

TRACY L. WILKISON
Interim United States Attorney
SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division
SCOTT PAETTY (Cal. Bar No. 274719)
CATHERINE AHN (Cal. Bar No. 248286)
BRIAN FAERSTEIN (Cal. Bar No. 274850)
Assistant United States Attorneys
Major Frauds/Environmental and Community Safety Crimes Sections
1100/1300 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-6527/2424/3819
Facsimile: (213) 894-6269/0141
E-mail: Scott.Paetty@usdoj.gov
Catherine.S.Ahn@usdoj.gov
Brian.Faerstein@usdoj.gov

JOSEPH S. BEEMSTERBOER
Acting Chief, Fraud Section
Criminal Division, U.S. Department of Justice
CHRISTOPHER FENTON
Trial Attorney, Fraud Section
Criminal Division, U.S. Department of Justice
1400 New York Avenue NW, 3rd Floor
Washington, DC 20530
Telephone: (202) 320-0539
Facsimile: (202) 514-0152
E-mail: Christopher.Fenton@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD AYVAZIAN,
aka "Richard Avazian,"

Defendant.

No. CR 20-00579-SVW-1

GOVERNMENT'S RESPONSE TO FUGITIVE
DEFENDANT RICHARD AYVAZIAN'S REQUEST
FOR RETURN OF PASSPORTS AND CLARIFY
HIS CONDITIONS OF RELEASE POST-
FLIGHT (ECF 1178)

Plaintiff United States of America, by and through its counsel
of record, the Interim United States Attorney for the Central
District of California, Assistant United States Attorneys Catherine

1 Ahn, Scott Paetty, and Brian Faerstein, and Department of Justice
2 Trial Attorney Christopher Fenton, hereby files its response to
3 fugitive defendant Richard Ayvazyan's request to clarify his
4 conditions of supervision post-flight (ECF 1178), pursuant to the
5 briefing schedule ordered by the Court on December 27, 2021 (ECF
6 1219).

7 The government's opposition is based upon the attached
8 memorandum of points and authorities, the declaration of Catherine
9 Ahn, and the files and records in this case.

10 Dated: January 3, 2021

Respectfully submitted,

11 TRACY L. WILKISON
Interim United States Attorney

12 SCOTT M. GARRINGER
13 Assistant United States Attorney
Chief, Criminal Division

14 /s/

15 CATHERINE AHN
16 SCOTT PAETTY
BRIAN FAERSTEIN
Assistant United States Attorneys
17 CHRISTOPHER FENTON
Department of Justice Trial Attorney

18 Attorneys for Plaintiff
19 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Court previously made a finding that defendant Richard Ayvazyan ("defendant"), who has ties to Armenia, voluntarily absconded from supervision after noting on the record that - on the eve of defendant's sentencing - emergency passports for defendant's minor children to travel to Armenia had been unsuccessfully requested from the U.S. State Department. Counsel for defendant now asks the Court to take action that would serve only to aid defendant's flight and facilitate defendant's previously-failed attempt to extract his children from the United States, namely: (i) order United States Probation and Pretrial Services ("Probation") and the government to return the children's passports to the children; and (ii) "clarify" that when it entered an order forfeiting the bail posted on defendant's behalf, that the Court had also terminated the conditions of pretrial and presentence supervision imposed (including condition that defendant surrender his children's passports). (ECF 1178 at 15.)

The Court should deny counsel's first request as moot: neither Probation nor the government is in possession of the children's passports.

The Court should deny counsel's second request because it is unsupported by law or fact and would result in an absurd outcome: rewarding a fugitive for successfully violating the Court's order.

II. Background and Procedural History

Defendant's conditions of pretrial release included, among other things, that defendant be subject to location monitoring, appear as ordered by the Court, not commit new crimes, and surrender all

1 passports and travel documents (including those of defendant's three
2 minor children) to Probation¹ and not obtain new ones. (ECF 47 at 1-
3 4.) Defendant's conditions also included a notice specifying that,
4 "a failure to appear may result in the forfeiture of any bail posted,
5 which means that defendant will be obligated to pay the full amount
6 of the bond, which may be enforced by all applicable laws of the
7 United States." (Id. at 5.) Following defendant's conviction at
8 trial, this Court denied the government's request to remand him into
9 custody and permitted him to remain released under the same
10 conditions as prior to trial.

11 On or around August 29, 2021, defendant removed his location
12 monitoring bracelet and absconded from supervision while awaiting
13 sentencing. (ECF 1121 ¶ 68.) He left a note for his minor children,
14 whom he had abandoned, in which he wrote of what appears to be his
15 secret plan to reunite the family:

16 Without staying too much, we both love you more than anything in
17 this world. We will be together again one day. This is not a
18 goodbye but a brief break from each other. Our family will
19 always be strong and together no matter the circumstances. I
20 will find a way, that's a promise.

21 (ECF 1065-3 (emphasis added).) On November 9, 2021, a request for
22 emergency passports was submitted to the State Department on behalf
23 of defendant's minor children so that they may travel to Armenia.
24 (ECF 1184 at 3:25-4:4.)

25 Citing this request for the emergency passports, among other
26 facts, the Court made a finding that defendant's absence was
27 voluntary, sentenced him in absentia, and forfeited the bail posted

28 ¹ Despite the fact he was required by Court order to surrender
his children's passports, defendant had failed to do so, and efforts
by Probation to locate these documents were unsuccessful. (ECF
1005.)

1 on his behalf. (ECF 980, 1082, 1166, 1184 at 3:25-4:4.)

2 Following sentencing, at the end of a brief stating defendant's
3 position with respect to restitution and forfeiture, counsel
4 requested that the Court effectively relieve defendant, who remains a
5 fugitive, of his obligation to comply with the Court-ordered
6 conditions of release. (ECF 1178 at 15-16.) Counsel asked the Court
7 to: (i) order Probation and the government to return the children's
8 passports to the children; and (ii) "clarify" that when it entered an
9 order forfeiting the bail posted on defendant's behalf, that the
10 Court had also terminated the conditions of pretrial and presentence
11 supervision imposed (including condition that defendant surrender his
12 children's passports). (Id.)

13 Counsel failed to proffer any facts in support of its request,
14 instead asserting only counsel's purported "understanding" that "the
15 aforementioned passports or travel documents were either surrendered
16 or seized during the November 5, 2020 search warrant executions,
17 remain in the custody of Pretrial Services, Probation, or the
18 government, or have otherwise been lost." (Id.)

19 **III. Counsel's Request Is Based on a Factual Error**

20 As with counsel's previous motion to continue sentencing based
21 on the Ayvazyan family's claim that defendant may have been abducted,
22 counsel makes a request on behalf of defendant's minor children (whom
23 he does not represent) "without a single iota of supporting evidence"
24 explaining the circumstances surrounding counsel's request. (ECF
25 1094 at 3.)

26 Moreover, counsel's asserted claim, which was unsupported by a
27 declaration, is factually incorrect. Counsel incorrectly suggests
28 that defendant may have complied with his conditions of release by

1 surrendering his children's passports (which he did not), that the
2 children's passports were at some point in time in the possession of
3 Probation or the government (which they were not), and that Probation
4 or the government may have lost them (which is factually incorrect).
5 None of these statements are true; defendant failed to provide the
6 children's passports to Probation and further attempts to obtain them
7 were denied. (ECF 1005.)

8 **IV. Counsel's First Request Is Moot**

9 Counsel's first request is that the Court order Probation and
10 the government to return the children's passports to the children.
11 However, as explained above, defendant never surrendered his
12 children's passports and, as such, neither Probation nor the
13 government are in possession of them. Accordingly, counsel's first
14 request should be denied as moot.

15 **V. Counsel's Second Request Is Unsupported by Law**

16 Counsel's argument in support of its second request lacks legal
17 basis. Remarkably, counsel does not cite to any authority in support
18 of counsel's second request. (ECF 1178 at 15-16.) Nor is the
19 government aware of authority compelling the result urged by counsel
20 here.

21 Counsel's argument is also contrary to the law because it is
22 predicated on conflating this Court's authority to forfeit bail (18
23 U.S.C. §§ 3142) - one of numerous bond conditions imposed on
24 defendant - with revocation of bond in its entirety and the
25 dissipation of those conditions upon arrest and detention (18 U.S.C.
26 § 3148). A court may find that a defendant violated a condition of
27 release without revoking defendant's release and ordering him
28 detained. See e.g., United States v. Bararia, 2013 WL 1907782 at *1

1 (D. Ct. Nev. March 12, 2013) (court declined to revoke defendant's
2 pretrial release, despite finding defendant violated a condition of
3 release, because it found defendant was not a flight risk or a danger
4 to the community). The statute itself contemplates an outcome where
5 a defendant is found to have violated a condition of release but
6 remains released subject to conditions. Specifically, 18 U.S.C.
7 § 3148(b) states that, "If the judicial officer finds that there are
8 conditions of release that will assure that the person will not flee
9 or pose a danger to the safety of any other person or the community,
10 and that the person will abide by such conditions, the judicial
11 officer shall treat the person in accordance with the provisions of
12 section 3142 of this title and may amend the conditions of release
13 accordingly." Id.

14 Once a defendant's release is revoked and he is detained
15 pursuant to 18 U.S.C. § 3148, those terms and conditions of release
16 are naturally no longer in force because defendant is no longer
17 released - he is in the custody of the United States. Mere
18 forfeiture of all or part of a bond serving as collateral for
19 defendant's compliance does not, however, vitiate a defendant's
20 obligations to abide by the remaining terms and conditions. A
21 requirement that defendant provide some kind of financial security is
22 one of many possible conditions of pretrial or presentence release
23 that a court may impose in order to assure itself that defendant will
24 abide by the terms and conditions of his release. As the Supreme
25 Court noted in Stack v. Boyle, 342 U.S. 1 (1951), "The right to
26 release before trial is conditioned upon the accused's giving
27 adequate assurance that he will stand trial and submit to sentence if
28 found guilty. Like the ancient practice of securing the oaths of

1 responsible persons to stand as sureties for the accused, the modern
2 practice of requiring a bail bond or the deposit of a sum of money
3 subject to forfeiture serves as additional assurance of the presence
4 of an accused.” Id. at 4-5 (internal citations omitted) (emphasis
5 added). See also United States v. Salerno, 481 U.S. 739, 742-743,
6 745 (1987) (upholding the constitutionality of the Bail Reform Act).

7 The Court ordered forfeiture of defendant’s bond. (ECF 1167.)
8 The Court, however, did not rescind the previously imposed conditions
9 of his pretrial and presentence release. And for good reason –
10 termination of defendant’s conditions of release prior to the time he
11 self-surrenders to begin serving his sentence would reward him for
12 absconding. (See, e.g., ECF 1005.) It would also facilitate his
13 flight. At defendant’s sentencing hearing, the Court made a finding
14 that the Ayvazyan family’s effort to obtain emergency passports for
15 defendant’s children to travel to Armenia further supported the
16 Court’s view that defendant had voluntarily absconded. (ECF 1184 at
17 3:21-4:4.) These efforts were consistent with defendant’s secret
18 plan to “find a way” to reunite him and his children after only a
19 “brief break”. (ECF 1065-3.) The Court should therefore deny
20 counsel’s request.

21 **VI. Counsel’s Requests Should Be Denied for Lack of Standing**

22 Counsel purports to make its requests as part of an effort to
23 vindicate the rights of defendant’s children to travel. (ECF 1178 at
24 16.) However, while counsel asserts there is a new legal guardian
25 who assumed defendant’s parental rights (id.), counsel has neither
26 identified nor provided proof of that legal guardianship nor asserted
27 that counsel represents that guardian or the children. Even if
28 counsel did, that would not negate the fact that – based on the lack

1 of identification or proof of guardianship - the guardian does not
2 appear to be a party to the case before this Court. There is thus no
3 one before this Court who has standing to act on behalf of the
4 children and the government is not aware of any attorney who
5 represents them.

6 Furthermore, to the extent any properly appointed legal guardian
7 wished to assert a claim with respect to the children's travel
8 documents, this criminal case is not the appropriate forum for
9 seeking such relief, as the Court's jurisdiction is limited to the
10 criminal case before it and the conduct of the defendants in this
11 case.

12 **VII. Conclusion**

13 For the reasons above, the government respectfully requests the
14 Court deny counsel for fugitive defendant Richard Ayvazyan's requests
15 that the Court: (i) order Probation and the government to return the
16 children's passports to the children; and (ii) "clarify" that when it
17 entered an order forfeiting the bail posted on defendant's behalf,
18 that the Court had also terminated the conditions of pretrial and
19 presentence supervision imposed (including the condition that
20 defendant surrender his children's passports). The government
21 respectfully submits that instead, the Court should maintain the
22 conditions of release it imposed on defendant before he fled and
23 until such time as he is in custody.