

1 The following is the PDF of an official transcript. Official
2 transcripts may be filed in CM/ECF only by the Official Court
3 Reporter and will be restricted in CM/ECF for a period of 90
4 days. You may cite to a portion of the attached transcript by
5 the docket entry number, referencing page and line number,
6 only after the Court Reporter has filed the official
7 transcript; however, you are prohibited from attaching a full
8 or partial transcript to any document filed with the Court.

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

UNITED STATES OF AMERICA,)
) CRIMINAL ACTION NO.
 vs.) 1:22-CR-00171-MLB-RDC-1
)
)
 CARL DELANO TORJAGBO,)
)
 Defendant.)
 _____)

BEFORE THE HONORABLE MICHAEL L. BROWN
TRANSCRIPT OF MOTION HEARING
AUGUST 15, 2023

APPEARANCES OF COUNSEL:

For the Government: JOHN R. PHILLIPS
UNITED STATES ATTORNEY'S OFFICE
For the Defendant: JAY L. STRONGWATER
STRONGWATER & ASSOCIATES, LLC

*Proceedings recorded by mechanical stenography
and computer-aided transcript produced by*

KEISHA M. CRUMP, RCR, RMR, RPR
Official Court Reporter
1759 U.S. Courthouse
75 Ted Turner Drive, SW
Atlanta, Georgia 30303
(404) 215-1354

1 (Atlanta, Fulton County, Georgia, August 15, 2023, in open
2 court at 2:00 p.m.)

3 - - -

4 P R O C E E D I N G

5 THE COURT: We are here for a motion hearing in the
6 United States versus Carl Torjagbo.

7 May I have appearances starting with counsel for the
8 United States.

9 MR. PHILLIPS: Good afternoon, Your Honor. Russell
10 Phillips for the United States.

11 THE COURT: And for the defendant?

12 MR. STRONGWATER: Good afternoon, Your Honor. Jay
13 Strongwater on behalf of Carl Torjagbo, who is seated to my
14 right.

15 THE COURT: All right. So it was my understanding
16 that there was a competency evaluation done. Is that correct?

17 MR. STRONGWATER: Yes.

18 THE COURT: And that has been resolved?

19 MR. STRONGWATER: The report has come back from the
20 BOP psychologist who says that Mr. Torjagbo is competent.

21 THE COURT: Okay.

22 MR. STRONGWATER: May I remain seated?

23 THE COURT: Yes.

24 MR. STRONGWATER: Okay.

25 THE COURT: So how should we proceed now with this

1 case?

2 MR. STRONGWATER: I believe the appeal from the
3 detention order is ripe for the Court to look at.

4 THE COURT: Okay. And then what happens after that?
5 Where are you all in the discovery process?

6 MR. STRONGWATER: There is a pending Jackson-Denno
7 hearing. Judge Cannon earlier today wanted -- asked us to ask
8 the Court whether that's something the Court wanted to hear or
9 refer back to her.

10 THE COURT: Okay.

11 MR. STRONGWATER: I think discovery has been
12 completed. There is a question of whether a competency
13 hearing is necessary after we consult with Mr. Torjagbo and
14 the psychologist who made the initial finding on our behalf,
15 our behalf being the defendant's behalf. And we have ten days
16 to two weeks to get back to the magistrate judge on that.

17 THE COURT: You have how long to get back to her?

18 MR. STRONGWATER: Ten days, ten working days.

19 THE COURT: All right. Do y'all want to talk about
20 the bond today then? Are you ready to do that today?

21 MR. STRONGWATER: Yes, Your Honor.

22 THE COURT: Are y'all ready to do that today?

23 MR. PHILLIPS: Yes, Your Honor.

24 THE COURT: Okay. I have read the magistrate judge's
25 prior order. I have read the motion for reconsideration, and

1 I have read the Government's response to that. It seems to me
2 as though, and I think the Government makes the point that the
3 facts relied upon by the magistrate judge to deny bond on the
4 grounds that he is a flight risk remain exactly the same as
5 they were before. Is that right? Is there any new
6 information to be considered?

7 MR. STRONGWATER: I hope so. That's why we're before
8 the Court.

9 THE COURT: Okay.

10 MR. STRONGWATER: By way of proffer, Your Honor.

11 Mr. Torjagbo is accused of obtaining a
12 multimillion-dollar PPP loan.

13 THE COURT: I know.

14 MR. STRONGWATER: Yes.

15 THE COURT: Nine million. He tried for 13; he got
16 nine, almost 10 million. Some amount of it was clawed back.
17 The rest of it was spent on a Lamborghini, a BMW, some
18 property, some tractor trailers, and the rest of it is in the
19 wind somewhere.

20 MR. STRONGWATER: All but that last comment, I think,
21 is accurate. I think the money -- the loan proceeds have been
22 either frozen through bank accounts or financial accounts or
23 the property -- or the real property and the personal property
24 that was purchased with the loan proceeds have been seized, so
25 there's been, I believe, a full recoupment of the loan

1 proceeds.

2 THE COURT: What do you say about that on behalf of
3 the United States?

4 MR. PHILLIPS: Judge, that's -- that's not entirely
5 correct. First of all, I think it's important to make clear
6 that it's not only the nine-and-a-half million dollars that
7 the defendant obtained in the PPP fraud loan, but three days
8 before that, he obtained roughly three-and-a-half million
9 dollars by filing a phony tax return. And at the same time,
10 he filed a very similar return, which, fortunately, the IRS
11 flagged and did not fund seeking another three-plus million
12 dollars. So within three days just by filing phony paperwork,
13 he got more than \$13 million in taxpayer money.

14 THE COURT: How can it possibly be that easy?

15 MR. PHILLIPS: That's a great question. I don't
16 know.

17 THE COURT: How could it possibly be that easy?

18 MR. PHILLIPS: I know, Judge, that during the
19 pandemic, there was this push to push the CARES money out to
20 try to save small businesses from going under because they
21 couldn't pay their employees because they were shut down, and
22 so that was the reason for putting out, I think, eventually
23 \$800 billion in CARES Act money through the PPP loan program.
24 And in order to do that, a lot of those loans, you know, just
25 could not be vetted. And so, roughly, a third of that amount

1 now we're being told was fraud, so hundreds of billions of
2 dollars in fraud money.

