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

United States of America,

v. Case No. 1:22-cr-171-MLB

Carl Delano Torjagbo,

Defendant.

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ORDER

The Court denies Defendant Carl Torjagbo's Motion for Review of the Magistrate Judge's order of detention. (Dkt. 50.)

I. Background

Defendant is charged with several counts of bank fraud and money laundering arising from his efforts to fraudulently obtain more than $6 million from the federal government. According to the United States (and as alleged in the indictment) Defendant applied for a $9.5 million PPP loan on behalf of a company called "Kremkov Industries." (Dkt. 1 ¶ 8.) In the application, Defendant swore Kremkov Industries existed in February 2020, needed the loan to support on-going operations, and had 493 employees with a monthly payroll of $3.8 million. (*Id.* ¶¶ 5-13.)

Those were all lies—the company did not exist in February 2020, never conducted any legitimate business, never had any employees, and never paid any payroll. (*Id.*) As part of the application, Defendant also submitted a host of bogus documents, including false tax returns and fake reports listing the names of the 493 people he claimed to be Kremkov employees. (*Id.* ¶ 15.) The United States fell for Defendant's lies and transferred $9.5 million to his bank account. (*Id.* ¶ 16.) He had only $105 in bank before that. (*Id.* ¶ 18.)

The indictment explains how Defendant moved that money into six different bank accounts, spent some of it on various things, filed a petition to change his name from Carl Delano Torjagbo to Karl Lucius Delano, and purchased luxury items, including a house, a Lamborghini, a Range Rover, a BMW, and (most stupidly) cosmetic surgery for something called "surfer abs." (Dkt. 1 ¶¶ 22-33; 52 at 6.) The United States argues that, although it has not yet filed charges, it has evidence Defendant also committed aggravated identity theft (involving fraudulent documents he submitted to obtain the PPP loan) and wire fraud (arising from two tax refunds Defendant sought using false information.) (Dkt. 52 at 7.)

The United States moved for detention, arguing Defendant was both a danger to the community and a risk of flight. (Dkt. 10.) The Magistrate Judge granted that motion, finding the United States satisfied its burden of showing Defendant was a danger by clear and convincing evidence and a risk of flight by a preponderance of the evidence. (Dkt. 11.) In doing so, the Magistrate Judge relied upon evidence regarding the strength of the United States's case, the amount of money he stole, Defendant's scant ties to the district, his significant ties overseas, and his possession of a passport and pilot's license. (*Id.*)

Defendant now appeals that decision. He argues he is a naturalized citizen of the United States who has resided in the Atlanta area for "a substantial period of time" and has a "local support group" that includes a cousin with whom he could live if released. (Dkt. 31 ¶ 4.) He also argues that he will surrender his pilot's license, comply with home confinement and location monitoring, and is not a danger to anyone as the United States was the only victim of his non-violent offense. (*Id.* ¶¶ 5-6.) He says he would surrender his passport but already reported it stolen.

The Court held a hearing. A question arose about Defendant's passport—defendant still insisting he did not have it to surrender as he had previously reported it stolen. (Transcript of August 15, 2023 Hearing ("Tran.") at 11.) The United States subsequently notified the Court that it does not believe Defendant. According to the United States, Defendant has had two passports since 2014. (Dkt. 60.) He got the first one, ending in 8896, in 2014 and reported it stolen to the State Department in 2015 to get a replacement passport. (*Id.* at 2.) He got the second (replacement) passport, ending in 6005, in 2015 and has never reported that one stolen to the State Department. (*Id.*) Apparently, in 2021 Defendant reported to USCIS that his ex-girlfriend had stolen his "passport, naturalization certificate, birth certificate, and Covid records," but never told the State Department about his passport having been stolen. (*Id.*) The 6005 passport remains valid. (*Id.*)

At the hearing, the Court also inquired of the cousin named Peter with whom Defendant proposed to live if released. Peter stated that, while Defendant could live with him, his wife was not willing to post a bond in support of Defendant's appearance. (Tran. at 17-18.) The United States has since notified the Court that, when FBI agents sought to seize the Lamborghini Defendant allegedly purchased with fraudulently obtained funds, Peter tried to take possession of the car ahead of law enforcement. (*Id.* at 6-7.)

The United States also provided additional information about the Defendant's financial condition. It explained that, as of April 2021, Defendant had control of more than $6.3 million from his fraudulent activity. (Dkt. 60 at 7-8.)[1] Following the indictment here, the United States froze $1.9 million, but Defendant apparently spent or otherwise placed the remaining money beyond the reach of law enforcement. The United States says Defendant may still have access to that money.

II. Legal Standard

The Bail Reform Act, 18 U.S.C. § 3141-3150, governs the release and detention of defendants awaiting trial. It provides for the pretrial detention of a defendant if "the judicial officer 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 and the

[1] This included $3 million from the PPP fraud and $3.3 million from the tax fraud. Although not clear, it appears the United States clawed back most of the PPP loan.

community. . . ." 18 U.S.C. § 3142(e)(1). In determining whether there are conditions of release that will reasonably assure a defendant's appearance at trial, a court must consider: (1) the nature and circumstances of the offenses 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 the community that would be posed by the person's release. 18 U.S.C. § 3142(g).[2] When the government seeks pretrial detention because a defendant poses a serious risk of flight, the government's burden of proof is by a preponderance of the evidence. *United States v. King,* 849 F.2d 485, 489 (11th Cir. 1988). For detention based on danger to the community, the burden of proof is clear and convincing evidence. *Id.*

The Bail Reform Act allows either party to seek review of an order requiring pretrial detention. 18 U.S.C. § 3145(b). The district court then reviews the magistrate judge's decision *de novo*. *United States v. Hurtado*, 779 F.2d 1467, 1480 (11th Cir. 1985); *United States v. Gavaria*, 828 F.2d 667, 670 (11th Cir. 1987). The district court may rely entirely

[2] As the Court determines defendant is a risk of flight, it does not assess his dangerousness to the community.

on the pleadings and the evidence developed before the magistrate judge or it may conduct its own evidentiary hearing. *King*, 849 F.2d at 490.

