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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RHONDA LEE FIRESTACK-
HARVEY (1),
MICHELLE LYNN GREGG (3), and
ROLLAND MARK GREGG (4),

Defendants.

NOS: 2:13-CR-0024-TOR-1
2:13-CR-0024-TOR-3
2:13-CR-0024-TOR-4

ORDER DENYING MOTION FOR
DETENTION

BEFORE THE COURT is the United States' Motion for Detention (ECF No. 635) and Motion to Expedite (ECF No. 636). The Government is represented by Earl H. Hicks and Caitlin A. Baunsgard. The Defendants are represented by Jeffrey S. Niesen, Bevan J. Maxey, and Phil Telfeyan, respectively.

On March 3, 2015, Rhonda Lee Firestack-Harvey, Michelle Lynn Gregg, and Rolland Mark Gregg were found guilty by jury verdict of manufacturing more than 50, but less than 100 marijuana plants in violation of 21 U.S.C. § 841(a)(1). The Government seeks their detention pending sentencing.

DISCUSSION

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2 “The Supreme Court has long recognized constitutional limits on pretrial
3 detention.” *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 777 (9th Cir. 2014) (en
4 banc). “The Court has prohibited excessive bail, required a judicial determination
5 of probable cause within 48 hours of arrest, barred punitive conditions of pretrial
6 confinement, prohibited pretrial detention as punishment, and held that restrictions
7 on pretrial release of adult arrestees must be carefully limited to serve a compelling
8 governmental interest.” *Id.* (internal citations omitted). Significant to the dispute
9 presently before this Court, the Supreme Court recognized that Congress had
10 authorized pretrial detention for the legitimate regulatory purpose of “preventing
11 danger to the community.” *United States v. Salerno*, 481 U.S. 739, 747 (1987).
12 The Court held “that the pretrial detention contemplated by the Bail Reform Act is
13 regulatory in nature, and does not constitute punishment before trial in violation of
14 the Due Process Clause.” *Id.* at 748. Thus, the Supreme Court concluded that the
15 Bail Reform Act satisfied heightened scrutiny because it both served a
16 “compelling” and “overwhelming” governmental interest “in preventing crime by
17 arrestees” and was “carefully limited” to achieve that purpose. *Id.* at 749–50, 755
18 (noting also that an arrestee may be incarcerated until trial if he presents a risk of
19 flight or a danger to witnesses).

1 With this backdrop, the Court examines the relevant statutory provisions
2 governing detention in this case. Title 18 United States Code section 3143(a)(2),
3 the Mandatory Detention Act (a provision of the Bail Reform Act of 1984), now
4 provides:

5 (2) The judicial officer shall order that a person who has been found
6 guilty of an offense in a case described in subparagraph (A), (B), or
7 (C) of subsection (f)(1) of section 3142 and is awaiting imposition or
8 execution of sentence be detained unless—

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

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

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

16 The offense described in section 3142(f)(1)(C) includes one “for which a
17 maximum term of imprisonment of ten years or more is prescribed in the
18 Controlled Substances Act (21 U.S.C. § 801 et seq.)” The incarceration penalty
19 for manufacturing 50 or more, but less than 100 marijuana plants is “a term of
20 imprisonment of not more than 20 years.” 21 U.S.C. § 841(b)(1)(C). Thus,
Defendants have been convicted of an offense for which mandatory detention is
called for under the provisions of section 3143(b).

1 There are, however, exceptions to mandatory detention, those identified in
2 section 3143(b) recited above and one contained within section 3145(c):

3 A person subject to detention pursuant to section 3143(a)(2) or (b)(2),
4 and who meets the conditions of release set forth in section 3143(a)(1)
5 or (b)(1), may be ordered released, under appropriate conditions, by
6 the judicial officer, if it is clearly shown that there are exceptional
7 reasons why such person's detention would not be appropriate.