3 And this defendant got what I believe is the largest
4 PPP loan in this district, certainly the largest one that we
5 have discovered to be fraudulent. It's the largest one that
6 we've investigated, the largest one that we've prosecuted as a
7 single loan. There might be others who got, you know, through
8 fraud, multiple loans. But in terms of just the single value
9 of one loan, this is at the top.

10 But the phony tax return where he just makes up
11 employment information and files that, and they literally just
12 wire him three-and-a-half million dollars, and he tried to get
13 another three-and-a-half by doing the same thing. So why
14 they'd flagged that one and not the first one, I don't know.

15 THE COURT: He got about \$14 million; is that your
16 estimate?

17 MR. PHILLIPS: Roughly, yeah.

18 THE COURT: Of which how much has been recovered or
19 frozen or was not provided?

20 MR. PHILLIPS: Well, that's a difficult question to
21 answer, but let me explain how we got to where we are.

22 THE COURT: The reason I ask is because a large part
23 of the magistrate judge's conclusion seems to me rightfully
24 focused on the fact that he may have assets. He clearly has
25 ties overseas. He is a pilot, and he has the -- if he has the

1 means to abscond, that would go a long way. I think it went a
2 long way with the magistrate judge. It would probably go a
3 long way with me. That's why I'm curious about that.

4 MR. PHILLIPS: Well, that's right, Judge. The
5 loan -- the bank that funded the PPP loan got scared that
6 there was fraud, and they clawed back some of the money. But
7 they had already lost millions and millions of dollars in the
8 initial transfer.

9 Well, first, they put the whole nine-and-a-half
10 million in his account, and he immediately took out over
11 3 million and moved it to a different bank and then started
12 spending that. And he bought the \$1.7 million house in
13 Marietta and all the cars and other goodies that are listed in
14 the various things that we filed, the indictment, and the
15 seizure warrants and so forth. But it's -- it's more than
16 just that because he got the tax money too. He got
17 three-and-a-half million roughly there.

18 And when he was arrested, he made a statement to the
19 FBI after he was advised of his rights, and this is going to
20 be the subject of the Jackson-Denno hearing. But the
21 Government's view on that and what it says on the recording --
22 there's an audio recording the Court can listen to -- and he
23 tells the FBI that he has offshore accounts.

24 And the reason he's making that statement is to -- is
25 because the FBI said where did you get the money to buy these

1 things, these trucks, these trailers, these fancy cars, this
2 house, et cetera, get the plastic surgery for your abs, the
3 surfer ab; where did you get the money to pay for that? And
4 he said, oh, I'm -- you know, I'm very successful. I'm in the
5 gold mining business. And the agent said, yeah, I know, you
6 told, you know, the PPP folks that you had 493 employees. He
7 didn't -- he didn't use that number, but that's what he said
8 in his loan application.

9 And he tells Mr. Torjagbo, where did you get the
10 money? And Torjagbo says I'm very successful. I'm in the
11 gold mining business in Africa. And he eventually tells the
12 agent my employees and my assets are in Africa. Well, why are
13 you getting a PPP loan from the American taxpayers if you've
14 got a gold mining operation in Africa that is suffering from
15 the pandemic? But that's what he said. And he said my money
16 is tied up in offshore accounts. He told the agent that he
17 had accounts in Africa and Switzerland, as I recall. And so
18 by his own --

19 THE COURT: And are you -- I'm sorry to interrupt
20 you, but let me just make sure. Are you suggesting that that
21 is, in fact, true or are you suggesting that he might have
22 some offshore accounts?

23 MR. PHILLIPS: I have no way of knowing, Your Honor,
24 right. I have not been able to check that out. That is what
25 the defendant told the FBI. I don't believe --

1 THE COURT: And but you're going to argue that he
2 might because I don't remember reading that at least in the
3 order.

4 MR. PHILLIPS: We did not have that information at
5 the time of the detention hearing. I have not been able to
6 get the audio. I haven't been able to listen to that, and so
7 they -- this all happened the same day they brought the
8 defendant in and we had his bond hearing.

9 THE COURT: But you're going to argue that that means
10 he might have offshore assets that -- and by the way, we're
11 missing some millions of dollars?

12 MR. PHILLIPS: We're missing millions of dollars.

13 THE COURT: Is that true? Are you, in fact -- there
14 is still millions of dollars that have not been accounted for?

15 MR. PHILLIPS: That's right, Judge. Because
16 remember, he got more than \$3 million of PPP money, then he
17 got roughly three-and-a-half, round numbers, from the IRS, so
18 we haven't been able to seize all of that.

19 What we did seize, and there are numerous, I think,
20 probably 20 or so seizure warrants that we obtained for each
21 of these fancy vehicles, plus I think it's roughly 11 tractor
22 trailers, somewhere in that ballpark, ten or 11 tractor
23 trailers that he had bought to start a new business.

24 And so not only is he telling the FBI I have money in
25 offshore accounts, but we know that he used taxpayer money to

1 start a new business.

2 And even though he lived in Georgia, he registered
3 this new business in Wyoming. It's a company that's in the
4 trucking business, and he opened up bank accounts in the names
5 of this trucking company, and then he bought these ten or 11
6 tractor trailer trucks, which we have seized.

7 But he's trying to start a new business with the
8 taxpayer money that was given to him because he swore under
9 oath that he had 493 employees and a \$1.5 million
10 approximately monthly payroll that he had to make for these
11 existing people. There is no evidence of any of that, so I
12 would not count on anything that the defendant says as being
13 true. I just know that that is a statement that he made to
14 the FBI.

15 I don't have any evidence that those accounts exist,
16 but I also don't have the millions of dollars that were
17 missing. All of the accounts that we knew about, we seized.
18 We got a seizure warrant. We took the money out of those
19 accounts, so they're not just frozen. We actually took the
20 money out of the accounts. They no longer exist.

21 THE COURT: By your own account, how much money has
22 not been recovered either -- I'm assuming you seized the
23 house, the Land Rover, the tracts of land, the BMW, and the
24 Lamborghini.

