IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* CARL DELANO TORJAGBO, a/k/a KARL LUCIUS DELANO	CRIMINAL ACTION NUMBER 1:22-cr-171-MLB-RDC

GOVERNMENT'S POST-HEARING BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR REVOCATION OF MAGISTRATE JUDGE'S DETENTION ORDER

The United States of America files this post-hearing brief in opposition to Defendant Torjagbo's motion for revocation of the Magistrate Judge's detention order.

For the reasons stated in the government's opening brief (Doc. 52) and at the hearing conducted by the District Court on August 15, 2023, Torjagbo should be detained. The government has shown by a preponderance of the evidence that Torjagbo is a flight risk, and by clear and convincing evidence that he is a danger to the community. *See* 18 U.S.C. § 3142(e)(1); *United States v. King*, 849 F.2d 485, 488 (11th Cir. 1988); *United States v. Quartermaine*, 913 F.2d 910, 917 (11th Cir. 1990).

The government files brief to clarify its arguments and to provide additional support for its contention that detention is appropriate.

1. Torjagbo's passport

Torjagbo told the Magistrate Judge that he reported to immigration (not the State Department) that he "lost his passport and citizenship document." (Tr. at 37). Torjagbo stated that "[h]e made that report back in August of 2021." (*Id.*).

After the hearing conducted by the District Court, the FBI conducted additional checks that yielded the following information concerning Torjagbo's passport:

- On 04/05/2013, Torjagbo became a naturalized U.S. citizen.
- On 12/05/2014, Torjagbo obtained his first U.S. passport (last 4 digits 8896), with an expiration date of 12/04/24.
- On 05/29/2015, Torjagbo reported to the U.S. Department of State that his passport (#8896) had been stolen, claiming that it simply "vanished" from the place where he kept it. That same day, 05/29/2015, Torjagbo was issued a second U.S. passport (last 4 digits 6005), with an expiration date of 05/28/25.
- On 06/21/2021, Torjagbo reported to U.S. Citizenship and Immigration Services (USCIS) that his ex-girlfriend had stolen his passport, naturalization certificate, birth certificate, and Covid records approximately one month earlier. USCIS subsequently issued Torjagbo a replacement naturalization certificate.
- The State Department has no record of Torjagbo reporting his 2015 passport (#6005) lost or stolen. Torjagbo's 2015 passport (#6005) is currently listed in the U.S. Customs and Border Patrol system as "valid."

The State Department (not USCIS) is responsible for issuing passports. *See, e.g.*, *Martinez v. Sec'y of State*, 652 F. App'x 758, 764 (11th Cir. 2016) ("Under 22 U.S.C. § 211a and 8 U.S.C. § 1504(a), the Secretary of State has the authority to 'grant and issue passports.'"). "To replace a lost or stolen passport, [the passport holder] must submit Form DS-11 in person" to the State Department at a Passport Acceptance Facility. https://travel.state.gov/content/travel/en/passports/have-passport/lost-stolen.html

Torjagbo knew the correct procedure because he followed the correct procedure when he reported his 2014 passport stolen. He did not follow that same procedure in 2021, however, when his 2015 passport was allegedly stolen. Instead, Torjagbo claims that, in 2021, he reported to *USCIS* that his 2015 passport had been stolen. If true, that was a meaningless gesture, because only the *State Department* can cancel a lost or stolen passport. Since Torjagbo's 2015 passport (#6005) is still valid, he could use it to exit the United States if released on bond.

2. Torjagbo's marital history

Torjagbo told Pretrial Services that he is unmarried. (Tr. at 21). He recently told a BOP psychologist that he has "never" been married. When the prosecutor mentioned this at the District Court hearing, Torjagbo did not dispute what the prosecutor had said.

Post-hearing checks conducted by the FBI yielded the following information concerning Torjagbo's marital history:

- On 05/25/2002, Torjagbo married Desiree Ann Harrington in Palm Bay, Brevard County, Florida. A copy of their marriage certificate is attached hereto as Ex. 1.
- On 06/17/2008, Torjagbo was granted IR6 Lawful Permanent Resident (green card) status in the United States because he filed a petition stating that he was married to a U.S. citizen. According to USCIS, Torjagbo's petition would not have been granted if he had not provided USCIS with either a marriage certificate or some other type of evidence to prove that his marriage existed.

