

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

UNITED STATES OF AMERICA

v.

MAURICE FAYNE, *a/k/a Arkansas Mo*

CRIMINAL INDICTMENT
1:20-CR-228-MHC-JKL-1
(SECOND SUPERSEDING)

**Government's Response in Opposition to
Defendant's Motion for Release Pending Sentencing**

The United States of America respectfully files this response in opposition to Defendant's motion for release pending sentencing (Doc. 189). This Court should deny the motion because Fayne fails to meet his burden of showing by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of any other person or the community if released.

I. Facts

A. Fayne's guilty plea

On May 11, 2021, Fayne pleaded guilty to Counts 1 through 6 of the second superseding indictment, including one count of conspiracy to commit wire fraud, three counts of wire fraud, one count of bank fraud, and one count of making a false statement to a financial institution insured by the FDIC. (Doc. 186-1 ¶ 1; *see* Doc. 96 ¶¶ 1-15). In his guilty plea, Fayne admitted that

- the amount of loss resulting from the offenses of conviction and all relevant conduct is more than \$3,500,000 but less than \$9,500,000;
- the offenses involved 10 or more victims and resulted in substantial financial hardship to one or more victims;
- he relocated, and participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials;
- the offense involved sophisticated means, and he intentionally engaged in or caused the conduct constituting sophisticated means;
- he derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offenses;
- he was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; and
- he willfully obstructed justice in this case.

(Doc. 186-1 ¶ 13).

B. Fayne's bond history

On May 13, 2020, Fayne was arrested on a criminal complaint charging bank fraud. (Docs. 1, 10). Because of concern that he might flee, the government contemplated filing a motion for detention at his initial appearance. (Doc. 144 at 10). The government's concerns were based on three things. First, Fayne falsely told federal agents that he did not use PPP loan proceeds for personal purposes. (*Id.* at 7-8). A substantial amount of the fraud money was unaccounted for – one account that had held fraud money had been “cleaned out,” and large amounts of cash had been removed from other accounts before the government could obtain seizure warrants. (*Id.* at 13).

Second, a search of Fayne's cellphone showed that, shortly after being interviewed by federal agents, Fayne conducted internet searches concerning "countries that will not extradite to the United States." (*Id.* at 8-9).

Third, when agents executed a search warrant at Fayne's residence a few days before arresting him, Fayne attempted to leave through the basement door but stopped when he saw an agent posted outside. (*Id.* at 10). Agents then searched Fayne's basement and found a bag containing \$70,000 in cash, leading them to conclude that Fayne might be a flight risk. (*Id.*).

In spite of these red flags, the government recommended a bond because Fayne surrendered to the FBI upon learning that a warrant had been issued for his arrest. (*Id.* at 8-9). Based in part on the government's recommendation, the Court released Fayne with conditions:

THE COURT: You're to avoid all contact, directly or indirectly, with anyone who you have reason to believe would be a victim or potential witness in this case. And I encourage the government to give [defense counsel] a list of potential witnesses or participants to put Mr. Fayne on as much notice as possible; however, if they fail to do that, that's not an excuse. If there's someone who it is later proven that you knew or very well should have known was a potential witness, meaning anyone who has any firsthand knowledge of the facts of this case, you're not to speak to that person about this case yourself or through any intermediaries other than your lawyer or investigators working for your lawyer.

(*Id.* at 23-24).

The Court further instructed Fayne not to commit any new crimes while on release. (*Id.* at 27). And the Court warned Fayne that “a violation of bond is grounds to revoke the bond.” (*Id.* at 21). A written order followed. (Doc. 9).

On May 18, 2020, Fayne’s probation officer sent Fayne a list of potential witnesses. (Doc. 145 at 17, 19-20; Doc. 154-1). Jimia Cain’s name was not on the “DO NOT CONTACT” list because, at that time, the government did not know about Cain. (Doc. 145 at 26). But the investigation continued, and that led to new charges being filed against Fayne, including charges related to a Ponzi scheme. (*Id.*; Docs. 17, 41, 96). Cain is a victim of that Ponzi scheme and therefore a witness in this case. (Doc. 145 at 32). Fayne knew that before the government did. (Doc. 145 at 27). Fayne knew and he had reason to know because Cain had invested hundreds of thousands of dollars in *his* phony trucking business. (*Id.*).

C. Fayne’s bond violations

On May 29, 2020, Cain filed a civil lawsuit against Fayne and Fayne’s ex-wife alleging that they had defrauded her with respect to her investment in Fayne’s trucking company. (Doc. 145 at 15). Shortly after Cain filed that lawsuit, two “thugs” went to her house and tried to intimidate her into dismissing her suit against Fayne. (*Id.* at 5). During the week of November 2, 2020, Fayne texted Cain and told her to leave his ex-wife alone. (*Id.* at 5-6). Cain replied: “I will do

everything in my power to help them put you in jail because what you did was wrong.” (*Id.* at 6). Fayne responded: “Ha ha. I won’t spend a day in jail.” (*Id.*). On November 9, 2020, Fayne sent another text message to Cain, threatening to sue her if she did not dismiss her lawsuit against him. (*Id.* at 6, 9).

