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

UNITED STATES OF AMERICA	)	Docket Number
	)	1:22-CR-00171-MLB-RDC-1
	)	
	)	
v.	)	
	)	
	)	Atlanta, Georgia
	)	May 12, 2022
CARL DELANO TORJAGBO, also known	)	
as KARL LUCIUS DELANO	)	
	)	

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES OF COUNSEL:

For the Government: MR. JOHN R. PHILLIPS

For the Defendant: MR. KENDAL SILAS

Official Court Reporter: ALICIA B. BAGLEY, RMR, CRR

Proceedings recorded by mechanical stenography, transcript produced by computer

P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; May 12, 2022;
defendant present)

THE COURT: Please be seated. Good afternoon.

MR. PHILLIPS: Good afternoon, Judge.

THE COURT: The Court calls the case of United States of America vs. Carl Delano Torjagbo, also known as Karl Lucius Delano. This is criminal indictment Number 1:22-CR-171. We have appearing on behalf of the government Russell Phillips. Seated with the defendant is Kendal Silas who I've not yet appointed.

Mr. Torjagbo, you're here because a criminal indictment has been filed against you. The criminal indictment charges you in Count One with bank fraud. Beginning in or about January of 2021 and continuing through at least in or about March of 2021, in the Northern District of Georgia and elsewhere.

Count One alleges that you, aided and abetted by others, knowingly executed and attempted to execute a scheme to defraud JPMorgan Chase, National Bank Association, or Chase Bank, a financial institution as defined in 18 USC 20, and to obtain monies and funds owned by and under the custody and control of Chase Bank, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts. This is in conjunction with your forming a business, Kremkov Industries, a Georgia company organized by you on or about January 4, 2021, ten months after the Paycheck Protection Program eligibility date had expired. At that time, the indictment alleges, Kremkov Industries was not eligible for a PPP loan because it was not in operation on February 15, 2020. According to the indictment, that business never conducted any legitimate business and never paid wages to any employees because it had no employees.

Nevertheless, on February 16 you signed a PPP loan application on behalf of this company and submitted it to Chase Bank requesting a PPP loan of $9,554,425. On or about March 29th, 2021, as a result of your materially false and fraudulent representations Chase Bank transferred $9,554,425 in PPP loans to your custody and control, in violation of Title 18 U.S. Code, Section 1344 and Section 2.

Count Two through Four charges you with concealment of money laundering, in violation of 18 USC 1956(a)(1)(B)(i).

Five through Seven charges you with transaction of money laundering, in violation of 18 USC 1957 and Section 2.

You're also charged in -- has the defendant received a copy of the underlying indictment?

MR. SILAS: He has, Your Honor.

THE COURT: Does he understand the nature of the charges pending against him?

MR. SILAS: Yes, Your Honor.

THE COURT: There's also a forfeiture provision in a sum of money that arose or resulting from the offenses listed in the indictment, including, it looks like, five different properties. He understands the nature of the charges pending against him?

MR. SILAS: He does, Your Honor.

THE COURT: Because you've been charged, you have an absolute constitutional right to remain silent. That means no one associated with the government or law enforcement can force or compel you to make any statement or answer any questions concerning any subject, particularly the allegations of this case, including your background, alienage, and criminal history.

Any statement made by you, or the answers given to any questions asked, can and will be used against you in court as evidence, that is, in this proceeding and all others related to these charges and perhaps in related ones as well, such as a probation revocation, state court, immigration proceedings, if applicable. Therefore, you should not make any statements or answer any questions from persons associated with the government or law enforcement unless and until a lawyer representing only your legal interests advises you that making such a statement is in your best interest.

You also have the right to have an attorney represent you before and during any questioning or making any statements at every proceeding and appearance in court on these charges, including this one. You may hire a lawyer of your own choosing if you financially qualify. If you're not able to hire an attorney, the Court may appoint someone to represent you at no cost to you if you so qualify. The cost will be borne by the Court, but the lawyer will represent only your interests.

I am looking at your financial affidavit with a little bit of a dilemma because he obviously has a substantial amount of assets, some which may have been derived from the allegations, which would prevent him from being able to hire an attorney, but I'm not sure if the government has seized these assets yet or what.

MR. PHILLIPS: Your Honor, I'm not privy to the affidavits so I'm not sure what assets you're referring to, but I can tell you that we obtained 24 seizure warrants for motor vehicles and for bank accounts and I know that those seizure warrants were being executed today. I don't know what the result of those was. I don't know what funds they were able to get out of those bank accounts.

THE COURT: Okay.

MR. PHILLIPS: But I do know that we obtained warrants for accounts at PNC Bank and for Bank of America. I'll have to talk to the agent and find out what they were able to get out of those.

THE COURT: Okay. For the purpose of this hearing I will go ahead and appoint Mr. Silas because I'm not sure what his financial posture will be after those warrants have been executed, but if we need to we can come back and revisit his qualifications, financial qualifications.

Did I ask him did he want the Court to appoint somebody to represent you or do you want to hire your own attorney?

MR. SILAS: For now he'd like the Federal Defender to be appointed.

THE COURT: Okay. For the purpose of this hearing and until further notice the Court will go ahead and appoint Mr. Silas to represent him.

Okay. Because you've been charged in a criminal indictment, you do not have a right to what is called a preliminary or probable cause hearing because a grand jury, sitting here in the Northern District of Georgia, has already determined, by the return of this charging document, the indictment, that you committed the offense that is set forth in Counts One through Seven of the underlying indictment.