25 MR. PHILLIPS: That's right.

1 THE COURT: You seized all of those?

2 MR. PHILLIPS: There's a Land Rover. We seized all
3 of those things, and plus all of the tractor trailers.

4 THE COURT: Okay. How much do you think is miss --
5 has not been accounted for?

6 MR. PHILLIPS: I'm terrible with math. I don't know
7 the exact number, but millions of dollars.

8 THE COURT: Can you ask? Does your agent know? Does
9 he have any better...?

10 MR. PHILLIPS: We're checking with our financial
11 person at the FBI who's been working with us on that. But
12 it's a substantial amount of money. Let's put it this way,
13 Judge.

14 THE COURT: Enough.

15 MR. PHILLIPS: Enough money that if a person were so
16 inclined to flee, he could certainly finance that flight to a
17 different country, get a private jet, and fly anywhere in the
18 world he wanted to, not to mention the fact that as you know,
19 he's a licensed airline transport pilot, and he's a flight
20 instructor.

21 THE COURT: And he has family in Ghana; is that where
22 it is?

23 MR. PHILLIPS: He does, Judge. But I'm glad you
24 brought that up because that's an interesting topic. He told
25 pretrial services at the time of the bond hearing that he was

1 born in Ghana, and that's an important factor because it goes
2 into the arguments that I made in my brief about him not
3 having substantial ties to this district because he was born
4 there, still has family there. He wired fraud money to his
5 mom, who allegedly was sick there in Ghana.

6 But when he was interviewed most recently by the
7 psychiatrist at the BOP, he told that doctor that he was born
8 in South Africa, not Ghana. Those countries are roughly
9 3,000 miles apart, Judge. That's like saying, you know, I was
10 born in LA but you were really born in New York. I mean,
11 that's preposterous. Why would you make that statement?

12 THE COURT: It's more like you saying you were born
13 in LA and you're really born in Brazil.

14 MR. PHILLIPS: Okay.

15 THE COURT: Because it's not even the same country.

16 MR. PHILLIPS: It's not even the same country. And
17 so those are his words. He's made two different statements.
18 They both can't be true. So one of those statements is -- at
19 least one of them is false. We know that.

20 So he does not have substantial ties to the charging
21 district, so he's got the means to flee if he wants to do
22 that, the skill that we can't take away from him, even if he
23 says here's my passport, here's -- which he claims he's
24 lost -- here's my airline transport pilot certificate and my
25 medical certificate and so forth; he still has this skill.

1 THE COURT: When did he become a naturalized citizen?

2 MR. PHILLIPS: When did he?

3 THE COURT: Yes.

4 MR. PHILLIPS: That is --

5 THE COURT: I'm wondering if he is subject to
6 deportation upon conviction?

7 MR. PHILLIPS: Judge, I think he's been a citizen for
8 a good while.

9 THE COURT: Is he nevertheless subject to deportation
10 if convicted on a fraud offense?

11 MR. STRONGWATER: No, Your Honor. I'm sorry.

12 THE COURT: No, that's all right. I want this to be
13 informal.

14 MR. STRONGWATER: Okay.

15 THE COURT: So please.

16 MR. STRONGWATER: My understanding is the only way --
17 once you're naturalized, you're not deportable unless your
18 N-400 naturalization petition contains a false statement in it
19 that would render your naturalization proceeding null and
20 void.

21 THE COURT: I'm not sure that's true. I thought you
22 could be deported if it was a crime of moral turpitude.

23 MR. STRONGWATER: I think only if your green -- I'm
24 sorry, Russell. I think it --

25 THE COURT: Only if it's a --

1 MR. STRONGWATER: If it's a green card status --

2 THE COURT: Okay.

3 MR. STRONGWATER: -- if you were a legal resident
4 alien.

5 THE COURT: Ah, right.

6 MR. STRONGWATER: Then you can be deported.

7 THE COURT: If you're naturalized, you have to lie
8 during the time of your process.

9 MR. STRONGWATER: Right. Because there's boxes have
10 you ever done a host of things, and if you check no and the
11 answer is yes, then the Government could come back and say
12 your naturalization petition was fraudulent --

13 THE COURT: Yeah.

14 MR. STRONGWATER: -- we're going to cancel your
15 naturalization, you're back to green card status, now you're
16 deportable.

17 THE COURT: I thought the magistrate judge -- yeah,
18 so she checked subject to removal and deportation after
19 incarceration, didn't she?

20 MR. STRONGWATER: I think that was an overzealous
21 check mark.

22 MR. PHILLIPS: According to what the defendant told
23 the psychiatrist at BOP, he was naturalized in 2012, so it's
24 been more ten years if that's right.

25 THE COURT: But you don't think he's subject to

1 deportation then?

2 MR. PHILLIPS: I don't, Judge, but that is not
3 something that we've looked at closely, and I'm certainly not
4 an expert in immigration. And I'm not in a position to make a
5 representation to the Court.

6 THE COURT: Okay. But at least insofar as the facts
7 I can rely upon, I cannot rely upon the check mark that he's
8 subject to deportation?

9 MR. STRONGWATER: That would be our position. I'm
10 sorry to interrupt you.

11 THE COURT: I don't see how I could rely on that
12 unless somebody gives me evidence.

13 MR. PHILLIPS: I'm not asking the Court to do that.

14 THE COURT: Okay. Fair enough.

15 MR. PHILLIPS: I think there's substantial evidence
16 otherwise. There are so many other things, Judge.

17 As I stated in my brief, it's our plan to supersede
18 the indictment to add additional charges based on the
19 aggravated identity theft. The FBI has interviewed some of
20 the people whose personal information, name and Social
21 Security number and so forth, was used in that fraudulent PPP
22 loan application.

23 And so we know that the defendant falsely represented
24 that this person was an employee. He used that person's name
25 and Social Security number, means of identification, so he's

1 committed aggravated identity theft. He did that in
2 connection with bank fraud filing a fraudulent PPP loan
3 application.

4 So our plan would be to increase the charges against
5 him. That -- and as the Court knows, that carries a mandatory
6 minimum of two years. And if we were to charge multiple
7 counts, if the Court were so inclined, the Court could, if it
8 chose to, stack those.

9 THE COURT: And does that have to be consecutive to
10 any sentence he gets on the underlying fraud?

11 MR. PHILLIPS: It does, Judge. And so that just
12 makes it, you know, the consequences of a conviction that much
13 more severe. The charges are already serious, and so
14 regarding -- you know, the max -- the statutory maximum is 30
15 years for bank fraud, but it's unlikely that anybody is going
16 to get a 30-year sentence for bank fraud.

17 But because the dollar amount of the loss is so high,
18 and you've got all of these other factors that are involved,
19 his guidelines are going to be high. And so he's certainly
20 looking at a substantial prison sentence under normal
21 conditions. And if he's charged with the aggravated identity
22 theft on top of that, he's looking at even more, plus he would
23 be subject to a restitution order of, you know, \$14 million.

24 THE COURT: So he might be -- he might be somewhere
25 in excess of 27 just on the base offense level and the

1 addition for the amount if it's just 9 million.

2 MR. STRONGWATER: Judge --

3 THE COURT: And that's 70 months plus two years at
4 the low end of the guidelines.

5 MR. PHILLIPS: Right.

6 THE COURT: That's your point. I mean, if we're
7 putting -- if we're putting numbers to it, that might be a
8 conservative estimate of the guideline range.

9 MR. PHILLIPS: It would certainly give a reasonable
10 person cause to be scared and create a motive to flee if the
11 person didn't have strong ties to the community. This
12 defendant has never been married. His parents live in Africa.
13 He doesn't have any family here. He doesn't have a wife. He
14 doesn't have any kids. He doesn't have a long-term romantic
15 relationship that would cause him to stay here. He's got
16 literally nothing.

17 The house that he lived in, he bought with stolen
18 taxpayer money, and so he told pretrial services that it was
19 his intent that if the Court released him on bond that he
20 would go back there to live. That house is subject to
21 forfeiture.

22 I've had the person who runs the homeowners
23 association for that neighborhood, which is a very nice
24 neighborhood in Marietta, and they're very concerned because
25 the house is, you know, going to the dogs because there's

1 nobody there to take care of it, and they're worried about how
2 that's affecting their property values.

3 If the defendant didn't want to cooperate, which
4 that's his right, the Government is not able to do anything
5 with that. We've got a lien on that property, but we can't
6 sell it until the defendant has been convicted. And so that
7 house is just sitting there, and it's deteriorating. Nobody
8 is living in it. I'm not sure who's cutting the grass or, you
9 know, who's maintaining it. I know how hard it is to maintain
10 my own house. And if nobody is there to do those things, you
11 know, that's building up. So it's not the same place that he
12 left a year ago. It's certainly deteriorated over that time.

13 THE COURT: And it wouldn't be available to him to
14 live in anyways.

15 MR. PHILLIPS: He's not legally entitled to it. He
16 doesn't have family. He doesn't have other connections to the
17 district. He'd only lived in the district for a short time
18 before he committed this fraud. He didn't --

19 THE COURT: How long had he lived there?

20 MR. PHILLIPS: Based on what he told pretrial
21 services, I think that he had lived in the house for just over
22 a year and maybe claimed to be in the district for maybe two
23 years or so before the fraud.

24 THE COURT: Mr. Strongwater, do you want to correct
25 that?

1 MR. STRONGWATER: As far as the house, we're not
2 proposing that Mr. Torjagbo return to that home. Peter Irie,
3 his family member, is here in the courtroom.

4 THE COURT: What's his relationship to him?

5 MR. STRONGWATER: Peter, what's your relationship?

6 MR. IRIE: A cousin.

7 MR. STRONGWATER: A cousin. And he's been in touch
8 since the day Mr. Torjagbo --

9 THE COURT: And he lives here in Atlanta?

10 MR. STRONGWATER: Yes, in Buford.

11 THE COURT: And does he have a house?

12 MR. STRONGWATER: Yes, he does.

13 THE COURT: And what's the house worth?

14 MR. STRONGWATER: I'm sorry. Could I go back and ask
15 him? Well, let me qualify that.

16 THE COURT: And would he put the house up for bond?

17 MR. STRONGWATER: I think that precedes their -- no.

18 THE COURT: He would not?

19 MR. STRONGWATER: His wife does not want to post the
20 house as collateral for --

21 THE COURT: So what would he use to post for bond?

22 MR. STRONGWATER: I would -- as far as hard assets, I
23 don't know at the moment. What we're proposing was he does
24 have a place to live independent of this house, the
25 \$1.7 million house that's been seized or lienied on. He would

1 live with Mr. Irie and Mr. Irie's spouse. He would be under
2 either curfew or home confinement with a geolocation monitor.

3 THE COURT: What will he post for bond? You're
4 talking about an OR bond?

5 MR. STRONGWATER: No. If the judge set -- if the
6 Court set a bond, we would struggle to make those conditions.
7 I mean, right now we have restricted -- the only thing we can
8 propose to the Court at the moment is physical restrictions,
9 restrictions on him as far as where he can be and how it could
10 be monitored in addition to surrendering his pilot's license.

11 THE COURT: And the passport?

12 MR. STRONGWATER: We don't have the passport. I
13 don't think the Government has the passport.

14 THE COURT: No, the Government doesn't --

15 MR. STRONGWATER: We don't know where the passport
16 is.

17 THE COURT: He claims his girlfriend stole the
18 passport. Did he file a police report about that?

19 THE DEFENDANT: No, Your Honor. I --

20 THE COURT: Mr. Strongwater? You need to talk to
21 your lawyer.

22 MR. STRONGWATER: It was filed with ICE.

23 THE COURT: When was that done?

24 MR. STRONGWATER: Approximately 2021.

25 THE COURT: After his arrest in this case?

1 MR. STRONGWATER: No, prior to.

2 THE COURT: Do we know if that's true, Mr. Phillips?

3 MR. PHILLIPS: I do not, Your Honor.

4 THE COURT: But at any rate, somebody is willing to
5 let him have a place to live but is not willing to put his
6 house up as part of bond?

7 MR. STRONGWATER: I think the cousin is. The
8 cousin's spouse is not.

9 THE COURT: Is that right, sir?

10 MR. IRIE: Yeah, absolutely. We're going through
11 some sort of separation, so I have to get a consensus for that
12 but.

13 THE COURT: And you are --

14 MR. IRIE: I'm the cousin.

15 THE COURT: You're -- you are brother or sister with
16 his mother or his father?

17 MR. IRIE: With mom, mom side.

18 THE COURT: You are his mother's brother?

19 MR. IRIE: My mom is a sister to, how you call it,
20 his mom.

21 THE COURT: Yes. Your mom is his mom's sister?

22 MR. IRIE: Correct.

23 MR. STRONGWATER: Mr. Torjagbo's mother is his --
24 Peter Irie's aunt.

25 THE COURT: I'm just trying to make sure I

1 understand. So your mother is the sister of the defendant's
2 mother?

3 MR. IRIE: Correct.

4 THE COURT: Is that right?

5 MR. IRIE: Yes. That's correct.

6 THE COURT: Okay.

7 MR. PHILLIPS: So, Judge, the defendant has had no
8 lawful employment since at least 2016. He told the BOP
9 doctor, who evaluated -- evaluated him recently, that he lost
10 his previous job because he was arrested. And it was some
11 sort of a domestic dispute. He was charged with aggravated
12 assault and domestic violence and other things. Those charges
13 were dead docketed. We talked about that in the brief. And
14 he's not had any lawful employment since then.

15 So let's talk about the false statements that he's
16 made about his employment. As I mentioned earlier, he created
17 that sham company in Wyoming called FlyingJack. And so he
18 represented to the magistrate judge at the detention hearing
19 that he had been employed by FlyingJack for eight months.

20 That company was funded entirely by fraud proceeds.
21 It had no legitimate income. So any salary that the defendant
22 received from FlyingJack was nothing other than fraud
23 proceeds.

24 He can't go back to that job. All of the assets of
25 that company, the trucks and the trailers that he bought with

1 fraud proceeds have all been seized. That company doesn't do
2 any legitimate business. It doesn't have any employees. It
3 doesn't have a place of business. There's nothing to go back
4 to.

5 And at the detention hearing, defense counsel
6 admitted that the defendant had used PPP loan proceeds to buy,
7 quote, physical assets like tractors and trailers for his
8 other business. So he files a PPP loan application in the
9 name of the company called Kremkov Industries, which was
10 supposedly a gold mining operation. He lied and said he had
11 493 employees; it wasn't true. He said he had \$1.5 million,
12 \$1.4 million monthly payroll; that wasn't true.

13 And so he then takes the PPP money and he uses it to
14 fund another business, so there's nothing to go back to there
15 either. Kremkov is a sham. FlyingJack is a sham. And so he
16 has no employment. He has no employment history since he lost
17 his legitimate job, which I believe was as an airline pilot,
18 because of the issues that I mentioned.

19 He told the IRS not that he was employed by
20 FlyingJack, but that he was employed by Kremkov, and he told
21 IRS that he earned \$9.2 million in wages in 2020. In one year
22 he said he earned -- I owe taxes on \$9.2 million. That's what
23 he told the IRS, and that's why he got the big refund. That
24 was not true either.

25 So he just makes up statements wherever it's

1 convenient for him without regard to whether they're true,
2 without regard to whether they're consistent with what he said
3 before or anything. So how can you trust somebody like that
4 whose made all of these false statements under oath to get
5 money from the Government to come in and say, oh, Judge, I've
6 now changed my ways? You can believe me. If you let me out
7 on bond, I'll give you my airline transport certificate, and
8 even though I can't find my passport, scout's honor, I won't
9 flee. Now, I'll live with this guy right here that nobody's
10 ever seen before or ever heard of before today. That is not a
11 very reliable thing in my opinion.

12 The defendant has some criminal history. I'm not
13 saying he's John Dillard here, but it is something that needs
14 to be considered.

15 As the Court knows, the issue that the Government has
16 the burden of proof on is, is the defendant either a risk of
17 flight, which we have to show by a preponderance of the
18 evidence, or is he a danger to the community, which we have to
19 show by clear and convincing evidence.

20 And so to be a danger to the community, it doesn't
21 mean that you have to be a gangster, that you have to hurt
22 people physically or be a big drug dealer or somehow
23 threaten -- you know, beat people up or threaten them
24 physically. Being a danger to the community also includes
25 people who are a financial danger.

1 And somebody like this defendant who is so willing to
2 just disregard the law and just make up facts and figures when
3 it suits him to line his own pockets is clearly a danger to
4 the community.

5 And as the magistrate judge found at the detention
6 hearing, the fact that he's previously created false documents
7 makes it more likely that he would create false documents to
8 aid his flight if the Court were to let him out on bond.

9 So, previously, he was charged with aggravated
10 assault. He was charged with driving on a suspended license
11 and the failure to appear. So I think the failure to appear
12 is more serious than driving.

13 THE COURT: Was that dropped? Because that does
14 worry me.

15 MR. PHILLIPS: I don't show that that was dropped.

16 MR. STRONGWATER: I don't have the pretrial services
17 report in front of me.

18 MR. PHILLIPS: I do.

19 MR. STRONGWATER: Okay. We have that he -- it was
20 basically moving violations, so I think he might have -- it
21 was a 2008 conviction for traffic and driving violation.

22 MR. PHILLIPS: According to the page 3 of the
23 pretrial services report, it says he was arrested on
24 September 17, 1999, by the Brevard County Sheriff's Office in
25 Florida. He was charged with failure to appear for a

1 misdemeanor offense, and the disposition is unknown.

2 He was also charged with failure to appear, Judge,
3 but in a different jurisdiction by the Rockledge Police
4 Department in Rockledge, Florida, and that was roughly six or
5 seven months later on March 31st of 2000, and his license was
6 suspended indefinitely, and he was fined \$100.

7 MR. STRONGWATER: You said 2000?

8 MR. PHILLIPS: 3/31/2000.

9 MR. STRONGWATER: 2000.

10 THE COURT: Okay.

11 MR. PHILLIPS: He's had other charges, including the
12 driving while his license was suspended, aggravated assault,
13 intimidating and harassing a 911 operator.

14 THE COURT: Those were all dropped.

15 MR. PHILLIPS: They were, but the Court can consider
16 his entire record. The Court does -- you have discretion,
17 Judge. You can say I don't think that's worth considering or
18 I think it informs my judgment about what kind of person I'm
19 dealing with: A history of multiple arrests, multiple
20 different types of offenses, including the failure to appear,
21 and the violence on somebody that he lived with.

22 Regardless of who started it, who's to blame, what
23 who said what to whom and all that kind of stuff, it's still
24 not the kind of thing that -- that makes you feel comfortable
25 about having somebody out there dealing with the community.

1 I think there is evidence, Judge, that he is a danger
2 to the community for multiple reasons, and so I think that's a
3 factor that the courts should certainly give strong weight to
4 in its decision about whether to detain this gentleman.

5 And I've cited a number of cases in there that talk
6 about driving with a suspended license and failure to appear,
7 and they talk about it, and they describe the person as
8 somebody who has little to no respect for the law. And so I
9 think that's -- that's characteristic of the kind of person
10 that we're dealing here -- dealing with here, no respect for
11 the law, no respect for the rules. If I want \$14 million, all
12 I've got to do is file some phony papers, and the taxpayers
13 will give it to me, and then I'll go live like a king.

14 THE COURT: Well, I get that out of the lying to the
15 magistrate judge about what his employment was. I mean, when
16 you're in court and then you lie to the judge to say that you
17 were employed by FlyingJack, that's fairly brazen, in my
18 opinion.

19 MR. PHILLIPS: It is. In addition, Judge, he lied to
20 the FBI agent in his post-arrest statement. You can hear in
21 the recordings the agent says where did you get the money to
22 buy these things, and he said that's my own money; that's not
23 PPP money. And the agent says, come on, man, don't do that.
24 Don't -- don't say that. You know that's not true. There's a
25 paper trail. All of these bank records show where you got the

1 money. We've got the checks. We've got the wires. We know
2 how you got the money to pay for these things. And yet he
3 just brazenly lies to the FBI agent.

4 You could say, well, he was scared and he was
5 intimidated or whatever. There's no evidence of that on the
6 tape. You'll listen to the tape. You'll see there's no
7 evidence of him being intimidated or harassed in any way.
8 It's just -- he just chooses to say whatever.

9 I think the main thing that the magistrate judge
10 focused on and that I would certainly say is extremely
11 concerning to us is the defendant being a pilot and having all
12 this experience flying and being a flight instructor and the
13 missing money, those two things in combination.

14 Even if he didn't fly himself, if he said his skills
15 are rusty or whatever, he still possibly has the money to hire
16 somebody else to do that for him, and so that is -- that's a
17 huge concern.

18 So the factors, Judge, that I want the Court to pay
19 attention to, to give weight to in deciding this issue, the
20 nature and circumstances of the offense charged, we've already
21 talked about that, extremely serious, the weight of the
22 evidence. I know we throw around the word overwhelmingly or
23 overwhelming a lot. We talk about a lot of our cases having
24 overwhelming evidence; we truly do here. This, as the agent
25 said on the tape, is a paper trail case, a records case, and

1 those records don't lie. We didn't make those records up.
2 You know, JPMorgan and the other banks and the other people
3 who sold him these cars, well, these are their records. All
4 we did was go out and get them and assemble them.

5 And the evidence of him doing these things is
6 overwhelming. Plus he's never denied it. He's never said I
7 didn't buy a BMW, I didn't buy a Lamborghini, I didn't buy a
8 Range Rover, I didn't buy this house, I didn't have this
9 surgery on my abs. He admits he did all of those things.
10 He's just lied about was he entitled to the money and so
11 forth, and we don't know where a lot of it is.

12 So the weight of the evidence, extremely strong.
13 Defendant's history and characteristics, we've talked about
14 that in terms of his ties to the community and his employment
15 and so forth, and then the nature and seriousness of the
16 danger to the community, if the defendant were to be released.

17 And for all of those reasons, Judge, unless you have
18 some more questions, I'm happy to answer.

19 THE COURT: Just if you've gotten me the amount that
20 you think is missing?

21 MR. PHILLIPS: We're still looking for Mr. Share, and
22 we've not been able to get that. But if I do, I will
23 certainly provide that to you and to Mr. Strongwater.

24 THE COURT: Until then, you would describe it as
25 millions?

1 MR. PHILLIPS: I would describe it as extremely
2 significant. We believe it's in the millions. But whatever
3 that number is, we know that it's enough that could fund
4 flight to another country to avoid prosecution.

5 THE COURT: Okay. Mr. Strongwater.

6 MR. STRONGWATER: Your Honor, I don't -- other than
7 listening to the tape, I don't know what representations were
8 made when Mr. Torjagbo first appeared in front of the Court
9 for detention. I would say that my --

10 THE COURT: I thought he -- I thought the
11 representation was that he told the magistrate judge that he
12 had been working for eight months for FlyingJack.

13 MR. STRONGWATER: Is that in the pretrial service
14 report?

15 MR. PHILLIPS: It is. It's also in our brief. We
16 cite that page.

17 MR. STRONGWATER: I meant as far as -- I'm sorry to
18 interrupt.

19 MR. PHILLIPS: I was just saying we cited that page
20 of the transcript in our brief --

21 MR. STRONGWATER: Yeah.

22 MR. PHILLIPS: -- where that representation was made.

23 MR. STRONGWATER: Yeah, as far as the representation
24 that Mr. Torjagbo admitted that he used the funds to start the
25 trucking business, we weren't there. The Government said that

1 counsel, and I just wanted to make sure that the Court knew
2 that it wasn't us that made that representation.

3 Judge, all I can do is point the Court to 18 3142(c).
4 This is not a presumption case, and the statute for bond
5 suggests that conditions of release be under the least
6 restrictive conditions. And (c)(1)(b) sets out ten -- ten
7 specific conditions to consider, but is not an all-inclusive
8 list, so we'd ask the Court to be somewhat creative as far
9 as --

10 THE COURT: I don't see how I can be creative.

11 MR. STRONGWATER: Okay.

12 THE COURT: Because what you've given me is that he
13 can't afford to pay a bond, that all you've given me, the only
14 thing you've given me different from what was at -- in front
15 of the magistrate judge is that now there is a cousin that
16 would allow him to stay there, but that's not much, is it?

17 MR. STRONGWATER: It may not be much, but is it
18 sufficient. Similarly, I don't believe there is aggravated
19 identity theft in this case because my recollection of the
20 roster of employees did not contain Social Security numbers,
21 so it's missing a vital element of aggravated identity theft,
22 so the two-year consecutive, I don't think is going to apply
23 at the end of the day.

