

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

LEE ELBAZ,
a/k/a “Lena Green,”

Defendant

Criminal Action No. TDC-18-157

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION FOR EXPEDITED
RECONSIDERATION OF ORDER REVOKING BAIL**

The government, by and through undersigned counsel, respectfully submits this brief in opposition to the Defendant’s Motion for Expedited Reconsideration of Order Revoking Bail. This Court properly determined that the defendant, a foreign national convicted by a jury of wire fraud and conspiracy charges who faces a potential sentence of life imprisonment, has the manner, means, and incentive to flee and ordered the defendant detained pending sentencing. The defendant’s Motion should be denied. In support of its position, the government submits as follows:

I. Factual Background

Between May 2014 and June 2017, the defendant orchestrated a scheme to defraud tens of thousands of binary options clients out of over \$100 million. As a manager and Chief Executive Officer of Yukom Communications (“Yukom”), the defendant was responsible for hiring, training, and overseeing dozens of employees. As the evidence at trial showed, the defendant trained her employees and co-conspirators to lie to clients about, among other things: whether investors made money in binary options; the nature and safety of “investments” in binary options; gains and rates of return clients could expect to receive; the alignment of financial interests between Yukom and

its clients; the education, credentials, and experience of the defendant and her employees; and whether clients could withdraw funds from their accounts. At the defendant's direction, her employees lied to clients and used other fraudulent tactics to convince clients to send money and to prevent clients from withdrawing their funds.

On September 14, 2017, the defendant was arrested on a criminal complaint. D.E. 1. On March 22, 2018, a grand jury in the District of Maryland returned an Indictment charging the defendant with three counts of wire fraud (18 U.S.C. § 1343) and one count of conspiracy (18 U.S.C. § 1349) for her role in the scheme to defraud binary options investors. The case proceeded to trial and, on August 6, 2019, the jury unanimously convicted the defendant on all counts. D.E. 292. Pretrial Services recommended that the defendant be detained pending sentencing based on her status as a foreign national and lack of ties to the United States. After return of the verdict, the government moved for detention pending sentencing. This Court concluded that the defendant could not show by clear and convincing evidence that she did not pose a flight risk and ordered that she be detained.

At trial, the government presented overwhelming evidence of the defendant's guilt. First, the government offered testimony of four cooperating witnesses, former employees of Yukom or its affiliated company, Numaris, all of whom testified to the defendant's role in organizing and overseeing the scheme. Second, the government offered testimony from five victim investors who relied on the representations made by the defendant's co-conspirators. Third, the government introduced dozens of emails demonstrating the defendant's control over the scheme, including correspondence setting sales targets, managing client "risk" settings, directing employees to prevent clients from withdrawing funds, and circulating training materials containing false and fraudulent statements. Fourth, the government offered recordings of training sessions for new

Yukom employees, including a session conducted by the defendant, and recordings of phone calls in which Yukom employees made false and misleading statements to investors. Fifth, the government offered excerpts of the defendant's post-arrest statement, including her statement that 95% of binary options clients lost money—despite the fact that she trained her employees to promise clients they were likely to make a profit.

II. Legal Standard

Under 18 U.S.C. § 3143(a)(1), “the sentencing judge ‘shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence ... be detained, *unless* the [judge] finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released.’” *United States v. Cohen*, No. 14-cr-0310, 2015 WL 11090689, at *2 (D. Md. Oct. 19, 2015) (quoting 18 U.S.C. § 3143(a)(1)). Under this framework, “[o]nce a defendant has been found guilty of a crime, the presumption of innocence is replaced by a presumption of detention.” *Moreland v. United States*, 968 F.2d 655, 660 n.9 (8th Cir. 1992). Remand after a guilty verdict “encourages general respect for the law by signaling that a guilty person will not be able to avoid or delay imposition and service of the sentence prescribed by law.” *United States v. Kakande*, No. 1:10-CR-00117, 2011 WL 1790639, at *2 (D. Me. May 9, 2011).

Accordingly, once a defendant has been convicted, “[t]he burden falls on [the] defendant to demonstrate by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of others or the community.” *United States v. Jinwright*, No. 3:09-CR-00067, 2010 WL 2926084, at *1 (W.D.N.C. July 23, 2010); *see also United States v. Thompson*, No. 1:07-CR-00051, 2008 WL 4460204, at *1 (W.D. Va. 2008). A defendant is *only* entitled to release pending sentencing if she “clears these high procedural hurdles.” *United States v. Abuhamra*, 389 F.3d

309, 320 (2d Cir.2004) (“18 U.S.C. § 3143(a)(1) creates a presumption in favor of detention; it places the burden on the defendant to defeat that presumption; and it requires the defendant to carry that burden by clear and convincing evidence, not by a mere preponderance.”). As this Court has concluded, “[e]ven if the defendant proffers evidence rebutting the presumption, the presumption ‘remains a factor to be considered by the Court in evaluating whether Defendant should be detained.’” *Cohen*, 2015 WL 11090689, at *2 (quoting *United States v. Burris*, No.1:07-cr-76, 2007 WL 3232539, at *1 (W.D.N.C. Oct. 31, 2007)); see also *United States v. Granger*, No. 2:06CR46, 2006 WL 1303150, at *1 n. 1 (E.D. Va. 2006).

III. Argument

The defendant is a foreign national with virtually no ties to the United States who has been convicted of orchestrating and directing a scheme to defraud victims worldwide out of over \$100 million. The defendant faces a potential sentence of life imprisonment under the Guidelines.¹ She not only has the manner and means to flee, she also has substantial motive to do so and thus poses a substantial risk of flight. The defendant has not carried her burden of showing by clear and convincing evidence that she “is not likely to flee” if released and cannot do so. The Court correctly determined that the defendant should be detained pending sentencing and the defendant’s motion should be denied.

A. The Defendant has a Strong Motive to Flee.

The defendant has now been convicted of conspiring to defraud binary options investors. As a result of this conviction, the defendant is likely facing a significant term of imprisonment.

¹ The approximately \$100 million figure is a conservative measure of loss that only reflects net deposits through May 2016. The government intends to offer evidence at sentencing that the actual losses caused by the scheme through the end of 2017 exceed \$147 million.

The statutory maximum sentence for each of the four counts of conviction is twenty years. The government estimates that the defendant's advisory sentence under the Guidelines will be life imprisonment, which reflects not only the substantial losses caused by the defendant's scheme but also enhancements for her role as a leader of the scheme, using of sophisticated means to defraud investors, causing substantial financial hardship to victims, and targeting vulnerable victims. In light of her conviction and potential lengthy sentence, the defendant has a strong motive to flee and her lack of flight to date, is simply not sufficient to establish that she will remain in the United States now that she has been convicted and faces a substantial sentence. *See United States v. Dailey*, 650 F. App'x 193, 194 (5th Cir. 2016) (concluding defendant's argument that he "complied with all the conditions of bail pending trial" was not sufficient to establish "by clear and convincing evidence that he was not a flight risk"); *United States v. Khanu*, 675 F. Supp. 2d 69, 75 (D.D.C. 2009), *aff'd*, 370 F. App'x 121 (D.C. Cir. 2010) ("It is true that Defendant has not previously attempted to flee. But Defendant's failure to flee prior to his conviction does not, by itself, constitute clear and convincing evidence that he is unlikely to flee in the future."); *Jinwright*, 2010 WL 2926084, at *5 ("Something has changed since trial; Defendant is no longer presumed innocent but is guilty of the counts of conviction. His legal status has changed, increasing his incentive to flee.").

B. The Defendant is a Foreign National with Means to Flee.

The defendant is an Israeli citizen with limited ties to the United States and likely access to millions in fraud proceeds to aid in her flight. First, the defendant lacks any ties or legal status connecting her to the United States. The defendant has lived nearly her entire life in Israel. By her own admission, most of her family and friends still live overseas. *See Tr. Trans. Aug. 7, 2019* (defendant noting parents, nephews, and substantial contacts in Israel). Indeed, the only connection the defendant cites to the United States is her aunt. The defendant's suggestion that

she post additional bond secured by collateral located in Israel only underscores the point that she primarily has ties to a foreign country, as she and her parents both have property there.²

In addition, as a foreign national with no legal status in the United States, the defendant will be deported upon completion of her sentence. As one Court has observed, with respect to a foreign national convicted of a financial crime, “[i]f Defendant will be unable to return to the community after he completes his sentence, his current ties to the community (strong or otherwise) provide little assurance that he will remain in the jurisdiction long enough to be sentenced.” *Khanu*, 675 F. Supp. 2d at 71. *See also Kakande*, 2011 WL 1790639, at *2 (denying marriage fraud defendant’s motion for post-conviction release, observing that defendant would likely be deported following his sentence and “he has every reason to go there now and avoid further time in prison.”).

Second, the defendant has access to the means—financial and otherwise—to flee the United States. The defendant worked in Israel and Mauritius, and likely has contacts, namely her co-conspirators, abroad who could aid in her flight. *Jinwright*, 2010 WL 2926084, at *5 (concluding defendant could have “established ties overseas that could facilitate his flight from the United States” based on financial resources and international travel). Evidence further established that the defendant exercised substantial control over Yukom’s bank accounts and finances. *See, e.g., Ex. 59.1*. To date, the government has been unable to trace or recover these proceeds. The

² Pledging an additional \$1.189 million in collateral would not alter the analysis in this case, particularly where the government has still not located over \$100 million in fraud proceeds. Regardless, the government objects to the suggestion that pledging collateral located abroad would be sufficient to guarantee the defendant’s appearance or appropriate in this case. Simply put, it would be extremely difficult, if not impossible, for the government to seize assets located abroad in the event the defendant decided to flee. Pledging these assets as collateral thus provides no assurance of the defendant’s appearance for sentencing.

crux of the defendant's argument appears to be that the government has not proven that she has ready access to these funds, which, of course misstates the burden. The government has shown that the defendant was a high-level conspirator in a scheme that netted over \$100 million dollars in victim funds, and the vast majority of that money remains untraced, unseized, and potentially available to the defendant and her co-conspirators. Particularly in light of the nature of the defendant's crimes and deceitful conduct, the defendant's mere assertion that she lacks access to these funds is simply insufficient to meet her burden of showing by "clear and convincing evidence" that she does not have access to means to flee.

C. The Defendant was Convicted of Crimes of Deception and has a History of Lying to Authorities and the Court.

The defendant was convicted for orchestrating a massive fraud scheme that preyed upon thousands of investors through lies and deceit. The defendant not only lied directly to clients, she trained others to do so in order to profit. As evidence at trial established, after she was arrested in September 2017, the defendant repeatedly lied to agents of the Federal Bureau of Investigation. For example, the defendant claimed she had never changed a client's risk settings. Evidence at trial showed that this was demonstrably false because the defendant regularly engaged in this fraudulent and manipulative tactic. In addition, the defendant testified at trial for a day and a half. Given the jury's verdict, the jury obviously did not find the defendant's denials and excuses credible, nor should this Court. In sum, the defendant has not only been convicted of crimes involving the deception of tens of thousands of victims through sophisticated, material misrepresentations, she has also demonstrated to this Court through her testimony that she cannot be taken at her word or trusted to appear should she be released pending sentencing.

IV. Conclusion

The defendant has strong motive to flee, particularly as she has now been convicted. The defendant is facing a substantial potential sentence, she has no ties to the United States and likely