Do you want to proceed with the arraignment at this time, Mr. Phillips?

MR. PHILLIPS: Yes, Your Honor.

MR. SILAS: Judge, I don't think I got the form for him to sign.

MR. PHILLIPS: Your Honor, I prepared the motion for detention and the motion to unseal the indictment. I forgot to prepare the Plea with Counsel. That's my fault, I apologize. Can I run back to the office and do that right now? I'm sorry, Your Honor. I can actually fill it out on my computer right here.

(off-the-record discussion)

THE COURT: While she's working on that, I obviously did not read every word of the criminal indictment. Mr. Silas, I'd like to ask if your client would waive the formal reading of the indictment or would he like for me to read the entire document -- the entire indictment to him?

MR. SILAS: We'll waive reading.

THE COURT: While we're waiting on that, Mr. Torjagbo, you also have the right to a bond or detention hearing. Is he asleep? It looks like your eyes were closed. You have the right to a detention and bond hearing. In this case the government is seeking to detain you until these charges are resolved. The government's indicated in the motion that you are a risk of flight.

Is the defendant going to request to have that detention hearing?

MR. SILAS: He is, Your Honor.

THE COURT: Okay. Then we'll wait for the Plea with Counsel Form.

MR. PHILLIPS: Your Honor, I'm prepared to go forward today if the Court would like to.

THE COURT: Do you need more time, Mr. Silas? It's up to you. Do you want to go forward today or do you need more time to prepare for the bond? Is he a U.S. citizen? That wasn't clear to me. I know there was --

MR. SILAS: (Inaudible).

THE COURT: Okay. I just didn't see it. I may have overlooked it in the Pretrial Services report. I don't remember seeing it.

(off-the-record discussion)

THE COURT: Mr. Silas, did you say you wanted to go forward with the bond hearing today or are you wanting more time to prepare for it?

MR. SILAS: We would like to go forward today.

THE COURT: Okay.

(a brief recess was taken)

THE COURT: Okay. Mr. Phillips, do you have the Plea with Counsel Form?

MR. PHILLIPS: I do, Your Honor.

THE COURT: Okay. You may present it to defense counsel.

MR. PHILLIPS: Sir, you have in front of you a document entitled "Indictment" in Criminal Case Number 1:22-CR-171. Are you Carl Delano Torjagbo, also known as Karl Lucius Delano?

THE DEFENDANT: Yes.

MR. PHILLIPS: All right. And it's your intent today to plead not guilty to Counts One through Seven of the indictment; is that correct?

THE DEFENDANT: Yes.

MR. PHILLIPS: And is this your signature on the Plea with Counsel Form where it says "Defendant"?

THE DEFENDANT: Yes.

MR. PHILLIPS: And you're represented today by Kendal Silas; is that correct?

THE DEFENDANT: Yes.

MR. PHILLIPS: Mr. Silas, is this your signature on the Plea with Counsel Form?

MR. SILAS: Yes, it is.

MR. PHILLIPS: All right. Your Honor, at this time I'd tender Defendant Carl Torjagbo's, also known as Karl Delano's, Plea with Counsel Form.

THE COURT: Okay. Thank you.

Okay. Let the record reflect that the defendant has received a copy of the underlying indictment, he has been arraigned. I think you have "having waived arraignment" in here. He's not waiving his arraignment.

MR. PHILLIPS: Do you want me to strike through it?

THE COURT: If you can strike "having been" -- instead of *waived*, "having been arraigned." Strike out the *waived* part of it and they can initial it.

MR. PHILLIPS: Okay.

(off-the-record discussion)

MR. PHILLIPS: All right. Mr. Torjagbo, is that your signature on the Plea with Counsel Form where it says "Defendant"?

THE DEFENDANT: Yes.

MR. PHILLIPS: Mr. Silas, is that your signature on the Plea with Counsel Form?

MR. SILAS: It is.

MR. PHILLIPS: Your Honor, I'd tender the defendant's revised Plea with Counsel Form.

THE COURT: Okay. Thank you.

Okay. Let the record reflect that the defendant has received a copy of the underlying indictment, he's waived the formal reading of the indictment. Having been arraigned, he's entered a not guilty plea to Counts One through Seven. The Court would note for the record that the defendant, as well as his counsel, each have signed the Plea with Counsel Form and the Court will order that a not guilty plea be entered.

Mr. Phillips, will this be a short, medium, or long case?

MR. PHILLIPS: Your Honor, I think this will be a medium case.

THE COURT: Okay. As a medium case this case is assigned to District Judge Brown and Magistrate Judge Cannon.

Do you have Rule 16 discovery for Mr. Silas?

MR. PHILLIPS: I do, Your Honor. I'm handing Mr. Silas now a discovery disc and a piece of paper that has the password for the disc on it.

THE COURT: Okay. Is reciprocal discovery requested?

MR. PHILLIPS: Yes, Your Honor.

THE COURT: Okay. So noted.

Okay. We'll proceed now to the detention portion of this hearing. Mr. Phillips.

MR. PHILLIPS: Thank you, Your Honor.

As the Court knows, the detention issue is governed by 18 USC, Section 3142(e)(1), which states that if the Court finds that no condition, or combination of conditions, will reasonably assure the appearance of the person as required and the safety of any other person in the community the Court shall order the detention of the person before trial. It's the government's contention that both of those apply in this case, risk of flight and danger to the community.

The government bears the burden of establishing that the defendant should be detained either by a preponderance of the evidence concerning risk of flight or by clear and convincing evidence concerning danger to the community. The statute also states that the Court shall consider the factors that are listed in Subsection G and I'd like to address those.

The first one, as to risk of flight, has to do with the defendant changing his name. This is a case, Your Honor, that involves a huge PPP loan, $9.5 million and change. It's the largest single PPP loan that my office has investigated during the two plus years of this pandemic. As the Court knows, the Paycheck Protection Program, also known as the PPP, is a federal loan program that was designed to provide funds to help small businesses stay afloat during the covid-19 pandemic. This defendant is accused of applying for a loan of more than $9.5 million getting that loan in the name of a shell company, it's the company that he made up. After getting that $9.5 million, he then is accused of laundering that money, as alleged in the indictment.

One of the things that we found when we were going through the bank records that pertain to the PPP loan is that not only did this defendant make numerous false statements in the loan application itself -- for example, he said he had 493 employees. That was not true. He didn't have any employees. He said he had a payroll of more than $3.8 million per month, that was not true. He swore that his company had been in business since December of 2014, that was not true. The Georgia Secretary of State's records show that that company was not organized until January of 2021, approximately 10 months after the cutoff to get a PPP loan.

He made those false statements, he swore to them under oath, but he also doubled down on that. He submitted numerous false and fraudulent documents in support of his loan application. He made up this company, he made up all the facts concerning the company and its performance and its existence, those were all lies. Then he made up tax documents to support what he was telling JPMorgan Chase Bank in his loan application. He submitted what's called 940 and 941, those are federal forms, IRS forms, that pertain to withholding and the number of employees that a business has, those were all just made up.

But here's the really interesting thing, Judge. He filed a phony personal income tax return. It wasn't phony. He actually filed a tax return. It was fraudulent because he just made up all of that information and that's attached to his PPP loan application -- or it's submitted with it and his bank records show that when he filed the PPP loan application in his tax return for 2020 he told the IRS that he was employed by Kremkov Industries, this phony company, and he said that he had earned wages of more than $9 million that year. But he also claimed a tax loss that exceeded that and wiped out all of his income. His alleged tax loss was more than $9.9

million -- or approximately $9.9 million. As a result, he alleged that he was entitled to a refund of more than $3.3 million. That happened three days before he filed the phony PPP loan application.

So he files his tax return and he says to the government "Give me $3.3 million in a refund," and the government did. Then three days later he files this PPP loan application and he says "Give me another 9 and a half million dollars of taxpayer money." So within three days, just by filing these phony documents in the name of a fraudulent and made up, fictitious company, the government gave him almost $13 million of taxpayer money so that's what this case is about.

He's not charged with the tax fraud. The DOJ Tax Division has to approve the charges for that so we're not able to bring those at this time. I'm telling you about it not because it's a charge, but because it's evidence in the case. We discovered that tax return that this gentleman submitted to JPMorgan Chase Bank with his PPP loan application. Then when we reviewed his bank records we saw the actual check that the government provided him, the tax refund. It's worth $3,366,240.76, and he deposited that check into not his personal account, because it was his personal tax refund, he deposited that check into an account in the name of Kremkov Industries at PNC Bank.

So the indictment talks in great detail about things that the defendant did with the PPP loan proceeds. For example, the defendant used approximately $1.7 million to buy a new house. So this house that's referred to in his Pretrial Services report where he says "This is where I live and I want to go back there and keep living there if the Court let's me out on bond," that 5114 Greythorne Lane, that's a house that he bought with $1.7 million in taxpayer money.

He also spent approximately $300,000 buying other real estate, more than $800,000 to buy tractor-trailer trucks to start a new trucking business called FlyingJack Freight and Logistics and, if the Court will look at the defendant's Pretrial Services report, it indicates that that is his current employer. He says he's been employed there for eight months and he says he's the CEO of this company. That's a fraud, Your Honor. That's another fictitious LLC that the defendant made up to launder fraud proceeds. Instead of doing that in Georgia where he lives, he got Wyoming to do it to make it even harder to find and harder to trace the money, that's a Wyoming entity. He then got a tax ID number for that phony company and he set up a bank account in the name of that phony company and he transferred more than 1.7 -- well, approximately $1.7 million of the fraud proceeds to the bank account at Bank of America that he set up in the name of FlyingJack Freight and Logistics. So when he says he's the CEO of that company it is nothing but fraud. It is nothing but a shell company and a front for a fraud scheme.

So the defendant was contacted by the Federal Motor Carrier Safety Administration earlier this week and they have a right to inspect all new trucking companies within the first 12 months. So they called the defendant and they said, "We would like to inspect your trucks," and so the defendant told the Federal Motor Carrier Safety Administration that he has not put any of these trucks into service yet so he has not yet earned any income whatever through that phony business.

So the FBI went to a meeting this morning where the defendant was to bring these tractor-trailers for inspection by the Federal Motor Carrier Safety Administration and he was arrested on the charges in the indictment and those vehicles were seized. So his statements to the Court that he lives in this big fancy house at 5114 Greythorne Lane and that he's the CEO of this trucking company, that's just fraud. That's taxpayer money that he used to set that up. So he wants to go back and continue living a life that is fully funded by fraud money.

In addition to those things that I already named, he bought himself a $118,000 BMW, an $87,000 Land Rover. He paid $15,000 to have plastic surgery to have his abs done, what they called gladiator abs so he's willing to spend money and endure pain and suffering to change his appearance. He went to New York and got that plastic surgery done.

