

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

Eastern District of Kentucky
FILED
DEC 27 2016
AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

2564
COVINGTON MAGISTRATE NO. 16-8153

UNITED STATES OF AMERICA

PLAINTIFF

V.

UNITED STATES'S MEMORANDUM
IN SUPPORT OF DETENTION

UMAIR HAMID,
aka SHAH KHAN and
aka THE SHAH

DEFENDANT

* * * * *

For the reasons described during the December 21, 2016, detention hearing, and for the additional reasons described below, Umair Hamid, a/k/a "the Shah," a/k/a "Shah Khan," the defendant, poses a significant risk of flight and is a danger to the community. Accordingly, the Government respectfully submits that there exists no set of conditions to address these risks, and that Hamid should be detained.

Significantly, since the detention hearing the Government has learned that the U.S. Department of State has revoked Hamid's temporary travel visa effective December 22, 2016. Hamid, therefore, is now in the United States without any legal status whatsoever. Accordingly, the Government respectfully requests that (i) the Court order the defendant detained, and (ii) issue a removal order so that the defendant can be promptly transported to the Southern District of New York to face prosecution.

A. Applicable Law

Title 18, United States Code, Section 3142(e) provides that, if a judicial officer concludes that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community,” he or she shall order the defendant detained pending trial. 18 U.S.C. § 3142(e). Under the statute, pretrial detention must be supported by clear and convincing evidence when the justification involves danger to the community, and a preponderance of the evidence when the justification involves the risk of flight. Here, both danger to the community and risk of flight weigh heavily in favor of detention.

The Bail Reform Act lists four factors relevant to detention analysis: (1) the nature and circumstances of the crimes charged, (2) the history and characteristics of the defendant, (3) the seriousness of the danger posed by the defendant's release, and (4) the evidence of the defendant's guilt. *See* 18 U.S.C. § 3142(g).

The legislative history of the Bail Reform Act of 1984 makes clear that Congress intended the “safety of the community” language in Section 3142 to be given a broad construction. *See* S. Rep. No. 225, 98th Cong., 1st Sess. 12 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3195 (“The reference to safety of any other person is intended to cover the situation in which the safety of a particular identifiable individual, perhaps a victim or witness, is of concern, while the language referring to the safety of the community refers to the danger that the defendant might engage in criminal activity to the detriment of the community. *The Committee intends that the concern about safety be given a broader construction than merely danger of harm of personal violence.*”) (emphasis supplied). Courts have, therefore, appropriately construed the statute to find that protection of the community from economic harm is a valid objective of bail conditions. *See United States v. Madoff*, 586 F. Supp. 2d 240, 252

(S.D.N.Y. 2009) (reviewing case law and concluding that there is “support for considering economic harm in evaluating danger to the community under § 3142 of the Bail Reform Act”); *United States v. Schenberger*, 498 F. Supp. 2d 738, 742 (D.N.J. 2007) (holding that “[a] danger to the community does not only include physical harm or violent behavior” and citing the Senate Committee Report language reproduced above); *United States v. Persaud*, 2007 WL 1074906, at *1 (N.D.N.Y. Apr. 5, 2007) (concurring with the Magistrate Judge that “economic harm qualifies as a danger within the contemplation of the Bail Reform Act”); *see also United States v. Reynolds*, 956 F.2d 192, 193 (9th Cir.1992) (post-conviction for mail fraud and witness tampering, the Court held that “danger may, at least in some cases, encompass pecuniary or economic harm.”).

B. Risk of Flight

Hamid poses an extraordinary flight risk. Hamid is a Pakistani national who entered the United States on a temporary tourist visa in order to open bank accounts in furtherance of his diploma mill scheme. As of December 22, 2016, he has no legal status whatsoever in the United States because his tourist visa has been revoked by the U.S. Department of State. Hamid has significant ties to Pakistan and no meaningful ties to the United States. Most significantly, he has no ties whatsoever to New York, where this case will be prosecuted.

Hamid’s counsel argued during the detention hearing that because Hamid has surrendered his Pakistani passport, this mitigates the risk of flight. This is not the case. The Government is aware that the defendant could easily obtain a Pakistani passport and travel in a number of ways, including (1) through a Pakistani consulate in the United States, whose practices the U.S. Government cannot dictate or control, (2) by mail from Pakistan, and (3) by traveling using the passport of a relative. That risk is more pronounced here than in a typical case because Hamid

and his co-conspirators at Axact have significant financial resources, which they can bring to bear to assist Hamid in fleeing the country and evading law enforcement. Thus, the fact that Hamid has turned over his Pakistani passport should give the Court no comfort that he will remain in the United States to face charges.

It is significant, moreover, that Hamid has already fled from one country to another in response to the filing of criminal charges against Axact and its principals. Hamid does not dispute that after Pakistani authorities brought charges in Pakistan against Hamid's co-conspirators, Hamid left Pakistan for the United Arab Emirates (the "UAE"), where he lived for several months. Nor does Hamid dispute that he returned to Pakistan only after charges were dropped when the Pakistani prosecutor's home was attacked with a grenade. Hamid had no legitimate basis to be in the UAE, and it is apparent from the circumstances that he fled and hid in the UAE until there was no longer any risk that he would be prosecuted in Pakistan.

In light of Hamid's lack of ties to the U.S. and the fact that he has already fled to the UAE to avoid prosecution, the risk that Hamid will again flee is extraordinary.

C. Strength of the Evidence and Criminal Penalties

The proof that Hamid was integrally involved in the fake diploma scheme perpetrated by Axact is overwhelming. There can be no dispute that Axact orchestrated a massive consumer fraud that was global in scale. Axact duped tens of thousands of consumers across the world into paying more than \$140 million for fake diplomas. The defendant, in his capacity as a Vice-President of Axact, played a critical leadership role in Axact's criminal scheme. That Hamid was a crucial part of Axact's operations is not in dispute. Indeed, Hamid's defense counsel submitted a letter to the Court from Axact stating that Hamid's "role is critical, and he is very busy and active in the company's affairs," such that "[h]is absence from the company for any

period of time will result in a significant disruption of the company's operations and harm the work that it and its employees are doing." (Defense Exhibit 3)

As is described in detail in the Complaint, Hamid was also captured on numerous recorded telephone calls and in email correspondence with a cooperating witness ("CW-1") actively discussing the operations of the fake diploma scheme carried out by Axact. Hamid used an alias of "the Shah" and "Shah Khan" when interacting with CW-1 in order to hide his true identity. But there can be no dispute that Hamid is the "Shah" and "Shah Khan." In addition to the extensive evidence linking Hamid to the aliases "the Shah" and "Shah Khan" set forth in the Complaint, Hamid confessed when interviewed by law enforcement on December 19, 2016 that he and "the Shah" are one and the same person. Hamid further confessed that he knew CW-1 and had dealt with him extensively.

While the defense attempts to portray the defendant's use of the name "the Shah" as a mere nickname rather than a criminal alias, this claim is not supported by the evidence. In reality, the defendant studiously avoided providing his true name to CW-1 for years, despite the fact that CW-1 and Hamid had extensive dealings by phone and email in connection with the illegal fake diploma operation. Hamid only finally provided his true identity to CW-1 after CW-1 informed Hamid he required an identity document in order to transfer proceeds of the fraud to Hamid, as Hamid had repeatedly been requesting CW-1 do in recent months. That Hamid used the names "the Shah" and "Shah Khan" as an alias in order to hide his true identity and to evade law enforcement is supported by the record. In fact, Hamid used voice-over-Internet protocol ("VOIP") phones and took steps to mask his IP address to further hide his identity. More recently, Hamid misled CW-1 about his true whereabouts, telling CW-1 that he was in Pakistan and had cancelled his upcoming travel plans to the United States, when, in truth in fact, his

travels plans were already booked and he was to imminently arrive in the United States for the purpose of opening additional bank accounts in furtherance of the fake diploma scheme.

These facts and the strength of the evidence underscore that Hamid presents an extraordinary flight risk. The defense claims that the strength of the evidence of Hamid's guilt, however, is not a valid consideration, stating in pertinent part that "the law is clear that the guilt of the accused has no place in the pre-trial release/detention analysis." (Defense Submission, at 7). This is not the law. While the ultimate guilt of a defendant is not at-issue in a bail hearing, the Court is expressly required in "determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community" to consider "the weight of the evidence against the person." 18 U.S.C. § 3142(g). Here, the strength of the Government's case against Hamid weighs heavily in favor of detention because Hamid will have a strong incentive to flee given the strong likelihood of conviction.

Hamid also faces significant criminal penalties if convicted that further increase the likelihood of his flight from prosecution. The Complaint charges Hamid with one count of wire fraud conspiracy, two counts of wire fraud, and one count of aggravated identity theft. The Government estimates conservatively that Hamid will face a Guidelines range of well over 200 months' imprisonment if convicted, reflecting a loss amount of at least \$140 million, and enhancements for Hamid's leadership role and the vast victimization caused by the scheme. In addition, Hamid faces a mandatory consecutive minimum sentence of two years' imprisonment on the aggravated identity theft charge. The circumstances of this case therefore make plain that Hamid has every incentive to flee – as he has already done before – and no incentive to appear in

court in New York to face charges in this case. No combination of bail conditions could possibly address this extraordinary flight risk.

In an effort to minimize the scope of the evidence against Hamid, the defendant repeatedly claims in his submission that the Government's proffer of evidence against Hamid should not be relied upon by the Court and is "untested." (Defense Submission, at 7). The defense further asserts that, at this early stage in the proceeding, the Government should have called live witnesses to testify as to Hamid's confession and that the Government's proffer should be discounted because "the nature of the government's assertions and 'proof' proffered to the Court . . . would not be admissible under the rules of evidence."

But at the bail stage of a proceeding, the Government is not required to call witnesses to testify as to its evidence. It is well-established, black letter law that "[d]etention hearings are an informal proceeding, and the evidence presented is not governed by the Federal Rules of Evidence." *United States v. Duncan*, 897 F. Supp. 688, 690 (N.D.N.Y. 1988); *see also* 18 U.S.C. § 3142(f)(2). The government may proceed in a detention hearing by way of proffer, and frequently does so. *See United States v. Webb*, 238 F.3d 426 (table), 2000 WL 1721060, at *2 (6th Cir. 2000) ("[T]he government may proceed in a detention hearing by proffer or hearsay."); *see also United States v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996) ("Every circuit to have considered the matter . . . [has] permitted the Government to proceed by way of proffer."); *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986); *United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986); *United States v. Acevedo-Ramos*, 755 F.2d 203, 206-07 (1st Cir. 1985).

The Government is permitted to proceed by proffer at a detention hearing because such hearings are "neither a discovery device for the defense nor a trial on the merits." *Smith*, 79 F.3d at 1210. "The process that is due is only that which is required by and proportionate to the

purpose of the proceeding.” *Id.* That purpose includes neither a reprise of all the evidence, *United States v. Suppa*, 799 F.2d 115, 119 (3d Cir. 1986), nor the right to confront non-testifying government witnesses, *United States v. Accetturo*, 783 F.2d 382, 388-89 (3d Cir. 1986). *See also United States v. Hurtado*, 779 F.2d 1467, 1479 (11th Cir. 1985) (purpose of pretrial detention hearing is not to “rehash . . . probable cause” but to provide opportunity for detainee to show no risk of flight or danger to community); *Smith*, 79 F.3d at 1210 (“A right to require the government to produce its witnesses against [a defendant] would complicate the hearing to a degree out of proportion to the liberty interest at stake - viz. the interest in remaining free until trial, for what is by statute a period of limited duration.”). Accordingly, the fact that the Government has proffered various facts for the Court to consider in making a detention determination is permissible and typical at this early stage in the proceeding. This is particularly true where, as here, the Court may rely on the detailed facts set forth in the Complaint, which was sworn under oath by a federal agent. The defense’s arguments otherwise lack merit.

The defense also claims – without any basis whatsoever – that Hamid “did not confess.” (Defense Submission, at 6). This is simply not the case. The fact that the defendant admitted that he is “the Shah” when interviewed by law enforcement is significant and goes directly to the weight of the evidence against Hamid. “The Shah” is not merely a nickname. It is the identity of an individual who was captured during the Government’s investigation actively participating in a fake diploma scheme in recorded telephone conversations and in email communications with a cooperating witness. Therefore, Hamid’s admission that he is “the Shah” and controlled the Shah’s email account is crucial evidence that only further demonstrates the strength of the case against him. Furthermore, contrary to the defense’s claims, Hamid’s confession went beyond merely admitting that he is “the Shah” and that he knew the CW. During his interview with law

enforcement, Hamid admitted that he understood the diplomas that he participated in selling were fake.

D. Danger to the Community

As is noted above, danger to the community is not limited to the threat of violence, and can include the threat of future fraud by a defendant. There is a significant risk that Hamid will continue to defraud American consumers despite his arrest. Although Axact was shut down by Pakistani law enforcement in May 2015, and its fraud was revealed in national newspaper articles, Hamid was undeterred from continuing to defraud consumers by selling them fake and worthless diplomas in exchange for upfront fees. In fact, for nearly a year after Axact was shut down by Pakistani authorities, Hamid continued to pursue the fraud undeterred, and actively participated in the fake diploma scheme up until the date of his arrest.

Indeed, the very purpose of Hamid's recent trips to the United States was to defraud American consumers. Hamid came to the United States in order to open bank accounts to collect money from consumers that were defrauded through the sale of fake diplomas. As is described in the Complaint, on or about October 18, 2016, Hamid, after travelling to the United States, opened a bank account that he controlled at a Huntington Bank branch in Cincinnati, Ohio, in the name of a shell entity called "Globemia Inc." (the "Huntington Account"). Hamid used the Huntington Account to continue to perpetrate the fake diploma fraud. As described in the Complaint, a confidential source received a fraudulent solicitation from a phony school selling fake diplomas as recently as November 2016. As payment for a fake diploma, the confidential source was instructed to wire transfer funds to the Huntington Account – the very bank account that Hamid personally opened in Cincinnati in October 2016. Lest there be any doubt that

Hamid was directly responsible for the opening of the Huntington Account, Hamid was captured on surveillance footage opening the account.

Furthermore, documents provided by Huntington Bank show that Hamid has used the Huntington Account extensively in recent weeks to receive large sums of money from defrauded consumers. Even though the Huntington Account was only opened on October 18, 2016, by October 31, 2016 Hamid had already received approximately \$185,000 in electronic deposits in that account from defrauded consumers located in the United States and abroad. These wire transfers from consumers bear the clear indicia of Hamid's ongoing fake diploma fraud. For example, many of the incoming wire transfers into the Huntington Account have notations such as "Academic Fee" and "School Expenses," plainly reflecting that the purpose of the account that Hamid personally opened was to collect funds directly from defrauded consumers in connection with the fake diploma scheme. Furthermore, the Government has now determined that, as recently as this past Monday, Hamid opened yet another business account at 5th 3rd Bank in the name of "Learning Academic Group." Hamid has thus travelled to the United States from abroad on at least two occasions in the past few months for the purpose of receiving money from swindled consumers by opening and managing bank accounts that he alone controlled in furtherance of the fraudulent diploma scheme. Hamid did so even after many of his co-conspirators faced arrest and prosecution in Pakistan for perpetrating the fraud that Hamid has continued to commit in the United States.

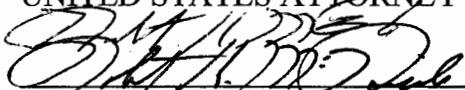
Conclusion

For the foregoing reasons, the Government respectfully submits that the Court should order Umair Hamid detained.

Respectfully submitted,

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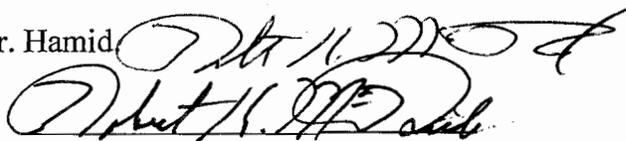
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CERTIFICATE OF SERVICE

I certify that on December 27, 2016, I filed this response with the Clerk of Court and a copy was sent by email to counsel for Mr. Hamid.



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