U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 7, 2020

BY ECF

Honorable Lewis J. Liman
United States Chief District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Adedayo Ilori*, 20 Cr. 378 (LJL)

Dear Judge Liman:

The Government respectfully submits this letter in opposition to the defendant Adedayo Ilori's motion to modify the conditions of his release, filed on October 5, 2020. (ECF No. 33). Specifically, Ilori seeks to eliminate electronic monitoring and a curfew as conditions of his pretrial release. The Government has conferred with Pretrial Services Officer Joshua Rothman, who also opposes the modification at this time. As explained further below, Ilori committed the instant offenses while on pretrial release in another case, demonstrating that Ilori cannot curb his criminal activity short of direct and rigorous supervision.

I. Background

A. The Offense Conduct

Between March 2019 and March 2020, Ilori conspired with his co-defendant Herode Chancy, who was a bank manager, to engage in a scheme to submit fraudulent business loan applications (the "Loan Scheme") to an individual they believed was a corrupt underwriter for a third-party commercial lender but who was in reality an undercover agent with Homeland Security Investigations ("UC-1"). Chancy and Ilori arranged to submit approximately eight fraudulent business loan applications by email and mail to UC-1 for a total of approximately $1,020,000 in loans. Chancy and Ilori intended to "bust out" the loans, *i.e.*, they intended not to repay the loans, and they then intended to close the business accounts that received the loans in order to prevent the commercial lender from recouping the loan payments.

To apply for the business loans, Chancy and Ilori submitted to UC-1 fabricated bank statements for purported business bank accounts. For some of the business loan applications, Chancy and Ilori also used stolen identities as the purported loan recipients on the fraudulent loan applications, and Ilori opened bank accounts using the stolen identification information in order to receive the loan proceeds.

Chancy and Ilori submitted two rounds of loan applications to UC-1. In the first round, Chancy and Ilori used a different business entity for each of the four $5,000 loan applications. Chancy prepared two of the applications and Ilori prepared two of the applications. Law enforcement funded these loan applications from an undercover bank account. In the second round, Chancy emailed and mailed UC-1 four loan applications for $250,000 each. Three of the four business entities on the second round of loan applications were the same business entities and identities used in the first round of applications; the fourth loan application was in Chancy's own name. Law enforcement never funded the second round of loan applications.

After Ilori and Chancy submitted the fraudulent loan applications, Ilori conspired with Chancy and co-defendant Michael Albarella, who was also a bank manager, to open another bank account using an additional stolen identity in order to launder the proceeds of the loan scheme. Albarella accepted a bribe from an undercover officer in order to open that bank account.

Ilori was the source of the stolen identities of for the Loan Scheme. He provided at least three different stolen identities to Chancy to use in the Loan Scheme, including the stolen identity used to open a bank account with Albarella in order to launder the proceeds of the Scheme.

In addition, Ilori was arrested in June 2019 by the NYPD while attempting to open bank accounts using the identities of other people in furtherance of the Loan Scheme; he was found to be in possession of multiple driver's licenses at the time of his arrest. That arrest was not coordinated with the Government's investigation. In a number of later recordings, Chancy and Ilori discussed the fact that Ilori was arrested while opening bank accounts using other identities for the purpose of the Loan Scheme and that his subsequent detention was delaying the Loan Scheme. The Manhattan District Attorney's office indicted Ilori on eleven counts, including criminal possession of a forged instrument and identity theft. Ultimately, Chancy assisted in providing Ilori's bond for his pretrial release in that case in November 2019, and those charges remain pending. Once released, Ilori promptly continued the Loan Scheme with Chancy, as reflected in numerous recordings of meetings starting in mid-November 2019. Chancy and Ilori subsequently submitted their first round of fraudulent loan applications in December 2019.

B. Procedural History

Ilori was arrested with Chancy and Albarella on March 4, 2020 pursuant to a complaint. On July 23, 2020, the grand jury returned an indictment, charging Ilori and Chancy with the following: (1) conspiracy to commit mail and wire fraud, in violation of Title 18, United States Code, Section 1349; (2) wire fraud, in violation of Title 18, United States Code, Section 1343; (2) mail fraud, in violation of Title 18, United States Code, Section 1341; (4) aggravated identity theft, in violation of Title 18, United States Code, Section 1028A; and (5) conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956. In addition,

Albarella was charged with bank bribery, in violation of Title 18, United States Code, Section 215(a)(2).

At his presentment on March 4, 2020, Ilori was released on an agreed upon bail package that included a $100,000 personal recognizance bond, to be co-signed by two financially responsible people, as well as home detention with electronic monitoring. At the presentment, Pretrial Services recommended home detention enforced by electronic monitoring, as well as a bond co-signed by three financially responsible people. On March 11, 2020, the Honorable Ona T. Wang, on the consent of the Government, granted Ilori's consent to modify the terms of his release to include only one financially responsible co-signer. On June 24, 2020, again on the Government's consent, the Honorable Ona T. Wang granted Ilori's request to modify the terms of his release to permit him to attend his daughter's school graduation. On July 31, 2020, the Court granted, with the Government and Pretrial's consent, Ilori's request to replace home detention with a curfew and to add a second financially responsible person as a co-signer on his bond.

II. Electronic Monitoring and a Curfew Remain Warranted at This Juncture

A. Legal Standard

In the pre-trial context, if a judicial officer determines that release of the defendant on his own recognizance or upon execution of an unsecured appearance bond "will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person . . . subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(c)(1)(B). In making this assessment, the Bail Reform Act requires courts to consider four factors: (1) "the nature and circumstances of the offense charged"; (2) "the weight of the evidence against the person"; (3) "the history and characteristics of the person," including his "character, . . . family ties, employment, . . . past conduct, . . . criminal history, and record concerning appearance at court proceedings"; and (4) "the nature and seriousness of the danger . . . posed by the person's release." 18 U.S.C. § 3142(g).