His parents still live in Ghana, as he indicated in his Pretrial Services report, and he's wired more than $80,000 of the fraud proceeds to his mother in Ghana. A large part of the stolen money, Your Honor, is unaccounted for and so that creates an extra risk of flight because the government was unable to trace that. Despite our almost around-the-clock efforts for the last couple of months in trying to figure out where all that money went, there's still a large part of that money that is unaccounted for.

This defendant has engaged in literally hundreds of financial transactions with the fraud proceeds, including online transfers between accounts, wire transfers, checks, cashier's checks, debit cards, credit cards, and cash withdrawals largely to conceal and disguise the nature and location, source, ownership, and control of the bank fraud proceeds and then to convert the fraud proceeds to his own use. He has a number of debit cards and credit cards that are connected to his bank accounts and he uses those for all of his daily living expenses. All of his groceries and all of his everyday living expenses are being paid for by taxpayer money on those accounts that are funded fully with the fraud proceeds.

We seized those bank accounts because there's no evidence from his bank records that any legitimate money in any significant amount went into any of those accounts. There are a few checks in there for like 20 or 30 or $40 that the defendant got because he was an extra in some television or movie productions, but literally, you know, very small amounts of money. So almost all of the money that is in those accounts and that he's been transferring back and forth between those accounts and using to set up these fictitious companies and to fund his upgraded lifestyle, that's fraud money.

The fraud occurred in early 2021, that's when it began, and then the defendant, on July 29th of 2021, went to the Superior

Court of Cobb County, Georgia, and he filed a petition to change his name from Karl Lucius Delano -- I'm sorry, from Carl with a "C" Torjagbo to Karl Lucius Delano, Karl with a "K," and the petition was granted on September 17th, 2021. But even though he legally changed his name and even though he came to Court and he told the Court that, in other papers that I've seen, he's using that name. He's used that name to buy real estate, but he's used both names. He hasn't switched over to the new name, he's just operating in two different identities.

He's created at least two -- well, before I get to that, a number of courts, Your Honor, have said that the defendant's use of an alias evidences a willingness and an ability to flee, *United States vs. Gillin*, G-I-L-L-I-N, 345 F.Supp 1145, Southern District of Texas from 1972, and *United States v. Ferguson,* which is a Michigan case from 2013 finding that the defendant presented a flight risk because he was able to obtain a driver's license with a false identity once which meant that he likely could do so again.

So we think that changing his name for purposes of leading this new life is extremely important. It appears that the defendant comitted the frauds in the name of his birth name, this Torjagbo, and then he thought he could change his name and create some LLCs that are shell companies and just hide this fraud, this $13 million fraud, he thought he could hide that and get away from it by creating this new identity for himself. As I said, he's created multiple bank accounts through the names of these fictitious entities, two of them in the name of Kremkov Industries, one at Chase Bank, one at PNC Bank, and one at Bank of America in the name of FlyingJack Freight and Logistics.

Also, we believe the defendant is a risk of flight because he holds a U.S. passport. It doesn't expire until May 28th of 2025. But more importantly, the defendant is a licensed airline transport pilot and a flight instructor. When I say "a licensed airline transport pilot," I mean he is a commercial pilot. He flew for FlyDubai Airlines and for SkyWest Airlines, those are two that we know about. So even if this Court were to tell the defendant to turn in your passport and turn in your pilot's license, we can't take away his skill. His skill as a pilot is something that's going to remain with him even if he doesn't have paperwork, and because there's such a huge amount of money that's unaccounted for we think that the defendant is a flight risk because he has this special skill that would enable him to fly a plane and leave the country.

Another factor that the Court is asked to consider in determining whether detention or bond would be the appropriate choice is the nature and circumstances of the offense. As I said, the defendant is charged with bank fraud, that carries a maximum punishment of 30 years in a penitentiary, as well as two different types of money laundering. Under 1956 each of those counts carries a maximum punishment of 20 years in prison and under 1957 each of those is 10 years in prison.

As this Court knows, danger to the community is not limited to the threat of physical violence. Numerous courts have said that the term "dangerousness," as used in the Bail Reform Act, has a much broader construction than might be commonly understood in everyday life. There can be no question that an economic danger falls under the broad umbrella of "dangerousness," as that term is used in the Bail Reform Act.

This defendant appears to be a significant fraudster and an economic danger to the community, if he's released from custody, and the ease with which he committed these crimes and his boldness, his daring to ask the federal government to give him $13 million in these two separate fraudulent transactions is staggering. I mean, somebody who's got that kind of nerve, who knows what he might be willing to do. The Seventh Circuit has said information that sheds light on the defendant's honesty is a highly relevant factor in determining whether the defendant should remain in custody or be granted bond and thus is material, *United States vs. Bedolla*, B-E-D-O-L-L-A, hyphen, *Zabala*, Z-A-B-A-L-A, from 2010.

The next factor the Court should consider is the weight of the evidence. Your Honor, the evidence in this case is overwhelming. The bank records and the records of purchasing these motor vehicles and these real properties leave a paper trail a mile long. There is no other person who has benefitted from these fraudulent transactions other than the defendant. He spent all of the money that we've been able to trace so far on himself for personal luxuries and for building this new business in the name of FlyingJack. He doesn't have any partners in that business, nobody else helped him submit the application, nobody else helped him submit the fraudulent tax return. As far as we can tell, it's all on him.

He used his own social security number, his home address, and his own name, Torjagbo, in filling out this application that he submitted to Chase Bank and the loan proceeds were deposited into a Chase account that he alone controlled and then he moved the money from Chase to other accounts at PNC Bank and then Bank of America that he alone controlled, there's no other signer on the account. There's nobody else who has a right of withdrawal on any of those accounts.

