December, 2020.

/s/ Thomas W. Thrash, Jr.
THOMAS W. THRASH, JR.
UNITED STATES DISTRICT JUDGE