8 18 U.S.C. § 3145(c). In *United States v. Garcia*, 340 F.3d 1013 (9th Cir. 2003),
9 the Ninth Circuit was called upon to interpret this provision of the Mandatory
10 Detention Act and, more specifically, what Congress meant by the term
11 “exceptional reasons.” The Ninth Circuit concluded that “[b]y adopting the term
12 ‘exceptional reasons,’ and nothing more, Congress placed broad discretion in the
13 district court to consider all the particular circumstances of the case before it and
14 draw upon its broad ‘experience with the mainsprings of human conduct.’” *Id.* at
15 1018 (citation omitted) (“While we offer some guidance today, we place no limit
16 on the range of matters the district court may consider.”).

17 The Ninth Circuit proceeded to offer some illustrative factors district courts
18 could consider: (1) whether defendant's criminal conduct was aberrational, *id.* at
19 1019; (2) whether defendant led an exemplary life prior to his offense and would
20 likely contribute to society significantly if allowed to remain free on bail, *id.*; (3)
 whether the crime committed by the defendant, while falling within one of the
 mandatory categories, is sufficiently dissimilar from the other crimes in that

1 category, *id.*; (4) the length of the sentence as a proxy for its seriousness, *id.*; (5)
2 whether the hardships of prison would be unusually harsh for a particular
3 defendant because of illness or injury, *id.* at 1019–20; (6) whether incarceration
4 would impose exceptional risks on a defendant’s physical or mental well-being, *id.*
5 at 1020; (7) the nature of the defendant’s arguments on appeal (*id.*); (8) whether
6 defendant is exceptionally unlikely to flee or to constitute a danger to the
7 community, *id.* at 1021; (9) whether defendant was unusually cooperative with the
8 government, *id.*; and (10) and whether defendant’s cooperation would make him
9 exceptionally vulnerable to injury in prison, *id.*. The Ninth Circuit cautioned,
10 however, that the exception to mandatory detention applies only where justified by
11 exceptional circumstances. “Hardships that commonly result from imprisonment
12 do not meet the standard.” *Id.* at 1022.

13 This case presents the issue of detention post-verdict, yet pre-sentencing,
14 meaning pre-punishment. In other words, the purpose of detention according to
15 Congress has yet to tip in favor of exacting punishment but still rests within the
16 legitimate regulatory purpose of preventing danger to the community and
17 preventing non-appearance. That equation will change at sentencing.

18 Here, this Court finds Defendants continued release pending sentencing to
19 be appropriate. All three Defendants were released pretrial on appropriate
20 conditions over two years ago, and no one has been shown to have violated those

1 conditions. No one has tested positive for use of a controlled substance. No one
2 has a criminal history. Rolland Mark Gregg posted a \$50,000 unsecured
3 appearance bond. ECF No. 73. Rhonda Lee Firestack-Harvey posted a \$75,000
4 unsecured appearance bond. ECF No. 89. The Government did not seek the
5 detention of Michelle Lynn Gregg (ECF No. 76), and she was released on her
6 promise to appear. ECF No. 131. All Defendants have appeared as required.
7 There is no mandatory minimum sentence applicable to the conviction. Until
8 sentencing, incarceration as a form of punishment would be inappropriate as it
9 would unduly impact the Court's comprehensive sentencing discretion. Rhonda
10 Lee Firestack-Harvey is the primary caregiver of her terminally-ill husband, and
11 immediate incarceration of her would be detrimental to her husband's well-being.
12 Accordingly, the Court finds by clear and convincing evidence that the Defendants
13 are not likely to flee or pose a danger to any other person or the community and
14 that Defendants have clearly shown exceptional reasons why their detention would
15 not be appropriate at this time.

16 While the Defendants alternatively contend that they may have substantial
17 issues to raise in motions for a new trial or acquittal, the Court cannot evaluate
18 those until they are filed. Accordingly, the Court does not rest its holding on those
19 alternative grounds at this time.

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1 **IT IS HEREBY ORDERED:**

2 1. The United States' Motion to Expedite (ECF No. 636) is **GRANTED**.

3 2. The United States' Motion for Detention (ECF No. 635) is **DENIED**.

4 The District Court Clerk is hereby directed to enter this Order and provide
5 copies to counsel and to the United States Probation Office.

6 **DATED** March 11, 2015.



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Thomas O. Rice
THOMAS O. RICE
UNITED STATES DISTRICT JUDGE