The next factor, Your Honor, is the person's physical and mental condition. In June 2021, a month before he filed the petition to change his name, the defendant paid a little bit over $15,000 for plastic surgery in New York to surgically enhance his appearance. While that may be a vanity issue that doesn't disguise who he is, it certainly says something about his willingness to endure what I would imagine is significant pain and suffering and spend significant money to change his appearance. So if he's willing to do that he might be willing to have other types of cosmetic surgery to change his facial appearance and make it easier for him to avoid capture if he's allowed out on bond.

The next factor is family ties or ties to the community. The defendant was born in Ghana. He's wire transferred more than $80,000 of the PPP loan proceeds to Ghana. According to notes that are in these wire transfer records, his mother in Ghana is sick and he was sending her money for medical treatment, that's another reason that he might want to go to Ghana and leave the United States.

The defendant's ties to this state are hardly more than a reflection of his criminal activities here. He's lived at this address in Marietta, he says, since 2021, so a year or so. He lives alone. He's unmarried, he has no children, no wife. Both his parents and his siblings all reside in Ghana, that's according to his Pretrial Services report.

The next factor, Your Honor, is employment. As I said, the defendant states in his Pretrial Services report that he's employed by FlyingJack Freight and Logistics. As I explained earlier, that is a fictitious company. It was created with fraud money, it was used to launder fraud money, and other than whatever people he's hired to drive these trucks around for him temporarily, it's not an ongoing business. Certainly the defendant should not be allowed to operate a business that was fully funded with fraud proceeds.

Furthermore, that business is going to be effectively shut down because this morning the FBI executed seizure warrants, which are under seal -- I need to unseal those and I don't know if the Court can do that orally or if I need to file a separate motion, but I will do that. We obtained seizure warrants for those tractor-trailers so that business doesn't have any assets, it's not going to be a going concern when he leaves here today, if the Court lets him leave on bond. So he doesn't have any employment to go to, he's not going to make any money from FlyingJack, and it's a fraud.

In his employment -- I'm sorry. In his PPP loan application, which was filed on February 16 of 2021, he stated or claimed that he had been employed by Kremkov Industries since December 31 of 2014, but the Georgia Secretary of State's records show that that company was not created until January 4th of 2021, six years after he said he had started working for Kremkov. He made that statement under oath in his PPP loan application, that was false. The Fifth Circuit has said "A job is meaningless as an indicator of future appearances before the Court when it is directly connected to criminal activity," that's *United States vs. Rueben*, 974 F.2d 580, 1992.

As far as the defendant's financial resources, as I said, I'm not privy to the document that the defendant filed, but on his tax return the defendant told the IRS that in 2020 he made $9,199,411 in wages from Kremkov Industries, that was not true. He's already made that false statement about his income so I wouldn't put a lot of credence in anything that he says about his income that's not actually backed up by some records.

I can state that I've reviewed those bank records and those bank records do not show any deposits into any of the accounts that he controls that came from any noncriminal source, other than those minor and, in my view, insignificant payments that are deposits from what appears to be working as an extra in a television or a movie production. There's also no evidence that the defendant has any bank accounts other than the accounts that we've identified that we traced the fraud money to. Those accounts don't show that he's moved money to any accounts that we are unaware of and that we have not looked at in detail.

The next factor, Your Honor, is the defendant's criminal history. I'm sure that one way to look at it is to say, well, he doesn't have any felony convictions and so somebody might be tempted to write that off and say that's insignificant. But on Page 3 of the Pretrial Services report I note not one, but two failures to appear, allegedly, misdemeanor offenses. A failure to appear shows a disrespect for the Court and for the legal process to not show up when you're supposed to and the defendant has done that not once, but twice.

In addition, the defendant has driven while he had a suspended license. Again, it's a minor offense in the scheme of things. The way that this Court normally deals with things -- this Court is used to dealing with federal felony offenses and so driving with a suspended license may seem like a minor thing. But, again, it shows a lack of respect for the Court, it shows a lack of respect for the law, and a willingness to just do whatever you want because it's convenient for you.

In addition, the defendant has been charged with aggravated assault, it was dead docketed, but it shows a tendency towards violence. Again, he was charged in 2016 with intimidating and harassing a 9/11 -- or a 911 operator and he was also charged with simple battery and family violence and false imprisonment. Again, those were dead docketed. I assume that's because somebody who was a recipient of that violence refused to prosecute, but it says something about this individual in combination with all of these other factors. It doesn't alone mean that he ought to be detained, I'm not arguing that, but it is evidence of his lack of respect for the law and his lack of willingness to abide by what the Court tells him he should do.

Your Honor, I'm happy to answer any questions, but that's my presentation. Thank you for your time and, again, I apologize for not having that form filled out earlier.

MR. SILAS: May I have just a moment, Your Honor?

THE COURT: Yes, you may.

MR. SILAS: All right. Your Honor, Mr. Torjagbo is a 42-year-old man who has no prior felony convictions at all. The case before the Court, while certainly not insignificant, is not a case that involves violence and, as I read the government's motion for detention, while the government appears to have asserted during its presentation -- or at least implied there was a risk of danger to the public, the reason stated -- well, I guess the government did state the safety of any other person in the community so I guess perhaps the government's speaking in a more general sense. But in any event, this is a case where -- we believe that it is not a case where there are no set of conditions that could be set in place by the Court to ensure both the appearance of Mr. Torjagbo and the community.

