

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

ATICHA JITTAPHOL

Defendant

CRIMINAL No. 21-cr-10270-MLW

GOVERNMENT'S RECOMMENDATION CONCERNING PROBATION'S JANUARY 20,
2022 PETITION

On October 26, 2021, the defendant was released for pretrial supervision with the following conditions, amongst others:

The defendant must not use or unlawfully possess a narcotic drug or other controlled substances as defined by 21 U.S.C. § 802.

The defendant must submit to testing for a prohibited substance if required by the pretrial services office or supervising officer.

The defendant must participate in a program for inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.

On February 7, 2022, Probation submitted a petition for action (“Petition”) recommending that the defendant re-commence residential drug treatment after the defendant’s sweat patch returned a positive result for methamphetamine. The Court ordered the parties to file memoranda addressing their recommendations concerning the action the Court should take concerning the Petition. ECF No. 39

Under 18 U.S.C. § 3148, the Court may “enter an order of revocation and detention if, after a hearing, the judicial officer [] finds that [a] there is probable cause to believe that the person has committed a Federal, State, or local crime while on release or [b] clear and

convincing evidence that the person has violated any other condition of release; and [] finds that ... the person is unlikely to abide by any condition or combination of conditions of release.”

Here, there is probable cause to believe that the defendant has violated a Federal, State, or local crime—namely the defendant tested (a) positive for amphetamines in a urine sample collected on November 3, 2021 and (b) positive for methamphetamine via a sweat patch collected between January 20, 2022 and January 27, 2022. The defendant notes that she tested negative for amphetamines via a sweat patch collected on January 14, 2022 and via urine samples collected on January 11, 2022¹, January 21, 2022, January 26, 2022, and February 3, 2022. Although some of those test results conflict with the positive sweat patch test collected January 20-27, 2022, those tests do not invalidate the positive urine sample collected on November 3, 2021.

There is also evidence that the defendant is unlikely to abide by any condition or combination of conditions of release. On January 11, 2022, Probation filed a Petition for Action on Conditions of Pretrial Release because the defendant refused to participate in a long-term inpatient treatment program, which was recommended by probation. After a hearing on January 20, 2022, Probation revised its order and no longer required the defendant to attend an inpatient drug treatment program. Ex. A, Hrg. Tr. at 50, January 20, 2022. The government believes that while close, there is not yet a preponderance of evidence that the defendant is unlikely to abide by any condition or combination of conditions of release. *See United States v. Gotti*, 794 F.2d 773, 777 (2d Cir. 1986).

¹ The January 11, 2022 urine test was performed at the defendant’s request. Ex. A, Hrg. Tr. at 10, January 20, 2022.

Thus, the government supports Probation's recommendation that the defendant re-enter a residential treatment program. If the defendant refuses to comply with that condition of release, the government believes there is likely probable cause to support a finding that the defendant is unlikely to abide by any condition or combination of conditions of release, and the Court should enter an order of revocation and detention at that time.

Respectfully submitted,

JOSHUA S. LEVY
First Assistant United States Attorney

By: /s/ Elysa Q. Wan
ELYSA Q. WAN
Assistant United States Attorney

ALYSSA TOCHKA
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Elysa Q. Wan
Elysa Q. Wan
Assistant United States Attorney

Date: February 23, 2022