There is no logical reason that Torjagbo would lead this Court to believe that he was never married unless he knew that his marriage was a sham. Marriage fraud is a federal crime. *See* 8 U.S.C. § 1325(c) ("Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.").

3. Torjagbo's place of birth

Torjagbo told Pretrial Services that he was born in Ghana. But more recently, Torjagbo told a BOP psychologist that he was born in South Africa. At least one of those statements has to be false. At the District Court hearing, Torjagbo made no attempt to explain his conflicting statements concerning his place of birth, even after the prosecutor raised the issue.

It is beyond dispute that a defendant's citizenship status is relevant to the Court's bond determination. *United States v. Doe*, 661 F.3d 550, 566 (11th Cir. 2011). In examining a defendant's false statement for purposes of determining whether or not a bond is appropriate, "[t]he relevant considerations are the kind of information provided and its tendency to influence the court, not the actual effect of a particular misstatement. Personal information is a highly relevant factor in determining whether a defendant should remain in custody or be granted bond, and thus is material." *Id*. at 567 (quoting *United States v. Bedolla-Zavala*, 611 F.3d 392, 396 (7th Cir. 2010)).

4. Torjagbo's cousin, Peter LNU

Torjagbo's cousin, Peter LNU, appeared at the District Court hearing and stated that Torjagbo could live with him if he is released on bond. But Peter admitted that he and his wife are having marital problems, and he stated that his wife does not want him to use their house as collateral for a bond.

Moreover, Peter tried to interfere with the FBI's service of a seizure warrant for the Lamborghini. The service advisor at MotorCars of Atlanta, the dealer that sold the vehicle to Torjagbo, told the FBI that he initially dealt directly with Torjagbo but knew him by the name "Carl Delano."

A man named Brahim Ganzou contacted the service advisor and said that he was a friend of Carl's and would be handling all of Carl's affairs while Carl was out of the country dealing with a family emergency.

Two or three weeks later, the FBI called the dealer and said that they had a seizure warrant for the Lamborghini. The FBI asked the dealer not to release the vehicle to anyone before the FBI could get there to take possession of it. The night before the FBI seized the Lamborghini, Ganzou contacted the dealership about picking up the Lamborghini and was told of the seizure warrant. Soon after that, Peter LNU went to the dealership and said that he was Carl's cousin. Peter stated that he had flown in from New York and was now handling Carl's affairs. Peter demanded to see a copy of the seizure warrant. The service advisor told Peter that the matter was between the dealership and the FBI. Again, Peter demanded to see the warrant. The service advisor said that the matter was between the dealership and the FBI, and there was nothing he could do for Peter. Peter then left the dealership.

5. Torjagbo's access to money

On March 29, 2021, Torjagbo received a fraudulent PPP loan in the amount of $9,554,425.00. Torjagbo immediately transferred $3 million of the loan proceeds to a different bank, causing the bank that had funded the loan to claw back the remaining loan proceeds.

The following month, on April 27, 2021, Torjagbo received a fraudulent tax refund in the amount of $3,366,240.76. Around the same time, Torjagbo filed a second bogus tax return, claiming a similar refund of over $3 million, but the IRS suspected fraud and did not issue the second refund. Nevertheless, between his fraudulent PPP loan (even after the clawback) and his first fraudulent tax refund, Torjagbo had in his possession a total of $6,366,240.76 in stolen taxpayer funds.

Torjagbo deposited the $6,366,240.76 in fraud proceeds into six different bank accounts at three different banks:

- Chase Bank account #8755, titled in the name of Kremkov Industries;
- PNC account #9499, titled in the name of Kremkov Industries;
- PNC account #9814, titled in the name of Carl Torjagbo;
- PNC account #9822, titled in the name of Carl Torjagbo;
- PNC account #9849, titled in the name of Carl Torjagbo; and
- Bank of America account #1199, titled in the name of FlyingJack.

Torjagbo tried to conceal and disguise the source of the fraud money and make it harder for law enforcement to trace it by engaging in a sophisticated money laundering operation. The number of accounts involved and the number of transactions involved make it difficult to account for every dollar, especially since so much of the money was withdrawn in cash. In addition to large cash withdrawals, Torjagbo used online transfers between accounts, wire transfers, checks, cashier's checks, debit cards, and credit cards to dispose of and hide the money.