The Court certainly can require as conditions of bond that Mr. Torjagbo obtain other employment. The Court can require that he be on a location monitor so the Court knows where he is. The government is seemingly largely aware of the movements -- I do want to note that the amount of money that Mr. Torjagbo that I understand he actually received in connection with these loan applications is not $9.5 million. Although perhaps he might have been approved for $9.5 million, it's my understanding that at some point fairly early in the process that accounts were frozen and that about $6.5 million of the money was actually frozen. My understanding is that Mr. Torjagbo actually received about $3 million in connection with that.

While there was money that was obtained in connection with an IRS tax return, the money that was received, it's my understanding, may have had some connection to other business activity such as offshore drilling or something of that nature. But in any event, when we look at what the government has identified in terms of the various assets that are noted in the indictment in the case and those that were referred to by Mr. Phillips, it does appear that, in large part, the assets are there in the sense that there's a home that Mr. Torjagbo resides in the Cobb County area and there are various other pieces of property that have been purchased. The government has identified a number of trucks. The government has indicated that it has obtained seizure warrants -- I think 24 seizure warrants apparently primarily relating at this point to tractors and trailers that were purchased for use as part of FlyingJack Freight and Logistics. That is, in essence, it appears in large part where the money has actually gone.

It appears to me that the fact that Mr. Torjagbo actually took the money and actually put it into actually buying physical assets like tractors and trailers suggests that his business, FlyingJack Freight and Logistics, is not actually -- is not a shell company at all. I mean, it is a company that actually has real assets, it's a real business. It may be at a point in the process where he had not been especially operational, that is, maybe it hasn't done a lot of business, but it does appear that that actually is where the money was going.

I would posit just based on -- while the government has perhaps made out its case for why it believes that fraud was actually committed in connection with the PPP loan process, that still doesn't answer the question, at the end of the day, in terms of whether this gentleman that's before the Court presents such a risk that the Court has no alternative but to incarcerate him.

Again, he's 42 years old. He has no history -- no prior felony convictions on his record at all. When we look at the failure to appears that are referenced by the government in its argument, those are things that happened back in 1999 and 2000. One involved an unidentified misdemeanor offense at age 20 for Mr. Torjagbo. The other relates to apparently the driving on a suspended license. I will say that with regard to the earlier offense that Mr. Torjagbo was not aware of any sort of failure to actually -- that he actually failed to appear for court appearances. But in any event, when we look at his record, almost entirely are things that comprise traffic-related offenses.

We've got an aggravated assault arrest -- and I beg to differ with the government. I don't think that the Court can glean much discernible about any risk that Mr. Torjagbo would pose to the public by virtue of the fact that there was a charge that was placed on him back in 2015 for aggravated assault and the charge ultimately was dead docketed. To me, that really says nothing that really gives any meaningful information about the characteristics of Mr. Torjagbo. There again, with regard to the matter in 2016 regarding a 911 call, there again the charges were dead docketed so I would posit to the Court there's not really much of anything that really can be gleaned from that.

What we do know is that Mr. Torjagbo actually does have some very substantial ties to the United States. Yes, he was born in Ghana and he lived in Ghana, but he's actually a citizen of the United States at this point. He's been living in the United States primarily for the past 25 years. He came to the United States at age 17 to go to school and he, in fact, did attend school there at the Florida Institute of Technology in Melbourne, Florida, where ultimately he did obtain a degree in aviation management there. He has primarily worked in the United States. He's worked in the United States since then. After getting his degree he went on to work as a civilian contractor working with the Air Force and he provided -- he did provide flight instruction there to members of the Air Force and he himself eventually did become a member of the U.S. Armed Forces himself. He actually served in the Army, the U.S. Army, in 2011 himself.

He gained his citizenship and became a legal permanent resident in 2008 or '09. In 2012, he actually became a citizen of the United States. Yes, he has worked in an aviation-related field and he has worked in Houston, he's lived in Atlanta, he's been living in Atlanta now for approximately the past couple of years, but this is not his first stint of actually living in the Atlanta area. He actually has lived previously in Atlanta so he has a total of about 7 years that he's lived in the Atlanta area.

He has very substantial ties here and Mr. Torjagbo's life here is in the United States. He's 42 years old. He left Ghana when he was 17 years old so primarily since he was 17 years old he's actually lived in the United States. This is where his life is, this is where his home is, this is where his assets are. He basically has no desire and no intention of living anywhere else.

While it may be the case that the business was -- that Kremkov Industries was formerly licensed here in Georgia after 2020, but my understanding from Mr. Torjagbo is this is a business that had been operational for a substantial period of time even before that. This is a business that operated initially with regard to mining in Africa and he organized the business after 2020.

So because of covid, when he received money in relation to the loan, he used the money, he did. I mean, he used money with regard to his other business, but that was, in part, a reflection of the financial distress that arose because of covid and it appeared that the money might be, I guess, better used and that he might be able to make more productive use of the funds with regard to his transport business that he was also in the process of starting, that is FlyingJack Freight and Logistics.

I also understand from Mr. Torjagbo that his mother is not -- his mother is not ill and that, in fact, he was in the process of applying for his family to be able to come here with visas to visit him.

Interestingly, the government noted with regard to changes of appearance that Mr. Torjagbo has undergone surgery. But notably, the surgery doesn't change meaningfully Mr. Torjagbo's appearance. I mean, there's no indication that he's ever sought any plastic surgery with regard to his face which would primarily be how anyone would identify him. The government's contention is that Mr. Torjagbo had some plastic surgery to his abdomen which is generally covered by a coat and it wouldn't be the basis for identifying some likeness. But in any event, I also understand from Mr. Torjagbo that that surgery is related to a hernia and liposuction.

