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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARMAN HAYRAPETYAN,

Defendant.

No. CR 20-579(A)-SVW-6

GOVERNMENT'S OPPOSITION TO DEFENDANT ARMAN HAYRAPETYAN'S MOTION FOR REVIEW/RECONSIDERATION OF ORDER SETTING CONDITIONS OF RELEASE/DETENTION (ECF 263); MEMORANDUM OF POINTS AND AUTHORITIES; EXHIBIT

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California and Assistant United States Attorneys Scott Paetty and Brian Faerstein, and United States Department of Justice Trial

Attorney Christopher Fenton, hereby files this opposition to Defendant Arman HAYRAPETYAN's Motion for Review/Reconsideration of Order Setting Conditions of Release/Detention (ECF 263).

This opposition is based on the attached memorandum of points and authorities and accompanying exhibit, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: April 9, 2021

Respectfully submitted,

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/s/
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I. INTRODUCTION

On March 25, 2021, defendant Arman HAYRAPETYAN made his initial appearance on the First Superseding Indictment in this case. Following a detention hearing, Magistrate Judge Maria A. Audero ordered defendant detained pending trial based on risk of flight. Defendant is an Armenian citizen whose entire family lives in Armenia, and defendant has virtually no ties to this district or the United States, nor significant bail resources to draw upon. Defendant traveled to Armenia for approximately four months just last year -- immediately after he is alleged to have stolen and laundered hundreds of thousands of dollars in COVID-19 disaster relief funds. And defendant allegedly engaged in such conduct using stolen identities of real people, giving rise to Judge Audero's concern he could do the same to flee the country.

Defendant HAYRAPETYAN now seeks this Court's review of Judge Audero's order of detention, relying on substantially the same factual record presented during the initial detention hearing, with the exception of proffering a proposed surety to sign an unsecured bond. Defendant's proffered facts and arguments as well as the proposal of a surety without justification remain insufficient to mitigate the risk of flight in this case, and thus his motion for reconsideration should be denied.

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

The First Superseding Indictment, filed March 9, 2021, charges defendant HAYRAPETYAN with conspiracy to commit bank fraud and wire fraud, individual counts of bank fraud and wire fraud, money laundering conspiracy, and one count of aggravated identity theft.

(ECF 154.) These charges arise out of defendant HAYRAPETYAN's participation in an expansive scheme to use stolen, fake, and synthetic identities of individuals and business entities to submit fraudulent COVID-19 disaster relief loan applications and launder the proceeds of the fraudulent loans. (Id.)

The overt acts alleged in the conspiracy counts in the First Superseding Indictment provide examples of some, but not all, of the fraudulent loan applications defendant HAYRAPETYAN caused to be submitted in furtherance of the alleged conspiracy. (Id., ¶ 33 (Overt Acts 1-7).) In particular, defendant HAYRAPETYAN is alleged to have stolen the identities of two real people ("D.S" and "M.H.") as well as their actual companies ("S." Construction and "H." Construction) for purposes of submitting COVID-19 disaster relief loan applications in their names. (Id.) The proceeds from these fraudulent loans were deposited into bank accounts that defendant HAYRAPETYAN had opened using the stolen names of these companies. (Id., ¶ 27(a)-(c) (describing one bank account opened as "Arman Hayrapetyan DBA S. Construction" and two bank accounts opened as "Arman Hayrapetyan DBA H. Construction").) Defendant HARYAPETYAN directed some of the fraudulent loan proceeds to coconspirators, including, but not limited to, a company called Fiber One Media controlled by "Viktoria Kauichko," an alias alleged to be used by codefendant Marietta TERABELIAN. (Id., ¶ 33 (Overt Act 7).)

On March 11, 2021, three of the four newly-charged defendants in the First Superseding Indictment -- defendants Manuk GRIGORYAN, Edvard PARONYAN, and Vahe DADYAN -- were arrested and made their initial appearances. (See ECF 177, 191, 198.) However, despite significant efforts, agents were unable to locate defendant HAYRAPETYAN at either of his two likely residential addresses, and he did not self-surrender until two weeks later, on March 25, 2021. (See Exh. 1 attached hereto (Transcript of 3/25/21 Hearing), at 11:14-20; ECF 263 (Defendant's Motion to Reconsider) at 3.)

Pretrial Services recommended defendant HAYRAPETYAN be detained based on risk of flight. Pretrial Services cited its concerns that he possessed an Armenian passport, had family ties to Armenia, had no family ties to this District, and did not have any bail resources. Pretrial Services also could not fully verify his background as proffered.[1]

Judge Audero agreed and similarly concluded that defendant posed a risk of flight that could not be mitigated by any condition or combination of conditions of bond. (ECF 255.) Judge Audero found that defendant posed a risk of non-appearance based on the reasons stated in the Pretrial Services Report and by the parties, including: "He has an Armenian passport; foreign travel history, recent; no bail resources; partially verified background information; all of his family is in Armenia; and he has got no family ties to this district." (See Exh. 1 at 23:14-17.) Judge Audero also stated her concern about risk of flight based on "the nature of the allegations being the assumption of other people's identities." (Id. at 23:1-3.) And Judge Audero noted her concerns about an "unsecured appearance bond by someone who you are telling me really is here just starting

[1] The government understands that the Pretrial Services Report is part of the Court's record in this case but it is not to be made public.

his life, I don't know if he has any resources at all." (Id. at 23:8-10.)

III. ARGUMENT

Under the Bail Reform Act of 1984, pretrial detention of a defendant is required where no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. 18 U.S.C. § 3142(e)(1). Detention is appropriate where a defendant is either a danger to the community or a flight risk; it is not necessary to prove both. United States v. Motamedi, 767 F.2d 1403, 1406 (9th Cir. 1985). "[T]he government bears the burden of showing by a preponderance of the evidence that the defendant poses a flight risk." United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991).

Courts must consider several factors when determining whether there are conditions that could reasonably assure the appearance of defendant and the safety of the community, including: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or to the community that would be posed by the defendant's release. 18 U.S.C. § 3142(g); United States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986). While the weight of the evidence is the least important of the factors, the nature of the offense and evidence of guilt are relevant in terms of the likelihood that a person will fail to appear or pose a danger to the community. Id.

A. Defendant is a Serious Flight Risk

At the detention hearing, defendant HAYRAPETYAN proffered substantially the same facts and arguments as are set forth in his motion for reconsideration, which Judge Audero found insufficient to ensure his appearance in this case. The only new fact is that defendant proposes a surety to sign on to an unsecured bond. This development alone is inadequate to mitigate his serious risk of flight.[2]

Defendant HAYRAPETYAN is an Armenian citizen who moved to the United States in 2019. (ECF 263 at 6.) All of defendant's family -- including his parents, his wife, and his daughter -- live in Armenia; he has no family ties to this District. (ECF 263 at 6-7.) He does not own property in this District (or in the United States) and he does not have anyone willing to post property on his behalf.[3] (ECF 263 at 7.) Defendant recently traveled to Armenia for approximately

[2] During the initial detention hearing, the government also argued that defendant poses a danger to the community in light of his alleged theft of at least two real individuals' identities and the identities of their businesses. (ECF 154, § 33 (Overt Acts 1-7); Exh. 1 at 14:22 -15:4.) As alleged in the First Superseding Indictment, defendant used these stolen identities in connection with the fraud. (Id.) The Ninth Circuit has held that "danger may, at least in some cases, encompass pecuniary or economic harm." United States v. Reynolds, 956 F.2d 192, 192-93 (9th Cir. 1992). Judge Audero based her decision regarding detention on defendant's risk of flight, but his risk of danger to the community is an alternative basis to detain him.

[3] As explained further herein, the government does not suggest that defendant should be detained solely because he does not have sufficient bail resources. Rather, given the other significant risks of flight present here, the risk is compounded by the lack of a significant financial commitment in mitigation of the aggregate risk. See United States v. Fidler, 419 F.3d 1026, 1028 (9th Cir. 2005).

four months in 2020. (ECF 263 at 6.) Defendant has strong ties to Armenia and virtually no ties to the United States.

The timing of defendant's 2020 travel to Armenia raises significant concerns in light of the allegations in the First Superseding Indictment. Defendant traveled to Armenia immediately after allegedly receiving hundreds of thousands of dollars in proceeds from fraudulent COVID-19 disaster relief loans, and remained abroad for approximately four months before returning to Los Angeles in September 2020.[4] (ECF 154, ¶ 33 (Overt Acts 1-7).)

In addition, although defendant apparently informed Pretrial Services that he has held his current job since 2019, his employer provided information contradicting that assertion. His employer verified that, as of March 25, 2021, defendant had only worked for the company for six months -- and thus he likely would not have started the job until after returning from Armenia in September 2020. This critical discrepancy -- i.e., whether defendant was in fact employed by this company during the key time period during which he is alleged to have participated in the conspiracy -- raises concerns about the veracity of this and other information defendant provided to Pretrial Services. It also provides the government additional apprehension about whether he can be trusted to follow conditions of pretrial release.

Moreover, as Judge Audero found, the nature of the allegations in this case present other concerns about potential flight,

[4] Defendant asserts that he "was given approval from the Government to go home during this time." (ECF 263 at 7.) To the extent defendant implies the government was aware of his alleged involvement in the COVID-19 disaster relief fraudulent scheme immediately preceding his travel, he is wrong.

specifically defendant's alleged "assumption of other people's identities." (Exh. 1 at 23:2-3.) Defendant used the stolen identities of at least two people and two businesses to commit fraud. Even were he to surrender his passport, there is a risk he would use fake identities to evade law enforcement and flee.

Defendant points to his decision to self-surrender two weeks after the other newly-charged defendants were arrested as evidence that he does not intend to flee. (ECF 263 at 6.) Defendant may not have understood the seriousness of the charges. Now that he has access to the discovery and appreciates the potential sentence (which includes a two-year mandatory minimum), he may be incentivized to flee to escape prison and be with his family. The proposed conditions are insufficient to mitigate such risk. See United States v. Townsend, 897 F.2d 989, 995 (9th Cir. 1990) (holding that the district court properly considered "penalties possible under the present indictment" as providing an "incentive to consider flight").

B. The Proposed Surety Does Not Mitigate the Risk of Flight

Defendant's newly proposed surety -- to sign on to a $50,000 to $75,000 unsecured appearance bond -- is insufficient to ensure defendant's appearance and mitigate his risk of flight.

First, although defendant notes that "a third party surety has come forward and offered to sign an appearance bond on Mr. Hayrapetyan's behalf," (ECF 263 at 7), defendant offers no details about the proposed surety's background, relationship to defendant, or financial solvency. It is critical that defendant have significant ties to any proposed surety to ensure the surety's commitment to the bond provides moral suasion to defendant in complying with his conditions of release. Equally important, the government must be able to look to the surety for payment on the bond should defendant flee the jurisdiction or otherwise not be able to satisfy an order of bail forfeiture. Defendant's submission lacks all of this information and does not provide a basis to assure the government or the Court that the proposed surety will mitigate the substantial risk of flight here. Notably, the government spoke with the proposed surety on April 8, 2021, and has significant doubts as to whether the proffered individual has the type of close relationship to defendant or the financial resources to satisfy the objectives of a surety.

Second, a secured bond is necessary to mitigate the significant risk of flight in this case. Such a requirement is consistent with the Court's approach to six out of the other seven defendants in this case, where it has required the posting of property or corporate surety bonds to secure defendants' appearance bonds. (See ECF 5, 20, 44-45, 47-48, 177, 191.) Such is the case for the other five defendants who, like defendant HAYRAPETYAN, are charged with aggravated identity theft in addition to the other conspiracy and fraudulent scheme counts in the indictment.[5] The total bond amounts for these other five defendants (with some portion of the bond secured by property) range from $100,000 to $250,000. Importantly, defendant HAYRAPETYAN's risk of flight is greater than any of his co-

[5] In addition to defendant HAYRAPETYAN, defendants Richard AYVAZYAN, Marietta TERABELIAN, Artur AYVAZYAN, Tamara DADYAN, and Manuk GRIGORYAN also are charged with aggravated identity theft in the First Superseding Indictment. (ECF 154, ¶¶ 42-51.)

defendants because he has strong ties to Armenia and virtually no ties to the United States.[6]

IV. CONCLUSION

For the foregoing reasons, the government respectfully requests the Court deny defendant HAYRAPETYAN's Motion for Review/ Reconsideration of Order Setting Conditions of Release/Detention (ECF 263).

[6] The government does not seek the imposition of a secured bond or a bond with additional sureties for the purpose of imposing a "de facto detention" in this case. United States v. Fidler, 419 F.3d 1026, 1028 (9th Cir. 2005). As the government apprised Judge Audero and defense counsel acknowledged, the government initially proposed to defense counsel a bond package that it viewed as adequate to mitigate the risks of flight and danger here. (See Exh. 1 at 21:18-25, 22:11-17.) In any event, as detailed above, there is an independent risk of flight in this case, and the proposed bond package is not sufficient to mitigate that risk. See Fidler, 419 F.3d at 1028 ("[T]he de facto detention of a defendant under these circumstances does not violate § 3142(c)(2) if the record shows that the detention is not based solely on the defendant's inability to meet the financial condition, but rather on the district court's determination that the amount of the bond is necessary to reasonably assure the defendant's attendance at trial or the safety of the community. This is because, under those circumstances, the defendant's detention is not because he cannot raise the money, but because without the money, the risk of flight [or danger to others] is too great.") (internal quotation and citation omitted).