UNITED STATES OF AMERICA
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 8:10-cr-501-T-27MAP

DAVID R. LEWALSKI
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ORDER

The Defendant is charged by indictment with conspiracy to commit mail and wire fraud and substantive counts of wire fraud. Although a magistrate judge in the arresting district ordered him detained, he moves for bond (doc. 18) in the prosecuting district, which is this district. For the reasons stated at today's hearing, in the government's lengthy and detailed response (doc. 21), and below, the motion is denied.

In early November 2010, the Defendant was arrested in the Southern District of New York on a complaint issued in the Middle District of Florida charging him with wire fraud. That complaint alleged the Defendant spearheaded a Ponzi scheme that dated back to at least 2005; namely, the Defendant told investors he would make them significant returns on the forex market when in reality the Defendant invested minuscule amounts in that market. The government's case follows state civil enforcement efforts to recover losses to victim investors.

The government moved to detain the Defendant pursuant to 18 U.S.C. § 3142(f)(2) in the arresting district alleging he posed a serious risk to flee and a danger to the community. In sum, the government persuasively proffered to the magistrate judge what it proffered to me in significantly more detail: the Defendant spent vast sums for his own benefit, avoided the state's civil action by moving to Europe, and worked at hindering the investigation by persuading others

to engage in conduct that would benefit him. The magistrate judge weighed the government's arguments against those of the Defendant's retained counsel and detained the Defendant finding him to be a serious risk to flee (doc. 18-1 at pp. 11-12). Now represented by new counsel, the Defendant moves for a "bond hearing" and his release on "personal recognizance" or, in the alternative, under "other conditions of release." *See* doc. 18 at p. 6.[1]

The Bail Reform Act outlines the factors a judicial officer should consider for deciding if conditions of release can be set reasonably assuring a defendant's presence as required and the safety of any other person and the community: (1) the nature and circumstances of the crime charged, and particularly whether the offense is a crime of violence; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *See* 18 U.S.C. § 3142(g). The government must show the Defendant is a serious flight risk by a preponderance of the evidence. *United States v. King,* 849 F.2d 485, 489 (11th Cir. 1988). Against this standard, the Defendant offers nothing new since his initial detention hearing; instead he makes essentially the same arguments he presented or could have presented then.

If anything, the reasons for detaining the Defendant are more persuasive now than when the magistrate judge in the Southern District issued his order. The grand jury has since indicted

[1] Ordinarily, I would have denied this request on the papers because the appropriate course under the Bail Reform Act would have been for the Defendant to seek review before the district judge. *See* 18 U.S.C. 3145(b); *United States v. Torres,* 86 F.3d 1029 (11th Cir. 1996) (same context but dealing with the review of a magistrate judge's release order). Nonetheless, because the magistrate judge in the Southern District of New York specifically stated that the prosecuting district could reconsider his decision (by implication a magistrate judge), I convened a hearing to give the Defendant the opportunity promised in the Southern District of New York.

the Defendant on conspiracy and substantive counts of wire fraud. And the government's proof, which is more detailed, continues to grow; moreover, the estimated loss, at least per the government, approaches $30 million. While the Defendant says all his accounts have been frozen and his passport seized, he has not been forthcoming about his assets. Future travel plans to Europe, which were thwarted by his arrest, persuasively suggests the Defendant has access to significant sums. In short, I agree with the magistrate judge in the Southern District of New York that the Defendant should be detained as a serious flight risk.[2] Accordingly, it is

ORDERED:

1. To the extent the Defendant's motion for bond hearing (doc. 18) seeks the Defendant's release, the motion is DENIED and the order detaining the Defendant pending trial remains in effect.

DONE and ORDERED at Tampa, Florida, on December 20, 2010.

Mark A. Pizzo
MARK A. PIZZO
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
U.S. Pretrial Services
U.S. Marshal

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[2] I note the magistrate judge in the Southern District of New York did not specifically find that the Defendant posed a danger to others or the community (doc. 13). *See* 18 U.S.C. § 3142(e). Although the government argued as much at today's hearing, and provided much more detail than it did in its proffer before the magistrate judge in New York , I find it unnecessary to decide if the government has proven dangerousness by clear and convincing evidence. *See* 18 U.S.C. § 3146(f); *United States v. King,* 849 F.2d 485, 489 (11th Cir. 1988). It is enough that I agree the with magistrate judge's decision to detain the Defendant. Nonetheless, I have considered the government's proffer regarding the Defendant's veiled threatening remarks about the receiver, his continued efforts to solicit funds from victims, and his effort to cover up the scheme. *See* doc. 21 at pp. 15-22. Such information is relevant under 18 U.S.C. § 3142(g) and weighs against the Defendant's release.