The government has identified the accounts that the funds went into. I think it's notable that the government hasn't actually been able to identify the accounts and also I think it's notable with regard to risk of flight that it doesn't appear that the monies were actually brought into accounts in different names. The government has noted in its argument that the conduct by Mr. Torjagbo was brazen. I would assert that the nature of the conduct does suggest something otherwise in terms of risk of flight.

The government notes that Mr. Torjagbo did the alleged fraud in his own name, using his own social security, using his own name, not the identity of someone else, not the identity of someone made up. This is stuff that's all being done in his own name so he could easily be traced and easily be found. There was no fake -- there was no false identity here. He has essentially legally changed his name. He hasn't used a different name that is one that's made up. He has since gotten a name change to a different name, but with regard to the alleged fraud, it does not appear that the government is really contending that Mr. Torjagbo tried to use some other identity to conceal his tracks at all.

Again, I posit, Your Honor, that it would be a huge step for the Court to -- simply based upon, primarily the facts of the case, which is largely, it seems, what the government is standing on, the amount of money that's involved in the case, the misrepresentations that were made -- now, of course, PPP loan fraud -- many PPP loan fraud involves -- perhaps all involve some degree of misrepresentation, that is the essence of the actual criminal conduct. It's certainly fairly common that defendants in such cases receive bond. In this case we have, again, a defendant who does not have a substantial criminal history at all.

While the amount of money might have been substantial, I would posit to the Court that the fact that Mr. Torjagbo has been primarily in the United States for 25 years and does not have a significant history of failure to appear in court -- and I note that the criminal history in the Pretrial Services report notes that (inaudible) -- those cases are extremely dated and we don't know the circumstances of them. What we do know is that the matters that were involved in those cases were minor things.

I would posit to the Court that there are things that could be put in place, whether it be some sort of security that would be required, location monitoring, restriction as far as curfew, requiring Mr. Torjagbo actually get some other employment, that he not obtain employment in the commercial field. He doesn't have an airplane. It appears that the government's actually in the process of actually freezing his assets or essentially seizing all of the assets of the FlyingJack Freight and Logistics business with regard to the tractors and trailers involved. The government has identified the pieces of property that he has. Certainly the government can take other means to actually prevent the disposition with regards to the property. The government has some ability here to limit the conduct of Mr. Torjagbo going forward.

I would posit that despite the nature of the conduct, the nature of the alleged document which the government asserts rests on misrepresentation, that will be litigated over the course of time and I posit to the Court that to the extent that the government has argued about the nature of some of these expenditures that were made by Mr. Torjagbo, such as the use of it on an abdomen modification, or something of that nature, or using debit cards to pay for personal expenses, it appears to me that those arguments perhaps have more powerful force with regard to sentencing than with regards to bond. If the government wants to argue that that is a matter of aggravation as to why the punishment should be reflective of that or to accomplish that, that's one thing. But the fact that perhaps he used debit card accounts to pay for his personal meals, that says nothing about whether or not he presents a risk of flight or anything of that nature or whether he presents a risk of danger to the public, which is really the consideration that the Court has to decide here today.

I would posit that based upon what we know about the alleged offenses that are set forth in the indictment and as referenced by Mr. Phillips and the information that is set forth in the Pretrial Services report, to me, I posit to the Court that those things do not overcome the history that Mr. Torjagbo has established over the course of the past 25 years in the United States. In essence, he has been an upstanding person and he has not been a person who has conducted himself in such a way that the Court can contend there's no way that the Court can have any reason to believe that if the Court were to let him out the Court could control him and have him appear back.

THE COURT: Thank you.

MR. PHILLIPS: May I respond just briefly?

THE COURT: Sure.

MR. PHILLIPS: Mr. Silas was talking about the $9.5 million in PPP being put in the Chase account and he talked about that account being frozen, let me explain what happened. After the money was deposited into the account the defendant wrote a check for $3 million payable to Kremkov Industries and he moved it from Chase Bank to PNC Bank and on that check he wrote a note in the "for" section and he said "payroll" and so that was a lie. That was done to conceal and disguise the truth about that transfer. It wasn't payroll because he didn't have a payroll, he didn't have any employees. He just moved money from one account in the name of a shell company to another account at a different bank in the name of that same shell company. Then what did he do with it? He proceeded to buy himself a $1.7 million house, an $118,000 BMW, an $87,000 Land Rover and on and on and on, all those things I talked about, and to pay all his personal expenses.

So when that happened Chase Bank got concerned and they took action because they thought it was a fraud and they clawed back the remaining money from that account, but he had already moved $3 million to PNC and then he deposited his fraudulent tax refund, the 3.3 million and change, into that PNC account. So at least at one time he had more than $6.3 million. There's one transfer, one, where he moves $6 million in an online transfer from one account to another, there's no reason to do that. You don't need all these multiple accounts unless you're trying to hide it. Then he engages in all this new behavior in his new name and he creates this new company out in Wyoming called FlyingJack Freight and Logistics and sets himself up in the new business.

Mr. Silas, you know, he's a great lawyer. He's doing everything he can to put his client's actions in a positive light, but to say that this company existed before -- this Kremkov Industries existed before the PPP deadline, filing deadline, is just simply not true. I'm not saying he's lying. He doesn't understand the facts about that because his client is telling him that the company existed. It didn't.

