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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 3:24-cr-00277 MMC
	)	
Plaintiff,	)	UNITED STATES' OPPOSITION TO
	)	DEFENDANT'S MOTION TO REVOKE JUDGE
v.	)	HIXSON'S ORDER OF DETENTION
	)	
LUKE BRUGNARA,	)	
	)	
Defendant.	)	

I. INTRODUCTION

On July 10, 2024, the Court held an initial status conference in the above-captioned case. At the status conference, the defendant orally moved to revoke Judge Hixson’s order of detention. This Court set a hearing on the matter for Wednesday, July 17, 2024, at 2:15 p.m. *See* Dkt. 18. The United States maintains that the defendant should be detained on the basis that no condition or set of conditions can reasonably assure the defendant’s appearance, and that Judge Hixson appropriately concluded the defendant should be detained through trial.

II. BACKGROUND

A. 2008-2015: The defendant's prior convictions in this district

The defendant has a long history in this judicial district. In 2008, the defendant was charged

1 with two counts of making false statements and four counts of violating the Endangered Species Act.
 2 No. 8-CR-236-MMC, Dkt. 1 (indictment). The defendant pled guilty to all counts on January 26, 2010.
 3 *Id.*, Dkt. 54 (guilty plea application and order accepting guilty plea). This Court sentenced the defendant
 4 to a total prison term of 15 months. *Id.*, Dkt. 101 (judgment in a criminal case).

5 In a separate 2008 case, the defendant was charged with three counts of filing false tax returns.
 6 Case No. 8-CR-222-WHA, Dkt. 1 (indictment). In 2010, the grand jury returned a superseding
 7 indictment charging the defendant with three counts of filing a false tax return and one count of
 8 obstructing internal revenue laws. *Id.*, Dkt. 68 (superseding indictment). The defendant pled guilty to
 9 all four counts. *Id.*, Dkt. 70 (guilty plea application and order accepting guilty plea). Judge William
 10 Alsup sentenced the defendant to a total prison term of 30 months. *Id.*, Dkt. 134 (amended judgment).

11 In June 2014, the grand jury returned an indictment charging the defendant with one count of
 12 mail fraud. Case No. 14-CR-306, Dkt. 9. In July 2014, the grand jury returned a superseding indictment
 13 that added three wire fraud counts and two counts of false declaration before court. *Id.*, Dkt. 50. Then,
 14 in March 2015, the grand jury returned a second superseding indictment adding a fourth wire fraud
 15 count and escape and contempt counts. *Id.*, Dkt. 348. The escape count arose from the defendant's
 16 infamous escape from the San Francisco federal courthouse. *See id.*, Dkt. 317 (Judge Alsup's issuance
 17 of a bench warrant based on the defendant's "escape[] from the federal building"); *see also* ABC 7
 18 News, *EXCLUSIVE: SF real estate mogul, art scammer, gives jailhouse interview*,
 19 <https://abc7news.com/lucky-luke-san-francisco-real-estate-mogul-brugnara-dan-noyes-i-team/960144/>
 20 (last viewed July 11, 2024). At trial, the defendant was acquitted on two wire fraud counts but
 21 convicted on all other counts, including the two counts of false declaration before court and escape.
 22 Case No. 14-CR-306, Dkt. 625 (criminal trial minutes). Judge Alsup sentenced the defendant to a total
 23 prison term of 84 months. *Id.*, Dkt. 787 (judgment in a criminal case).

24 **B. 2023: Judge Alsup revokes the defendant's supervised release and sentences him to**
 25 **a 456-day prison term for, among other things, absconding from supervision**

26 As described in the following paragraphs, in 2023, Judge Alsup presided over Form 12
 27 proceedings following allegations that the defendant violated numerous conditions of supervised release.
 28 Ultimately, Judge Alsup revoked the defendant's supervised release and imposed a 456-day prison term.

1. The petition and its numerous charges

In January 2023, Judge Alsup issued a second amended petition for warrant for a person under supervision. Case No. 14-CR-306-WHA, Dkt. 1049 (second amended petition). The petition alleged that the defendant had committed a number of supervised release violations, including the following:

- (i) the defendant left the judicial district without the permission of the court or probation officer (Charge 2);
- (ii) the defendant violated standard condition number five that he work at a lawful occupation, unless excused by Probation (Charge 4);
- (iii) the defendant violated standard condition number six that he notify Probation at least ten days prior to any change in residence or employment (Charge 5);
- (iv) the defendant violated standard condition number three that he shall answer truthfully all inquiries by the probation officer (Charges 6 and 12);
- (v) the defendant violated a standard condition of supervision that he not commit another federal, state, or local crime, in that he, a prohibited person, possessed a firearm and ammunition (Charge 7);
- (vi) the defendant violated standard condition number two that he report to Probation as directed and submit a truthful and complete written report (Charge 8);
- (vii) the defendant violated a mandatory condition of supervision that he not possess, among other things, a firearm or ammunition (Charge 9);
- (viii) the defendant violated special condition number six that he provide the probation officer with any requested financial information, in that he failed to report that he applied for a PPP loan (Charge 11); and
- (ix) the defendant violated a standard condition of supervision that he not commit another federal, state, or local crime, in that he committed assault by means likely to cause great bodily injury, specifically, he assaulted the mother of his girlfriend, Yitong Wen (Charge 14).

Following an evidentiary hearing, Judge Alsup found that the defendant violated Charges 7 through 9; specifically, that he failed to provide a truthful report to Probation (Charge 8) and that he

1 possessed a firearm (Charges 7 and 9). Case No. 14-CR-306, Dkt. 1067 (criminal minutes).

2 **2. The defendant flees before sentencing and asks Judge Alsup to recuse himself**

3 Judge Alsup set sentencing for March 14, 2023. Case No. 14-CR-306, Dkt. 1081. But the
4 defendant did not appear for sentencing, so Judge Alsup issued a warrant for the defendant's arrest. *See*
5 *id.*, Dkts. 1081 (minute entry) and 1082 (order issuing warrant of arrest for defendant's failure to appear
6 in violation of 18 U.S.C. § 3146).

7 In April 2023, while a fugitive from justice, the defendant sent an email to the clerk asking that
8 Judge Alsup recuse himself. *See id.*, Dkt. 1088 (Judge Alsup's notice explaining that the defendant,
9 "now a fugitive from justice," sent the described email). Judge Alsup concluded the email was improper
10 and ignored it. *See id.*

11 **3. Judge Alsup concludes a false filing was lodged with the clerk**

12 About a month later, on May 10, 2023, Judge Alsup issued a notice regarding a document
13 relating to the case that was left with the clerk's office two days earlier, on May 8. *See* Case No. 14-CR-
14 306, Dkt. 1093. In his notice, Judge Alsup wrote that the Court had reason to believe the document was
15 not submitted by the defendant's counsel and asked the defendant's counsel (Randy Sue Pollock) to (1)
16 file a statement of whether or not she filed the document, and (2) state whether she signed the document
17 and what she believes the origin of the document might be. *Id.*

18 Defense counsel filed her declaration as required. Dkt. 1096. In it, she declared, among other
19 things, that the defendant has been a fugitive for approximately two months and that he had been in
20 contact with her via telephone and emails. Dkt. 1096, ¶¶ 2-3. Defense counsel declared she "repeatedly
21 told [the defendant] to surrender." Dkt. 1096, ¶ 3. Regarding the document, defense counsel declared,
22 among other things, that the declaration that was signed by the defendant included several facts that
23 defense counsel had deleted in the draft declaration she sent to the defendant. Dkt. 1096, ¶ 9.

24 Judge Alsup concluded that the document (a motion for recusal) was not filed by defense counsel
25 but instead was filed by some unauthorized person. Dkt. 1104.

26 **4. The defendant is arrested and Judge Alsup denies his release**

27 On or about May 17, 2023, the defendant was arrested. *See* Case No. 14-CR-306, Dkt. 1116
28 (stating arrest warrant executed on said date). Judge Alsup denied the defendant's motion for release.

1 *See id.*, Dkt. 1113 (further stating that the defendant addressed the Court and was thereafter removed
2 from the proceedings).

3 **5. Prior to sentencing on the Form 12, the defendant asks to be released to attend**
4 **his mother's funeral; Judge Alsup denies the request based on the defendant's**
absconding from supervision and refusal to obey court orders

5 On July 13, 2023, the defendant filed a renewed motion for an order directing the U.S. Marshals
6 to escort him to his mother's funeral. Case No. 14-CR-306, Dkt. 1147. Judge Alsup denied the motion.
7 *See id.*, Dkt. 1148. An excerpt of Judge Alsup's order on the motion follows:

8 In other cases, the judge has allowed an inmate to be released from
9 custody long enough to attend an important family event such as a funeral,
10 but this order denies (again) defendant Luke Brugnara's request to do so.
11 He is in custody awaiting sentencing.

12 Twice before defendant has absconded from criminal proceedings
13 in this Court and gone into hiding, never turning himself in but always
14 having to be tracked down and caught by deputy marshals. The risk of
15 another attempted flight and the attendant violence is too great.

16 Defendant has a history of being noncompliant. He will *not* take
17 orders, as illustrated as recently as Wednesday of this week when, at the
18 hearing, he refused to obey court and counsel requests to behave and he
19 interrupted the proceedings with his long diatribe. He was finally escorted
20 out of the courtroom and into the holding cell by three deputies so that the
21 hearing could finish. Many other prior similar disruption scenarios by him
22 could be recounted, at least a dozen. Were he released with deputies to
23 attend the funeral in question, it would take three deputies or more to
24 control him. We do not have three deputies to spare.

25 And, it would be a crowded funeral with confederates possibly
26 present, none of whom would have gone through a security clearance; it
27 would take even more deputies to guard against his escape or his being
28 aided by a confederate.

...

Two family members (a brother and sister) swear under oath that
the funeral would be cancelled if defendant were released to attend, so
fearful of him they remain. Defendant would, they fear, terrorize the
event with his disruptive and belligerent manner.

6. Judge Alsup revokes the defendant's supervised release and sentences him to
456 days in prison

On July 25, 2023, the Court issued a judgment revoking the defendant's supervised release.
Case No. 14-CR-306, Dkt. 1157. As set forth in the judgment, the Court determined the defendant
violated Charges 7-9 relating to his unlawful possession of a firearm (Charges 7 and 9) and his failure to

1 submit a truthful and complete written report to Probation (Charge 8). (As referenced, these three
 2 charges were the subject of an evidentiary hearing.) In addition, the defendant admitted, among other
 3 charges, leaving the judicial district without permission (Count 2), failing to notify Probation about his
 4 change of address (Charge 5), and failing to answer truthfully inquiries by the probation officer (Charges
 5 6 and 12).

6 Judge Alsup sentenced the defendant to a total term of 456 days. The breakdown of that
 7 sentence is important: the defendant received 364 days for the Form 12 violations, **64 days for**
 8 **absconding from supervision**, and another 28 days for the defendant's "insulting statement made
 9 during sentencing." As explained below, during the sentencing, the defendant called Supervisory
 10 Probation Officer Jennifer Hutchings a "c**t."

