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May 8, 2022

Honorable Brendan Hurson
United States Magistrate Judge
United States District Court
for the District of Maryland
101 W. Lombard St.
Baltimore, MD 21201

Re: *United States v. Ahmed Sary*, Criminal No. 22-1286-JMC

Dear Judge Hurson:

We write on behalf of the government in the above-referenced matter in advance of the detention hearing of Defendant Ahmed Sary set for May 9, 2022 at 11:30 a.m. For the reasons that follow, the Court should detain Defendant pending trial in this matter.

BACKGROUND

As set forth in the Criminal Complaint and Affidavit in Support of Criminal Complaint and Arrest Warrant, ECF No. 1 (the "Complaint"), probable cause exists to believe that between June 2020 and December 2021, Defendant committed the following crimes: (1) Wire Fraud, in violation of 18 U.S.C. § 1343; (2) Wire Fraud Conspiracy, in violation of 18 U.S.C. § 1349; and (3) Money Laundering, in violation of 18 U.S.C. § 1956.

The Complaint arises out of Defendant's submission of numerous fraudulent applications for Paycheck Protection Program (PPP) loans and Economic Injury Disaster Loans (EIDL) both for his own purported businesses, as well as other purported businesses.

These loan applications submitted by Defendant contained false statements and misrepresentations, including the number of employees employed by the businesses and payroll expenses of the businesses, or were submitted on behalf of businesses that either did not exist in any legitimate capacity, and/or businesses that grossly over-represented their financial conditions and gross revenue. The loan applications were likewise frequently supported by altered or forged bank statements and tax related documents (such as IRS Form 940s—Employer's Annual Federal Unemployment Tax Return) that were not consistent with IRS records. Likewise, the spending of the loan proceeds was often inconsistent with typical payroll and other expenses allowable under the loan program parameters.

The Government has identified more than 40 potentially fraudulent PPP loans, totaling at least $10 million that resulted in kickback payments of more than $2.5 million to Defendant, his associates, and purported businesses they controlled. The kickback payments were frequently structured or made in a manner to conceal the nature and total amount of the payments, and

created the appearance that the payments were for legitimate business purposes—including by containing memos that indicated the payments were for business related purposes, loan applicants structuring multiple payments to different entities controlled by Defendant and his associates, and the use of different banking institutions to reduce the possibility of alerts of suspicion.

Defendant was arrested on April 29, 2022 and, that same day, search warrants were executed at his office located at 1600 Hanover Street in Baltimore, an apartment adjoining the office, and Defendant's residence. From the apartment adjoining Defendant's office, law enforcement seized numerous pieces of evidence related to Defendant's scheme.

Law enforcement seized over 90 hard copies of files related to the submission of PPP/EIDL applications for various entities—broken down one entity per file. These files contained large amounts of personal identifying information—copies of driver's licenses, social security cards and numbers, bank statements, tax documents, as well as copies of checks, and PPP application paperwork. Some of the files contained *doctored* bank statements as well. Law enforcement likewise seized numerous checks—apparent kickback checks—from entities that received PPP loans. The checks were signed and a payment amount was listed, but the payee was blank.[1]

Law enforcement also seized pre-signed blank checks from a number of the entities used by Defendant to launder the kickback payments from the PPP loan recipients. And law enforcement likewise seized numerous hard copy paper files containing credit reports and other PII of individuals, as well as numerous original vehicle titles.

LEGAL STANDARD

Under 18 U.S.C. § 3142(e), a defendant shall be ordered detained pending trial if the Court finds that "no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of any other person and the community." 18 U.S.C. § 3142(e). Detention is required if the Court finds that either the defendant poses a risk of flight or a danger to the community (or both).

"In determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community," a court is required by law to consider the factors set forth in 18 U.S.C. § 3142(g), which are "(1) the nature and circumstances of the offense charged . . . ; (2) the weight of the evidence against the person; (3) the history and characteristics of the person . . . ; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release." In seeking detention, the government bears the burden of establishing risk of flight by a preponderance of the evidence and danger to the community by clear and convincing evidence.

ARGUMENT

Each of the Section 3142(g) factors weighs in favor of detention on the basis of both economic danger and risk of flight.