He says this company was in the gold mining business, but when he filed his PPP loan application he told JPMorgan Chase Bank the same thing that he told the Georgia Secretary of State. He said that company is located in Douglasville, Georgia, and the address that he gave was his home address. How can one have 493 employees at your home? It's a single-family residence in a subdivision. Of course he didn't have 493 employees. So to argue that the company was somehow in business in some other state or some other country or whatever beforehand, it's preposterous. It's a shell company, it was used purely for fraud and for money laundering.

THE COURT: Okay. Thank you.

Based on the information presented to the Court, we have a case in which the defendant's alleged to have defrauded the U.S. government out of $9.5 million. Actually, seeking 13 million, even though 9.5 is in the indictment, that is a substantial sum of money. Even if the bank clawed back 6 million of it, we still have in excess of 6 million still outstanding.

The Court notes a couple of things. That the information the defendant provided to the Pretrial Services officers was not verified, he didn't have anybody that can verify any of the information. The Court finds that he does not have substantial ties to the charging district. He's lived at this address for a year. I understand counsel is arguing, based on information provided to him by his client, that he's been in the U.S. for 20 something years. The Court notes its concern about his use of an alias or changing his identity - again, the new name - after the alleged criminal conduct at issue. The Court notes the defendant has ties to a foreign country and that his family resides in Ghana where he was born. The Court also notes with regard to the alternative name or the new identity, the alias, he's alleged to have committed fraud in both names. The Court finds there's no verifiable, what appears to be, legitimate work history. The Court also notes the defendant, who was a trained pilot, is unable to find his passport and could not recall where his passport would be.

I'm mostly concerned he's a licensed pilot, there's a substantial sum of money that is still outstanding here, we don't know what -- even though the government has indicated it has a substantial number of seizure warrants, no one knows exactly what's left in those accounts, if anything. There may be cash that's waiting there and you are a pilot and you can rent something to flee the country to a nearby island. This was a lot of money barely a year ago. We're not talking about conduct in 2018 or 2017 or 2019. We're talking about substantial sums of money that you had last year.

You were in the military, I noticed you didn't mention that to Pretrial Service or your pilot experience, which would be normally a positive for risk of flight. You're in the Armed Forces, you're a pilot, you know, (inaudible), work history, things of that nature, and so the Court finds, in light of the extensive -- I did notice, before Mr. Phillips indicated, that this was the largest sum of PPP money fraud that I have seen. But what stands out to me most is the concern about the pilot. If the allegations are true in the underlying case, you are quite bright to engage in this type of fraud, to an extent, not counting using your own information, but it's extensive. It was an extensive number of transactions between accounts transferring here and there, the tax $3 million refund from a business that allegedly did not exist or income you did not make.

So the Court finds that, for these and other reasons, I am going to detain him until these charges are resolved deeming that you are a risk of flight and the type of fraud engaged here, the Court is concerned about the security of the community with regard to this-- it was meant for small businesses, legitimate businesses, not for you to form a business after the fact after you have bought luxury items for yourself, personal items for yourself. So I don't think I can fashion conditions that will ensure your appearance in Court or that you're going to continue to engage in some type of similar economic fraud so the Court is going to detain you until these charges are resolved.

Anything else on behalf of either party?

MR. PHILLIPS: Not for the government.

THE COURT: And I didn't say your ties to Ghana. I'm going to say that, too. I said earlier you don't know where your passport is and the house you live in appeared to be something that was purchased by fraud. So for these and other reasons, I didn't go through each and every reason, but these are the substantial reasons the Court is concerned that you're a risk of flight and a danger to the community.

MR. SILAS: Your Honor, I know the Court has made its decision. May I say a couple things for the record?

THE COURT: Sure.

MR. SILAS: Mr. Torjagbo would like the Court to know that he did report to immigration that he lost his passport and citizenship document. He made that report back in August of 2021 and the matter is still pending at this point. So he doesn't have his passport, but he has made an official report to the government that those items were lost. He believed that they were taken from his house perhaps when he separated from an ex-girlfriend and perhaps she took those items, that's why he doesn't have them.

He would also like the Court to know that he is a commercial pilot, but he's unable to -- he can't fly a commercial plane by himself, he doesn't have the ability. To the extent that would provide some assurance to the Court, that he doesn't have access to any sort of commercial plane.

THE COURT: Okay. With regard to the passport, he was able to -- allegedly, if the allegations in the underlying indictment are true, he was able to manufacture substantial documents to engage in the alleged conduct so he would probably be likely to be able to obtain a passport, even if he couldn't find his legitimate one, and because there's a substantial amount of money missing, that money could be used to hire a pilot to fly you somewhere close to here. In any event, thank you for that information, it's noted on the record, but it does not change the Court's opinion.

I'd also at this time remind the government of its obligation to comply with the Due Process Protection Act, Rule 5(f)(1) of the Federal Rules of Criminal Procedure. Counsel is reminded of your obligation under *Brady* and its progeny to disclose evidence that is favorable to the defendant and material to either guilt or punishment. The failure to do so in a timely manner may result in the suppression of evidence, the dismissal of some or all counts, or other remedies that are just under the circumstances.

Okay. Anything else at this time on behalf of either party?

MR. PHILLIPS: Not for the government.

MR. SILAS: No, Your Honor.

THE COURT: If there's nothing else before the Court, Court is in recess.

(proceedings concluded)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

CERTIFICATE OF REPORTER

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 27th day of May, 2022.

/S/ Alicia B. Bagley
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