U.S. Department of Justice

United States Attorney
Southern District of New York

[redacted]

July 12, 2019

VIA ECF

The Honorable Richard M. Berman
United States District Court
Southern District of New York
United States Courthouse
[redacted]

Re: *United States* v. *Jeffrey Epstein*, 19 Cr. 490 (RMB)

Dear Judge Berman:

The Government respectfully submits this letter in response to the defendant's Motion for Pretrial Release (the "Release Motion"), dated July 11, 2019 (Dkt. 6), and in further support of its Memorandum in Support of Detention (the "Detention Memo"), submitted to Magistrate Judge Pitman on July 8, 2019, which is attached hereto and incorporated herein (Ex. A).

Simply put, the Release Motion misconstrues and misunderstands the relevant law, belittles and smears the many dozens of victims of the defendant's appalling sexual abuse, and utterly fails to meet its burden of rebutting the presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community. Rather than even attempting to address the grave risks of releasing a defendant with extraordinary financial resources, the defendant instead proposes a bail package that is effectively an unsecured bond masquerading as a 14-point plan. The Court should reject the defendant's application and order him detained pending trial.

PRELIMINARY STATEMENT

The defendant is a serial sexual predator who is charged with abusing underage girls for years. A grand jury has returned an indictment against him setting forth allegations that he abused dozens of minors, including girls as young as 14 years old, in multiple states. To this day, he is designated by New York State in the highest category of risk to reoffend, despite his attempts to lower that classification. And any doubt that he is unrepentant and unreformed was eliminated when law enforcement agents discovered a trove of nude images of young girls in his Manhattan mansion on the night of his arrest, more than a decade after he was first convicted of a sex crime involving a juvenile.

The defendant faces substantial evidence of guilt founded on the corroborated testimony of numerous victims, and this case presents the very real possibility that he will be go to prison for the rest of his natural life. He has at his disposal a vast fortune, nearly all of which remains

concealed or obscured from the Court and the Government. The defendant also has a history of obstruction and manipulation of witnesses, including as recently as when his offenses reemerged in the media mere months ago. And he continues to show a shocking lack of understanding of the gravity of the harm he has perpetrated, including through the minimization of his conduct and casual disparagement of victims in his arguments.

Against this backdrop of significant—and fast-growing—evidence, serious charges, and the prospect of a lengthy prison sentence, the defendant proposes to be released on conditions that are preposterously inadequate. While there are no conditions of bail that would reasonably assure the defendant's presence in court proceedings or protect the safety of the community, as further explained below, the defendant's proposal here is not a serious one. The defendant's Release Motion sets forth a woefully inadequate bail package that, among other things, offers to pledge as the only security against at least hundreds of millions of net worth a single property that has already been designated by the Government for forfeiture and is therefore of no value whatsoever as collateral. His proposed global waiver of extradition is unenforceable, and even if enforceable would be little comfort to victims forced to wait additional months or years while the defendant is located and returned to this country. The promise to "deregister or otherwise ground" his private jet is meaningless given his wealth and ability to secure other means of travel, and the two co-signers he proposes only reinforce his minimal community ties. Electronic monitoring would merely give the defendant less of a head start in fleeing. And the private security force he proposes to guard his gilded cage, a proposal already rejected by this Court in similar circumstances, simply reinforced the obvious fact that the defendant should be housed where he can be secured at all times: a federal correction center.

The defendant faces a presumption of detention, Pretrial Services has recommended detention, and victims of the defendant seek his detention. The Court should order him detained.

BACKGROUND

A. Overview and Offense Conduct

As previously set forth, a federal grand jury in this District returned an indictment (the "Indictment") charging the defendant with violating Title 18, United States Code Section 1519, and conspiracy to commit the same. The defendant argues that the Government "labels this a 'Sex Trafficking' case," as if the Government invented the term just for this defendant. Release Motion at 2. In fact, the title of the statute for which a grand jury has found probable cause to believe the defendant violated is: "Sex Trafficking of Children." 18 U.S.C. § 1591.

As charged by the grand jury, the facts giving rise to those charges involve a years-long scheme to sexually abuse underage girls. Specifically, the defendant enticed and recruited dozens of minor girls to engage in sex acts with him, for which he paid the victims hundreds of dollars in cash, in at least two different states. Victims were initially recruited to provide "massages" to the defendant, which would be performed nude or partially nude, would become increasingly sexual in nature, and would typically include one or more sex acts, including groping and direct or indirect contact with victims' genitals. To perpetuate this exploitation of underage girls, the defendant

actively encouraged certain victims to recruit additional girls to be similarly sexually abused. He paid these victim-recruiters hundreds of dollars for each additional girl they brought to him, creating a vast network of underage victims for him to exploit in New York and Palm Beach.

The defendant keeps making clear the he does not understand the gravity of the offenses with which he is charged, including his claim that he has "no criminal history"—other than a conviction for engaging in sexual conduct with a minor, *precisely the same kind of conduct alleged here*. And following that conviction, as described previously by the Government, the defendant continued to maintain a vast trove of hundreds or thousands of nude photos of young subjects. The defendant's victims in this case, often particularly vulnerable girls, were as young as 14 years old when he abused them. The defendant knew he was abusing minors, including because victims told him directly they were underage. And he abused these victims repeatedly—day after day, month after month, year after year.

The defense calls these appalling acts "simple prostitution."[1] Mag. Tr. 12:12; *see also* D. Tr. at 6:15-19 ("This is basically the Feds today . . . redoing the same conduct that was investigated 10 years ago and calling it, instead of prostitution, calling it sex trafficking"). That offensive and horrible labeling of underage girls as prostitutes is unrecognized in federal law, which criminalizes commercial sex acts with minors irrespective of the presence or absence of force, fraud, or coercion. Defense counsel has already argued repeatedly that the Government's case is infirm because no threats or coercion is alleged. Mag. Tr. at 12 ("There was no coercion. There were no threats. There was no violence."), 17 ("there was no coercion. There was no intimidation. There is no deception."); Release Motion at 2 ("There are no allegations . . . that he forced, coerced, defrauded, or enslaved anybody . . . .").

The most charitable explanation of this argument is that defense counsel may not yet realize with which offense the defendant has been charged, wrongly believing it to be the provision of the relevant statute that criminalizes recruitment or enticement of *adults* for commercial sex through means of force, threats of force, fraud, or coercion. The prong under which the defendant is charged, conversely, involves minors. As the indictment properly alleges, and the statute provides for, where victims are underage, the Government principally must prove that a minor is caused to engage in a commercial sex act. *See United States v. Afyare*, 632 F. App'x 272, 278 (6th Cir. 2016) ("We hold that § 1591(a) criminalizes the sex trafficking of children (less than 18 years old) with or without any force, fraud, or coercion, and it also criminalizes the sex trafficking of adults (18 or older), but only if done by force, fraud, or coercion.").

Here, incredibly, the defense has already effectively admitted that the Government will be able to present evidence of these primary elements—that the defendant engaged in sex acts for money with girls he knew were underage. *See* Release Motion at 2. If the defendant dislikes the state of federal sex trafficking law, he may petition any of the nine members of Congress who

[1] "Mag. Tr." refers to the transcript of the hearing before Magistrate Judge Pitman on July 8, 2019; "D. Tr." refers to the transcript of the hearing before this Court on July 8, 2019.

represent his places of residence; meanwhile, in the case that has actually been brought, his insistence that he is innocent of a crime with which he is not charged is irrelevant.

B. The Defendant

It might not occur to a reader of the Release Motion that the defendant is widely reported to be a billionaire—indeed, even the word "million" only appears once, to offer up as collateral a property the Government has already noticed for seizure and forfeiture. Release Motion at 4. Otherwise, there is not a single mention of net worth, income, or valuation of the defendant's vast assets. This is, at best, obscurative.

