

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
Albany Division**

UNITED STATES OF AMERICA,)	
)	
v.)	MOTION FOR PRETRIAL DETENTION
)	
)	
GEORGE C. ORTLOFF,)	CASE NUMBER: 1:08-mj-449 (RFT)
)	
Defendant.)	
)	

UNITED STATES’ MOTION FOR PRETRIAL DETENTION

The United States of America, by and through the undersigned counsel, submits this motion seeking the pretrial detention of George C. Ortloff (“Ortloff”) pursuant to 18 U.S.C. § 3142(e). As addressed in greater detail below, the United States submits (1) that there is probable cause to believe that Ortloff committed an offense that triggers the rebuttable presumption in favor of detention in the last sentence of 18 U.S.C. § 3142(e) and (2) that in light of the nature and circumstances of the offense charged against Ortloff (alleging the enticement of two minors using a facility or means of interstate commerce to engage in sexual activity), the weight of the evidence against Ortloff (including various electronic messages and recorded oral statements), the history and characteristics of Ortloff (including a claim by Ortloff that as a 9 year old child, and later as an adult, he engaged in sexual acts with minors), and the danger to the community posed by Ortloff’s release, there is clear and convincing evidence that there exist no condition or combination of conditions that will reasonably assure the safety of the community should Ortloff be released. Ortloff should therefore be detained pending trial.

BACKGROUND OF INVESTIGATION

Before addressing the application of the legal framework relating to pretrial detention set forth in 18 U.S.C. § 3141, *et seq.*, the United States is providing the following factual narrative

that, the United States alleges, gave rise to the arrest of Ortloff, the charge included in the criminal complaint docketed as Case No. 1:08-mj-449, and the United States' pending motion for pretrial detention:

1. On March 06, 2008, law enforcement officials received three Cyber Tipline reports from the National Center for Missing and Exploited Children regarding the distribution and possession of child pornography by an America Online (AOL) subscriber. These reports were made by AOL after an individual using this screen name emailed the same image, three times, on March 5, 2008. This image depicts what appears to be a minor female engaged in sexual conduct with an adult male. According to AOL, the screen name used is associated with a paid account subscribed to by George Ortloff, 176 US Oval Suite 1000, Plattsburgh, NY. This address had been used by Ortloff at some point when he was with the NYS Assembly (from 1986-2007), and was presumably used sometime after 1997. The images were sent from a hotel in which Ortloff was a registered guest on the day and at the time the images were sent.

2. Thereafter, online searches were conducted for the various screen names registered to Ortloff. In June of 2008, Ortloff was located in an online group. Ortloff had a posting in this room that stated, among other things, that he would like to meet and get to know younger families. His online profiles indicated that his sexual interests included "fam fun", "yg", "yng", "yf", and "preteen".

3. Thereafter, an undercover agent and Ortloff engaged in the following communications¹:

a. On June 9, 2008, Ortloff was informed that two minor females, ages 11 and 12, were available for sexual encounters with an adult male. Ortloff informed the undercover that she

¹ These conversations are available, upon request, for the Court's review. Only portions of the conversations are included here.

should be careful, but he was interested in the discussion. He also informed the undercover agent that he raised his own children “very open about sex and nudity from birth” and also ***discussed his own sexual experiences at age nine, with an eleven year old girl and her minor friends;***

b. On June 11, 2008, the two engaged in another online discussion. When asked about his greatest needs, Ortloff stated “there is the basic physical need for sexual release, there is the need to please a woman and see how she responds ... it’s a big part of my makeup to be good for her, and then ***there is the need for taboo ... the forbidden is exciting, my personal history has laid down some patterns in the sexual part of my brain that need fulfilling***”. During this conversation, Ortloff stated that “if things work out the way you have in mind, we don’t want to leave a trail for people with bad intent to do us harm” and noted that as things progress, he would provide the undercover “pointers” on how to accomplish this. During this conversation, he asked about the minors’ appearances and whether they both had breast development. When asked if he finds younger girls attractive, he stated “two things about that, I don’t consider myself to be a “p---ph—e” (not spelling out certain words on the net is a good security idea), but ***... because of my own beginnings, I find that the type of girl I spent my earliest sexual experiences with has always been the hottest thing for my brain***”. When asked if photos do much for him, he stated “videos and photos, of sexual acts, are great to get me aroused”. At one point during this conversation he was asked “so you never enjoy watching any or looking at photos of beautiful young girls?” He replied “of course I do! I would be lying if I said I didn’t, over the years I’ve seen almost everything, I think”;

c. On June 13, 2008, Ortloff discussed his interests in pornography. When asked whether he had a collection of pornography, he stated that he had “deleted everything, cleaned my hard drive and wiped it all out” prior to sending his computer to be repaired. He also noted that he had most of his collection on a zip drive card, but that was destroyed. When asked about why he disposed of everything, he explained that he was concerned about the risk of being caught with it in his possession. When asked if he ever feels like watching the “taboo” (referring

to child pornography) anymore, he responded by asking for such an image. *During this conversation, Ortloff again discussed his first sexual experiences. He noted that they occurred when he was nine and that they involved girls who were 7, 11, and 12. When asked if he was still sexually attracted to girls that age, he stated “I understand that a person’s first sexual experiences “imprint” patterns in the brain that are permanent, what you first did is always a turn on afterward”.* When asked if he has any experience with virgins as an adult, he replied “no, never, and that’s one of the few things I want to do before I die”. Later in the conversation, he explained that pursuing taboo interests with someone involves a trust factor and that there is a need to meet first on a one-on-one basis and get to the trust level before you “dare to begin”. He continued on to say “don’t take this the wrong way, but there’s no way I’m walking into a trap”, “so ... if you are sincere and you want this to happen with me, you’ll have to play it out by my rules, and trust me”. When asked his rules, he explained,

basically, I know what I’m doing, and what the risks are, and I’m asking that you trust me to know how to go about it, so that when I ask you to meet me on such-and-such a basis, you just take it on faith that it’s the right thing to do, and for a period of time, we never, never discuss the other, the only rule you need to accept at this point is that once we decide we want to move forward, we drop all discussion of the ultimate thing and don’t take that topic up again until we both have the total trust of the other, we can talk about it at any length here ... but at some point, we make up our minds to go forward, and we go through a period where every email, chat, phone call, meeting is 100% about something else. We meet and develop trust on another level entirely, it doesn’t have to be sexual ... it could be work-related, or business, but whatever it is, it is not about taboo, we can discuss those now ... or later, but there will be a period of time where we discipline ourselves to speak nothing about it. It will be hard, but if we don’t we will never have the protection we will need going forward.

During this conversation, he also stated that he should never speak to the minors online as a safety issue. He also stated that “it’s important that, after we change gears, there be absolutely no prior arrangement on the net” and arrangements should be made in person. He further noted that

...when we change gears, despite the fact that you and I have an understanding about what we each desire down the road ... we move forward on a completely different basis. First time we meet, it’s just you and me, we develop a common interest, we pursue that. First time you introduce me...it’s totally normal and no discussion about anything, all the while you and I are having abundant chance to decide if the other can really be trusted, if you decide the answer is no ... you haven’t cross any bridge you’ll regret later on ..., and

if you decide yes it has been worth the time invested.

He also stated that “I promise you that if it works out that I will give them an excellent experience”. He noted that he had “a lot to teach them.” When asked if he is willing to use condoms, he stated “oh absolutely, no risk of pregnancy, you don’t want them bred, do you?” Ortloff also discussed taking photographs when he was with the minors and asked about child pornography. In addition, Ortloff then directed the undercover to create a new email account to be used “just for our business communication and we will give each other the information about them in a phone call”.

d. On June 27, 2008, during an online conversation concerning the planned sexual encounter with the two minors, Ortloff noted that it “is a very delicate thing to do, needs to be completely private, as you know...one of the things you can trust me on is to protect you, and watch both our backs, I have known people who successfully maintained this lifestyle for several generations, and I have known people who thought they couldn’t get caught ... and did” and spent time in prison. He also noted he was aware of two other families he knew who engaged in sexual activities, or looked for others to engage in sexual activity, with their daughters and were arrested. During this conversation, he noted the risk of evidence being found online from emails and instant messages and explained that there are “internet crime units in every state who spend their time online pretending to be into things” and if there is “evidence to be found ... we’re both in big trouble”. He also stated that the screen names and email accounts that had been used were now compromised because of what had been discussed on them. He explained that because of this, new email accounts and a new means of communication needed to be used. He further noted he needed to eliminate any internet evidence.

e. On July 30, 2008, a face to face meeting was held with Ortloff. At this meeting, he identified himself using a fictitious name. During the meeting, he discussed his interest in engaging in sex with the alleged minors and began planning a meeting for this purpose. The use

of condoms was discussed during this meeting. Also discussed was a location where such a meeting would occur (hotel or a house), the use of lubrication (specifically one he liked called “Swiss Navy”), and photographing and videotaping the sex acts with the alleged minors.

Additionally, Ortloff explained that a number of years ago, while he was an adult, he engaged in sexual acts with a twelve year old girl and a nine year old girl.

f. During online communications after this meeting, Ortloff stated that if he could not meet the alleged minors in person before meeting them to have sex, seeing them on a web cam would be an alternative way for him to be “put more at ease”. During this conversation he also discussed the possibility of showing and discussing with the alleged minors a few online pornographic videos. He then provided links to a number of videos with “teen” titles. During this conversation, he noted that the second video displays “...actual defloration”. The video shows a female engaged in intercourse and bleeding from her vaginal area. Ortloff stated that having sex when blood was involved was not a problem for him, but noted “I am thinking that whichever girl is second in line, she might get scared?”. He goes on to say that he wants to teach the minors “oral” and describes his “ideal situation” which includes kissing, touching, undressing, introducing the touching of genitals, and kissing the genitals.

g. On August 18, 2008, the undercover and Ortloff met in person. During this meeting, he provided a webcam and the necessary software to the undercover. He stated that if the alleged minors are willing to get naked and be explicit on webcam, then he would know that they were willing to get naked in person. Ortloff acknowledged that what he was planning on doing was not legal and that was why it was necessary to ensure that he was not walking into a trap or being “set up.” He referenced “those shows on TV” where men are arrested after they travel to a location to meet young girls.” During this meeting, Ortloff also discussed the types of dildos that he might use with the alleged minors, and the possibility of introducing the alleged minors

to others “in the lifestyle”. During this conversation, *Ortloff again discussed his past sexual encounters with nine and twelve year old girls*. He stated that he was their neighbor and engaged in oral sex and intercourse with both girls. Additionally, Ortloff discussed the use of various items (such as rabbit fur, a flogger, “Swiss Navy” lubrication) for the sexual encounter with the alleged minors. There was also discussion during this conversation as to whether to videotape his first sexual encounter with the alleged minors. He expressed concerns about taping the first time because he felt that it might make the alleged minors uncomfortable. Later, during the same online conversation, he indicated that he was still interested in child pornography. He also acknowledged that he had sent child pornography via email on the internet and became concerned when AOL later terminated his accounts. He stated that this occurred in March or April 2008, after he emailed a picture of a preteen girl being vaginally penetrated. He described the image and stated that based on the girl’s size, she was probably a toddler. He stated that he emailed the image to someone he met on AOL. Sometime after he emailed it, he could no longer access any of his AOL accounts. He noted that this scared him and caused him to burn the thumb drive where he stored his collection of child pornography. However, he noted that once he met the alleged minors, he would be interested in trading child pornography. Ortloff also described a child pornography website that he had visited. When discussing how to find child pornography online, he referred to chat rooms where he met people interested in trading child pornography.

h. On September 10, 2008, Ortloff communicated directly with the alleged minors. During their conversation, he sent them links to online 2 pornographic videos, which he then viewed with them and discussed the sexual acts which were occurring in the video. The first video depicts a teenage female receiving and performing oral sex with an adult male and then engaging in sexual intercourse. The second video depicts a teenage female with her hair in pigtails masturbating with a popsicle and then engaging in sexual intercourse with an adult male.

Ortloff also discussed sex and engaging in sexual acts with the alleged minors during this conversation. He noted that he was excited about being their teacher. He further informed them that they will learn by doing and that there was really nothing they could do which would be wrong. He also asked them if they had masturbated before. Ortloff also described dildos and their use and looked at dildos online with them. Additionally, he asked them if they were ready to have sex. Ortloff also discussed the use of condoms and whether they would be on birth control. Plans were made to meet the evening of Tuesday, September 16, 2008, at his hotel room in Saratoga with the “girls” for the purpose of having sex. He stated that he would have lubricant with him and would try to buy a dildo. He requested that the alleged minors bring a “nightie”. He also asked if they had pubic hair and asked the color of their public hair. During this online “meet” Ortloff provided an image which depicts him naked. He then told the alleged minors that “when you get with me you will have to figure out how to make it bigger” (referring to his penis which could be seen in the image he sent).

i. On September 30, 2008, Ortloff engaged in a telephone conversation with the undercover agent. During this conversation, he discussed meeting the alleged minors on Monday October 13, 2008, at his hotel room for the purpose of him engaging in sexual acts with them. During this conversation, Ortloff stated that he would be interested in seeing pictures of nude six to twelve year old girls engaged in sexual acts with older men and images of minors where the focus of the image was on the genitalia of children. He also noted that he would attempt to reserve a hotel room in Latham or on Wolf Road in Colonie, New York.

j. On October 13, 2008, the undercover agent met Ortloff at the Albany County Airport. Although Ortloff had driven to this location, he informed the undercover that he had flown into

the airport. The two then drove to Ortloff's hotel room and the undercover informed him that she would pick up the minors from their home and return to the hotel room. Prior to leaving the hotel, Ortloff and the undercover officer viewed child pornography. Additionally, Ortloff discussed engaging in sexual acts with the two "minors". Ortloff also showed the undercover two vibrators he had purchased to use on the minors. Ortloff thereafter attempted to engage in an online conversation with the "minors" via webcam. While attempting to communicate with them, he removed all his clothing.

k. While Ortloff and the undercover agent were in the hotel room, the following conversations, among others, occurred:

1. UC- Now they will have, I don't know if you are going to let them keep those but they would have something to play with
Ortloff - Those toys, I want them to keep them
UC – good
Ortloff - And I want them to practice with them. That's going to be their homework.
UC – you know the homework this weekend kept saying buffering (referring to 5 porn links he sent as homework for the girls) and I clicked on to update to latest version and it appeared you know whatever it does, it runs something
Ortloff - Oh, I have noticed that some of those do that,
UC – Did you have the same problem?
Ortloff - Well not, I don't think I actually tried to look at those but I have noticed that some of those do that;
2. Ortloff - Now, how old are they?
UC – eleven and twelve
Ortloff - Which ones Ali? Which ones the younger one?
UC – Ali
Ortloff - The pink one
UC – Your pink queen
Ortloff - Does she have breast already?
UC – Yup, I mean small but yeah
Ortloff - But they show
UC – Yeah, I think the bras I have bought her have been 32a

Ortloff - And what about Amber?

UC – She is about the same

Ortloff - She said she was flat

UC – She didn't say flat, cus I remember, what did she say, you thought she said flat but and I think she said, she said something else but;

3. Ortloff - I ask myself...I always ask myself when I am doing something new...Is this right or wrong? Do I have a moral problem with this? And honestly I don't have a moral problem with this because I started when I was young and you started when you were young and here we are it didn't ruin us, or maybe it did (laugh) but a
4. Ortloff - See, I want to teach them, I want them to be very well balanced
UC – I think that's what will be happening
Ortloff - I don't want them to get screwed up and I want them to be confident women when they are 18 where they can freely enter in to a sexual relationship if they want to and know that I'm good I know what I am doing....;
5. Ortloff - I would feel personally much better if you would stay, I don't know personally what I would say if someone said what are you doing in a room with two little girls that aren't related to you. Where as if you answer the door
UC- yeah we're here with friends
Ortloff - Yeah sorry we are sleeping, why did you wake us up?
UC – Right I'm fine with that. Like I said that was always something that ultimately I wanted them to have input on and you, so if you want me to stay that is fine I just you know I want us to be clear that it's going to be for you and for them...;
6. Ortloff - I would genuinely love; well I'm going to love eating out your girls
UC- good
Ortloff - But I would genuinely like to eat a little one
UC – How little do you think you would enjoy
Ortloff-Awe I don't know
UC – Infant?
Ortloff-Maybe! (smiling)
UC- Toddler?
Ortloff-Maybe! (smiling)
UC – Really?
Ortloff-Awe come on you can't see this (pointing to his partially erect penis)
UC – It's growing

Ortloff- It's growing, umm if the parents were ok with it. You know if it was the parents, say it was the parents had raised her to accept that. I'm not going to force anything on anybody

UC – You know some ..

Ortloff- Or do it behind a parents back

UC – Right but if it's in a loving type of

Ortloff- Yeah

UC – You know you wrote in umm and it always stuck with me when you wrote in one of the messages about I don't consider myself a p-d I mean I know the connotation with the word pedophilia or how ever you pronounce it is bad but doesn't that just mean that you just like kids

Ortloff-Mhmm

UC – So is that bad

Ortloff- Well it's illegal and 99% of people think it's bad

UC- Do you?

Ortloff-Probably 80% of people would kill you

UC- I think a lot of it is associated with the horrible crimes that occur

4. On October 13, 2008, search warrants were executed at the defendant's residence, offices, and hotel room. Among other things, a computers and computer media were seized. In addition, two vibrators, a camera, condoms, and lubricant were recovered from Ortloff's hotel room. Many of these items had been purchased by Ortloff that day in Schenectady.

5. On October 14, 2008, Ortloff was charged in a criminal complaint with a violation of 18 U.S.C. § 2422(b). At his initial appearance on the same date, Ortloff was temporarily held by the Court after the United States moved for detention on the grounds that Ortloff posed a danger to the community. After the United States requested a one-day continuance permitted under 18 U.S.C. § 3142(f)(2), the matter was adjourned until October 15, 2008, for the court to address the government's motion for detention.

UNITED STATES' POSITION

The Bail Reform Act, 18 U.S.C. 3141 *et seq.*, allows for the pretrial detention of defendants charged with "serious felonies" who "pose a threat to the safety of an individual or to

the community which no condition of release can dispel.” *See United States v. Salerno*, 481 U.S. 739, 755 (1987). In short, pretrial detention is warranted when the case involves a crime of violence (or other qualifying crime) and the government shows that there is no condition or combination of release conditions that will reasonably assure the safety of other persons and the community or the future appearance of the defendant at trial. *See* 18 U.S.C. §§ 3142(e) and (f). Although the Bail Reform Act permits detention to reasonably assure the appearance of a defendant or the safety of a community, the United States is only seeking the detention of Ortloff on the grounds that, at the present time, there are no condition or combination of conditions that will reasonably assure the safety of the community in the event Ortloff is not detained.

The procedural framework governing a detention hearing and a court’s detention determination are well established:

Evidence may be introduced by proffer since normal evidentiary rules do not apply. Under certain circumstances ... the statute creates a rebuttable presumption that there is no condition or combination of conditions that will preclude ... dangerousness. Despite that presumption, the government retains the burden of proof, by clear and convincing evidence as to dangerousness ... If the defendant presents rebuttal evidence the presumption does not dissipate but continues to be weighted along with other factors. Recited in the statute, those other factors include: [1] the nature and circumstances of the charged offense; [2] the weight of the evidence; [3] the nature and characteristic of the defendant; [4] the nature and seriousness of the risk to the community ...

See United States v. Vasconcellos, 519 F.Supp. 2d 311, 315-16 (N.D.N.Y. 2007) (Sharpe, J.) (citations omitted). Consistent with this framework, there is likely a presumption that Ortloff should be detained pending trial. Although this presumption is rebuttable, in light of the facts underlying the criminal complaint and statements made by Ortloff during his communications with the undercover agent and cited above that reference contact/relationships with other minors, the United States submits that this presumption could not be rebutted by any evidence that Ortloff might offer at the hearing scheduled for October 15, 2008. Nonetheless, the United

States believes that it can still establish by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the safety of the community should Ortloff not be detained.

