

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA (PANAMA CITY)**

UNITED STATES OF AMERICA, :
 :
Plaintiff. : **District Case No. 5:09CR30-4**
 :
vs. :
 :
MICHAEL REED, :
 :
Defendant. :

**CERTIFICATE OF COMPLIANCE OF MOTION FOR
RECONSIDERATION OF PRE-SENTENCE DETENTION**

Comes now, **Michael Reed** by and through undersigned Counsel, **Marcia G. Shein**, and pursuant to N.D. Fla. Loc. R.7.1(B) states the following:

1. On July 24, 2009 a Motion for Reconsideration of Bond pending sentencing was filed.
2. On July 23, 2009, the government was advised the motion was going to be filed.
3. On July 26, 2009, the government having had adequate time to review said motion, advised they had no objection to the motion and request.
4. Having conferred with the government, and given adequate time for their review of the motion, it is respectfully requested this Honorable Court

consider the matter accordingly.

Respectfully submitted,

/s/Marcia G. Shein
MARCIA G. SHEIN
Federal Bar No. 53667
2392 North Decatur Road
Decatur, Georgia 30033
(404) 633-3797
(404) 633-7980(Fax)
Marcia@msheinlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the above referenced Motion which will be electronically delivered to Assistant United States Attorney Gayle Littleton at gayle.littleton@usdoj.gov.

This 27th day of July, 2009.

Respectfully submitted,

/s/Marcia G. Shein
MARCIA G. SHEIN
Federal Bar No. 53667
GA State Bar No. 639820
2392 North Decatur Road
Decatur, Georgia 30033
(404) 633-3797
(404) 633-7980(Fax)
Marcia@msheinlaw.com

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

UNITED STATES OF AMERICA

vs.

CASE NO. 5:09-cr-30-4/RS

MICHAEL REED

ORDER

Before me are Defendant's Motion for Reconsideration of Presentence Detention (Doc. 122) and Defendant's Certificate of Compliance (Doc. 141).

A. Background

On July 23, 2009, Defendant pled guilty to one count of conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846. Because this offense involved up to five kilograms or more of a mixture or substance containing a detectable amount of cocaine, the maximum penalty for the defendant is between 40 years and life imprisonment.

Immediately upon adjudicating Defendant guilty of the crime he had admitted to committing, I remanded Defendant into the custody of the U. S. Marshal under the mandatory detention provision of 18 U.S.C. § 3143(a)(2). This provision states that a "judicial officer shall order that a person who has been found guilty of an offense in a case in subparagraph (A), (B), or (C) of subsection

(f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained” unless the defendant meets one of the following exceptions:

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2).

In determining whether this provision was applicable to Defendant, I reviewed 18 U.S.C. § 3142(f)(1)(C) which describes “an offense for which a maximum term of imprisonment of ten years or more is prescribed by the Controlled Substances Act (21 U.S.C. 801 *et seq.*)” The Controlled Substances Act states, in pertinent part, that “[a]ny person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.” 21 U.S.C. § 846. Because Defendant pled guilty to the offense of conspiracy to distribute and possess with intent to distribute five kilograms or more of a mixture or substance containing a detectable amount of cocaine, he is subject to the penalties prescribed for the offense that was

the object of the conspiracy: possession with intent to distribute 5 kilograms or more of a mixture or substance containing a detectable amount of cocaine in violation of 21 U.S.C. § 841(a)(1).

Title 21, Section 841 of the United States Code provides that any person whose offense under Section 841(a) involves five kilograms or more of a mixture or substance containing a detectable amount of cocaine “shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life” 21 U.S.C. § 841(b)(1)(A). Depending on the Defendant’s role in the conspiracy, I may find that Defendant is responsible for a lesser amount of cocaine—greater than 500 grams, but less than five kilograms. In such an instance, Title 21, Section 841 of the United States Code provides that any person whose offense under Section 841(a) involves 500 grams or more of a mixture or substance containing a detectable amount of cocaine “shall be sentenced to a term of imprisonment which may not be less than 5 years or more than 40 years” 21 U.S.C. § 841(b)(1)(B). Under either scenario, Defendant’s maximum statutory sentence is greater than ten years. Consequently, Defendant’s detention pending sentencing is mandatory pursuant to 18 U.S.C. § 3143(a)(2) because the maximum sentence is greater than 10 years and his offense is in the category of offenses described in 18 U.S.C. § 3142(f)(1)(C).

B. Dr. Reed's Motion

Defendant urges me to reconsider my order detaining him pending trial because he asserts that “Section 3143(a)(2) is not the controlling section applicable to this defendant . . . [because] the Government took the position that detention was not necessary” (Doc. 122 at 2). Defendant’s reasoning is that since Section 3143(a)(2) mentions Section 3142(f)(1), the court must apply Section 3142(f)(1) to Defendant. I cannot accept defense counsel’s tortured reading of 18 U.S.C. § 3143 (a)(2).

“ ‘In statutory construction, ‘the plain meaning of the statute controls unless the language is ambiguous or leads to absurd results.’” *United States v. Hoffman-Vaile*, 568 F.3d 1335, 1343 (11th Cir. 2009) (quoting *United States v. Carrell*, 252 F.3d 1193, 1198 (11th Cir. 2001)). There is no ambiguity in Section 3143(a)(2) and no absurd results are obtained through its application. The plain meaning of the Section is that a judge must order the detention of a person found guilty of an offense described in subparagraph (A), (B), or (C) of 18 U.S.C. § 3412(f)(1). The intention of Congress in mentioning subsection (f)(1) was to provide a cross-reference within the United States Code to a different section that laid out specific offenses. The clear reason for this cross-reference is to save space within the Code by cutting out duplicative language. The reason is not, as the defendant suggests,

to require a motion by the Government before Section 3143(a)(2) applies. If this were so, Section 3143(a)(2) would specifically state that a motion by the Government was necessary. No such requirement is detailed in Section 3143(a). Therefore, the plain meaning of Section 3143(a) is that no Government motion is necessary for the mandatory detention provision to apply, rendering Defendant's argument meritless. Also meritless is Defendant's reliance on *United States v. Mateo*, No. 05-20849-CR, 2007 WL 81834 (S.D. Fla. Jan 8, 2007), a case involving health care fraud, not a crime of violence or drugs, and therefore subject to Section 3143(a)(1), not Section 3143(a)(2) as in this case.

While it is not surprising that defense counsel has put forward a novel approach to reading 18 U.S.C. § 3143 because it is her job to zealously represent her client, it is surprising that the Government has not opposed Defendant's release. I can find no other drug case during my tenure as a district judge where the Government has consented to a defendant's release after entering a plea. As clear as Congress is in requiring the detention of a defendant like Dr. Reed pending sentencing, it would seem to be in the public's best interest for the Government to zealously uphold the law and request detention.

Besides urging a misreading of the detention statute, Defendant also argues that 18 U.S.C. § 3145(c) provides an exception to the mandatory detention requirements of 18 U.S.C. § 3143(a)(2). Section 3145(c) provides that, on appeal,

a “person subject to detention pursuant to section 3143(a)(2) . . . may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person’s detention would not be appropriate.” It is unclear in the Eleventh Circuit whether a district judge has the authority under Section 3145(c) to release a defendant from custody pending sentencing because there are no published appellate decisions on this matter. It is also unlikely that I have authority to order Defendant released because Section 3145(c) applies to appeals and there is no appeal pending. Even assuming that I do have the authority, however, I decline to order Defendant released because he has failed to clearly show exceptional reasons why is detention is inappropriate.

Defendant would have me find him to be an exception because he was a well-regarded surgeon in this community with a clean record, and because he has obligations to his family and former patients. While it is lamentable that Defendant’s family and former patients will be negatively impacted, the reasons that Defendant has offered to support his release are not exceptional. The majority of defendants facing incarceration have personal family and business hardships. *United States v. Cook*, 42 F. App’x 803, 804 (6th Cir. 2002)(affirming district court ruling that family and business hardships are not exceptional reasons under 18 U.S.C. § 3145(c). Furthermore, cooperation with the government, compliance with pretrial supervision, and good work history also do not provide exceptional

reasons for release. *Cook*, 42 F. App'x at 804; *United States v. Mostrom*, 11 F.3d 93, 95 (8th Cir. 1993). In all, there is nothing exceptional regarding Defendant's situation that would merit his release pending sentencing. It is true that Defendant has farther to fall than his co-conspirators and that his lifestyle will likely suffer the greatest setback from his felony conviction, but these are merely the consequences of Defendant's actions – consequences that Defendant should have considered long before entering the drug conspiracy in the first place.

C. Conclusion

The relief requested by Defendant's Motion for Reconsideration of Presentence Detention (Doc. 122) is **DENIED**.

ORDERED on July 28, 2009.

/S/ Richard Smoak
RICHARD SMOAK
UNITED STATES DISTRICT JUDGE