Put plainly, the defendant is extraordinarily wealthy. According to records from a financial institution ("Institution-1") relating to the defendant, in or about 2017, the defendant's estimated net worth was listed as "$500 MM +" and his estimated annual income was $10 million. According to records from another financial institution ("Institution-2") relating to the defendant, from 2018 through the present, the defendant's personal and business accounts have spent more than $10 million on credit cards alone.

The defendant has six residences, a private jet, an estimated net worth of at least a half a billion dollars. His extraordinary incentives to flee, as further discussed below, are equaled by his means to do so.

ARGUMENT

The Government agrees with Pretrial Services that the defendant should be detained pending trial. He is a tremendous risk of flight, and a danger to the community, and he cannot overcome the statutory presumption in favor of detention in this case.

I. The Defendant's Proposal Does Nothing to Mitigate His Flight Risk

Each of the relevant factors to be considered as to flight risk—the nature and circumstances of the offense, the strength of the evidence, and the history and characteristics of the defendant—counsel strongly in favor of detention, and the defendant's proposed package would do nothing whatsoever to mitigate that risk.

A. The Defendant's Financial Resources

As set forth in the Government's Detention Memo, the nature and circumstances of this offense and the strength of the evidence create an extraordinary risk of flight. The defendant faces up to 45 years of incarceration on the current counts with which he is charged, and the possibility of a severe sentence is a significant factor in assessing the risk of flight. *See United States v. Jackson*, 823 F.2d 4, 7 (2d Cir. 1987).

And the evidence of his guilt, already robust less than a week ago when the Indictment was unsealed, is growing stronger literally by the day. Several additional women have identified themselves to the Government as victims of the defendant. Pursuant to judicially-authorized

search warrants, the Government has discovered and seized vast amounts of photographs of nude and seminude young women and girls in the defendant's Manhattan residence, and is in the process of reviewing dozens of electronic discs that contain still more such photos. And dozens of individuals have called the Government to convey information regarding the defendant and his conduct. All this in less than a week, and all in addition to an Indictment that already alleges dozens of victims in New York and dozens of victims in Florida.

Faced with significant and mounting evidence, the defendant's Release Motion does not even attempt to account for the numerous entities, accounts, and assets he controls in the United States and abroad. The Court cannot begin to evaluate the defendant's net worth, much less be aware of particular obscured, hidden, or foreign-based assets that would further demonstrate the defendant's ability to finance a comfortable life beyond the reach of United States authorities. The defendant's financial resources are indisputably a relevant aspect of his "history and characteristics." 18 U.S.C. § 3142(g)(3); *See United States v. Patriarca*, 948 F.2d 789, 795 (1st Cir. 1991) (explaining that a district court should consider the extent of a defendant's assets and net worth before determining the amount of property to be posted as forfeiture condition).

In the first instance, because the defendant has refused to fill out a financial affidavit in connection with his application for bail, the Court simply does not have sufficient information to properly and accurately evaluate the defendant's risk of flight. Although the defendant continues to hide the true scope, nature, and amount of his assets, he has repeatedly been described as a billionaire in press reports, and is identified in documents of his own financial institution as having a net worth of $500 million or more.

As described in the Government's Detention Memo, these resources, which remain unknown in scope and would be completely unfettered by the defendant's proposed bail package, give the defendant access to innumerable means to flee. The defendant is a frequent traveler and regularly travels to and from the United States, including approximately more than 20 flights in which he traveled to or from a foreign country since 2018. Extensive international travel of this nature further demonstrates a significant risk of flight. *See*, *e.g.*, *United States v. Anderson*, 384 F. Supp. 2d 32, 36 (D.D.C. 2005).

And not only does the defendant have the means to flee thanks to his vast wealth, crucially, even were he to sacrifice *literally all* of his current assets, there is every indication that he would immediately be able to resume making millions or tens of millions of dollars per year outside of the United States. He already earns an estimated $10,000,000 per year, according to records from Institution-1, while living in the U.S. Virgin Islands, traveling extensively abroad, and residing in part in Paris, France; there would be little to stop the defendant from fleeing, transferring his unknown assets abroad, and resuming whatever it is he does to earn his vast wealth from a computer terminal beyond the reach of extradition.

The defendant is in a position to abandon millions of dollars in cash and property securing any potential bond and still live comfortably for the rest of his life. These resources, and the ease with which the defendant could flee and live outside the reach of law enforcement make the risk of flight unacceptably high.

B. The Defendant's Promise of "Consent" to Extradition is Unenforceable and Impractical

The theoretical possibility of extradition does not support release, because extradition is never guaranteed, and rather is typically lengthy, complicated, and expensive. Additionally, the defendant's offer to sign a so-called "consent" to extradition provides no additional reassurance whatsoever. Numerous courts have recognized that such purported waivers are unenforceable and effectively meaningless. *See, e.g.*, *United States v. Morrison*, No. 16-MR-118, 2016 WL 7421924, at *4 (W.D.N.Y. Dec. 23, 2016); *United States v. Kazeem*, No. 15 Cr. 172, 2015 WL 4645357, at *3 (D. Or. Aug. 3, 2015); *United States v. Young*, Nos. 12 Cr. 502, 12 Cr. 645, 2013 WL 12131300, at *7 (D. Utah Aug. 27, 2013); *United States v. Cohen*, No. C 10-00547, 2010 WL 5387757, at *9 n.11 (N.D. Cal. Dec. 20, 2010); *United States v. Bohn*, 330 F. Supp. 2d 960, 961 (W.D. Tenn. 2004); *United States v. Stroh*, No. 396 Cr. 139, 2000 WL 1832956, at *5 (D. Conn. Nov. 3, 2000); *United States v. Botero*, 604 F. Supp. 1028, 1035 (S.D. Fla. 1985). This is for very good reason: Any defendant who signs such a purported waiver and then flees will assuredly contest the validity and/or voluntariness of the waiver, and will get to do so in the jurisdiction of his choosing (*i.e.*, the one to which he chose to flee). The Department of Justice's Office of International Affairs is unaware of any country anywhere in the world that would consider an anticipatory extradition waiver binding.

C. Home Confinement and Electronic Monitoring Provide No Assurance

The defendant's proposal of ankle-bracelet monitoring should be of no comfort to the Court. In particular, the defendant's endorsement of a GPS monitoring bracelet rather than a radio frequency bracelet is farcical—neither one is useful or effective *after it has been removed.* At best, home confinement and electronic monitoring would merely reduce his head start should he decide to flee. *See United States v. Zarger*, No. 00 Cr. 773, 2000 WL 1134364, at *1 (E.D.N.Y. Aug. 4, 2000) (Gleeson, J.) (rejecting defendant's application for bail in part because home detention with electronic monitoring "at best . . . limits a fleeing defendant's head start"); *see also United States v. Casteneda*, No. 18 Cr. 047, 2018 WL 888744, at *9 (N.D. Cal. Feb. 2018) (same); *United States v. Anderson*, 384 F.Supp.2d 32, 41 (D.D.C. 2005) (same); *United States v. Benatar*, No. 02 Cr. 099, 2002 WL 31410262, at *3 (E.D.N.Y. Oct. 10, 2002) (same).

D. Private Security is Inadequate and Raises Numerous Questions and Challenges

The defendant also proposes the use of a private security force to march him to and from court under the threat of deadly force. This proposal should be rejected.

At the outset, it is far from clear that the defendant's private jail proposal, which seeks to replicate the conditions of a government-run detention facility in the defendant's home, is a condition of "release" that implicates the Bail Reform Act. "[T]here is a debate within the judiciary over whether a defendant, if she is able to perfectly replicate a private jail in her own home at her own cost, has a right to do so under the Bail Reform Act and the United States Constitution." *United States v. Valerio*, 9 F. Supp. 3d 283, 292 (E.D.N.Y. 2014) (Bianco, J.) (collecting cases). The Second Circuit has never directly addressed this issue. *See United States v. Sabhnani*, 493 F.3d 63, 78 n.18 (2d Cir. 2007) ("The government has not argued and, therefore,

we have no occasion to consider whether it would be 'contrary to the principles of detention and release on bail' to allow wealthy defendants 'to buy their way out by constructing a private jail." (citations omitted)). While "troubled by [the] possibility" of wealthy defendants being allowed to construct a private jail, the Second Circuit has not yet had occasion to decide whether district courts "routinely must consider the retention of self-paid private security guards as an acceptable condition of release before ordering detention." *United States v. Banki*, 369 Fed. App'x 152, 153-54 (2d Cir. 2010) (unpublished); *see Valerio*, 9 F. Supp. 3d at 293-94 (noting that the Bail Reform Act addresses solely "conditions of release, not conditions of detention"). Indeed, a decision by this Court reasoned that "the very severe restrictions" in the private jail proposal presented to him did "not appear to contemplate 'release' so much as it describes a very expensive form of private jail or detention." *United States v. Zarrab*, 2016 WL 3681423, at *10 (S.D.N.Y. June 16, 2016).

Courts have long been troubled by private jail proposals like the defendant's which, "at best 'elaborately replicate a detention facility without the confidence of security such a facility instills.'" *United States v. Orena*, 986 F.2d 628, 632 (2d Cir. 1993) (quoting *United States v. Gotti*, 776 F. Supp. 666, 672 (E.D.N.Y. 1991) (rejecting private jail proposal)); *see also Valerio*, 9 F. Supp. 3d at 295 ("The questions about the legal authorization for the private security firm to use force against defendant should he violate the terms of his release, and the questions over whether the guards can or should be armed, underscore the legal and practical uncertainties—indeed, the imperfections—of the private jail-like concept envisioned by defendant, as compared to the more secure option of an actual jail."). A private security firm simply cannot replicate the controlled environment of a federal correctional facility, in which, typically, all of the needs to the prisoner can be attended to without placing the prisoner in the community at large; the defendant's proposed private jail arrangement would have the effect of permanently placing him in just such a high-flight-risk circumstance. The risk of a public escape attempt while in the community and involving armed private guards attempting to stop the defendant, potentially by force—rather than the defendant being in the environment of a federal facility—also greatly magnifies the danger of the defendant's flight to the public. *See United States v. Boustani*, 356 F. Supp. 3d 246, 257 (E.D.N.Y. 2019) (in rejecting a private jail proposal, noting that it "raise[d] several issues related to use of force" including that any escape attempt would "present the risk of a confrontation of armed guards and Defendant . . . in the streets of New York city, which would mean that any reduction in the Defendant's flight risk from this proposal would be at least partially offset by a greater risk to the community") (citation omitted). "This is why, as the Government correctly notes, federal prisoners should be detained in facilities run by trained personnel from federal correctional facilities." *Id.* at 258 (citing *Sabhnani*, 493 F.3d at 74 n.13 ("To the extent [armed private guards] implies an expectation that deadly force may need to be used to assure defendant['s] presence at trial ... [s]uch a conclusion would, in fact, demand a defendant's detention")).

In *Banki*, the Second Circuit has held that it is not legal error "for a district court to decline to accept," as "a substitute for detention," a defendant hiring private security guards to monitor him. 369 F. App'x at 154. In the same decision, the Second Circuit noted that it was "troubled" by the possibility of "allow[ing] wealthy defendants to buy their way out by constructing a private jail." (internal quotation marks omitted)). *Accord, e.g.*, *United States* v. *Cilins*, No. 13 Cr. 315

(WHP), 2013 WL 3802012, at *3 (S.D.N.Y. July 19, 2013) ("'it is contrary to underlying principles of detention and release on bail that individuals otherwise ineligible for release should be able to buy their way out by constructing a private jail, policed by security guards not trained or ultimately accountable to the Government, even if carefully selected'" (quoting *Borodin* v. *Ashcroft*, 136 F. Supp. 2d 125, 134 (E.D.N.Y. 2001))); *Valerio*, 9 F. Supp. 3d at 293-94 (E.D.N.Y. 2014) ("There is nothing in the Bail Reform Act that would suggest that a defendant (or even, hypothetically, a group of defendants with private funding) has a statutory right to replicate or construct a private jail in a home or some other location.").

The defendant's payment of his guards also raises the conflict of interest inherent in having the defendant having extraordinary influence over a private security company tasked with guarding him, leaving the company's incentives entirely aligned with the defendant. *See*, *e.g.*, *Boustani*, 356 F. Supp. 3d at 257 (in finding that private armed guards would not reasonably assure the appearance of a defendant, noting a "clear conflict of interest—private prison guards paid by an inmate" and noting that in a recent S.D.N.Y. case involving private security guards the defendant "was outside of his apartment virtually all day, every weekday; was vitited by a masseuse for a total of 160 hours in a 30-day period; and went on an unauthorized visit to a restaurant in Chinatown with his private guards in tow"); *see also United States v. Tajideen*, 17 Cr. 046, 2018 WL 1342475, at *5-6 (D.D.C. Mar. 15, 2018) (Finding *Zarrab* "particularly instructive" and further noting: "While the Court has no reason to believe that the individuals selected for the defendant's security detail would intentionally violate federal law and assist the defendant in fleeing the Court's jurisdiction, it nonetheless is mindful of the power of money and its potential to corrupt or undermine laudable objectives. And although these realities cannot control the Court's ruling, they also cannot be absolutely discounted or ignored.").

Finally, in *Zarrab* this Court found that "the Defendant's privately funded armed guard proposal is unreasonable because it helps to foster inequity and unequal treatment in favor of a very small cohort of criminal defendants who are extremely wealthy, such as Mr. Zarrab." 2016 WL 3681423, at *13; *see also Boustani*, 356 F. Supp. 3d at 258 ("although this Defendant has vast financial resources to construct his own 'private prison,' the Court is not convinced 'disparate treatment based on wealth is permissible under the Bail Reform Act'") (quoting *United States v. Bruno*, 89 F. Supp. 3d 425, 432 (E.D.N.Y. 2015) (""Even if Defendant had the financial capacity to replicate a private jail within his own home, this Court is not convinced that such a set of conditions would be sufficiently effective in this case to protect the community from Defendant, or that such disparate treatment based on wealth is permissible under the Bail Act.")); *Borodin*, 136 F. Supp. 2d at 134 (E.D.N.Y. 2001) (Nickerson, J.) ("It is contrary to underlying principles of detention and release on bail that individuals otherwise ineligible for release should be able to buy their way out by constructing a private jail, policed by security guards not trained or ultimately accountable to the government, even if carefully selected.").

The defendant's appearance can only be assured through detention— not through bail granted based on hollow promises of an intent to clear his name in the face of weighty evidence and a sentence of up to 45 years in jail, not through release on the threat of forfeiture of a mere fraction of his wealth and property should he flee, and not through "detention" under the guard of individuals to be paid by the defendant himself. Indeed: "What more compelling case for an order

of detention is there than a case in which only an armed guard and the threat of deadly force is sufficient to assure the defendant's appearance?" *Zarrab*, 2016 WL 3681432, at *12 (quoting *United States v. Valerio*, 9 F. Supp. 3d at 295).

Very truly yours,

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