Cain was not the first witness that Fayne contacted in violation of his release conditions. Fayne had previously contacted a witness who works for United Community Bank, the bank fraud victim, causing Fayne’s probation officer to warn Fayne, again, not to contact any victim or witness. (Doc. 145 at 37).

D. Fayne’s revocation hearing

After learning that Fayne had contacted a second witness, Jimia Cain, Fayne’s probation officer filed a petition for revocation. (Doc. 145 at 4-5). At the revocation hearing, the Court found by clear and convincing evidence that Fayne had “violated the condition of pretrial release preventing contact with potential witnesses.” (Doc. 126). The Court also found by clear and convincing evidence that Fayne is not likely to abide by *any* conditions of release. (*Id.*) (emphasis added). Thus, pursuant to 18 U.S.C. § 3148(b)(1) & (2), the Court Ordered that Fayne’s bond be “REVOKED and that he be DETAINED through trial and, if applicable, sentencing.” (*Id.*).

II. Legal Standard

“[R]elease pending sentencing is governed by a different statute than pretrial release.” *United States v. Perez-Salinas*, 762 F. App’x 979 (11th Cir. 2019) (citing 18 U.S.C. §§ 3142, 3143(a)). “The provisions of 18 U.S.C. § 3143 govern release pending sentencing.” Fed. R. Crim. P. 46(c). The relevant part of § 3143 states as follows:

[T]he judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence . . . be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released.

18 U.S.C. § 3143(a)(1).

This statute does three things that are significant. First, it “establishes a presumption in favor of detaining convicted defendants pending sentencing.” *United States v. Hill*, No. CR. 1:05-CR-0269-TWT, 2007 WL 1231729, at *1 (N.D. Ga. Apr. 24, 2007); *see also United States v. Ben-Ari*, 537 F. App’x 828, 831 (11th Cir. 2013) (noting that the statute says “shall order”); *United States v. Holtz*, No. CRIM. A. 92-459, 1995 WL 106895, at *2 (E.D. Pa. Mar. 13, 1995) (stating that “[t]he statute’s mandatory language . . . leaves no room for judicial discretion”) (citing *United States v. Strong*, 775 F.2d 504, 505 (3d Cir. 1985)).

Second, it provides that a court may release a convicted defendant pending sentencing only if it finds that the defendant is *both* unlikely to flee *and* unlikely to pose a danger to the safety of another person or the community. *Ben-Ari*, 537 F. App'x at 831 (citing 18 U.S.C. § 3143(a)(1)).

Third, it requires that the court's findings concerning risk of flight and danger to the community be supported by "clear and convincing evidence." *Id.* (citing 18 U.S.C. § 3143(a)(1)). This is "an intermediate standard of proof [that] lies somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt." *United States v. Owens*, 854 F.2d 432, 436 n.8 (11th Cir. 1988) (citation and quotation marks omitted). "Clear and convincing" means that the evidence is sufficient to persuade the factfinder that the defendant's claim is "highly probable." *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984); *United States v. Brown*, 635 F. App'x 574, 578 (11th Cir. 2015).

Under § 3143(a)(1), "[t]he burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant." Fed. R. Crim. P. 46(c). Thus, "[u]nlike a defendant who has not yet been convicted and for whom the statute gives a presumption for bail except in certain circumstances, . . . once a defendant has been convicted, albeit not yet sentenced, the burden shifts to [the] defendant." *Strong*, 775 F.2d at 505.

In evaluating whether a defendant has met this high burden, courts often refer to the factors listed in 18 U.S.C. § 3142(g). *United States v. Dickerson*, No. CR419-072, 2020 WL 7234516, at *4 (S.D. Ga. Sept. 9, 2020), *report and recommendation adopted*, 2020 WL 5904940 (S.D. Ga. Oct. 6, 2020). Those factors include the nature and circumstances of the offense, the weight of the evidence against the defendant, the defendant's history and characteristics, and the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. 18 U.S.C. § 3142(g).

Hearsay evidence is admissible at a hearing on a defendant's motion for release pending sentencing. *See United States v. Lockett*, 549 F. App'x 269, 270 (5th Cir. 2013) (rejecting defendant's argument "that the district court violated his rights to due process and confrontation when it allowed, over his objections, the introduction of hearsay evidence at the hearing on his motion for release on bond pending sentencing").

III. Analysis

Fayne has not shown by clear and convincing evidence that he would pose neither a risk of flight nor a danger to the safety of any other person or the community if released. *See* 18 U.S.C. § 3143(a)(1); *United States v. Sanyaolu*, No. 1:16-CR-126-WSD, 2017 WL 3668615, at *1, 3 (N.D. Ga. Aug. 25, 2017) (denying defendant's motion for release pending sentencing, and holding that defendant failed to meet his burden of showing by clear and convincing evidence that he was a not a flight risk, even though defendant presented evidence that he had no criminal history; he and his family had lived in Georgia for a number of years; he had stable employment; he had fully complied with his pretrial release conditions while on bond; he no longer had a passport; he was willing to abide by any conditions of release that the Court might impose; and he suffered from serious medical ailments, which had worsened because his detention facility did not have adequate facilities to treat him); *see also United States v. Cornish*, 12 F. App'x 363, 363-364 (6th Cir. 2001) (affirming pre-sentence detention of defendant convicted of wire fraud, money laundering, bank fraud, and making false statements to a bank, because defendant had not been truthful with District Court and Pretrial Services, and defendant failed to present clear and convincing evidence that he was unlikely to flee).

Moreover, “[a]n indefinite pre-sentence release, or even one exceeding 60 days, is an abuse of discretion.” *United States v. Hanhardt*, 173 F. Supp. 2d 801, 806 (N.D. Ill. 2001) (citing *United States v. Krilich*, 178 F.3d 859, 862 (7th Cir. 1999) (reversing district court’s order releasing defendant on bail, and holding that, under § 3143(a), “a district court may not release the defendant for an indefinite period”); *United States v. Holzer*, 848 F.2d 822, 824 (7th Cir. 1988) (reversing district court’s order releasing defendant on bail, and holding that § 3143(a) “would justify at most a stay of 30 or 60 days”)). “These restrictions are in place because there is little chance of a fundamental miscarriage of justice after there has been a finding of guilt, particularly where the defendant has pleaded guilty and made an unconditional statement that he is in fact guilty.” *Hanhardt*, 173 F. Supp. 2d at 806 (citing *United States v. Lane*, 252 F.3d 905, 908 (7th Cir. 2001) (“Once the defendant has been convicted, the likelihood of a miscarriage of justice is much less and so the conditions for release are much tighter.”)).

Fayne’s sentencing is scheduled for September 8, 2021 (Doc. 188), approximately 16 weeks from this writing. “The court would presumptively abuse its discretion to grant pre-sentence release until then.” *See Hanhardt*, 173 F. Supp. 2d at 806 (finding that a 12-week release would have been an abuse of discretion) (citing *Krilich*, 178 F.3d at 862; *Holzer*, 848 F.2d at 824-25). “And, there

are no guarantees that the sentencing will actually occur on that date, for sentencing dates are commonly continued for a variety of reasons.” *Id.*

Throughout this case, Fayne has made repeated efforts to continue matters. (See Docs. 27, 52, 56, 73, 153, 179). “[A]nd with past behavior being a barometer of future behavior, additional efforts seem likely. In short, it is easily foreseeable that the sentencing date will be continued beyond [September 8, 2021].” See *Hanhardt*, 173 F. Supp. 2d at 806. In fact, Fayne is already asking not only that he be allowed out on bond until sentencing but that he be allowed to remain on bond for “at least 4 weeks after that date.” (Doc. 189 at 3, n.1). “Section 3143 would not even allow pre-sentence release until [Fayne is sentenced], much less some period of time beyond.” See *Hanhardt*, 173 F. Supp. 2d at 806.

A. Fayne is facing a lengthy prison sentence now that he has been convicted and thus has a strong motive to flee.

There has been no material change in Fayne’s circumstances since this Court revoked his bond on December 22, 2020, except that he pleaded guilty on May 11, 2021 and, as a result, is now facing a lengthy prison sentence. (See Doc. 126 ¶ 7(a)). “[T]hese changes make absconding more attractive,” especially for someone like Fayne who recently had access to millions of dollars in fraud proceeds, much of which is unaccounted for. See *Krilich*, 178 F.3d at 862.

Fayne is facing a maximum term of imprisonment of 30 years on each of the six counts to which he pleaded guilty. (Doc. 186-1 ¶ 7). This gives him an “overwhelming motivation to flee.” *See Hill*, 2007 WL 1231729, at *1 (noting that defendant was facing a 30-year sentence, and rejecting his argument that he was not a flight risk because he had complied with his pretrial release conditions).

B. The crimes to which Fayne pleaded guilty are non-violent offenses, but that does not necessarily mean that he would not be a risk of flight or a danger to the community if released.

Fayne states that all of the crimes to which he pleaded guilty are non-violent offenses. (Doc. 189 at 3). That is true, but Fayne admitted in his guilty plea that he manufactured, purchased, and used fraudulent identity documents to carry out his illegal schemes. (*See* Doc. 96 ¶¶ 5(e), (f), (k), (p), 11; Doc. 186-1 ¶ 1; *see also* Doc. 96 ¶¶ 22-23). A “[d]efendant’s access to and capability of obtaining fraudulent identity documents supports a finding that he is a risk of flight.” *United States v. Rives*, No. 1:14-CR-00130-TWT-JFK-4, 2014 WL 12698578, at *2 (N.D. Ga. Oct. 7, 2014) (citation omitted).

Fayne also admitted in his guilty plea that he used an alias when he “disguised his voice and posed as M.B. and T.M. in phone conversations with investors.” (*See* Doc. 96 ¶ 5(k); Doc. 186-1 ¶ 1). A “defendant’s use of an alias . . . evidences a willingness and an ability to flee.” *United States v. Gillin*, 345 F. Supp.

1145, 1148 (S.D. Tex. 1972); *see also United States v. Ferguson*, No. 10-20403, 2013 WL 1364700, at *4 (E.D. Mich. Apr. 4, 2013) (finding that 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”).

Furthermore, 18 U.S.C. § 3143(a), “does not limit ‘danger to . . . the community’ to the threat of violence.” *United States v. Manso-Portes*, 838 F.2d 889, 890 (7th Cir. 1987). “The term ‘dangerousness,’ as used in the Bail Reform Act of 1984, has a much broader construction than might be commonly understood in everyday parlance.” *United States v. King*, 849 F.2d 485, 487 (11th Cir. 1988). “There can be no question that an economic danger, like that posed by a serial defrauder, falls under the broad umbrella of ‘dangerousness’ as that term is used throughout the Bail Reform Act.” *United States v. Giordano*, 370 F. Supp. 2d 1256, 1270 (S.D. Fla. 2005).

Fayne’s guilty plea establishes that he is a serial fraudster who should be detained pending sentencing because he is *both* a risk of flight and a serious economic danger to the community. *See United States v. Holloway*, No. 1:13-CR-378-WSD-AJB, 2014 WL 1028932, at *2 (N.D. Ga. Mar. 14, 2014) (detaining defendant pending sentencing “to make sure he appear[ed] at his sentencing and to protect the community from his irresistible propensity to engage in fraudulent

conduct”); *see also United States v. Bailyson*, No. 18-80124-CR, 2018 WL 3323210, at *4 (S.D. Fla. July 6, 2018) (“Defendant appears to be a serial fraudster and an economic danger to the community if released from custody. The Court therefore considers and credits this factor as it relates to serious risk of flight or nonappearance.”).

C. Fayne previously violated his bond conditions, and he fails to present clear and convincing evidence that he would not do so again if given the chance.

Fayne promises that, should the Court see fit to release him on bond, he will abide by whatever conditions the Court imposes. (Doc. 189 at 4). He made that same promise the first time he was released on bond. *See United States v. Morris*, 313 F. App’x 125, 137 (10th Cir. 2009) (finding that defendant’s “promise that *this time* he would do *everything* asked of him . . . calls to mind the old adage—fool me once shame on you, fool me twice shame on me”).

D. Fayne remained on pretrial release for approximately six months before he engaged in the conduct that caused his bond to be revoked.

Fayne states that he “remained on bond with no incidents or allegations of non-compliance” for approximately six months before his bond was revoked. (See Doc. 189 at 1). “It is not unusual for persons seeking pre-sentence release to point to their *compliance* with pre-trial release orders as evidence that they will

appear for sentencing. The argument is routinely rejected because prior to trial there is the possibility of no imprisonment, which evaporates upon a finding of guilt.” *Hanhardt*, 173 F. Supp. 2d at 806; *see also Manso-Portes*, 838 F.2d at 889 (holding that the district court erred in concluding that “because the defendants appeared for trial while released on bond, they [were] sure to appear for sentencing”); *United States v. Hills*, No. 1:16CR329, 2018 WL 3956865, at *4-5 (N.D. Ohio Aug. 17, 2018) (“[E]ach defendant [previously] asserted his innocence. Now that acquittal is no longer a possibility, an important incentive for them to appear in court is gone.”).

Moreover, Fayne has no standing to make the *compliance* argument; on December 22, 2020, this Court found by clear and convincing evidence that Fayne had “violated the condition of pretrial release preventing contact with potential witnesses. . . and that [Fayne] is not likely to abide by [any] conditions or combination of conditions of release.” (Doc. 126 at 1; *see Hanhardt*, 173 F. Supp. 2d at 806 (holding that defendant was foreclosed from making the *compliance* argument because “he failed to comply with the pre-trial release order”)).

E. Fayne willfully obstructed justice by lying to the Court at his revocation hearing.

Giving materially false information at a bond hearing constitutes obstruction of justice. *United States v. Prozer*, 544 F. App'x 844, 845 (11th Cir. 2013). A “[d]efendant’s willingness to obstruct justice evinces a lack of respect for the rule of law and weighs heavily towards a finding that Defendant is a flight risk and a danger to the community.” *United States v. Burstyn*, No. 04-CR-60279-ALL, 2005 WL 2297605, at *4 (S.D. Fla. Mar. 18, 2005).