III. Analysis

This Court held an evidentiary hearing to assess the factors relevant under 18 U.S.C. § 3142(g) and to determine whether there are conditions of release that will reasonably assure Defendant's presence at trial and the safety of the community. The government introduced evidence about the charges against Defendant, the evidence supporting those charges, his connections outside the United States, and his efforts to change his identity. Counsel for Defendant also presented evidence about his ties to the district. The United States then provided additional information, as explained above.

A. Nature and Circumstances of the Offenses Charged

Defendant is charged with four felony counts involving the theft of more than $9 million from the United States. If convicted on the bank fraud charges, he could face up to 30 years in prison. A preliminary analysis of the Sentencing Guidelines also suggests Defendant likely faces a recommended Guideline sentence (if convicted) of 135 to 168 months. (Dkt. 60 at 12.) The seriousness of the charges provides Defendant significant incentive to flee.

The United States says it will likely supersede the indictment to add charges for tax fraud and aggravated identity theft. If convicted of the latter, Defendant would face a two-year mandatory sentence to be served consecutively to any sentence on the fraud charges. The United States has not yet added these charges, and they are not the basis for the Court's decision. But the threat of further charges provides Defendant additional incentive to flee.

The nature and circumstances of the offense weigh heavily in favor of detention.

B. Weight of the Evidence

The Court acknowledges that the weight of the evidence is the least important factor in a detention analysis. *See United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986). Even so, the evidence is significant. The indictment catalogues Defendant's efforts to defraud the United States for the PPP loan and his efforts to conceal and spend the illegally obtained money. The United States apparently can trace the funds from Defendant's fraudulent application into his personal bank accounts and then to his personal use. Defendant has never not seriously challenged the strength of the evidence against him.

The evidence proffered weighs in favor of detention.

C. History and Characteristics of the defendant

Defendant is a naturalized citizen. But, according to the Magistrate Judge (who relied on the Pretrial Services Report), Defendant does not have substantial ties to this district, having only lived in the district for less than a year prior to his arrest. (Dkt. 52 at 8; Pretrial Services Report ("PSR") at 1.) Defendant has no verifiable work history and has not worked since 2016. (Dkt. 52 at 8; PSR at 2; Tran. at 20.) He also lied to the Magistrate Judge at the detention hearing when he claimed to work for a company (Flying Jack) that was funded entirely from fraudulent proceeds. (Tran. at 20.) He has significant ties outside the United States. He has family living in Ghana, for example, is a pilot, and still has a valid passport (despite claiming to have reported it stolen). (Dkt. 52 at 8.) The United States has not been able to recover the money he obtained in this case, suggesting he may still have access to some of it. He also wired $79,000 to family in Ghana and claimed to law enforcement after his arrest that he has "offshore" bank accounts in the

Emirates and Africa. (Tran. at 5-6; Dkt. 60 at 9-10.) He also said he has a company, employees, and assets in Africa. (Tran. at 7.) One of Defendant's colleagues also told the FBI that Defendant's sister was able to collect funds from overseas to help Defendant, thus further evidencing his ties outside the United States. (Dkt. 60 at 10.) Maybe he is not really from Ghana. That's what he told the Pretrial Services Officer. (Tran at 13.) But when interviewed more recently by a psychologist, he claimed to be from South Africa, 3,000 miles away from Ghana. (*Id.*) He also told the Pretrial Services Officer he was not married and the psychologist that he had never been married. (Dkt. 60 at 4.) But the United States now says he claimed to have been married when he applied for U.S. citizenship. (*Id.*) So perhaps his citizenship was wrongfully obtained. And then there is the disturbing fact that, after obtaining the fraudulent funds, Defendant petitioned the State of Georgia to change his name—pretty good evidence he wants to conceal his identity. Against all of this, Defendant merely says he can live with Peter. But Peter will not post collateral to assure Defendant's appearance.

In a nutshell, Defendant has no local ties or employment, has family ties, money, and (perhaps) employment overseas, owns a valid passport (that he still has not reported as stolen), and knows how to fly a plane. Rolling into that the United States's inability to recover more than $1 million he took, considering the shifting information about where he is from and whether he is married, and pondering his efforts to change his name leads to one conclusion: Defendant's history and characteristics favor detention and give almost no assurance he will remain in the district for trial.

IV. Conclusion

Having considered all available information and the factors set forth in Title 18, United States Code, Section 3142(g), the Court concludes no condition or combination of conditions will reasonably assure the appearance of Defendant at trial. He faces significant charges that could result in significant jail time. The United States has substantial evidence of his involvement in the charged offenses. Defendant has no ties here and significant ties outside the United States. He has no property tying him to the United States and could present no family or friends who might be willing to post a surety so as to assure his appearance. Defendant clearly has plenty of motive to flee the United

States (possible incarceration here and family and money overseas) as well as the manner and means of doing so (money and a passport).

After a *de novo* and independent review, the Court **DENIES** Defendant's Motion for Review of the Magistrate Judge's order of detention (Dkt. 50) and Defendant's pro se motion to appeal order of detention (Dkt. 49).

SO ORDERED this 19th day of September, 2023.

MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE