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

February 28, 2022

BY ECF

The Honorable Lewis J. Liman
United States 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:

Pursuant to the Court's order dated February 28, 2022 (ECF No. 123), the Government writes to inform the Court whether it is requesting a *Fatico* hearing. The Government is not requesting a *Fatico* hearing in connection with the defendant's objections to the Presentence Report. The Government believes the Court can resolve any relevant pretrial objections based on transcripts of recorded conversations referenced in the Presentence Report, which the Government will provide to the Court later today as requested. However, to the extent the Court believes that the defendant's bail violations are relevant factors in imposing sentence, it appears that a *Fatico* hearing may be necessary.[1]

On October 8, 2021, the Government searched the defendant's person. On the same date, the Court ordered the defendant's bail revoked due to a violation of the terms of his pretrial release. The defendant and his co-defendant, Chris Recamier, have since been charged in Indictment 21 Cr. 746 (MKV), with fraud, identity theft, and money laundering offenses.

As early as November 15, 2021, the Government filed a letter stating that, at sentencing, the Government anticipated requesting that the Court consider four distinct bail violations as part of crafting an appropriate sentence for the defendant under 18 U.S.C. § 3553(a). (ECF. No. 108). Those violations are:

1. In or about Summer 2021, the defendant rented an apartment at 123 Melrose Street in Brooklyn under a false identity. In renting this apartment, the defendant used a fake ID card with his own picture but another person's identity

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[1] On February 28, 2022, the defendant filed a supplemental sentencing memorandum and expert report. (ECF. No. 124.) The Government intends to respond to the defendant's substantive, newly raised, sentencing arguments in a letter to be filed tomorrow.

(the "Apartment Violation");

2. In or about September 2021, the defendant and Recamier leased a Mercedes using a stolen identity (the "Car Violation");

3. In or about summer and fall 2021, the defendant made purchases using a bank card in the name of a stolen identity (the "Purchases Violation"); and

4. At the time of his arrest, the defendant possessed ID and bank cards in the names of third parties (the "Possession Violation").

The Government began making productions of discovery to defense counsel related to these violations on October 26, 2021. These productions were substantially complete in November 2021, although the Government produced a copy of Recamier's post arrest interview on January 13, 2022 and a small production of additional surveillance footage of the defendant using a stolen bank card on February 23, 2022.

The Government has continuously been in communication with defense counsel to guide defense counsel through the post-plea discovery productions and to identify whether a *Fatico* hearing would be necessary. Indeed, the Government recently explained to defense counsel the evidence the Government would offer for each of the four proposed violations if a *Fatico* hearing was required.

Until today, the Government was under the impression that a *Fatico* hearing would not be necessary. However, it appears that the defendant's position is that the Court should ignore the defendant's bail violations in imposing sentence. To the extent that the Court agrees with the Government that the defendant's bail violations are relevant to sentencing, and the defendant contests the facts of the four bail violations the Government is prepared to prove, a *Fatico* hearing will be necessary.

The defendant's arguments as to why these bail violations should not be considered at sentencing are misleading and unconvincing.

First, the fact that the defendant repeatedly violated his bail is, of course, relevant to multiple Section 3553(a) sentencing factors, including the need for the sentence to (a) afford adequate deterrence to criminal conduct, (b) promote respect for the law, and (c) consider the history and characteristics of the defendant. Indeed, the Second Circuit has approvingly cited district court consideration of post-offense conduct as part of sentencing. *See United States v. Pinhasov*, 762 F. App'x 43, 45 (2d Cir. 2019); *United States v. Alejo*, 336 F. App'x 761, 763 (2d Cir. 2009). In addition, the pretrial violations are relevant to determining whether the defendant has adequately accepted responsibility pursuant to Section 3E1.1 of the U.S. Sentencing Guidelines, which incorporates as a factor whether the defendant has voluntarily terminated or withdrawn from criminal conduct. *See* U.S.S.G. § 3E1.1, commentary note 1(B).

Second, the defendant misleadingly claims that the Court's consideration of the four identified bail violations would prejudice thedefendant in his pending case. Not so. The

Government is deliberately avoiding asking the Court to consider facts related to the defendant's pending Paycheck Protection Program ("PPP") fraud scheme at this sentencing. That conduct is the subject of a separate case, and the Government is not seeking to litigate the defendant's responsibility in that overall, multi-million dollar fraud scheme at sentencing. The Government selected four discrete bail violations that the defendant engaged in that are either wholly disconnected from the PPP fraud or only tangentially related.

The Apartment Violation has absolutely nothing to do with the PPP fraud. In that violation, the defendant used a fake ID with his own picture to rent an apartment in Brooklyn. Videos stored on the defendant's cellphone shows that the defendant was also present in that Brooklyn apartment building.

The Car Violation is almost entirely unrelated to the PPP fraud. The defendant leased the luxury vehicle with the assistance of his co-conspirator, Recamier, using the identity of another person. Neither the car itself nor the stolen identity used to lease it has been linked to the PPP fraud.

The Purchases Violation and Possession Violation are similarly only tangentially related to the PPP fraud. The link between these Violations and the new case is that a particular identity used to apply for PPP loans was used by the defendant to make purchases, and bank cards in that identity's name were also found on the defendant's person at the time of the execution of the search warrant in October 2021.

Each of these four violations are discrete and can be proven by a preponderance at a *Fatico* with a relatively streamlined presentation. It is difficult to see how proving the facts related to these violations would prejudice the defendant in his pending case. Of course, the defendant may choose not to testify as a result of his pending case, but that is not unique for any criminal defendant considering whether to testify in his defense.

The Government believes the defendant's flagrant violation of his bail are important considerations in imposing sentence. To the extent the Court agrees, and the defendant contests the underlying facts, a *Fatico* hearing will be necessary.[2]

Respectfully submitted,

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By: /s/

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Cc: Brooke Cucinella (via ECF)

[2] If the Court concludes a *Fatico* hearing will be necessary, the Government respectfully requests a ten-day adjournment to prepare its witnesses, exhibits, and other materials.