

FILED

UNITED STATES COURT OF APPEALS

SEP 26 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH MANUEL MARTIN,

Defendant - Appellant.

No. 12-10428

D.C. No. 1:11-cr-00219-AWI-1  
Eastern District of California,  
Fresno

ORDER

Before: REINHARDT, WARDLAW, and BEA, Circuit Judges.

This is an appeal from the district court's order denying the motion to revoke a pretrial detention order. We have jurisdiction pursuant to 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291.

We review the district court's factual findings concerning risk of flight and the danger that appellant poses to the community under a "deferential, clearly erroneous standard." *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990)). The conclusions based on such factual findings, however, present a mixed question of fact and law. *Hir*, 517 F.3d at 1086. Thus, "the question of whether the district

court's factual determinations justify the pretrial detention order is reviewed de novo." *Id.* at 1086-87 (citations omitted).

The district court erred in finding that the government met its burden of showing, by a preponderance of the evidence, that "no condition or combination of conditions will reasonably assure the [appellant's] appearance" and that the government demonstrated, by clear and convincing evidence, that "no condition or combination of conditions will reasonably assure . . . the safety of . . . the community." *See* 18 U.S.C. § 3142(e).

Accordingly, the district court's order is reversed. This case is remanded to the district court to establish appropriate conditions of release.

The mandate shall issue forthwith.

**REVERSED and REMANDED.**

BEA, Circuit Judge, dissenting:

I dissent.