24 The third part is while you're still talking
25 ballparking and saying millions, in looking at the forfeiture

1 and the seizure notices valuing the house, it seems like most
2 of the money, not all of the loan proceeds, have been frozen,
3 clawed back or liened on.

4 THE COURT: Well, let me say this.

5 MR. STRONGWATER: Yes, sir.

6 THE COURT: I don't see how -- I think -- I think if
7 you look at the statute, there's a provision that says I have
8 to release him on or he should be released upon personal
9 recognizances or unsecured bond, unless the Court determines
10 that the release will not reasonably assure his appearance or
11 endanger the community.

12 I don't see how releasing him on an unsecured bond or
13 on his own recognizance would in any way assure his appearance
14 at trial. I think to do that would not reasonably assure his
15 appearance. I think if you just run two numbers on the
16 guidelines, the amount of the alleged loss, which I put it at
17 nine, even though it might be up to three, and that comes out
18 to -- given the amount of the underlying offense, I think I
19 said it comes out to a level 27 of 70 months.

20 MR. STRONGWATER: I had the same while you were --

21 THE COURT: Okay. And if you -- so even if you were
22 to say that it could go up to 94 if you add the aggravated
23 identity theft, regardless of that, that is a significant
24 amount of time, which would provide significant reason for
25 someone not to be here.

1 If you add to it, what Mr. Phillips has argued about
2 the risk of flight as a result of his lies, his lack of
3 employment, his lack of real ties here, his significant ties
4 overseas, I don't see how what you've said he could do,
5 personal recognizance or unsecured, could possibly be the
6 answer.

7 MR. STRONGWATER: May I have one second, Your Honor?

8 THE COURT: Yes.

9 MR. STRONGWATER: Your Honor, could we suggest this:
10 If the Court needs more -- or as more as security either in
11 the way of people, real property, or cash, not from
12 Mr. Torjagbo but from third parties, can the Court leave open
13 a final ruling for a few days so that we can see what we can
14 muster?

15 THE COURT: Well, you can -- you can -- sitting here
16 now -- is there anything else you wanted to present on this?

17 MR. STRONGWATER: No, Your Honor.

18 THE COURT: Okay. Sitting here now, I think the
19 Government has made a compelling case that they have met their
20 burden by a preponderance of the evidence to show me that he
21 is a risk of flight, not addressing, not rejecting, but I'm
22 just talking about that because that's enough regardless of
23 danger.

24 But the amount of -- the weight of the case, the time
25 that he faces, the lack of local ties, the ties overseas, the

1 type of offense being a fraudulent offense that has involved
2 so very much lying to get so very much money with some
3 significant amount of the money still not recovered, and
4 family overseas -- I could be leaving something else out --
5 all of that I think makes a very compelling case that he is a
6 risk of flight. And not having gone back and read some of the
7 cases or made a final determination, I think it's probably a
8 preponderance of the evidence.

9 I'm trying to think of what there could possibly be
10 that could give him that type of -- give me that type of
11 assurance. One of them might be if there wasn't a lot of
12 money missing because the threat -- I did leave out the pilot
13 and all that that entails.

14 But the missing money with the -- with the claim that
15 he has accounts overseas or at least that he has wired some
16 money to his mother overseas and he has ties overseas, all
17 puts the specter on a person who would rather get out of the
18 country and go live off the missing millions rather than stay
19 here, face what the Government has presented as a fairly
20 strong case, and face maybe a 70-month guideline sentence at
21 the bottom. That's a pretty strong risk of flight.

22 But I don't -- I don't know if I might be convinced
23 otherwise if I saw something else. I don't know. I kind of
24 doubt it. But I don't know. I don't know what it is that you
25 could come up with.

1 I can't think of a series of release conditions that
2 would do it. Certainly a home detention or a home confinement
3 or an electronic monitoring would not do that for me because
4 he could be in the wind within minutes of cutting it off his
5 leg, and there would be nothing to stop him from doing that.
6 And then he would have all of the reasons, assets, and ability
7 to not be here, okay?

8 MR. STRONGWATER: Yes, sir.

9 THE COURT: But if there's something else you could
10 think of, I'll listen to it, but I think the Government -- I
11 want to go back and look at it a little bit more, but I think
12 the Government has proven it by a preponderance.

13 I would like to know the amount of money. If it's a
14 couple of hundred thousand dollars, that's one thing. If it's
15 a couple million, that's pretty big, pretty big deal, so I
16 will leave it open for the Government to tell me that amount.
17 And if there's something you want to do in the interim, you
18 could do that as well, but I would like to know the amount.

19 MR. PHILLIPS: May I respond just briefly, Judge?

20 THE COURT: Yes.

21 MR. PHILLIPS: So we know that the original PPP loan
22 is more than 9.5 million. We know that there's a check that
23 the defendant wrote to Kremkov Industries, which was a sham,
24 when he moved that money from the original account where the
25 loan was funded to a different bank, and so we know that was

1 3 million that went there. Plus he got 3,366,000 and change
2 from the IRS on the fraudulent tax, so that's 6.3 million
3 right there.

4 Even if we assume, just for the sake of discussion,
5 that the bank that funded the PPP loan clawed back everything
6 except the \$3 million that he transferred immediately, that's
7 still almost six-and-a-half million dollars that he had.

8 So we have under our control a \$1.7 million house
9 that he paid in cash for, and then those multiple vehicles
10 that we talked about, the Lamborghini being the most
11 expensive; it cost, I don't know, three, 350, somewhere in
12 that neighborhood he paid for it. We've got a \$100,000 BMW, a
13 \$100,000 Range Rover, \$15,000 worth of surgery, a few hundred
14 thousand dollars for other miscellaneous properties.

15 In other words, Judge, there just isn't
16 six-and-a-half million dollars that he spent on all of those
17 things. He probably at most spent half of that on the trucks
18 and the trailers and all of these flashy things that he had.

19 So I feel very comfortable in saying that there's at
20 least several million dollars that we don't have control over.
21 But the FBI agent who's helping us with the financial part of
22 the case will be back in the office tomorrow, I believe, and
23 so we will certainly work with him to try to get that number
24 and give the Court our best estimate of what we think is
25 missing.

