IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	MJ 122-051
	)	
GLADYS HARUN	)	

O R D E R

In consideration of the testimony and evidence, as well as the oral arguments, presented at the detention hearing held on July 8, 2022, and for the reasons explained below, the Court grants the government's oral motion for detention.

I. FACTUAL BACKGROUND

A. Alleged Offense Conduct

The indictment, returned on July 13, 2022, charges Defendant with one count of wire fraud and alleges she illegally obtained $299,913 in Payroll Protection Plan ("PPP") loan proceeds, disbursed pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), by misrepresenting the average monthly payroll of her business, Embrace Africa d/b/a Jackson Hewitt Tax ("Embrace Africa"). United States v. Harun, CR 322-009 doc. no. 1 (S.D. Ga. July 13, 2022); doc. no. 19-1, ¶ 16.[1] A complaint was the operative charging document at the time of the detention hearing on July 8, 2022. (Doc. no. 3.) At the hearing, IRS Special Agent ("SA") Brian Jack elaborated the factual allegations in the

[1]Unless otherwise noted, citations are to the docket entries in MJ 122-051. The Court will, as necessary, identify filings in the indicted case with the preface CR 322-009.

complaint affidavit (Court's recording system, *For the Record* ("FTR"), 10:47.03-11:21.14), and U.S. Secret Service SA Brian Truax testified as a rebuttal witness concerning his review of Defendant's financial transactions, (FTR 12:03.35-:08.19).[2] Defendant also testified after knowingly waiving her right to remain silent. (Transcript ("Tr."), Doc. no. 24, pp. 4:4-33:9.)

Defendant submitted a PPP loan application to Wells Fargo on April 17, 2020, for Embrace Africa that reported 36 employees and an average monthly payroll of $18,413. (Doc. no. 19-2, Gov't Ex. 2.) Wells Fargo approved the loan and disbursed $46,033 to Defendant. (Doc. no. 19-1, Compl. Aff. ¶ 19, Gov't Ex. 1.) In April 2021, Defendant submitted a PPP loan application to Truist Bank representing herself as an independent contractor with an average monthly payroll of $8,288. (Compl. Aff. ¶ 20.) Truist Bank approved the loan, and Defendant received $20,710. (Id.) That same month, on April 9, 2021, Defendant submitted a PPP loan application to Wells Fargo reporting Embrace Africa had 59 employees and an average monthly payroll of $158,830. (Compl. Aff. ¶ 21; doc. no. 19-3, Gov't Ex. 3.) Wells Fargo rejected the application and expressed concern that tax documents supporting the loan application appeared to be altered. (Compl. Aff. ¶ 22.) Undeterred, on June 17, 2021, Defendant submitted a PPP loan application to Lendistry that reported Embrace Africa had 22 employees and an average monthly payroll of $119,965.20. (Id. ¶ 23; doc. no. 19-7, Gov't Ex. 7.) Lendistry approved the application, and Defendant received $299,913. (Compl. Aff. ¶ 23.)

IRS tax returns that Defendant purportedly submitted in support of the CARES Act loan applications contain numerous abnormalities indicative of fraud such as mismatched fonts, odd spacing, and numbers that appear to be removed by white-out and typed over. (Doc.

[2]The Court cites to FTR for the witness testimonies of SA Brian Jack and SA Brian Truax.

nos. 19-4, 19-5, 19-6, 19-8, 19-9, Gov't Exs. 4-6, 8-9.) When asked by investigating agents to provide proof of Embrace Africa's average monthly payroll, Defendant submitted documents showing $8,429 for 2019 and $9,304 for 2020, sums significantly lower than what she represented on her loan applications. (Compl. Aff. ¶ 25.)

B. Pretrial Services Report

Defendant was born in Kenya, Africa in 1979, moved to the United States in 2005, and became a naturalized United States citizen in 2011. CR 322-009, doc. no. 10, p. 1. (S.D. Ga. July 18, 2022). She has lived in Georgia since 2005, first in Marietta and then moving to Eastman in 2011 and Byron in 2019. (Id.) In 2005, Defendant married Harum Mwaura in Kenya, and they have six children. (Id. at 2.) Mr. Mwaura left Defendant in July 2021, and Defendant has filed for divorce. (Id.) Defendant's father lives in Kenya, as do her two brothers and four sisters, and Defendant travels to Kenya to visit them on an annual basis. (Id. at 1-2.) Defendant began working as a self-employed tax preparer in 2014, and Defendant claims current annual income of approximately $800,000 as the owner of twelve Jackson Hewitt franchises. (Id. at 2-3.) Defendant has no prior criminal history. (Id. at 3.) She reported no history of mental health issues. (Id. at 3.)

