

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	MAG NO. 09-174-M-01 (JMF)
	:	
v.	:	
	:	
YUSUF ACAR	:	

GOVERNMENT’S MEMORANDUM IN SUPPORT OF DETENTION

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in support of its request that the defendant be detained pending trial.

Introduction

Yusuf Acar, a defendant who has pledged “jump on the next plane [to] Turkey and disappear” if his criminal scheme is uncovered, has been charged in a five-count complaint based on his role in a wide-ranging, likely years-long bribery and honest services fraud scheme which involves stealing substantial funds from the District of Columbia.

Yusuf Acar should be held because he is a serious flight risk. He is one of the two primary participants of the bribery and fraud scheme. He has the motive, skills, and wherewithal to flee and thrive on the lam. He recently sent approximately \$100,000 of cash to Turkey via his mother, who recently came here to visit. The government has also developed evidence that Acar has been preparing to smuggle approximately \$200,000 in cash to Turkey using a diplomatic pouch, to avoid detection. Moreover, Acar has also made efforts to set up bank accounts in foreign countries – specifically Kenya and Canada – for the purpose of transferring large amounts of additional monies which he stole from the D.C. government as part of his criminal scheme. These efforts would help him avoid detection if he were released and able to flee the country.

Applicable Law

The government must prove that a defendant presents a risk of flight only by a preponderance of the evidence, not by clear or convincing evidence or other, more demanding standards. United States v. Vortis, 785 F.2d 327, 328-29 (D.C. Cir. 1986); United States v. Xulam, 84 F.3d 441, 442 (D.C. Cir. 1996).¹ Moreover, at a detention hearing the government may present evidence by way of a proffer. United States v. Smith, 79 F.3d 1208, 1209-10 (D.C. Cir. 1996).

Three of the four factors under Section 3142(g) that are to guide the Court's detention decision – (1) the nature and circumstances of the offenses charged; (2) the weight of the evidence against the defendant; and (3) his history and characteristics – strongly support the need for and wisdom of detaining Yusuf Acar pending trial. See 18 U.S.C. § 3142(g). In short, given that there is no condition or combination of conditions that would assure his appearance, Mr. Acar should be detained. See id. § 3142(e).

Factual Background

As recounted in great detail in the affidavit in support of the arrest warrant, which is incorporated herein by reference, Mr. Acar and his co-defendant, Sushil Bansal, have organized and led a lengthy, complicated, and sophisticated bribery and fraud scheme which involves stealing large sums of money from Acar's employer, the District of Columbia government. During the scheme, Mr. Acar abused his position as the Acting Chief Security Officer for the D.C. Office of the Chief Technology Officer (OCTO) and conspired with, among other people, Bansal, who was an officer and affiliated with at least two Certified Business Enterprises (CBE) who are contracted to do

¹ The government must demonstrate clear and convincing evidence to detain a defendant as a serious risk of obstructing or attempting to obstruct justice. See, e.g., United States v. Leon, 766 F.2d 77, 82 (2d Cir. 1985).

business with the District of Columbia: Advanced Integrated Technologies Corporation (AITC) and Innovative IT Solutions, Inc. (IITS). In their various schemes, Acar, among other things, created and/or approved false documentation, had several “ghost employees” working for his agency, controlled the movement of large amounts of money to and from various bank accounts, and did all the other things necessary to lead a terribly successful conspiracy.

Argument

I. Mr. Acar Presents a Serious Risk of Flight

A. Nature and Circumstances of the Offenses Charged

The nature and circumstances of the offenses charged provide powerful and convincing reasons to detain Mr. Acar until trial. First, he is charged as being the leader of a sophisticated conspiracy which committed, among other things, acts of bribery, honest services fraud, conflict of interest and money laundering which involve stealing money from the District of Columbia government through a variety of schemes. The schemes required, among other things, Acar to manipulate government paperwork, outwit and outmaneuver government financial controls, corrupt employees who worked for him, and maintain the cooperation of his co-conspirators despite their risk of apprehension. Acar was able to continue this complicated scheme for years without being caught. A defendant with those types of sophisticated financial and interpersonal skills presents a great risk of not only flight, but successful flight.

Moreover, the charges against Mr. Acar expose him to a lengthy period of potential incarceration. The statutory maximum penalty for even one of the offenses with which he is charged – honest services wire fraud – is twenty years. Moreover, a conservative calculation of his exposure under the U.S. Sentencing Guidelines (made without the benefit of analyzing additional

evidence likely contained in the voluminous documents and computer records seized during the execution of search warrants at Acar's house, OCTO, AITC, and other locations), suggests the potential for a level 28, which calls for a range of at least 78-97 months of incarceration, provided the sentencing judge does not choose to depart upward under the Guidelines or under Booker.² If he were released before trial, he would have strong reason to flee to avoid that potential period of incarceration. Moreover, given the overwhelming evidence in the case – that Mr. Acar personally approved or ordered each and every fraudulent purchase order and that he has admitted to his involvement in the charged schemes – his motive to flee and avoid a likely sentence of such length becomes even more likely. Finally, Mr. Acar's home, vehicles, and other assets are all apparently tainted by his criminal schemes, thus leaving Mr. Acar little of apparent financial value left in the United States and all the more reason to flee overseas.

For many of the same reasons, Mr. Acar presents a serious risk of obstruction of justice or attempting to obstruct justice.³ The government's investigation has clearly shown that Mr. Acar is not only aware that he has been committing serious crimes, but has also shown that he has been taking affirmative steps to spread the profits from his criminal schemes to bank accounts in various countries, and to flee the country if necessary. Specifically:

² This conservative Guidelines calculation is based upon a loss value of between \$400,000 and \$1,000,000 (see generally U.S.S.G. Section 2B1.1(b)(1)). The government's initial review of the evidence seized in connection with the execution of the various search warrants in this case suggests that this loss amount may well be higher. Moreover, the government's investigation indicates that the schemes set forth in the affidavit have been going on for much longer than a few months. In addition, this calculation does not include all possible enhancements that Mr. Acar might face if convicted in this case.

³ The nature of the charges further suggests a serious risk of flight because Mr. Acar has brought his family members and co-workers under scrutiny.

- After intercepting an email from the DC Office of the Inspector General on February 10, 2009, Acar discussed with the Cooperating Witness [CW] in this case whether or not his actions were being monitored. At the end of the conversation, Acar said to the CW: "Are we going to jail?" demonstrating that he was aware that his actions were illegal.
- In a recorded conversation on December 10, 2008, Acar stated in part, regarding the risk of getting caught by the authorities: "I mean, I will jump on the next plane, go to Turkey and disappear. That's fine."
- On September 26, 2008, Acar told the CW that he had a large sum of money that he wanted to transfer overseas, and asked the CW if he had any overseas contacts who might be able to help him facilitate the transfer. After the CW indicated that he has contacts in Kenya, Acar suggested that he open a bank account in Kenya using only a small amount of money. Acar stated that he thought he could transfer between \$200,000 to \$300,000 per month overseas once the account was set up. Acar suggested that he and the CW take a trip to Kenya in mid-October for the sole purpose of opening up this bank account. Acar offered to pay for the entire trip.
- During the days that followed, Acar made efforts to secure a Visa for his anticipated trip to Kenya. Subsequently, on October 2, 2008, CW had a conversation with Acar where Acar again discussed taking a trip to Kenya for the purpose of opening up bank accounts.⁴
- On or about October 9, 2008, Acar indicated to the CW that he was looking to open a bank account in Canada for the purpose of sending money to a bank account in Canada. A review of Acar's debits from a Circle Network account he controls indicates that Acar took a plane trip to Canada around this time period.
- On or about November 7, 2008, Acar told the CW that he has the technical ability to log into approximately 120 different servers within the D.C. government. These servers include those contained at the Department of Motor Vehicles and at Treasury. In addition, Acar showed CW how he could log on to the server that is responsible for producing birth certificates for the District of Columbia. Acar told the CW that with a birth certificate and a foreign passport, one could then obtain a social security number (SSN) by saying that they were born in the United States and moved shortly after their birth. Acar further explained that once a SSN is obtained, one can then apply for a passport application. The government is unaware at this time if Acar has

⁴ At the direction of the FBI Agents with whom he was working, CW was instructed to tell Acar that he (CW) could not take a trip with him to Kenya at this time. The CW did this, and the trip to Kenya was never taken.

employed this above-described fraudulent scheme to obtain any phony passports or identities for himself or anyone else.

- During the past several weeks, Acar confided to the CW that Acar's mother and sister recently visited him in the United States and took a large amount of cash (possibly as much as \$100,000) back with her to Turkey. Acar also told the CW that he has more money that he wants to smuggle back to Turkey. Specifically, Acar told the CW that he has a friend who has a diplomatic passport who Acar wants to smuggle \$200,000 to Turkey through that friend.
- During the execution the search warrant of his home on the morning of his arrest, March 12, 2009, the FBI seized, among other things, over \$65,000 in cash from inside Mr. Acar's home. In addition, Acar had over \$4,500 in cash inside of the pajamas that he was wearing at the time that he was arrested.
- Also during the execution the search warrant of his home on March 12, FBI Agents found four passports in Mr. Acar's name: three United States passports (two apparently valid, and one expired); and an apparently valid Turkish passport.

In short, at the same time he was orchestrating a sophisticated series of schemes designed to steal large sums of money from the District of Columbia government, Acar was also devising additional schemes intended to spread this money overseas and flea the country, when and if his scheme was uncovered.

B. Weight of the Evidence Against Mr. Acar

Mr. Acar personally approved or ordered each and every fraudulent purchase order which were instrumental in carrying out these criminal schemes. He is recorded on tape directing and negotiating the terms of the schemes. Bank records show that he profited handsomely. He has admitted his involvement in the schemes. Besides the CW, at least three other individuals involved in the conspiracy have given statements implicating Acar. The evidence against him is overwhelming.

C. Mr. Acar's History and Characteristics

Mr. Acar is a first-time offender with ties to the Washington, D.C. metropolitan area. Nevertheless, other characteristics weigh in favor of pre-trial detention. He is a foreign national with strong ties to Turkey, and as previously indicated, has taken several affirmative steps to lay the groundwork for setting up residence out of the country. Moreover, during the search of his home, investigators found over \$70,000 in cash (over \$4500 of which was on his person), two seemingly valid United States passports, one expired United States passport, and a valid Turkish passport. Finally, judging by his ability to perpetrate this extensive scheme, Mr. Acar is a highly sophisticated offender who could be expected to outwit release conditions designed to secure his appearance.

D. Danger to the Community

At the present, and given that he is no longer working at the District of Columbia, the government has no information suggesting that Mr. Acar poses a definitive danger to the community or any particular member of the community. It is not known, however, whether Mr. Acar created "back doors" to District of Columbia networks that he could penetrate if released.

II. There is No Reasonable Condition or Combination of Conditions that Would Ensure Mr. Acar's Appearance.

The variety of potential conditions of release discussed in 18 U.S.C. § 3142(c)(1)(B) provide no assurance that Mr. Acar would appear at future Court dates. For example, in light of the fact that Mr. Acar has involved his wife and several friends and co-workers in his various criminal schemes, the government is not confident that there exists a third party who could be trusted to assume supervision for him. See *id.* § 3142(c)(1)(B)(i). A requirement that he maintain employment is

likely moot, inasmuch as will not likely be working for the District of Columbia any longer and it is unlikely another employer would assume the risk of hiring him. See id. § 3142(c)(1)(B)(ii).

Moreover, there is no reason to believe that release conditions prohibiting him from travel or contacting witnesses, or requiring him to report to Pretrial Services and comply with a curfew, would assure his appearance; all of those requirements require too great a leap of faith that Mr. Acar will ignore his present plight and remain in the jurisdiction, particularly given his stated intention to flee to Turkey. See id. § 3142(c)(1)(B)(iv-vii). Finally, given that his legitimate salary was over approximately \$127,000 annually, there is no reason to believe he has sufficient untainted real property or funds sufficient to post as a bond: the government seized; for example over \$70,000 in cash was seized from Mr. Acar's home on Thursday, which are suspected proceeds of the above-referenced criminal scheme. Indeed, there is reason to believe that any remaining assets or funds of Mr. Acar's would be tainted with proceeds of his scheme. See id. § 3142(c)(1)(B)(xi-xii).