I. There is a Rebuttable Presumption Favoring the Detention of Ortloff

Section 3142(e) of Title 18 provides that, subject to rebuttal, it “shall be presumed that no condition or combination of conditions will reasonably assure ... the safety of the community if the [magistrate judge] finds that there is probable cause to believe that the person committed ... an offense involving a minor victim under section ...2422.” Subject to a finding by this Court of probable cause, the pending charge against Ortloff triggers the rebuttable presumption favoring detention. Because Ortloff is charged with a violation 18 U.S.C. § 2422(b) stemming from conduct involving who he believed were 11 and 12 year old females, the rebuttable presumption of detention could apply in this proceeding.

Application of the rebuttable presumption is conditioned on a finding that there is probable cause to conclude that Ortloff violated 18 U.S.C. § 2422(b). Courts have generally found that the United States must prove the four following elements to establish a violation of Section 2422(b): “that an individual (I) used a facility of interstate commerce; (ii) to knowingly persuade, induce, or entice, or attempt to persuade, induce, or entice; (iii) any individual who is younger than eighteen-years old; (iv) to engage in sexual activity of a criminal nature.” *See United States v. Brand*, 467 F.3d 179, 201-02 (2nd Cir. 2006). The United States submits that the probable cause requirement with respect to these four elements is established by the electronic messages between Ortloff and the undercover agent and other recorded statements of Ortloff.

A finding of probable cause that Ortloff used a facility of interstate commerce is satisfied by his use of the Internet, and more specifically his use of an America Online to commit the

alleged criminal offense. Because all email messages sent to/from an American Online account are transmitted through the state of Virginia, there is probable cause to believe that Ortloff used a facility of interstate commerce to commit the alleged criminal offense. To wit, a number of the online communications between Ortloff and the undercover agent traveled, at the very least, from New York to Virginia and then back to New York

A finding of probable cause that Ortloff knowingly attempted to persuade, induce, or entice who he thought were 11 and 12 year old minors is satisfied by the electronic communications and Ortloff's oral statements during his meetings with the undercover agents. These documents and statements show that on multiple occasions, Ortloff sought to use and entice the alleged minors to meet and engage in various sexual acts.

A finding of probable cause that the two alleged minors were under the age of eighteen is also satisfied by the electronic communications and Ortloff's oral statements. In many of the communications between Ortloff and the undercover agent, Ortloff is told that the "minors" are 11 and 12 years of age.²

A finding of probable cause establishing the criminal sexual activity element of Section 2422(b) liability is satisfied by Sections 130.30(1) and 130.45(1) of New York State Penal Law. During the course of communicating with the undercover agents, Ortloff sought to meet with the "minors" to engage in acts of oral and vaginal sexual intercourse. Given the age of said

² The Second Circuit has recognized that all of the "circuits that have addressed this issue have held that 'a defendant may be convicted of attempting to violate § 2422(b) even if the attempt is made towards someone the defendant believes is a minor but who is actually not a minor.' *United States v. Hicks*, 457 F.3d 838, 841 (8th Cir.2006); accord *United States v. Tykarsky*, 446 F.3d 458, 461, 464-69 (3rd Cir.2006); *United States v. Sims*, 428 F.3d 945, 949, 959-60 (10th Cir.2005); *United States v. Meek*, 366 F.3d 705, 709, 717-20 (9th Cir.2004); *United States v. Root*, 296 F.3d 1222, 1224, 1227-31 (11th Cir.2002); *United States v. Farner*, 251 F.3d 510, 511, 512-13 (5th Cir.2001)." See *Brand*, 467 F.3d at 202, n.20.

“minors”, both of these categories of sexual activity could be criminally charged under New York law as criminal sexual acts.

The United States submits that probable cause exists that Ortloff has violated 18 U.S.C. § 2422(b) such that (pursuant to 18 U.S.C. § 3142(e)), there is a presumption that no condition or combination of conditions will reasonably assure the safety of the community.

II. Ortloff will be unable to Rebut the Presumption In Favor of Detention

Although Ortloff has yet to submit any proposed factual findings or argument to the Court that purport to rebut the presumption in favor of detention, the United States submits that Ortloff will nonetheless be unable to do so. During conversations with the undercover agent, Ortloff has indicated that he has had previous sexual contact with a number of actual minors. In his addition, these conversations demonstrate that Ortloff clearly has a sexual interest in minor females, including toddlers. The United States believes that the questions raised by these communications would preclude Ortloff from rebutting the statutory presumption that there is no condition or combination of conditions that will reasonably assure the safety of the community.

III. Detention of Ortloff is Also Warranted Pursuant to the Section 3142(g) Factors

Notwithstanding the presumption in 18 U.S.C. § 3142(e), the United States recognizes that it has the ultimate burden in this detention proceeding of establishing by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the safety of the community. Even though the presumption provided by Section 3142(e) remains relevant, *see United States v. Rodriguez*, 950 F.2d 85, 88 (2nd Cir. 1991) (“Once a defendant introduces rebuttal evidence, the presumption, rather than disappearing altogether,

continues to be weighed along with other factors to be considered when deciding whether to release a defendant”) the following four factors set forth in 18 U.S.C. § 3142(g) are necessary components to a determination regarding Ortloff’s pretrial detention:

(g) Factors to be considered. – The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning--

- (1) the nature and circumstances of the offense charged, ...
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, ...and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(e). As set forth below, the United States believes that the information responsive to these factors establishes the clear and convincing evidence necessary to establish the unsuitability of conditions of pretrial release to reasonably assure the safety of the community.

A. The Nature and Circumstances of the Offense

The first factor listed in 18 U.S.C. § 3142(g) requires consideration of “the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device.” *See* 18 U.S.C. § 3142(g)(1). The pending charge against Ortloff favors detention under this factor not only because the charge involves minor victims but also because violations of 18 U.S.C. § 2422(b) constitute crimes of violence pursuant to 18 U.S.C. § 3156(a)(4).

B. The Weight of the Evidence Against the Person

The evidence in this case is overwhelming. As highlighted in the Background of

Investigation section, *supra*, after initially distributing child pornography, Ortloff engaged in numerous conversations, over a 5 month period, in which he planned to meet 11 and 12 year old girls for the purpose of engaging in sexual activity with them. He even rented a hotel room for this purpose. He clearly intended to engage in sexual acts with them as evidenced by the fact that he brought condoms, lubricant, and 2 vibrators to this meeting.

C. The History and Characteristics of the Person

Information provided by Ortloff in several of the communications with the undercover provides additional evidence to question the suitability of conditions of pretrial release to reasonably assure the safety of the community. Initially, Ortloff was involved in distributing and possessing child pornography. AOL initially referred him after he distributed such an image and he himself admits that he had a collection of such material. He informed the undercover agent that he destroyed his collection after AOL terminated his account and he became concerned that he would be investigated. More importantly, according to Ortloff himself, he has engaged in sexual conduct with minors on a number of occasions. Initially, he stated that he engaged in sexual acts with young minors when he was 9 and that this left an imprint defining his sexual interests. He also admitted that later, as an adult, he again engaged in sexual acts with minors. Further, he has noted that he is sexually interested in very young girls, ***including toddlers***. Although Ortloff may not have a criminal record, his personal characteristics do not necessary favor release.

D. The Nature and Seriousness of the Danger to the Community

As outlined in detail above, Ortloff poses a danger to the female minors in the Northern District of New York. Moreover, there is even a heightened danger based upon his employment.

He is required to travel on a regular basis and stay overnight at hotels. He thereby could potentially have access to minors across the state. Furthermore, Ortloff informed the undercover agent that he helps coach a girls (ages 11-13) soccer team. In addition, during the course of his communications with the undercover, Ortloff often discussed counter measures to avoid detection by law enforcement. He used various screen names and changed email accounts to avoid detection. He advised the undercover agent on numerous occasions on methods to conceal their illegal conduct. The United States submits that this conduct, coupled with the additional factors addressed above, establishes clear and convincing evidence that there is no condition of pretrial release or combination of conditions that will reasonably assure the safety of the community.

Conclusion

The United States therefore respectfully requests that the Court order the pretrial detention of George C. Ortloff.

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