C. Plans for Unauthorized Trip to Kenya

On May 2, 2022, federal agents interviewed Defendant and informed her she was the target of a federal investigation concerning CARES Act fraud. (Tr. 24:6, 27:4-7.) On direct examination, Defendant admitted that, as a result of this interview, her defense attorney instructed her, and she agreed, to not make plans to leave the country without first informing her defense attorney and obtaining permission from the U.S. Attorney's Office. (Id. at 13:5-21.) Her defense attorney told her "not to make any plans to go out of the country without talking to [him] first." (Id. at 13:5-16.) She further testified on direct examination that she was in full compliance with that request and did not have any current plans to leave the country. (Id. at 13:22-14:8.) On cross examination, however, Defendant admitted (1) she had, in fact, been making plans to leave the country in July; and (2) she was not surprised to hear that her divorce attorney had emailed Mr. Mwaura's divorce attorney in June to say Defendant would be unavailable for any court proceedings in the divorce case from July 6 to August 6 because Defendant would be out of the country. (Id. at 15:10-17:11.)

SA Truax testified that Defendant made a cash withdrawal from her Wells Fargo Bank account in the amount of $100,000 on May 2, 2022, the same date of her interview with federal agents when she learned for the first time she was a target. (FTR 12:06.48-:07.35.) Defendant admitted making this cash withdrawal, although she could not recall the exact timing, but claimed the purpose was to send money to a school in Kenya for a "feeding program," and she withdrew cash because an international wire directly from Wells Fargo would take too long. (Tr. 24:12-26:2.) To save time, she withdrew the cash from the Wells Fargo account, deposited it with Truist Bank, and wired it to Africa. (Id.) Defendant testified she routinely withdraws money in this same manner and for the same purpose, explaining, "[I]t's part of what I do every day . . . ." (Id. at 25:21-22.) Defendant submitted no evidence of the alleged cash deposit and wire transfer to Kenya. SA Truax testified he has reviewed Defendant's bank records, including her transactions with Truist Bank and Blue Sky Bank, and found no other large cash withdrawals or any international wire transfers. (FTR 12:07.35-:08.19.)

D. Deception of Court Officials

During her post-arrest interview, Defendant informed the probation officer she has owned her tax business for more than six years, and her current income from that business is approximately $800,000 per year, which the probation officer divided by twelve to report a monthly income of $66,666.67. CR 322-009, doc. no. 10, p. 2. Also during this interview, Defendant reported no history of mental health issues or treatment. Id. at 3. However, just last year on August 29, 2021, Plaintiff signed and filed a motion seeking court-appointed counsel in a civil case in the Middle District of Georgia. Therein, she claimed to be unemployed and completely unable to work due to recurring migraines and a psychological illness. (Def.'s Mtn. Requesting Appt. of Counsel, doc. no. 19-13, p. 2, Gov't Ex. 13.) She also claimed to be financially destitute, stating, "I have a mental incapacity and have no money to hire an attorney." (Id. at 1.) Just above her signature, Plaintiff included the following sentence: "I declare that my answers to the foregoing are true and correct." (Id. at 2.) In further support of her civil motion, Defendant attached an affidavit from psychiatrist Thomas Hewitt Sachy, M.D., claiming Plaintiff had received continuous treatment for PTSD and major depressive disorder since June 2014 and thus lacked the mental capacity to pursue her legal claims without the assistance of legal counsel. (Id. at 3.)

On cross examination, Defendant testified she had no recollection of discussing her income with the probation officer, admitted her monthly income is nowhere near $66,000, and attempted to persuade the Court that she really is destitute despite owning twelve tax franchises. (Tr. 29:12-30:23.) She testified "Jackson Hewitt supports Embrace Africa," and "the money that we raise there is for nonprofit purposes mostly." (Id. at 29:7-8.) However, the tax franchises bear no indicia of being a nonprofit or supportive of a charity or causes to benefit Africa. (Id. at 29:18-25.) She did not explain the inconsistencies concerning her mental health and treatment as attested to in the Middle District but contradicted in the instant proceedings.

E. Intimidation of Potential Witness

During the course of the investigation, SA Jack interviewed other individuals involved in the case. (FTR 11:18.06-.14.) During and after the interviews, Defendant contacted some of the individuals. (FTR 11:18.16-.21.) One witness claimed to receive "multiple text messages and a voicemail" from Defendant. (FTR 11:18.40-.50.) The witness was "concerned" by the nature of the text messages and allowed SA Jack to photograph the text messages. (Id. at 11:19:20-11:19:30.) Two text messages provide as follows:

> May 17
>
> I left u a long voice-mail. Did u know I was called by GBI and dfcs and had to record a statement defending you. I never shared this with you but they called me asked me all sorts of questions about your capability and character as a mother when your kids were molested. I stood twice to defend and put a good word on you. I am not begging that u do the same but this is a test to show if you are really a true friend.
>
> May 20
>
> Kindly don't talk to them people anymore. They are enticing u for infor. You are a subject of investigation too. You know whom am talking about reported that me and you were making up w2s en filing fraudulent returns among other lies. Tell them u need a lawyer they will leave u alone. Be smart. I don't mean u harm but don't take yourself to the slaughter house. I have a company lawyer handling that if u need reach out to him for protection let me know.