B. Argument

A curfew enforced by electronic monitoring, in combination with the other conditions in place, are the least restrictive conditions that reasonably assure Ilori's continued appearance in court and the safety of the community. Application of the Bail Reform Act factors to this case establish that curfew enforced by electronic monitoring remains an appropriate condition of release at this time.

First, Ilori's history and characteristics weigh in favor of curfew enforced by electronic monitoring. Ilori has a substantial history of fraud convictions, which includes no less than seven convictions, as well as two bench warrants and a probation violation. A number of these convictions concern forged instruments. Ilori's criminal history shows that he has a history of using aliases, such as "Robert Ando", "Dayo Rasdo", "Christopher Halstead", "Rasdo Ilori", "Simon Peter", "Charles Howe", "Peter Simon" "Brian Aarons", and "William Keeney", as well as different dates of birth. Notably, at the time Ilori committed the instant offenses, he was already on pretrial release in his pending indicted case brought by the Manhattan District Attorney's Office. As described further above, Ilori was arrested in June 2019 while attempting to open bank accounts using the identities' of other persons, and he was arrested with multiple driver's licenses in his possession. Immediately upon his release on bail, he continued to engage in the Loan Scheme, which again involved using stolen identities to apply for loans and open bank accounts.

In addition to his criminal history, use of aliases, and access to stolen identities, Ilori has ties abroad. As reflected in the Pretrial Report, Ilori's parents reside in Nigeria and his brother resides in London. Ilori has travelled abroad extensively to England, Nigeria, and other foreign destinations, including as recently as January 2019. Moreover, Ilori does not have—and has not previously had—verifiable employment. Ilori claims that he is self-employed as a personal trainer. Pretrial Services, however, has not been able to verify Ilori's employment based on the documentation provided by Ilori. To the extent Ilori is currently working as a personal trainer, his current 8:00 a.m. to 10:00 p.m. curfew enforced by electronic monitoring allows him to do so. Moreover, Ilori argues to loosen the restrictions of his pretrial release on the basis that his co-defendants are not subject to a curfew with electronic monitoring. Ilori's co-defendants, however, among other factors, have no criminal history, no history of using aliases, and did not procure the stolen identities used in the Loan Scheme, unlike Ilori. These factors, taken together, indicate that Ilori is a flight risk.

Second, the nature of the offense is serious as Ilori is charged in five counts with engaging in a year-long scheme to procure over $1 million in fraudulent loans that entailed creating false bank statements, submitting fraudulent loan applications using stolen identities, and opening bank accounts using stolen identities. The weight of the evidence is strong. In particular, numerous recorded calls and meetings show that Ilori had a central role in the Loan Scheme, including that he procured identities to be used in the Scheme, submitted fraudulent bank statements, and expected to receive a substantial portion of the Scheme's proceeds. Ilori faces substantial penalties in this case if convicted, including a two year mandatory term of imprisonment in connection with the aggravated identity theft charge. All of these factors provide Ilori with an incentive to flee.

Third, Ilori continues to be a danger to the community based on his history of fraud, particularly with respect to identity theft. A number of courts, including in this District, have held that economic harm is a cognizable danger to the community under the Bail Reform Act.

See United States v. Madoff, 316 F. App'x 58, 59 (2d Cir. 2009) (noting pecuniary safety of the community is relevant under Section 3143); *United States v. Madoff*, 586 F. Supp. 2d 240, 252 (S.D.N.Y. 2009) (holding economic harm is relevant to assessing danger under Section 1342 and citing cases); *United States v. Jinwright*, No. 3:09-CR-00067-W, 2010 WL 2926084, at *3 (W.D.N.C. July 23, 2010) ("economic danger provides an adequate basis for detention" under Section 1343); *United States v. DeSimone*, No. 09-024S, 2009 WL 904688, at *2 (D.R.I. Apr. 1, 2009) ("'danger' under 18 U.S.C. § 3142(g)(4) may, at least in certain cases, extend to pecuniary or economic harm"); *United States v. Reynolds*, 956 F.2d 192, 192–93 (9th Cir. 1992) ("danger may, at least in some cases, encompass pecuniary or economic harm"). The danger of economic harm that Ilori continues to pose to the community merits the additional supervision by Pretrial Services that is in place with the curfew and electronic monitoring.

Lastly, the primary basis for Ilori's request to eliminate the curfew and electronic monitoring is Ilori's claim that he needs an MRI and possibly knee surgery and that the ankle bracelet purportedly aggravates his knee condition. As previously explained to defense counsel, the Government and Pretrial Services Officer Joshua Rothman consent to removing electronic monitoring temporarily for the purpose of an MRI and for any surgery, if there is to be one. According to Pretrial Services Officer Joshua Rothman, temporary, short-term removal of an ankle bracelet is standard procedure when necessary for medical procedures. To the extent the electronic bracelet is aggravating any pre-existing injury to Ilori's right knee, the electronic bracelet can be moved to Ilori's left leg. Accordingly, the concerns underlying Ilori's request to remove electronic monitoring can be addressed with measures short of complete removal of electronic monitoring. Moreover, weighed against the factors outlined above, Ilori's compliance to date with the terms of his release does not warrant a change in the conditions of his release at this juncture.

III. Conclusion

For the reasons set forth above, the Government respectfully submits that the Court deny the defendant's motion to modify the conditions of his release.

Respectfully submitted,
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