Fayne admitted in his guilty plea that he “willfully obstructed justice” in this case. (Doc. 186-1 ¶ 13). First, Fayne lied to the Court when he stated that the reason Jimia Cain was suing him “had nothing to do with this case” and that he “didn’t know she was a potential witness.” (Doc. 145 at 39). Cain’s civil complaint (GX-1) alleges, in relevant part, as follows:

From at least 2014 to the present date, defendant Maurice Fayne . . . , Defendant FAYNE TRUCKING, LLC, . . . and others . . . fraudulently induced plaintiff Jimia Cain . . . to loan hundreds of thousands of dollars to them by means of misrepresentations and with no intent to repay them. They have conducted similar frauds against others, by means of wire communications in interstate commerce, in several states, and judgments have accordingly been entered against them in consequence of some of that wrongdoing[.] [Fayne’s wife] knowingly reaped the benefits of Mr. Fayne’s fraud and caused two men to threaten Ms. Cain with violence if she did not discontinue this action.

(*Id.* ¶ 1.1).

Cain's civil complaint plainly and unambiguously alleges claims against Fayne that arise from Cain's investment in Fayne's *trucking* company; in fact, the words *truck* and *trucking* appear 100 times in Cain's complaint. (*See id.*). The Indictment plainly and unambiguously charges Fayne with defrauding investors in that same *trucking* company. (*See* Doc. 41 ¶¶ 1-3; Doc. 96 ¶¶ 1-7). Therefore, the Court properly found that the allegations in Cain's civil complaint "mirror the claims in this criminal case." (*Id.* at 32; *see also United States v. Ramadan*, 458 F. Supp. 3d 657, 664 (E.D. Mich. 2020) (denying defendant's motion for release from pretrial detention because of defendant's "lies, deceitful activity and general untrustworthiness, [which] further increases his risk of flight and the danger he would pose to the community if he were released"), *aff'd*, No. 20-1450, 2020 WL 5758015 (6th Cir. Sept. 22, 2020)).

Second, Fayne lied to the Court when he stated that he had never seen Jimia Cain's lawsuit. (Doc. 145 at 40). The Affidavit of Service filed by the process server who personally served Cain's summons and complaint on Fayne states, in relevant part, as follows:

On the 12th day of June, 2020 at 7:11 PM at the address of 4029 MOUNTAIN SIDE TRAIL, DACULA, Gwinnett County, GA 30019; this declarant served the above described documents upon MAURICE FAYNE and [K.R.] by then and there personally delivering 2 true and correct copy(ies) thereof, by then presenting to

and leaving the same with MAURICE FAYNE, REGISTERED AGENT, SPOUSE, who tried to refuse service by refusing to take documents and did not state reason for refusal, with identity confirmed by subject saying yes when named, a bald black male approx. 45-55 years of age, 5'6"-5'8" tall and weighing 140-160 lbs., a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above.

(GX-2).

It is beyond dispute that Fayne's statements to the Court concerning both the nature of Cain's civil complaint and whether he had ever "seen" Cain's complaint were material to the issue of detention. "Material" means that the information, if believed, "would tend to influence or affect the issue under determination." *United States v. Doe*, 661 F.3d 550, 566 (11th Cir. 2011). "The relevant considerations are the kind of information provided and its tendency to influence the court, not the actual effect of a particular misstatement." *United States v. Bedolla-Zavala*, 611 F.3d 392, 396 (7th Cir. 2010). Information that sheds light on a defendant's honesty "is a highly relevant factor in determining whether a defendant should remain in custody or be granted bond, and thus is material." *Id.*

F. Fayne violated federal law while on pretrial release and after his bond was revoked.

While on pretrial release, and even after his bond was revoked, Fayne violated the wire fraud statute in connection with one or more schemes to defraud R.D. and R.D.'s company, CTC Transportation, LLC; and a Nebraska corporation called RFG Leasing, Inc.

R.D. provided the following information to federal investigators, as documented in interview reports furnished to the defense in discovery. R.D. lives in South Carolina. His company, CTC, operated briefly in 2009 but was dormant until Fayne called him and proposed a deal in late 2019 or early 2020. Fayne said that he owned three trucks, and he said that he wanted to lease them to CTC and pay R.D. 10% of the profits.

Fayne never had permission from R.D. to enter into contracts on behalf of CTC, and Fayne never had any ownership interest in CTC. On or about November 14, 2019, however, Fayne – pretending to be acting on behalf of CTC – signed a contract to lease three trailers from RFG Leasing. On November 17, 2020, RFG filed civil lawsuit against CTC seeking approximately \$35,000 in damages and alleging that CTC had defaulted on the lease agreement and had failed to return the trailers to RFG. Until he was served with RFG's complaint,

R.D. was unaware that Fayne had (in the name of CTC) entered into an agreement with RFG.

From approximately August 2020 through December 22, 2020 (when Fayne's bond was revoked), Fayne's three trucks secretly operated under CTC's DOT number and under its authority, in violation of DOT rules and regulations. According to R.D., by approximately October 2020, Fayne's three trucks were making approximately \$30,000-\$40,000 per month. R.D. told federal agents that Fayne never paid him his share of the profits.

Fayne also defrauded R.D. by engaging in unauthorized transactions with J.B. Hunt Transport Services, Inc., which has asserted a civil claim against R.D. and CTC for approximately \$14,000. Until Fayne got arrested in December 2020, R.D. and Fayne were running loads through J.B. Hunt. R.D. told federal agents that Fayne was (without R.D.'s knowledge) taking fuel advances from J.B. Hunt, which put R.D. "in the hole." Fayne was the only one able to take fuel advances because Fayne prepared and submitted the "packets" to J.B. Hunt. The "packets" falsely showed that CTC was operating in accordance with DOT regulations. Fayne's name was on the "packets," so Fayne was the only person entitled to receive fuel advances. Fayne promised R.D. that he would put R.D.'s name on the packets, but Fayne used his own name instead. *See United States v. Gill*, No.

CR S-06-0312LKK(GGH), 2008 WL 2120069, at *1 (E.D. Cal. May 20, 2008) (“Gill was indicted on an alleged wire fraud scheme involving his trucking business. Pared to its essence, the indictment allege[d] that Gill would agree with a party to transport freight, but then hire out the actual transportation of goods with another carrier. . . . Gill would receive payment from the party whose goods were shipped, but Gill would not pay the carriers.”).

Fayne admitted in his guilty plea that he provided and caused others to provide false and misleading information to the United States Department of Transportation (DOT). (*See* Doc. 96 ¶ 5(f); Doc. 186-1 ¶ 1). And while detained at RAD, Fayne made telephone calls, including the three described below, to conspirators and others in furtherance of his scheme to defraud R.D. and to instruct others to aid him in making false statements to the DOT:

- On December 31, 2020, Fayne called a male associate named Will and an unidentified woman. Together, they called R.D. They talked about running Fayne’s criminal enterprise from jail and creating another new company (not in Fayne’s name) if necessary. Fayne said: “Anything Will ask for, that’s good to go cause that’s coming directly to me. He wouldn’t have your number if I wasn’t cool with it. And then as far as DOT, you need to call them to see if they gonna cancel out, so we know if we need to do this other company yet or not. Uh, my name ain’t on none of this shit. So, I don’t know. I don’t know the address. I don’t know the PIN number. I ain’t, I ain’t got access to none of that. You know what I’m saying? So, you gonna have to handle that part so we can keep everything going in transition. . . . [T]hat’s \$4,000 a week profit, just off that one truck a week.”

- On January 19, 2021, Fayne said to Will: “I’m fixing to start working all angles to get Felicia’s authority situated real quick. We got to get some movement going.” Fayne also told Will to call Ryan and find out “what he needs to get his [DOT] authority. I thought he was working on it. We got to figure something out to get shit moving.”
- On January 20, 2021, Fayne called an unidentified male and said: “If I don’t get out of here next week, man, I’m gonna have to just kinda, how can I say this? Pretty much like this. You’re going to have to start a new company. I can walk you through the whole process. It’ll take about. It’ll take about 20 days, 21 days for it to be set up, though. And then money’ll start being made immediately. I’ll get you access to drivers, trucks, everything. You’ll have to go get a bank account. Everything’ll be coming to you. Just, you know, we’ll just be pretty much be partners. You see what I’m saying? . . . I’m kinda just preplanning ahead. You know what I’m saying? Just in case, you know. I might stay in here another two weeks. But whatever. I still need. . . We still need the money to be flowing. You see what I’m saying? It don’t make sense for me to flow the money right now and can’t nobody access it. You see what I’m saying? . . . Next week, if I don’t get out, like I said, we’ll set up the business side of things. You just run it. You know what I’m saying? We’ll split it right down the middle, 50-50. You see what I’m saying? I can walk you through everything, how to set up everything, how to get everything going. Get you all the drivers’ info, stuff like that. I’ll get my phones over to you – for business contacts, etc. You see what I’m saying? Just run it up. You know what I’m saying? Take that as a blessing and run it up. You know what I’m saying?” The man Fayne was talking to said, “I got you 1,000 percent.”

Fayne’s jail calls show that Fayne has a network of flunkies and conspirators who assist him in carrying out his fraudulent schemes. This Court may take into account the activities of others that Fayne “supervises and controls” in determining whether Fayne is a danger to the community and whether his supervision of criminal activity can be “curtailed by any condition or

combination of conditions of release.” *See United States v. Ciccone*, 312 F.3d 535, 539-543 (2d Cir. 2002); *see also United States v. Infelise*, No. 90 CR 87, 1991 WL 268654, at *1 (N.D. Ill. Nov. 27, 1991) (denying defendant’s motion to be released on bond pending trial because defendant “continue[d] to engage in illegal activity, in violation of his release order, [and] also enlisted the help of [an associate] so his illegal activity would not be detected[, which] shows defendant[’s] inability to abide by the conditions of his release and his willingness to use others to conceal his violations”).

“The fact that [Fayne] has failed to abide by conditions of supervision, apparently engaging in additional criminal conduct while on supervision, supports a finding that he is a risk of flight and danger to the community.” *See Rives*, 2014 WL 12698578, at *3.

G. The length of Fayne’s residence in the community is insufficient to justify his release pending sentencing.

Fayne points out that he has resided in Georgia since 2017. (Doc. 189 at 3). But there is no evidence that he did anything while living in this state other than commit fraud. Fayne admitted in his guilty plea that he ran a multimillion-dollar Ponzi scheme from March 2013 through May 2020 and that he obtained a multimillion-dollar PPP loan under false pretenses in April 2020. (*See* Doc. 96 ¶¶ 1, 8-13); Doc. 186-1 ¶ 1). Fayne also admitted that he moved to Georgia

specifically to evade law enforcement. (*See* Doc. 96 ¶¶ 2-3); Doc. 186-1 ¶ 13(d)). In other words, Fayne's ties to this state are "hardly more than a reflection of" his criminal activities here; Fayne has not shown "the sort of [community] ties from which [the Court] can infer that [he] is so deeply committed and personally attached [to the state] that he cannot be driven from it by the threat of a long prison sentence." *See United States v. Rueben*, 974 F.2d 580, 586 (5th Cir. 1992).

H. Fayne's decision to surrender when he learned that a warrant had been issued for his arrest is a point in his favor but insufficient to justify his release now that he has been convicted.

Fayne argues that he should be released pending sentencing because he surrendered when he was notified that a warrant had been issued for his arrest. (*See* Doc. 189 at 1; Doc 4). "Although this evidence supports [Fayne's motion] for release, it does not by itself establish that there is no risk of [his] flight." *See United States v. Mitan*, No. CRIM.A. 08-760-1, 2009 WL 604695, at *12 (E.D. Pa. Mar. 6, 2009) (rejecting defendant's argument that he was not a flight risk since he surrendered following his indictment, appeared at his initial hearing, and hired counsel to defend the charges).

I. Fayne fails to show that he cannot obtain appropriate medical treatment while in custody.

Fayne states that he wants to be released pending sentencing so that he can “see a doctor about a shoulder injury that he has had since October 2019.” (Doc. 189 at 4). Fayne has provided no evidence, nor does he even allege in his motion, that he cannot obtain appropriate medical treatment for his shoulder injury while in custody, or that his shoulder injury would prevent him from fleeing. *See Sanyaolu*, 2017 WL 3668615, at *2-3 (denying defendant’s motion for release pending sentencing because defendant did “not demonstrate[] that his health would preclude him from fleeing, and there [was] no evidence that he [could not] obtain necessary medical treatment while in custody”); *United States v. Davis*, No. 1:16-CR-00074-WSD, 2017 WL 1325345, at *1-2 (N.D. Ga. Apr. 11, 2017) (denying defendant’s motion for release pending sentencing because “[d]efendant [did] not present[] any evidence that the Marshal Service ha[d] not provided him with the appropriate care for his medical conditions”); *United States v. Dimora*, No. 1:10CR387, 2012 WL 1409396, at *4 (N.D. Ohio Apr. 23, 2012) (denying defendant’s motion for release pending sentencing, and stating that nothing defendant presented to the court suggested that he was “not healthy enough to leave the jurisdiction, and seek medical treatment in another locale”), *aff’d* 750 F.3d 619, 632 (6th Cir. 2014); *United States v. Sudeen*, No. CR. 02-062, 2003

WL 21977170, at *1-2 (E.D. La. Aug. 14, 2003) (denying defendant's motion for release pending sentencing so that he could see his personal physician, and noting that defendant failed to show that he could not obtain the necessary medical treatment while in custody).

J. Even if Fayne could get a temporary job while awaiting sentencing, he fails to show how that would make him less of a flight risk or less of a danger to the community.

Fayne speculates that he could find gainful employment if released. (Doc. 189 at 3). But he provides no information about what type work he's qualified to do or who might hire him now that he's a convicted felon, nor does he explain how his shoulder injury and the additional medical treatment that he seeks would affect his ability to work, or limit the time that he would be available to work, between now and whenever he's sentenced.

Fayne previously held himself out to be the owner of a profitable trucking company, but he admitted in his guilty plea that it was really nothing more than the front for a Ponzi scheme, as well as the beneficiary of a fraudulent PPP loan. (See Doc. 96 ¶¶ 1-15); Doc. 186-1 ¶ 1). "[A] job is meaningless as an indicator of future appearances before the court when it is directly connected to [criminal activity]." *Rueben*, 974 F.2d at 586.

K. Fayne's history of asthma is insufficient to justify his release pending sentencing.

Fayne alleges that "due to his history of Asthma[,] he is at a higher risk for complications due to Covid-19." (Doc. 189 at 4). That is insufficient to warrant his release pending sentencing for five reasons. First, Fayne's concerns about contracting COVID-19 while detained have no bearing on whether he would be a flight risk or a danger to the community if released. *Ramadan*, 458 F. Supp. 3d at 662.

Second, Fayne does not allege that he has COVID-19. *See United States v. Ford*, 455 F. Supp. 3d 512, 521 (S.D. Ohio 2020) (holding that "mere possibility of contracting COVID-19" does not justify defendant's release).

Third, Fayne provides no evidence that his continued confinement increases his risk of contracting COVID-19. *See United States v. Lewis*, No. 19-60034-CR, 2020 WL 6262984, at *4 (S.D. Fla. Oct. 23, 2020) (denying bond pending sentencing because defendant's motion did not address the significant COVID restrictions that had been implemented at his detention facility, did not "explain the exposure levels of the people he propose[ed] to live with (if released), and thus fail[ed] to establish that releasing him would put him at a lower risk of contracting COVID-19"). Moreover, Fayne has already "received one dose of the Covid-19 vaccine [and] is awaiting the second dose." (Doc. 189 at 5).

Fourth, Fayne has not demonstrated that his asthma condition warrants his release. *See Lewis*, 2020 WL 6262984, at *4 (noting that “virtually every person over the age of 50 has some health condition that could conceivably put that person at a greater risk of succumbing to the coronavirus, but this does not entitle every inmate over 50 to be released”) (citation omitted).

Fifth, Fayne does not dispute that he suffered from the very same asthma condition “when he was working to steal the victims’ hard-earned money.” *See id.* (citing *United States v. Stuyvesant*, 454 F. Supp. 3d 1236, 1244 (S.D. Fla. 2020) (“The Court cannot agree that a defendant who is physically and mentally well enough to commit a serious federal crime is somehow not well enough to serve the sentence to which that crime inevitably exposes him.”)).

L. Fayne’s desire to attend to personal and family matters before going to prison is understandable but insufficient to justify his release pending sentencing.

Fayne wants to “assist his 18-year-old daughter as she prepares to start college[,] . . . spend time with his family[, and] organize his day-to-day household affairs prior to entering the BOP system.” (Doc. 189 at 5). Although sentencing a defendant to prison “regrettably results in separating [him] from his family and work, such is the case with every defendant facing a custodial sentence.” *United States v. Lippold*, 175 F. Supp. 2d 537, 541 (S.D.N.Y. 2001); *see*

also United States v. Adenuga, No. 3:12-CR-313-P, 2014 WL 349568, at *3 (N.D. Tex. Jan. 31, 2014) (rejecting defendants' contention that they should be released pending sentencing because they complied with their pre-trial conditions of release and because they had family obligations, and holding that neither of those things meant that defendants were not flight risks).

Fayne was arrested on May 13, 2020; he was free on bond until December 22, 2020. He had over seven months to get his affairs in order before his bond was revoked. At his urging, the Court even loosened his release conditions, allowed him to travel out of the district on multiple occasions to visit his sick grandmother in Arkansas, and eventually removed his curfew and location monitor altogether. (Doc. 189 at 4; *see* Docs. 65, 72, 78, 79, 80, 81, 82, 85, 86, 88, 89, 90, 95). Thus, on the facts of this case, Fayne's plea for additional time to get his affairs in order "does not carry the day." *See Hanhardt*, 173 F. Supp. 2d at 807 (finding that defendant had "plenty of time" to get his affairs in order before sentencing because he "faced the indictment for over a year [before being] incarcerated").

IV. Conclusion

For all of the foregoing reasons, Defendant's motion for release pending sentencing (Doc. 189) should be denied.

Respectfully submitted,



JOHN R. PHILLIPS
ASSISTANT UNITED STATES ATTORNEY

JOHN RUSSELL PHILLIPS
ASSISTANT UNITED STATES ATTORNEY
GEORGIA BAR NO. 576335



BERNITA B. MALLOY
ASSISTANT UNITED STATES ATTORNEY
GEORGIA BAR NO. 718905

600 U.S. COURTHOUSE
75 TED TURNER DRIVE, SW
ATLANTA, GA 30303
(404) 581-6000

CERTIFICATE OF SERVICE

I hereby certify that, on May 21, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system.

JOHN RUSSELL PHILLIPS
ASSISTANT UNITED STATES ATTORNEY
GEORGIA BAR NO. 576335

600 U.S. COURTHOUSE
75 TED TURNER DRIVE, SW
ATLANTA, GA 30303
(404) 581-6000