1 Just a couple of things I want to address --

2 THE COURT: We did not mention the fact that he tried
3 to change his name.

4 MR. PHILLIPS: He did change his name. Not tried, he
5 did.

6 THE COURT: Oh, he did actually change it to Karl
7 Lucius Delano?

8 MR. PHILLIPS: He legally changed his name in Cobb
9 County, yeah, the Superior Court of Cobb County. And the
10 timing of that is extremely suspicious. His version to the
11 BOP doctor was I waited until after I got a -- I became a
12 naturalized citizen to do it. Yeah, he waited about ten years
13 to do it.

14 He was saying it was because people had a hard time
15 pronouncing his name, and that's why he wanted to change it.
16 But the timing of it coincides with the fraud and the money
17 laundering, and you could see that he's using both names to do
18 the fraudulent transactions. You could see in the indictment
19 and the other documents that we filed that he uses both names
20 to commit the fraud and the money laundering.

21 So once he got the new name from Cobb County, he
22 didn't stop using the old name. He's just now using two
23 names. He also has two different Social Security numbers that
24 he's used.

25 Let me address one thing that Mr. Strongwater said

1 about the Government having names but not Social Security
2 numbers in the PPP loan application. The name and a Social
3 Security number are both forms of means of identification, as
4 that term is defined in Section 1028(a), the aggravated
5 identity theft statute.

6 There's no rule that I'm aware of that says that you
7 have to have more than one means of identification in order to
8 charge somebody with aggravated identity theft. The law, I
9 believe, is just the opposite that one of those is sufficient
10 by itself. So clearly he used the names of 493 people. Even
11 if he didn't use any Social Security number, he committed
12 aggravated identity theft if he knew that those were real
13 people who's names that he was using in connection with that
14 bank fraud. That's one thing.

15 The other one is I realize this is nitpicking, but I
16 don't want to create unnecessarily low expectations for
17 purposes of discussions with Mr. Strongwater. But I know that
18 there is at least one additional enhancement in the guidelines
19 that would apply, and that is if you get more than a million
20 dollars from a financial institution or multiple financial
21 institutions, that's plus two.

22 So in addition to the calculations that the Court
23 already did on the back of the envelope, I would ask start
24 thinking about the plus two because he clearly got more than a
25 million dollars from a financial institution.

1 THE COURT: Yeah, but that may very well be right,
2 but I think you get what you want by way of it being a serious
3 offense just at 70 -- 70 months is a lot of time. You're
4 right, it could be higher. I didn't -- I didn't run any of
5 the special characteristics. I simply used base offense level
6 and amount of the loss on the low end.

7 MR. PHILLIPS: By itself, that's a big number.

8 THE COURT: It is. Okay. All right.

9 MR. STRONGWATER: Could I ask the Government?

10 THE COURT: Yes.

11 MR. STRONGWATER: In talking about the clawback, what
12 bank was the 3 million transferred into?

13 MR. PHILLIPS: I think it went from JPMorgan Chase
14 to -- what's the big bank in Pittsburgh?

15 MR. STRONGWATER: PNC.

16 MR. PHILLIPS: I think it's PNC, yeah. You've got
17 all those.

18 MR. STRONGWATER: That has not been touched?

19 MR. PHILLIPS: Oh, no, the --

20 MR. STRONGWATER: I mean, to say that \$3 million was
21 transferred, I think --

22 MR. PHILLIPS: No, that account --

23 MR. STRONGWATER: That's not a missing pocket of
24 money.

25 THE COURT: No, I think what he's saying is there was

1 about between the PPP loan -- PPP loan and the tax return,
2 there was somewhere in the neighborhood of 12.

3 MR. STRONGWATER: Yes.

4 THE COURT: Of which six was actually obtained.

5 MR. STRONGWATER: Okay.

6 THE COURT: Of which three was transferred in that
7 big transfer of which some amount of that has been obtained
8 through the seizure of assets. But that amount, if you add up
9 what's in Government's pleading 34, if you add up the 800,000
10 for the trailers, assuming they've been seized, and the other
11 amounts in the chart, you get about 3.1 million, which would
12 mean there's still somewhere in the neighborhood of 3 million
13 missing, back-of-the-envelope stuff. Because I think the
14 Government said the other 3 million was clawed back by the
15 bank immediately.

16 MR. PHILLIPS: I think it was -- it might even be
17 closer to 6 million that was clawed back by JPMorgan Chase.

18 THE COURT: Okay.

19 MR. PHILLIPS: I know that there was the initial
20 transfer of \$3 million by check.

21 THE COURT: Yup.

22 MR. PHILLIPS: Because the defendant wrote on there
23 this is for payroll, and that went from Chase to PNC.

24 THE COURT: So that may -- if that was 3 million and
25 now it appears that you-all have retained assets that cost

1 about 3 million, perhaps there is not -- perhaps there is not
2 a lot of money missing.

3 MR. STRONGWATER: Because there's the \$600,000
4 deposit and the boat that was reclaimed. So we're dealing
5 with six figures to seven figures, but it's still something
6 for the Court to consider and something we have -- both sides
7 have to account for at the end of the day.

8 MR. PHILLIPS: We haven't seized \$6 million worth of
9 cash and property.

10 THE COURT: Okay. Well, we're all talking about
11 hypotheticals here. I'd like somebody to let me know, the
12 Government to let me know what they believe the amount that's
13 missing is, okay?

14 MR. PHILLIPS: Yes.

15 THE COURT: Because that is -- seems to be the
16 biggest part of the Government's argument here is that there
17 is a big incentive to flee because of what's been missing,
18 okay?

19 MR. PHILLIPS: Yes, Your Honor.

20 THE COURT: All right. Anything else?

21 MR. STRONGWATER: Not at this time. Nothing for
22 Mr. Torjagbo.

23 THE COURT: Say that again.

24 MR. STRONGWATER: Nothing for Mr. Torjagbo.

25 THE COURT: Okay. All right. Thank you--all very

1 much. I appreciate it.

2 MR. PHILLIPS: Thank you, Judge.

3

4 (The proceedings were adjourned at 3:00 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTERS CERTIFICATE

I, Keisha M. Crump, Official Court Reporter for the United States District Court for the Northern District of Georgia, with offices at Atlanta, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript is a true and accurate record of the proceedings.

This the 21st day of NOVEMBER, 2023.

/S/ Keisha M. Crump, RCR, RMR, RPR
Official Court Reporter
United States District Court
Northern District of Georgia