(Doc. no. 19-12, pp. 1-2.)

II. DISCUSSION

The Bail Reform Act of 1984 ("Act") mandates the pretrial release of a defendant unless the government carries its burden of proving there is no bond condition or combination of conditions that would "reasonably assure" the defendant's appearance in court or the safety of the community. 18 U.S.C. § 3142(c), (f). There is no statutory presumption of detention arising from the nature of the charge against Defendant. See id. § 3142(e)(2). The government's burden with respect to dangerousness is by clear and convincing evidence and the government's burden as to appearance in court is by a preponderance of the evidence. United States v. Quartermaine, 913 F.2d 910, 917 (11th Cir. 1990); 18 U.S.C. § 3142(f)(2). "The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the [detention] hearing." 18 U.S.C. § 3142(f)(2).

The Act specifies the factors considered in determining whether there are conditions to reasonably assure safety and appearance as (1) the nature and circumstances of the offense charged, including whether it is a crime of violence or terrorism, or involves a minor victim, controlled substance, firearm, or explosive device; (2) the weight of the evidence; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community posed by the defendant's release. Id. § 3142(g)(1)-(4). These factors weigh in favor of detention, as explained below.

A. Nature and Circumstances of the Offense and Weight of the Evidence

The nature and circumstances of the charged offense do not weigh in favor of detention. For the purposes of this detention analysis only, the evidence against Defendant is strong as exemplified by the complaint affidavit, agent testimony at the detention hearing, and supporting government exhibits.

B. Defendant's History and Characteristics

When considering the history and characteristics of a person in the context of determining pretrial detention, courts consider the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, record concerning appearance at court proceedings, and whether at the time of the current offense or arrest the person was on a conditional release. See 18 U.S.C. § 3142(g)(3).

Here, characteristics weighing in favor of Defendant's pretrial release are her physical condition, family ties to the community because of her six children, employment, clean criminal history, and the absence of any indication she abuses drugs or alcohol. Substantially outweighing these positive characteristics, however, is Defendant's character. Rarely does the Court encounter a person less credible than Defendant. As recounted in the factual background, Defendant lied in a filing attested to as true in the Middle District of Georgia, lied to the probation officer in this case, and provided testimony at the detention hearing that was full of inconsistencies, obfuscations, and implausible scenarios concerning her employment status, summer travel plans, the cash withdrawal on May 2, 2022, an alleged but unverified wire transfer overseas, and the financial status and nature of her tax business. In light of her character, it would be foolhardy to trust that Defendant would abide by the conditions of release and provide truthful answers to inquiries by her supervising officer.

C. Nature and Seriousness of Danger to the Community

As the Eleventh Circuit has explained, "[t]he 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 n.2 (11th Cir. 1988). Indeed, the Act broadly references the safety of any person and the safety of the community at large. While the primary focus of the former is the risk of physical violence toward a particular person such as a victim or witness, the latter refers to any risk a defendant may pose to the well-being of a community. Id. Examples include the potential corruption of a union or the obvious perils drug trafficking poses to a community. Id.

If Defendant truly owns twelve Jackson Hewitt tax franchises, she poses a serious and immediate threat to (1) taxpayers who entrust her company to maintain highly sensitive personal and financial information; and (2) the public coffers that are so easily manipulated by submission of fraudulent tax returns. She also poses a danger to potential witnesses, as evidenced by the intimidating text messages allegedly sent to one witness.

D. Risk of Flight

By far, the most important factor weighing in favor of detention is risk of flight. Defendant is a native of Kenya and regularly makes return trips there to see her father and all of her siblings. She admits withdrawing $100,000 in cash soon after learning in May she was the target of a federal investigation, and SA Truax determined from bank records this transfer occurred on the very day of the interview. She further admits making plans to visit Kenya in July without informing her defense attorney and seeking permission from the U.S. Attorney's Office, despite her understanding that it was important for her to do so. Her attempts to explain away these events are unpersuasive and not credible. These troubling facts compel the conclusion that Defendant is a significant flight risk, especially when paired with undeniable evidence that Defendant cannot be trusted to tell the truth.

III. CONCLUSION

For the above reasons, the Court finds (1) by clear and convincing evidence that there is no bond condition or combination of conditions that would reasonably assure the safety of the community; and (2) by a preponderance of the evidence that no bond condition or combination of conditions will reasonably assure Defendant's appearance in court.

Accordingly, Defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of any attorney for the government, the person in charge of the corrections facility shall deliver Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

SO ORDERED this 21st day of July, 2022, at Augusta, Georgia.

BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA