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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.
18

19 LEONARD FRANCIS (1), and
20 JOHN BELIVEAU (2),

21 Defendants.
22

23 UNITED STATES OF AMERICA,

24 Plaintiff,

25 v.
26

27 LEONARD FRANCIS (1), and
MICHAEL MISIEWICZ (2),
28

Defendants.

Case No. 13-CR-3781-JLS, -3782-JLS

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNITED STATES' MOTION TO
REVOKE RELEASE ORDER AND TO
DETAIN DEFENDANT AS A FLIGHT
RISK**

Date: November 25, 2013

Time: 2:00 p.m.

I
INTRODUCTION

Defendant Leonard Francis, the CEO and owner of Glenn Defense Marine Asia (“GDMA”), is accused of corrupting senior Navy officials into serving as double agents for him, by bribing them to provide him with classified national defense and law enforcement information, in order to protect Francis’s multi-national, multi-year, multi-million dollar fraud on the United States Navy.

Defendant is a Malaysian national with no meaningful ties to the United States, other than the fact that he has built a business empire based on defrauding the United States. He faces a sentence – as recommended by the U.S. Sentencing Guidelines – of a minimum term of life in a United States prison.

If given the opportunity, Defendant can – and will – flee this country. He literally has no reason to remain in the United States for trial. He has tremendous financial resources, estimated in the tens of millions of dollars; owns a fleet of vessels; owns a company with offices in a dozen countries; has family and friends across the globe; and has every means and motivation to flee to Mexico, and from there, shop for a country with no extradition treaty with the United States. If any person in this district should be detained as a risk of flight, it is Defendant.

The United States respectfully seeks review of an order (the “release order”)¹ by the U.S. Magistrate Judge setting the conditions of release proposed by Defendant. The Magistrate Judge held a lengthy and thorough hearing in this case. At the close of that hearing, the Magistrate Judge agreed with the United States on several factors that favor detention, including the very serious nature of the charges against Defendant; the strong weight of the evidence against Defendant; and Defendant’s ties to other

¹ Technically, as discussed further below, there are two identical release orders, one in each of two related cases.

1 countries and lack of ties to the United States. However, the Magistrate Judge
2 ultimately agreed with Defendant’s proposed bond conditions, under which Defendant
3 would be allowed to live at an upper-level apartment that he will rentwith GPS,
4 private video surveillance, and a guard hired by Defendant.

5 The fact that the Magistrate Judge concluded that private guards, video
6 surveillance, and an upper-level apartment (to prevent the defendant from escaping
7 from a window) were the least restrictive means available to ensure Mr. Francis’s
8 appearance speaks volumes about his incentive to flee. The United States respectfully
9 submits that these release conditions are inadequate. To the extent that Defendant’s
10 release conditions are designed to rely, in any measure, on Defendant’s goodwill and
11 voluntary compliance, those conditions are mistaken. To the extent that Defendant’s
12 release conditions are instead designed to physically prevent Defendant from reaching
13 the Mexico border, those conditions are insufficient. They establish what is in effect a
14 “home jail” that is designed to be far less effective than a real jail. Both parties
15 essentially agree that nothing short of physical confinement will ensure Mr. Francis’s
16 appearance. The issue for the Court to decide is whether that confinement should
17 occur at the MCC or in a prison of Mr. Francis’s own choosing and design.

18 Consideration of the factors outlined in the Bail Reform Act establish that
19 Defendant is in fact a flight risk. The United States urges, in agreement with Pretrial
20 Services, that Defendant be detained.

21 II

22 STATEMENT OF THE CASE

23 A. Pending Cases

24 Francis is charged in three pending cases with engaging in conspiracies to
25 commit bribery. The three cases, and the next court dates in each, are as follows:

- 26 (1) United States v. Leonard Francis and John Beliveau

1 13-MJ-3456-JMA

2 13-CR-3781-JLS

3 Next date: Motion hearing/trial setting before U.S. District Judge Janis L.
4 Sammartino, set for February 28, 2014.

5 (2) United States v. Leonard Francis and Michael Misiewicz

6 13-MJ-3457-JMA

7 13-CR-3782-JLS

8 Next date: Motion hearing/trial setting before U.S. District Judge Janis L.
9 Sammartino, set for February 28, 2014.

10 (3) United States v. Leonard Francis and Jose Sanchez

11 13-MJ-4027-DHB²

12 Next date: Arraignment on Indictment or Information before U.S. Magistrate
13 Judge David H. Bartick, set for December 5, 2013.

14 Additionally, Francis's conduct is described in the complaint in a fourth case.
15 That fourth case charges Alex Wisidagama, Francis's subordinate and cousin, with
16 conspiring with Francis (identified in the complaint by initials as "LF") and others to
17 defraud the United States.

18 (4) United States v. Alex Wisidagama

19 13-MJ-3783-JMA

20 Next date: Motion hearing/trial setting before U.S. District Judge Janis L.
21 Sammartino, set for December 6, 2013.

22 //

23 //

25 ² No Information or Indictment has been filed yet in this case, but it is anticipated
26 that the case will be related to 13-CR-3781 and -3782 based on a common defendant,
Leonard Francis.

1 **B. Bond Hearing**

2 Francis was arrested at his hotel suite at the San Diego Marriott Marquis on the
3 evening on September 16, 2013, based on arrest warrants issued in 13-MJ-3456 and -
4 3457. [See 13-MJ-3456, Dkt. No. 2.]

5 At his initial appearance the following day before U.S. Magistrate Judge Karen
6 Crawford,³ the United States moved to detain him as a risk of flight. [Dkt. No. 7.]
7 Pretrial Services likewise recommended that Francis be detained as a flight risk. A
8 detention hearing was scheduled for September 20, 2013.

9 On September 20, 2013, Francis waived the detention hearing and stipulated to
10 detention, without prejudice. [Dkt. No. 10.] An order of detention was entered. [Dkt.
11 No. 15.]

12 On November 20, 2013, Francis made an initial appearance on his third
13 criminal complaint, 13-MJ-4027, before U.S. Magistrate Judge David H. Bartick.
14 [See 13-MJ-4027, Dkt. No. 14.] The United States again moved to detain Francis. A
15 detention hearing was scheduled before Judge Bartick for Monday, November 25,
16 2013 at 2:00 p.m. (the same date and time as the hearing scheduled before this Court
17 on this Motion).

18 On November 21, 2013, the parties appeared before U.S. Magistrate Judge Jan
19 M. Adler, to hear Defendant’s request for bond in connection with two of Defendant’s
20 pending cases: 13-CR-3781, and -3782. [See 13-CR-3781, Dkt. No. 42.]

21 At the bond hearing, Judge Adler heard argument for approximately two hours.
22 Pretrial Services, after hearing Defendant’s bond proposal, again joined in the United
23 States’ recommendation that Defendant be detained.

24
25 _____
26 ³ Cases 13-MJ-3456 and -3457 were initially assigned to Judge Crawford, and
27 after he recusal were ultimately reassigned to U.S. Magistrate Judge Jan M. Adler.

1 At the conclusion of the hearing on Thursday evening, he set conditions of
2 release. [See 13-CR-3781, Dkt. No. 43.] Those conditions included:

- 3 • A \$1 million corporate surety bond
- 4 • A \$100,000 person appearance bond signed by Defendant and his aunt
- 5 • GPS monitoring with home detention
- 6 • Defendant will live at a rented apartment in San Diego County, in the
7 upper floor of a multi-story building (to be rented in the future)
- 8 • Defendant’s residence will be monitored by a security company with
9 surveillance cameras and alarms
- 10 • Defendant will have a 24-hour guard service in his apartment at all times

11 [Id.] At the request of the United States, Judge Adler stayed his release order, pending
12 review in this Court. [Dkt. No. 42.] This Motion follows.

13 **III**
14 **ARGUMENT**

15 **A. Legal Standard**

16 The Bail Reform Act provides for detention where “the judicial officer finds
17 that no condition or combination of conditions will reasonably assure the appearance
18 of the person as required and the safety of any other person and the community.” 18
19 U.S.C. § 3142(e). “On a motion for pretrial detention, the United States bears the
20 burden of showing by a preponderance of the evidence that the defendant poses a
21 flight risk, or by clear and convincing evidence, that the defendant poses a danger to
22 the community.” United States v. Aitken, 898 F.2d 104, 107 (9th Cir. 1990) (citation
23 omitted and emphasis added).

24 Here, the United States has moved to detain Defendant as a risk of flight only,
25 and the preponderance standard applies.

1 classified as “confidential” and “secret”) about ship schedules; internal and
2 proprietary Navy communications, including defense procurement information
3 concerning Defendant and his competitors; and sensitive law enforcement information
4 about the open investigations into Defendant. Defendant cultivated and maintained
5 these bribery relationships with each co-defendant over a period of several years.

6 In addition to bribery, Defendant defrauded the United States Navy for years,
7 using a variety of schemes, including submitting false bids from competing sub-
8 contractors; submitting false, inflated invoices from subcontractors, and the obtaining
9 kickbacks from those subcontractors; and creating invoices for phony companies and
10 phone foreign port authorities.

11 The complaint in United States v. Alex Wisidagama, 13-MJ-3783-JMA,
12 provides some concrete examples of the fraud. Based on those examples, in one
13 country alone (Thailand) during an approximate one-year period, Defendant defrauded
14 the United States Navy of over \$10 million.

15 Defendant’s bribery and fraud schemes were interrelated. He bribed
16 Commander Misiewicz and Commander Sanchez in order to obtain information that
17 would allow him to maximize the profit on his fraud; he bribed Special Agent
18 Beliveau to pass him NCIS investigative reports on GDMA, and to coach him on how
19 to evade the law enforcement techniques of NCIS.

20 At the bond hearing, the United States discussed the sentencing guidelines
21 applicable to Defendant, beginning with USSG § 2C1.1, the bribery guideline:

- 22 • Base offense level [§ 2C1.1(a)(1)] 12
- 23 • More than one bribe [§ 2C1.1(b)(1)] +2
- 24 • Losses exceeding \$20m [§ 2C1.1(b)(2)] +22
- 25 • Public official in sensitive position [§ 2C1.1(b)(3)] +4
- 26 • Leader of 5 or more in criminal activity [§ 3B1.1(a)] +4

1 States submits that the Court, in determining whether Defendant is a flight risk, should
2 consider (as Defendant himself presumably would) the total penalty he potentially
3 faces, rather than limiting that penalty to the maximum prescribed by the pending
4 counts.

5 Finally, it is worth noting that the guidelines as described above would be
6 applicable if Defendant is convicted in any one of the three criminal cases. Even if
7 Defendant were to persuade a sentencing court to apply downward departures or
8 variances (none of which were mentioned at the bond hearing, and none of which
9 readily come to mind), the United States would have a valid basis for seeking an
10 upward variance based on the fact that Defendant engaged in his bribery scheme many
11 times over.

12 This factor – the nature and circumstances of the offense – strongly favors
13 detention. Facing a life sentence, Defendant literally has nothing to lose by fleeing.

14 **C. Weight of the Evidence (18 U.S.C. § 3142(g)(2))**

15 Judge Adler found that the weight of the evidence is strong. Indeed, it is. The
16 four complaints, together, constitute over eighty pages describing details of
17 Defendant’s malfeasance – including details described in Defendant’s own words as
18 contained in his emails.

19 At the bond hearing, Defendant did not dispute that this factor favors detention.
20 Instead, the defense expressly stated that it was declining to discuss the merits of the
21 case.

22 This factor – the weight of the evidence – strongly favors detention.

23 **D. History and Characteristics (18 U.S.C. § 3142(g)(3))**

24 The Bail Reform Act directs courts to consider, under the heading “history and
25 characteristics of the person,” a wide range of factors. Among those are many factors
26 designed to bear upon whether a defendant is a flight risk, including “family ties,”

1 “employment,” “length of residence in the community,” and “community ties.” See
2 18 U.S.C. § 3142(g)(3). These factors could not favor detention more strongly.

3 Defendant is a Malaysian citizen who lives and works in Singapore. His
4 mother and children currently live in Malaysia.

5 Defendant is not a U.S. citizen. He does not have resident status. He has never
6 had resident status. Instead, he is present on a B-1/B-2 Visa, which allows him to
7 remain in the United States for a maximum stay of 6 months.⁵

8 As for Defendant’s ties to the community – this community – he has absolutely
9 none whatsoever. He has no family ties here. He has no employment here. He has no
10 length of residence here. He has no ties here.

11 Even considering Defendant’s ties to the United States as a whole, rather than
12 simply his ties to the community, he has none, except for an aunt who lives with her
13 son in the Baltimore area.

14 Finally, it bears noting that Defendant is not a first-time offender. As explained
15 by his counsel at the bond hearing, Defendant was previously convicted in Malaysia
16 for unlawful possession of a firearm, and unlawful possession of ammunition.
17 Although committed long ago, this was a serious offense under the Malaysian law.
18 He was sentenced to 18 months concurrently on each of two counts, and was also
19 sentenced to corporal punishment.

20 Defendant’s history and characteristics strongly favor detention.

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22 //

24 ⁵ The next motion hearing in this case is February 28, 2014, at which point he
25 will have been in the United States for 5 and one-half months. Absent renewal of his
26 visa, he will have no lawful permission to continue to remain in the United States
before trial, and will be subject to arrest and deportation by immigration authorities.

1 corrupt high-ranking Navy officials into violating their sworn duties, finding a way to
2 buy 15 minutes would be child's play.

3 The United States respectfully submits that this Court should reject Defendant's
4 ineffectual "three layers" in favor of "one layer" – a pretrial detention facility run by
5 the Bureau of Prisons. Based on the severe risk of flight he presents, the Bail Reform
6 Act simply does not entitle Defendant to a private home jail.

7 **IV**
8 **CONCLUSION**

9 Defendant is differently situated than many foreign nationals who appear before
10 this Court seeking bond. He not only has no ties to this community, but he did not
11 come here to build any ties. Instead, he came to the United States for a meeting on
12 September 16, 2013 with Navy officials to discuss his contracts, and was arrested after
13 the meeting. That meeting was six months in the planning. To coincide with that
14 meeting, the investigative team executed a plan that involved near-simultaneous law
15 enforcement operations in approximately eight countries in Asia, and eight states
16 within the U.S. The operation involved over 100 law enforcement agents. The result
17 of that operation is that Defendant is here, and in custody. If given the slightest
18 opportunity, Defendant will flee and not return.

19 For the reasons stated herein, the United States' motion should be granted.

20 DATED: November 22, 2013

Respectfully submitted,

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22 LAURA E. DUFFY
United States Attorney

23
24 By: /s Robert S. Huie
MARK W. PLETCHER
25 ROBERT S. HUIE
26 Assistant U.S. Attorneys

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4 **UNITED STATES DISTRICT COURT**
5 **SOUTHERN DISTRICT OF CALIFORNIA**

6 UNITED STATES OF AMERICA,

7
8 Plaintiff,

9 v.

10 LEONARD FRANCIS ET AL.,

11
12 Defendants.

Case No. 13-CR-3781-JLS, -3782-JLS

CERTIFICATE OF SERVICE

13
14 IT IS HEREBY CERTIFIED that:

15
16 I am a citizen of the United States and am at least eighteen years of age. My
17 business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

18 I am not a party to the above-entitled action. I have caused service of the
19 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
20 **UNITED STATES' MOTION TO REVOKE RELEASE ORDER AND TO**
21 **DETAIN DEFENDANT AS A FLIGHT RISK** on the parties by electronically filing
the foregoing with the Clerk of the District Court using its ECF System, which
electronically notifies their counsel.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on November 22, 2013.

24
25 /s Robert S. Huie
26 ROBERT S. HUIE
Assistant United States Attorney