To date, the FBI has not tried to trace every dollar, only the larger transactions that resulted in the purchase of significant assets, including real property, luxury vehicles, and tractor-trailers. The FBI was unable to locate and seize one of the trailers. If Torjagbo were released on bond, he could sell the trailer for cash and use the money to flee.

The FBI seized $1,989,502 from the six known U.S. bank accounts listed above, but more than $1.1 million was withdrawn from those accounts in cash or used to pay credit card bills and daily living expenses before the seizure warrants were executed.

In addition, Torjagbo wired $79,000 to his family in Ghana. The government has no information about where that money is now.

In a post-arrest interview, Torjagbo told FBI agents that he is in the mining business, which he said is lucrative, and that he has bank accounts in the Emirates and Africa. The government did not seize any funds from those accounts. Torjagbo's own statements concerning the availability of funds to finance his escape if released on bond may be used against him in this proceeding. *See, e.g., United States v. Dresch*, No. CR 21-0071 (ABJ), 2021 WL 2453166, at *5 (D.D.C. May 27, 2021) (finding that the "defendant's own statements" supplied grounds to conclude that he was a flight risk), *appeal dismissed*, No. 21-3038, 2021 WL 4760376 (D.C. Cir. Sept. 22, 2021).

Brahim Ganzou told the FBI that Torjagbo's sister was able to collect some funds from overseas to help Torjagbo.

At the District Court hearing, Torjagbo did not dispute the government's contention that he has sizeable assets that are missing and unaccounted for.

6. Torjagbo's Aggravated Identity Theft

Aggravated identity theft, in violation of section 18 U.S.C. § 1028A(a)(1), requires "unauthorized and knowing possession of another person's means of identification." *United States v. Meme*, 832 F. App'x 603, 605–06 (11th Cir. 2020). "The 'means of identification' element refers to 'a name, social security number, date of birth, or driver's license number, among other things.'" *United States v. Delva*, 922 F.3d 1228, 1249 (11th Cir. 2019).

In his PPP loan application, Torjagbo fraudulently claimed that one of his sham companies, Kremkov Industries, employed 493 people. In support of that application, Torjagbo submitted 71 pages of fake-employee payroll information, which included Personal Identifying Information (PII), *i.e.,* the first and last names of the 493 fake employees. In his post-arrest interview, Torjagbo acknowledged that these were the names of "real people." *See, e.g., United States v. Doe*, 661 F.3d 550, 561 (11th Cir. 2011) ("[I]n order to convict Doe of aggravated identity theft, the government had to prove that Doe knew the identity he was using belonged to a real person.").

It is likely that Torjagbo has other PII for the 493 people he fraudulent listed as employees of Kremkov Industries, such as dates of birth and social security numbers, and could use that information to fraudulently obtain credit cards and loans in their names to finance his escape if he is released on bond.

7. Torjagbo's Sentencing Guidelines

If Torjagbo is convicted of the charges in the current indictment, his adjusted offense level would be 33:

Guideline	Description	Value
§ 2B1.1(a)(1)	Base Offense Level (bank fraud)	7
§ 2B1.1(b)(1)(J)	The amount of loss resulting from the offenses of conviction and all relevant conduct is more than \$9,500,000 but less than \$25,000,000.	20
§ 2B1.1(b)(17)(A)	The Defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense.	2
§ 2B1.1(b)(10)	The offense involved sophisticated means, and the defendant intentionally engaged in or caused the conduct constituting sophisticated means.	2
§2S1.1(a), (b)(2)(B)	If convicted under 18 U.S.C. § 1956, increase by 2 levels.	2
	Adjusted Offense Level	**33**

Even if Torjagbo were in Criminal History Category I (the lowest level), his guideline range would be 135-168 months. If Torjagbo were convicted on even one count of aggravated identity theft, and such charges will likely be added soon in a superseding indictment, he would be facing an additional 24 months in prison, for a total sentence of 159-192 months.

In sum, the charges against Torjagbo are serious, and he is likely facing a lengthy prison sentence if convicted. The evidence of his guilt is formidable. Thus, he has tremendous incentive to flee if he is granted a bond.

Conclusion

For all of the foregoing reasons, this Court should adopt the Magistrate Judge's detention order.

Respectfully submitted,

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Certificate of Service

I hereby certify that, on August 21, 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system.

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