A. Nature And Circumstances Of The Offense And Weight Of The Evidence.

[1] Applicant 1, a PPP loan recipient who spent his PPP funds on a Mercedes-Benz and a luxury apartment, discussed, noted during his conversation with law enforcement that "Adam" directed him, as payment for assistance with the PPP loan, to leave two signed checks with payment amount listed but the payee blank, and that he did so.

To begin, the nature and circumstances of the offense are unquestionably serious. The crux of the crimes charged is that Defendant submitted and facilitated the submission of millions of dollars' worth of fraudulent government-backed loans—taking advantage of programs meant to help support small business owners hit hard by COVID-19 pandemic.

As noted above, Defendant and his co-conspirators used fake bank statements and fake IRS documents in connection with their scheme, and structured kickback payments for the purpose of concealing the nature and amount of the payments. The use of fake documents is not only an aggravating factor with respect to the charged crimes; indeed, a facility with the creation of (or access to) fake documents can also facilitate flight from justice.

Moreover, this is not a case in which Defendant merely played a peripheral role in the larger conspiracy. The Government's investigation has revealed that Defendant was the key player in the conspiracy—personally submitting fraudulent loan applications, facilitating the submission of fraudulent loan applications, managing the structuring of kick payments to himself and associates for obtaining his assistance in obtaining the PPP loans, and, with respect to certain of the loans, interfacing with a payroll processing company (Payroll Processor 1) for 35 businesses that received PPP loans. Defendant's efforts in establishing "payroll" for the businesses that received PPP loans was a critical part of the scheme to defraud. Indeed, PPP loans are forgivable provided that the recipient business can substantiate that it used the funds it received for certain legitimate businesses such as payroll, rent, and utilities. Thus, establishing "payroll" for these businesses provided Defendant and his co-conspirators a paper trail that they could use to seek forgiveness.

There is no question that Defendant's scheme was sophisticated and that the economic harm caused by the scheme was significant. Based on the allegations in the Complaint, Defendant faces an advisory guidelines range well in excess of five years' imprisonment, and the maximum possibility penalty for the wire fraud offenses is 30 years' imprisonment, given that the fraud affected financial institutions.

As for the weight of the evidence against Defendant, it is overwhelming. Loan applications for fraudulently obtained PPP loans were found hidden inside of an apartment that Defendant controlled, along with doctored bank statements[2] and other supporting documentation for the PPP applications. As noted, Defendant's purported businesses—as well as the purported businesses of certain of his associates[3]—consistently received kickback payments shortly after the PPP funds were disbursed. The average total kickback amounted to 28% of the amount of the value of the PPP loan. A number of these kickback checks were found inside Defendant's apartment.

IP addresses subscribed to Defendant's purported business, Amex Financial Group, were associated with applications for numerous PPP and EIDL loans. Likewise, that same IP address, at times, appeared as the subscriber IP associated with particular email addresses included in the PPP loan application, created shortly before the submission of the application.

Moreover, as noted in the Complaint, the statements of Applicant 1—who received a PPP loan of over $250,000 and paid a kickback to "Am Halal Meat" (one of Defendant's purported

[2] To qualify for eligibility, businesses applying for a PPP loan needed to be in operation before or on February 15, 2020. Accordingly, the doctored bank statements typically covered the February 2020 time frame.

[3] As noted above, law enforcement seized pre-signed blank checks from a number of these entities, as well as other banking information for them.

businesses), as well as a $38,000 kickback to a purported business of one of Defendant's associates—corroborate law enforcement's understanding of the scheme. Applicant 1 noted, among other things: (1) someone known as "Adam" whose office was on Hanover Street in Baltimore, Maryland, submitted the PPP loan application on Applicant 1's behalf; (2) Applicant 1 had never seen the IRS Form 940 or February 2020 bank statement that were submitted in connection with the PPP application for Applicant 1's business, and that neither the tax form nor the bank statement were accurate; (3) Applicant 1 had never seen the PPP loan application itself; and (4) "Adam" assisted Applicant 1 with setting up payroll services with Payroll Processor 1.

Applicant 1 further noted, as to the kickback payments (which reflected nearly 30% of the amount of the PPP loan) that, at Adam's direction, he provided "Adam" two signed checks with the payment amounts filled in, but the payee left blank and assumed that the payee would be filled in by "Adam."

