

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION
KNOXVILLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL R. WALLI, MEGAN RICE,
and GREG BOERTJE-OBED,

Defendants.

Criminal No. 12-107-ART

ORDER

*** **

A jury found each of the defendants guilty of a violation of 18 U.S.C. 1361 (willful destruction of government property) and 18 U.S.C. 2155(a) (injury of national-defense premises with intent to interfere with the national defense). *See* R. 156. Under the Bail Reform Act, the Court must order the defendants detained pending sentencing if those offenses are “described in [18 U.S.C. § 3142(f)(1)(A)-(C)],” subject to one limited exception. 18 U.S.C. § 3143(a)(2). Because the defendants’ offenses are described in 18 U.S.C. § 3142(f)(1)(A) and the exception does not apply, the defendants are ordered detained pending sentencing.

The Bail Reform Act, 18 U.S.C. § 3141, et seq., creates a presumption of detention pending sentencing, and the defendant bears the burden of rebutting that presumption. *See United States v. Parrett*, 486 F. App’x 544, 548 (6th Cir. 2012); *see also* 18 U.S.C. 3143 (stating that the court “shall” order detention). Generally, a defendant can rebut the presumption if he shows by “clear and convincing evidence” that he “is not likely to flee or pose a danger to the safety of any other person in the community if released.” 18 U.S.C. §

3143(a). Defendants convicted of certain, more serious, offenses can rebut the presumption only by making that showing *and* by showing that “there is a substantial likelihood that a motion for acquittal . . . will be granted” or that the prosecution “has recommended that no sentence of imprisonment be imposed.” *Id.* § 3143(a)(2).

The defendants’ offenses fall within the category of more serious offenses that triggers the stronger presumption in favor of detention. The stronger presumption of detention pending sentencing applies if the defendants have “been found guilty of an offense . . . described in subparagraph (A), (B), or (B) of subsection (f)(1) of section 3142.” *Id.* § 3143(a)(2). Section 3142(f)(1)(A) describes, among other things, offenses “listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed.” Both of the defendants’ offenses—under section 1361 and section 2155(a)—are listed in section 2332b(g)(5)(B), which defines the term “federal crime of terrorism.” And both offenses carry a maximum term of imprisonment of ten years or more. *See id.* § 1361 (setting a maximum term of imprisonment of “not more than ten years” if the damage to property is over \$1,000); *id.* § 2155(a) (setting a maximum term of imprisonment of “not more than 20 years”); *see also* R. 55 at 3 (superseding indictment alleging that the damage to property exceeded \$1,000); R. 156 at 2, 4, 6 (verdict forms requiring the jury to find beyond a reasonable doubt that the damage was more than \$1,000). Thus, the stronger presumption applies.¹

¹ At a hearing to discuss the detention issue, the Court asked the parties whether the defendants’ case fell under 18 U.S.C. § 3143. The United States argued that the case did because the offenses were crimes of violence, a type of offense described in section 3142(f)(1)(A). Because the defendants’ offenses are directly listed in 3142(f)(1)(A) by way of a cross-reference to section 2332b(g)(5)(B), the Court need not resolve the question whether those offenses are crimes of violence.

The defendants cannot rebut this stronger presumption in favor of detention. To do so, the defendants have to show two things. First, they must show that they are substantially likely to succeed on a motion to acquit or that the prosecution plans to recommend that no sentence of imprisonment be imposed. 18 U.S.C. § 3143(a)(2)(A). Second, they must show that they are unlikely “to flee or pose a danger to the safety of any other person in the community if released.” *Id.* § 3143(a)(2)(B). The defendants cannot make the first required showing. At the hearing held to discuss bail, the United States stated that it planned to recommend a sentence of incarceration. The Court previously denied the defendants’ Rule 29 motion on the section 1361 offense, so the defendants’ pending Rule 29 motion relates only to the section 2155(a) offense. *See* R. 151 at 2–3; R. 161 at 2. Even if that motion succeeds and the defendants are acquitted on the section 2155(a) offense, the defendants will remain convicted of the section 1361 offense. As explained, the section 2155(a) offense and the section 1361 offense both independently trigger the presumption of detention. The defendants cannot make the first showing required to rebut the presumption, so there is no need to address the second, and the defendants must be detained.

Nor have the defendants shown that exceptional circumstances warrant their release pending sentencing. Section 3145(c) states that defendants “subject to detention” under section 3143(a)(2) “may be ordered released . . . by the judicial officer, if it is clearly shown that there are exceptional reasons why . . . detention would not be appropriated.” District courts are judicial officers within the meaning of that provision. *See United States v. Christman*, 596 F.3d 870, 871 (6th Cir. 2010) (“[W]e hold that the district court erred in not considering whether [the defendant] established exceptional reasons to support his release

pending sentencing.”). Exceptional circumstances are those that are “out of the ordinary.” *United States v. Miller*, 568 F. Supp. 2d 764, 774 (E.D. Ky. 2008). In this case, the defendants have not pointed to any unique circumstances that weigh against detention.

Accordingly, it is **ORDERED** that:

- (1) The defendants’ motion for release pending sentencing, R. 157, is **DENIED**.
- (2) The defendants shall be **DETAINED** pending sentencing.
- (3) The United States’ deadline to file a brief on the question whether the defendants are likely to flee or pose a danger to the community by May 14, 2013, *see* R. 162 at 1, is **CANCELLED**.

This the 10th day of May, 2013.



Signed By:

Amul R. Thapar **AT**
United States District Judge