11 **C. Early May 2024: The Residential Reentry Center files two escape notices; the**
 12 **defendant is arrested six days after the second escape notice**

13 In early May 2024, the defendant was transferred to an Oakland residential reentry center (RRC)
 14 to serve the remainder of his 456-day term. According to a "Residential Reentry Apprehension Report,"
 15 on Thursday, May 9, 2024, RRC staff conducted a work site check at the defendant's purported job
 16 location at approximately 11:30 a.m. Ryan Rezaei Declaration, Ex. 2a, p. 1. RRC searched the area for
 17 approximately 2 ½ hours but could not locate the defendant. *Id.* (RRC staff searched the area until 2:00
 18 p.m.). At 2:15 p.m., the defendant contacted the BOP and indicated he did not know when he would be
 19 able to make it back to the RRC. *Id.* According to the apprehension report, the defendant self-
 20 surrendered and returned to the RRC at 4:11 p.m. "after escaping and being unaccountable during [the]
 21 work site visit by RRC staff." *Id.* (stating the inmate has been unaccountable for over three hours).

22 The next day, Friday, May 10, 2024, the defendant was to be transferred from the RRC to Santa
 23 Rita Jail as an "RRC failure." Rezaei Decl., Ex. 2b, p. 1 (two-page Bureau of Prisons document stating
 24 that the defendant escaped from his work site and is to be "remanded and removed from the community
 25 and placed in a secure local facility immediately as a RRC failure"). The U.S. Marshals picked the
 26 defendant up that morning but returned him to the RRC after Santa Rita Jail refused to medically clear
 27 the defendant. *Id.*, Ex. 2c, p. 1 (BOP letter to U.S. Marshal).

28 Then, on Saturday, May 11, 2024, at about 11:18 a.m., the defendant "walked up to the monitor

1 station handing the Security Monitors a note, declaring his intent to leave the facility. BRUGNARA
 2 walked out the front door of the facility without authorization and walked down the sidewalk away from
 3 the facility. [BRUGNARA] escaped for a second time from the RRC after being returned to the RRC by
 4 the USM.” Rezaei Decl., Ex. 2c, p. 1 (BOP letter to U.S. Marshal).

5 On May 17, 2024, Deputy Shawn Fogle with the U.S. Marshals Service located Yitong Wen’s
 6 vehicle at a hotel near the San Francisco Airport. Rezaei Decl., Ex. 2d (USMS Report of Investigation).
 7 As referenced, Wen was identified in the defendant’s Form 12 petition as his girlfriend. *See* Case No.
 8 14-CR-306-WHA, Dkt. 1049 (second amended petition). Deputy Fogle contacted the hotel’s general
 9 manager who confirmed Wen was renting Room 924. Rezaei Decl., Ex. 2d. A law enforcement team
 10 went to the hotel. *Id.* A confidential source reported that Wen was inside Room 924 and that the source
 11 had previously seen the defendant on the property. *Id.* Law enforcement entered Room 924, found the
 12 defendant there, and arrested him. *Id.* Wen was inside the room with the defendant. *Id.* The defendant
 13 was then transported to Santa Rita Jail. *Id.*

14 **D. Late May 2024: The grand jury returns an indictment charging the defendant with**
 15 **a pandemic-related fraud scheme**

16 In 2021, following his release from federal prison and while on supervised release, the defendant
 17 orchestrated a nine-month pandemic-related fraud scheme. *See* 24-CR-277-MMC, Dkt. 1 (indictment).
 18 As alleged in the May 2024 indictment, in January 2021, the defendant submitted two fraudulent loan
 19 applications under the Economic Injury Disaster Loan program. *Id.*, ¶¶ 19-21. He also submitted two
 20 fraudulent loan applications under the Paycheck Protection Program. *Id.*, ¶¶ 22-27. The defendant faces
 21 multiple counts of wire fraud and money laundering as a result of this scheme. Dkt. 1 (indictment).

22 **E. June 2024: The defendant makes his initial appearance in his PPP fraud case and is**
 23 **detained following a contested detention hearing**

24 **1. The initial appearance, Pretrial Services Report, and detention hearing**

25 On June 21, 2024, a writ was issued ordering the defendant’s production for an appearance on
 26 June 26, 2024. Case No. 24-CR-277-MMC, Dkt. 5 (writ). The defendant made his initial appearance on
 27 that date, at which time the government moved for detention. *Id.*, Dkts. 7-8 (minute entries). In support
 28 of its motion, the government filed a brief. *See* Dkt. 9 (government’s detention memorandum). In its

1 brief, the government recounted, among other things, the defendant's criminal history, his history of
2 escape, and the defendant's two May 2024 RRC escape notices. *See id.* The government also cited text
3 messages the defendant sent to a witness, MG, in which he instructed MG to stop texting him on this
4 phone as his phones were being monitored by the federal government. *Id.* at 5:16-28.

5 Pretrial prepared a bail report. *See* Dkt. 13 (Pretrial Services Report). The report stated, among
6 other things, that the defendant declined to be interviewed. *Id.* at 1. The report also noted the following
7 with respect to Yitong Wen, whom the defense identified to the Court as a possible surety: "Pretrial
8 Services asked if Ms. Wen was or had ever been in a romantic relationship with the defendant, which
9 she denied, twice stating 'we are not in a romantic relationship.'" *Id.* at 2. As stated above, Wen was
10 found in the hotel room where the defendant was arrested on May 11, 2024.

11 Pretrial recommended that the defendant be detained as both a risk of flight and danger to the
12 community. In support of its recommendation, Pretrial noted, among other things, the defendant's
13 criminal activity while under supervision, supervised release non-compliance, violations of community
14 supervision dating back more than a decade, prior failure to appear in federal court, the defendant's
15 absconding from supervision, and the defendant's prior escape. *Id.* at 5. Regarding Wen, Pretrial
16 Services believed she was not a suitable surety "due to her complicity in the defendant's history of
17 absconding and violating his supervision." *Id.* at 3.

18 The magistrate court proceeded with the detention hearing on July 1 and 2, 2024. Dkt. 15.
19 During the hearing, the government, among other things, shared with Judge Hixson information that
20 refuted Wen's statement to Pretrial that she was not in a romantic relationship. First, the government
21 shared information from Supervisory Probation Officer Jennifer Hutchings, who said that Wen and the
22 defendant had been in a long-time romantic relationship. *See* Rezaei Decl., Ex. 3, 6:50 – 7:09 (audio
23 recording of detention hearing). In addition, the government read into the record messages from May 7
24 and 9, 2024, that were seized from the defendant's phone. In summary, in those messages, the
25 defendant instructed Wen to take some kind of pill; Wen said she would as she did not want to have the
26 defendant's kids. *See id.* at 7:09 – 7:55. The defendant also wrote about being inside Wen and the size
27 of his genitalia. *Id.* at 7:56 – 8:25. The government has sanitized these messages in its filing and
28 recommends that the Court listen to the audio of the proceeding for their exact content.

1 The defendant himself spoke during the detention hearing. Among other things, the defendant
 2 spoke about what he said to Supervisory Probation Officer Hutchings during the sentencing on his Form
 3 12 violations in 2023. He admitted he said to Hutchings, “You’re a c**t.” Rezaei Decl., Ex. 3, 18:13 –
 4 19:42 (excerpt of detention hearing audio recording about his use of the word, with his admission that he
 5 told Hutchings “You’re a c**t” at 19:21 – 19:28).¹

6 Following the government and defense proffer and arguments, Judge Hixson ordered the
 7 defendant detained. Judge Hixson orally pronounced that the defendant would be detained on the basis
 8 that he was a flight risk. *Id.* at 30:22 – 31:45. In support of his pronouncement, Judge Hixson cited the
 9 Pretrial Services report, which stated that the defendant absconded twice from the RRC; said it would be
 10 naïve for the Court to think the defendant would not abscond again; referenced that the defendant either
 11 admitted or was found guilty of numerous supervised release violations in 14-CR-306, which showed
 12 the defendant’s unwillingness to abide by conditions of release; and said the defendant’s “erratic and
 13 disruptive” behavior in court makes the Court extremely skeptical that the defendant would report
 14 appropriately to a pretrial services officer. *Id.* at 30:22 – 31:45.

15 Judge Hixson also issued a written order of detention supplementing his findings and order at the
 16 detention hearing. Dkt. 19 (Court’s detention order).

17 **F. The defendant’s BOP sentence in 14-CR-306**

18 According to counsel with the Bureau of Prisons, the defendant is scheduled to complete his 456-
 19 day term in 14-CR-306 on August 4, 2024. Rezaei Decl., ¶ 3a and Ex. 4. Although the defendant is
 20 currently in Marshals custody in the above-captioned case (that is, the PPP fraud case in 24-CR-277)
 21 and although the defendant is not considered in BOP custody, because the defendant is currently in
 22 federal custody, he is earning credit towards his 456-day prison term under 18 U.S.C. § 3585 such that
 23 he will still complete that term on August 4, 2024. *See* Rezaei Decl., ¶¶ 3b – 3c.

24
 25
 26 ¹ In addition to explaining his use of a term derogatory towards women, during a discussion about his
 27 alleged escapes from the RRC in May 2024, the defendant went on what can only be described as a
 28 diatribe about the national origin, descent, and race of the RRC employees. Rezaei Decl., Ex. 3
 (discussion beginning at 20:49 of the audio recording). For instance, at one point, the defendant talked
 about an RRC worker who went to the defendant’s purported workplace. The defendant described the
 RRC worker as “one of these West Africans on a green card, whose name you cannot pronounce.”
 Rezaei Decl., Ex. 3, 20:29 – 20:33 (audio recording).

The government notes the defendant has already raised with Judge Alsup his belief that the extension of the defendant's term of imprisonment and the BOP's administration of good time credits was improper. *See* 14-CR-306, Dkt. 1233 (Judge Alsup's order on June 28, 2024). In his June 28th order, Judge Alsup, first, stated the defendant was moved to a residential reentry program, but then "escaped twice during his residency." *Id.* at 1. Judge Alsup then described the defendant's motions for immediate release as "preposterous and emblematic of the countless frivolous and reckless motions that [the defendant] has filed over the last decade." *Id.* at 2. Judge Alsup also wrote the Court "will not entertain any further motions on this issue." *Id.*

II. LEGAL STANDARD AND ARGUMENT

The Court must consider various factors under 18 U.S.C. § 3142(g) in determining whether a defendant's release is appropriate. *See* 18 U.S.C. § 3142(g). Based on the above facts, those factors – particularly the defendant's history and characteristics, including his past conduct and record concerning appearances at court proceedings – favor detention. The defendant simply refuses to follow the rules. And his behavior before Judge Hixson – which Judge Hixson described as erratic and disruptive – and also this Court at the status conference confirms that. So, too, does the defendant's very recent behavior in jail. Specifically, on June 25, 2024, the Alameda County Sheriff's Office requested that the Marshals transfer the defendant. *See* Rezaei Decl., ¶ 5. In the request, an ACSO deputy wrote in part: "Brugnara is continuously manipulating mental health protocols and refusing to accept any cellmates Along with this, Brugnara is manipulating inmates in our mental health housing unit to attack one another." *Id.*, Ex. 4. Judge Hixson got it right: there is no condition or set of conditions that can reasonably assure the defendant's appearance. This Court should deny the defendant's motion to revoke the detention order.

Separately, as set forth in Section F above, Judge Alsup has already ruled on defendant's claims that he should be immediately released in his 14-CR-306 case. The 456-day term that Judge Alsup imposed in mid-2023 will be completed on August 4, 2024, in just a few weeks. And the defendant is earning credit towards the completion of his 456-day sentence as he awaits trial in his PPP fraud matter. By raising with this Court his sentence in 14-CR-306, the defendant is seeking another bite at the apple.

In sum, the defendant should remain detained pending trial in this PPP fraud matter.

1 DATED: July 15, 2024

Respectfully submitted,

2 ISMAIL J. RAMSEY
3 United States Attorney

4 /S/
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6 RYAN ARASH REZAEI
7 Assistant United States Attorney
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