B. History And Characteristics Of The Defendant.

Defendant's personal history and characteristics demonstrate a significant risk of nonappearance. Defendant, a naturalized U.S. Citizen, has significant overseas ties. He was born in Egypt, has multiple siblings that reside there, and travels there frequently—often for weeks or even months at a time. Indeed, Defendant just returned from a trip to Egypt on April 9, 2022, having traveled there initially on March 19, 2022. His other trips to Egypt from the United States (and their approximate length)—all during the timeframe of the conspiracy—are noted below:

- One month: November 15, 2021 to December 15, 2021
- Two months: June 24, 2021 to August 24, 2021
- Two weeks: May 1, 2021 to May 16, 2021
- Two weeks: January 8, 2021 to January 22, 2021
- Five weeks: November 11, 2020 to December 19, 2020
- Seven weeks: July 3, 2020 to August 28, 2020[4]

When Defendant was searched incident to his arrest, law enforcement located a card for Arab African International Bank, which is based in Cairo, Egypt, indicating access to foreign bank accounts. What's more, two email accounts that belong to Defendant reflect online banking with this institution. Law enforcement also located an Egyptian identification card in Defendant's name.

C. Nature and Seriousness Of Danger to The Community.

The Government's primary basis for seeking detention is undoubtedly the substantial risk of nonappearance, which cannot be addressed with conditions of release. Nevertheless, the government submits that Defendant's release also would pose a danger to the public.

Indeed, there is a serious risk that Defendant will engage in additional acts of fraud while on release, thereby causing economic harm to the public. Courts have consistently recognized that economic harm should be recognized in the Section 3142 detention analysis. *See, e.g.*, *United States v. Provenzano*, 605 F.2d 85, 93 (3d Cir. 1979) (in assessing whether release is appropriate, courts "are not confined to considering only harms involving an aura of violence"); *United States v. Reynolds*, 925 F.2d 192, 192-93 (9th Cir. 1992) ("danger may, at least in some

[4] Defendant's outbound flight was from New York (JFK) to Cairo (CAI); his return flight was from London (LHR) to Washington DC (IAD).

cases, encompass pecuniary or economic harm"); *see also United States v. Fomukong*, No. 17-CR-00661-PWG-1, 2020 WL 3073321, at *5 (D. Md. June 10, 2020) ("[T]he Court finds that the defendant would pose a financial danger to the community if released, based on the nature of the offenses and the weight of the evidence against him.") (citing 18 U.S.C. § 3142(g)); *United States v. Cohen*, Crim. No. WDQ-14-310, ECF No. 39 (D. Md. Oct. 16, 2014) (Quarles, J.) (holding that dangerousness can properly be considered under 3142 when the government has a basis to seek detention based on risk of nonappearance).

As alleged by the Government, many of Defendant's acts in the scheme required simply access to the Internet and/or a phone—including the submission of fraudulent loan applications, the creation of doctored statements, arranging transactions, receiving fraud proceeds, and directing co-conspirators regarding what to do with them. Thus, the danger Defendant poses cannot be mitigated by any third-party custodian. Indeed, while Defendant's scheme involved numerous forged and fraudulent documents, the most basic of tools—computers, cell phones, and access to the internet—all played a critical role in the scheme. There are no conditions of release that would adequately prevent Defendant from having access to these items—even if supervised by a third-party custodian—and, therefore, there are no conditions of release that could prevent additional harm to the community if Defendant sought to inflict it. *See United States v. Schenberger*, 498 F. Supp. 2d 738, 744-45 (D.N.J. 2007) (even though defendant "agree[d] not to use or access a computer, this condition of release is difficult to enforce"). The same is true with respect to any proposed condition that would provide Pretrial Services the ability to monitor Defendant's internet or phone activity; such conditions are hard to enforce. Thus, it would be extremely difficult, if not impossible, for this Court to fashion release conditions that would address the financial harm posed by Defendant's release.

Simply put, Defendant poses a significant risk of danger to the community were he to be released, and there are no conditions that are sufficient to address this risk. There are likewise no condition or combination of conditions of release that would reasonably assure Defendant's appearance as required: Defendant has the motive, means, and contacts to flee—whether to another state or abroad. For all of these reasons, Defendant should therefore be detained.

Very truly yours,

Erek L. Barron
United States Attorney

By: _____
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