IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	:	
	:	CASE NO. 2:15 CR 168
v.	:	
	:	CHIEF JUDGE SARGUS
JOHN ANDERSON RANKIN	:	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO REVOKE DETENTION ORDER

The United States, by and through undersigned counsel, hereby responds to Defendant John Anderson Rankin's motion to revoke the Court's previous order of detention pending sentencing. (*See* ECF No. 140). As set forth below, Mr. Rankin has not overcome the statutory presumption in favor of post-conviction detention set forth in 18 U.S.C. § 3143(a)(1). Accordingly, he should remain detained pending sentencing, as the Court previously ordered.

I. BACKGROUND

John Rankin was notified in April 2011 that he was under criminal investigation for suspicious individual and corporate tax returns that he filed on behalf of himself and one of his businesses, Connectivity Systems, Inc. ("CSI"). In July 2015, the grand jury returned a seventeen-count indictment against Mr. Rankin, charging him with seven counts of failing to pay over federal income and F.I.C.A. tax withholdings on behalf of his employees; six counts of filing false individual tax returns; three counts of filing false corporate tax returns; and one count of corruptly endeavoring to interfere with the due administration of the Internal Revenue Code. Despite several warnings from the Court, Mr. Rankin opted to represent himself at trial. Following a two-week trial this September, the petit jury returned guilty verdicts against Mr. Rankin on all seventeen counts.

After the jury returned its verdicts, the Government moved to revoke Mr. Rankin's bond, and the Court heard oral argument regarding Mr. Rankin's detention pending sentencing. The Court then set forth the applicable legal standards from § 3143(a)(1) and applied them to Mr. Rankin's situation before determining that he had failed to prove by clear and convincing evidence that he is not likely to flee. The Court noted several bases for its decision—including the lengthy prison sentence that Mr. Rankin faces, his vast financial resources, and the near total disregard for the judicial system that Mr. Rankin displayed throughout these proceedings. Not one of those factors has changed in the two-and-a-half weeks since the Court ordered Mr. Rankin detained. Nevertheless, Mr. Rankin now moves for an order revoking the Court's prior decision regarding his post-conviction detention, citing some of the hardships he and his companies face in the wake of his imprisonment.

II. LEGAL STANDARDS

Under the Bail Reform Act of 1984, defendants at different stages of the criminal justice system face various levels of scrutiny regarding their detention or release into the community. *United States v. Ingle*, 454 F.3d 1082, 1084 (10th Cir. 2006). At the front end, and before a jury has weighed in regarding their guilt, defendants ordinarily should be released, unless a judicial officer finds "that no condition or combination of conditions will reasonably assure the [defendant's] appearance as required and the safety of . . . the community." 18 U.S.C. § 3142(e). At the back end, however—after a jury has found the defendant guilty—"the presumption is that the defendant will be detained." *Ingle*, 454 F.3d at 1084; *United States v. Vance*, 851 F.2d 166, 170 (6th Cir. 1988) ("[I]n enacting section 3143 of the Bail Reform Act of 1984, the committee endeavored to eliminate the presumption in favor of bail, and to create a presumption against post conviction release." (quotation omitted)).

The general rule for defendants like Mr. Rankin, who have been convicted but not yet sentenced, is set forth in 18 U.S.C. § 3143(a)(1). That statute provides, in relevant part, as follows:

> [T]he judicial officer *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 judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any person or the community if released . . . ."

18 U.S.C. § 3143(a)(1) (emphasis added).

The reason for this presumption in favor of post-conviction detention is straight forward: "Once guilt of a crime has been established in a court of law, there is no reason to favor release pending imposition of sentence or appeal. The conviction, in which the defendant's guilt has been established beyond a reasonable doubt, is presumably correct in law." *Vance*, 851 F.2d at 170 (quotation omitted). As the Sixth Circuit has made clear, this statute imposes a stiff burden on convicted defendants who nevertheless seek release. *Id.* at 169. Unlike ordinary detention determinations under 18 U.S.C. § 3142, "Section 3143 creates a presumption that a defendant who has been convicted . . . may not be released pending his appeal or sentencing unless he shows by clear and convincing evidence that [he] is not likely to flee or pose a danger to the safety of . . . the community." *Id.* (quotation omitted). Put simply, as this Court recognized in ordering Mr. Rankin detained, "in overcoming the presumption in favor of detention [in § 3143] *the burden of proof* rests with the defendant." *See id.* at 169-70 (quotation omitted).

In assessing whether a defendant should be released following his conviction, judges should consider several factors, including: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to the community that the defendant's release would pose. *See id.* at 169 (citing detention factors outlined at 18 U.S.C. § 3142(g)).

III. ANALYSIS

As this Court previously and correctly concluded, Mr. Rankin has not overcome the presumption in favor of post-conviction detention because he has not shown by clear and convincing evidence that he does not pose a flight risk. The Court was correct to order Mr. Rankin detained given the lengthy prison sentence he faces, his vast financial resources, and his disrespect for the judicial system, which he displayed throughout these proceedings. As such, his continued detention until sentencing is required. *See* 18 U.S.C. § 3143(a)(1); *Vance*, 851 F.2d at 170 (reversing district court's grant of bond where defendant failed to overcome burden of proof).

A. Mr. Rankin's Potential Sentence Shows He Poses a Risk of Flight.

The length of a potential sentence certainly bears on a defendant's risk of flight. As the Second Circuit concluded in legendary Wall Street fraudster Bernie Madoff's case, "the incentive to flee (based on his age and exposure to a lengthy imprisonment) . . . naturally bears upon and increases the risk of flight." *United States v. Madoff*, 316 F. App'x 58, 59 (2d Cir. 2009) (affirming district court's denial of Madoff's motion for pre-sentencing release). The Northern District of Ohio agreed after the racketeering and fraud trial of former Cuyahoga County Commissioner Jimmy Dimora. There, the court denied Dimora's motion for pre-sentencing release after concluding that he posed a risk of flight given that he "is facing considerable time in prison" and "a drastic change in lifestyle in the form of incarceration." *United States v. Dimora*, No. 1:10CR387, 2012 WL 1409396, at *4 (N.D. Ohio Apr. 23, 2012). Other courts routinely find "the potential sentence [a] defendant face[s]" to be a weighty consideration in making post-conviction detention determinations. *E.g.*, *United States v. Castiello*, 878 F.2d 554, 555-56 (1st Cir. 1989) (per curiam) (summarily dismissing defendant's appeal of detention order "in view of the potential sentence [he faced]" and "strong inducement to flight").

So too, here. As the Court already noted, Mr. Rankin faces considerable sentencing exposure given his seventeen convictions under the Internal Revenue Code, and he has done nothing to overcome the risk of flight that this sentencing exposure has created. The voluntary surrender of his passport—while laudable—does not overcome the statutory presumption in favor of detention. *See, e.g.*, *United States v. Bonilla*, 388 F. App'x 78, 80 (2d Cir. 2010) (affirming district court's detention order "even though [defendant] offered some evidence to challenge the statutory presumption of flight" based on surrender of his passport); *United States v. Jinwright*, No. 3:09-cr-00067, 2010 WL 2926084, at *5 (W.D.N.C. July 23, 2010) (same; voluntary surrender of passport did not overcome presumption that convicted defendant posed a flight risk). As in *Bonilla* and *Jinwright*, Mr. Rankin has family living overseas: his brother, Chris Rankin, currently resides in the Czech Republic, and John Rankin has made numerous trips to Europe in recent years. Thus, he is still a risk of flight.

Moreover, as this Court is aware, defendants can avoid the court's jurisdiction—and their impending imprisonment—by fleeing both *within* the United States and without. Thus, the surrender of Mr. Rankin's passport, while relevant, does not prove by clear and convincing evidence that he will not pose a risk of flight. The Court need look no further than the last inventor with significant financial resources (Tommy Thompson) who sought to avoid capture to see the pitfalls in ordering Mr. Rankin released, even without his passport. *See, e.g.*, Abby Phillip, *How Treasure Hunter Tommy Thompson, "One of the Smartest Fugitives Ever," Was Caught*, The Wash. Post (Jan. 30, 2015) (describing how "one of the most frustratingly intelligent and elusive criminals [federal agents] have ever sought" evaded an arrest warrant for more than two years, all while hiding in Florida); Kathy Gray, *Treasure Hunter Tommy Thompson Arrested at Hotel in Florida*, Columbus Dispatch (Jan. 29, 2015) (same).

B. Mr. Rankin's Vast Financial Holdings Show He Poses a Risk of Flight.

In ordering Mr. Rankin detained, the Court also correctly reasoned that his vast financial resources show that he poses a risk of flight. As courts routinely recognize, defendants who have significant financial means simultaneously have the ability to flee and thereby pose an increased risk of flight. *E.g.*, *Madoff*, 316 F. App'x at 59 ("[T]he district court's finding that [Madoff] has the means—and therefore the ability—to flee was not clear error."); *United States v. Khanu*, 370 F. App'x 121, 121-22 (D.C. Cir. 2010) (affirming post-conviction detention order due, in part, to defendant's "extensive financial resources" and concurrent risk of flight). As this court held in a previous case involving a defendant with significant financial means, "[w]hen one considers the apparently substantial resources that [Lance] Poulsen has available, which could be used to finance his flight, the conclusion that he poses at least some risk of absconding becomes—no pun intended—inescapable." *United States v. Poulsen*, 521 F. Supp. 2d 699, 704 (S.D. Ohio 2007) (Marbley, J.) (granting government's motion to revoke defendant's pre-trial release).

In the post-conviction setting, a stiff prison sentence coupled with substantial financial resources usually proves fatal to a defendant's efforts to secure his release. Two cases from other district courts prove the point. For example, in *United States v. Jinwright*, the defendant (like Mr. Rankin) was convicted of multiple counts of filing false tax returns and other federal tax offenses. 2010 WL 2926084, at *1. There, as here, the court ordered the defendant detained immediately after the verdicts were announced. *Id.* There, as here, the defendant later moved for reconsideration. *Id.* The court rejected the attempt after agreeing with the government that the defendant posed a risk of flight because he "(1) has the financial resources to flee, (2) has extensively traveled internationally, and (3) faces a drastic change of lifestyle upon his commitment to the United States Bureau of Prisons." *Id.* at *5.

Likewise, in *United States v. Miell*, a magistrate from the Northern District of Iowa ordered a defendant who had been convicted of filing false tax returns detained pending sentencing because he "had failed to carry his burden of demonstrating by clear and convincing evidence that he is not a flight risk." No. CR07-101-MWB, 2009 WL 1956451, at *1 (N.D. Iowa July 6, 2009). The defendant appealed to the district court, which affirmed the magistrate's post-conviction detention order. *Id.* at *2. In so doing, the court relied on the fact that, as with Mr. Rankin, "the federal sentencing guidelines will recommend a term of imprisonment . . . . [and] Defendant Miell has the type of substantial wealth which could finance a flight from justice." *Id.* Those two factors working in tandem doomed the defendant's effort to overcome the statutory presumption in favor of post-conviction detention outlined in § 3143(a)(1), just as they do here. *Id.*

C. Mr. Rankin's Disrespect for the Judicial System Shows He Poses a Risk of Flight.

In ordering Mr. Rankin detained, the Court also correctly ruled that his general disrespect for the judicial system shows that he poses a risk of flight. As the Northern District of Ohio concluded in the *Dimora* case, post-conviction detention is especially warranted where, as here, the defendant's conduct "did not involve a momentary lapse in judgment," but instead involved "fraudulent, dishonest, and obstructive conduct which included falsifying evidence to thwart the [federal agents'] investigation" that lasted "over a number of years." 2012 WL 1409396, at *3 (collecting cases). That is *exactly* the case with Mr. Rankin. His tax-fraud scheme, which involved fraudulent, dishonest, and obstructive conduct, was far from a momentary lapse in judgment. Instead, as the jury found, this scheme stretched all the way from 2005 until the date of the Indictment, in 2015. The jury also found that Mr. Rankin corruptly endeavored to interfere with the due administration of the Internal Revenue Code by making material misrepresentations to federal agents and by omitting key information that those agents had requested.

In other words, as with Jimmy Dimora, Mr. Rankin did his best to thwart a federal investigation, and his actions over this time period—"calculated to deceive . . . government employees and the public, and to conceal the criminal activity from the authorities"—show that he very well may "employ similar conduct to elude capture." *Id.* And, as the Court noted when ordering Mr. Rankin detained in the first instance, he may have offered false or misleading testimony in his own trial in an effort to avoid conviction. At bottom, "[t]his level of disregard for the judicial system . . . [should] leave[] the Court skeptical that [Mr. Rankin] would abide by [any] terms and conditions of release." *Id.*; *see also, e.g.*, *United States v. Nicolo*, 706 F. Supp. 2d 330, 334 (W.D.N.Y. 2010) (holding that defendant's deceitful and fraudulent behavior stretched over many years and demonstrated that he could not be trusted to abide by any conditions of release); *United States v. Davis*, 664 F. Supp. 2d 86, 90-91 (D.D.C. 2009) (agreeing with government's assertion that "defendant consistently lied" in the course of committing fraud offense, thereby undermining defendant's attempt to overcome presumption that he was a flight risk following his conviction), *conviction vacated on other grounds*, 596 F.3d 852 (D.C. Cir. 2010).

D. Mr. Rankin's Arguments to the Contrary Lack Merit.

Against this straight forward statutory regime, and the presumption that Mr. Rankin should remain detained, his arguments to the contrary lack merit. Mr. Rankin's motion barely mentions the central reason that he is detained—the statutory presumption that, having been convicted of multiple federal offenses, he now poses a risk of flight. Mr. Rankin cites "four factors why he should be released pending sentencing" (ECF No. 140, PageID 2392), but only one of them relates to flight, and even then, Mr. Rankin lists it last, (*id.* at PageID 2394). Instead, the bulk of Mr. Rankin's motion focuses on the hardships that he faces in winding down his business affairs and the assertion that he has learned his lesson. (*Id.* at PageID 2393-94).

For example, Mr. Rankin cites the fact that he must sell Tootles Pumpkin Inn because "Ohio law prohibits felons from owning liquor licenses." (*Id.* at PageID 2393). He also lists difficulties he supposedly faces in creating a new, marketable product for CSI that involves "Network Folding," because "only Mr. Rankin has the knowledge necessary to operationalize the programming." (*Id.*). He likewise points to his total failure to engage in any succession planning at his businesses, which is now leading to concern among his employees. (*Id.*). Mr. Rankin, moreover, alleges that he "accepts the consequences of the jury's verdict," is attempting to pay restitution to the IRS, and that he could do so more effectively if only he were not in custody. (*Id.* at PageID 2393-94).

Not surprisingly, similarly situated defendants have raised similar arguments before in an effort to secure their release following their convictions. Other courts have just as quickly rejected their efforts. Take the *Jinwright* case, for example. There, as here, the defendant was a small business owner who was convicted of filing false tax returns and other federal tax offenses. *Jinwright*, 2010 WL 2926084, at *1. There, as here, the defendant sought reconsideration of a detention order entered just after the verdicts were read. *Id.* There, as here, the defendant sought bond by arguing that "his release would be an economic benefit to the taxpayers because it would not only relieve the expense of his detention, ***but it would also allow him an opportunity to get his business affairs in order so that he can continue repaying his debt to the IRS***." *Id.* at *4 (emphasis added). And there, as here, the defendant also argued "***that his release would more easily facilitate the sale of his funeral home business***," *id.* at *4, and that his continued detention would "***deprive [him] of an opportunity to work on his business matters and impair his ability to make payments on the taxes the jury has found he owes***," *id.* at *1 (emphasis added).

The district court considered but rejected each of Jinwright's arguments before concluding that he "failed to satisfy his burden to show . . . that he is not likely to flee or that he does not pose a danger to the economic safety of the community." *Id.* at *6 (denying defendant's motion for release on bond). *First*, the court found "meritless" the defendant's argument that his release was essential (or helpful) to paying restitution to the IRS: "While the amount owed by Defendant to the IRS is substantial, it will hardly make a dent in the national debt." *Id.* at *4.

Second, the court found the defendant's desire to "more easily facilitate the sale of his [business]" largely irrelevant to the determination of his risk of flight or danger to the community. *Id.* at *5. The court sympathized with "the difficulties of conducting detailed discussions with potential buyers without being able to directly engage Defendant in those conversations," but likewise (and wisely) concluded that "such hardship does not provide clear and convincing evidence to overcome his burden under 18 U.S.C. § 3143(a)(1)." *Id.* Instead, the court determined that the defendant's "ability to increase his income is not a sufficient basis to permit his pre-sentence release," even though that income likely would go toward restitution. *Id.* (citing *United States v. Engle*, 592 F.3d 495, 504-05 (4th Cir. 2010), which reversed the district court's decision not to sentence the defendant to imprisonment because of his earning capacity and noted that the ability of a rich tax-evader to pay restitution should not allow him to avoid incarceration).

Finally, the court concluded its rejection of the defendant's arguments by noting that, while in jail, the defendant "has the ability to make periodic phone calls, receive periodic visitors, and send and receive mail." *Id.* Put simply, the defendant's detention "does not isolate him from communication with the outside world"—a conclusion that "holds true for [his] ability to liquidate his other assets." *Id.* The same conclusion holds true in this case, too. Mr. Rankin is in county jail and has sufficient opportunity to communicate with his attorney and other associates.

Aside from being largely irrelevant to the detention determination this Court already made under § 3143(a)(1), or the traditional detention factors outlined in § 3142(g), the hardships and concerns that Mr. Rankin cites are entirely of his own making. He admits as much in his motion: "Mr. Rankin failed to take any action to ensure that his businesses would continue to operate if he were incarcerated because he believed that he would be acquitted." (ECF No. 140, PageID 2392). It seems incredible that someone who knew he was under criminal investigation for over six years before trial, and who was under indictment for two years before trial, would take *no* action to prepare for his succession at a trio of business he owned based solely on his own hubris and belief that he would prevail at trial. But that's where Mr. Rankin finds himself. Even more incredible is the fact that Mr. Rankin has now turned around and used that very hubris and lack of planning as a justification for his post-conviction release. The Court should reject this approach.

The Government is painfully aware that Mr. Rankin's criminal deeds continue to reverberate throughout the Circleville community and continue to leave innocent victims in a lurch. That is part of the reason the Government prosecuted him in the first place. To be sure, "the need for a defendant to get his or her affairs in order has been cited as one of the reasons that the Section 3143(a)(1) standard is what it is for many defendants seeking release pending sentencing—as opposed to the even higher standards that defendants face when, for example, seeking release pending appeal." *United States v. Adenuga*, No. 3:12-CR-313, 2014 WL 349568, at *5 (N.D. Tex. Jan. 31, 2014). But "while that need may explain why Congress crafted the Section 3143(a)(1) standard as it did," a defendant's desire to be released to arrange for the well-being of others going forward "does not itself meet [the defendant's] heavy burden[] to . . . show by clear and convincing evidence that she or he is not a flight risk." *Id.* (denying defendants' motion for release pending sentencing to arrange for the care of their small children).

Despite Mr. Rankin's newly-expressed contrition and $5,000 restitution payment, these factors do not play heavily into the detention determination the Court must make under § 3143(a)(1)—whether Mr. Rankin has shown by clear and convincing evidence that he does not pose a flight risk. These may be appropriate factors to consider under 18 U.S.C. § 3553(a) when the time for sentencing arrives, but they bear little impact on whether Mr. Rankin should remain detained until his sentencing occurs.

That leaves Mr. Rankin's final argument, and the *only* one directly related to the Court's decision-making process under § 3143(a)(1)—his risk of flight. Mr. Rankin argues that he does not pose a risk of flight because one of his employees (and a retired sheriff's detective) contends that Mr. Rankin has strong ties to the community, his children, his grandchild, and his friends. (ECF No. 140, PageID 2394). Strong family and community ties are certainly relevant to a defendant's risk of flight, but they are rarely, if ever, dispositive of the issue, especially where a statutory presumption in favor of detention arises. *See, e.g.*, *Khanu*, 370 F. App'x at 122 (affirming district court's post-conviction detention order under § 3143(a)(1) despite "appellant's strong family ties in the community"); *United States v. Mercedes*, 254 F.3d 433, 437-38 (2d Cir. 2001) (holding that factors favoring release such as citizenship and strong ties to the community do not overcome presumption against pre-trial release where defendant was charged with a violent crime and the evidence against him was strong); *United States v. Vinson*, No. 1:12-CR-00020-MR-DLH, 2013 WL 5775063, at *2 (W.D.N.C. Oct. 25, 2013) ("[W]hile the Defendant has ties to the community, in that his 18-year-old daughter and girlfriend reside in this District, such ties cannot be considered to be substantial, as they are limited to these two individuals, neither of whom relies upon the Defendant for support.") (granting government's motion to revoke defendant's bond under 18 U.S.C. § 3143(a)(1)).

Despite the assertions of Mr. Rankin's employee, Mr. Rankin's family ties in the area are quite limited. He has no spouse. And neither of his adult children (or grandchild) live in the Southern District. Under the circumstances, "such ties cannot be considered to be substantial," let alone do they demonstrate by clear and convincing evidence that Mr. Rankin does not pose a risk of flight if released. *See Vinson*, 2013 WL 5775063, at *2; *cf. Dimora*, 2012 WL 1409396, at *3 (discounting defendant's reliance on "devotion to his family" given "substantial evidence offered at trial that [he] demonstrated an apparent lack of concern for his family during the charged conspiracy").

And whatever community ties Mr. Rankin purports to rely on to obtain release are self-serving at best. The Court heard ample testimony that Mr. Rankin willfully refused to pay his employees at CSI, Tuscan Table, and Rankin Enterprises whenever he felt like doing so—withholding paychecks by as much as fifty weeks in one instance (Jon Henderson) and by several months for other employees. Former CSI employees, including Jaime Heath and Ken McMahon, testified that they had to hire attorneys or threaten litigation to receive the pay they were owed once separated from Mr. Rankin's employ. Aside from repeatedly withholding payroll from his employees (all while siphoning off millions of dollars for personal gain), the jury found that Mr. Rankin also willfully collected but refused to pay over his employees' federal income tax and F.I.C.A. tax withholding in seven separate quarters—money he still has not paid over to the IRS. And in total, the evidence showed that Mr. Rankin still owes roughly $5 Million in federal taxes that he willfully misled the IRS about for the better part of a decade. Community ties? Far from it. Rather, the evidence showed that Mr. Rankin continuously took advantage of those members of the community closest to him. The Court should reject his brazen approach to now rely on those very community members, or his "ties" to them, to release him from jail pending sentencing.

IV. CONCLUSION

The Court got it right on September 14th: Mr. Rankin has failed to prove by clear and convincing evidence that he is not a flight risk due to the lengthy prison term he faces, his substantial financial resources (which could aid any flight), and his near-total disregard for the judicial system. For these reasons and those outlined above, the Government respectfully requests that this honorable Court adhere to its earlier order of detention and deny Mr. Rankin's motion to revoke that order.

Respectfully Submitted,

BENJAMIN C. GLASSMAN
UNITED STATES ATTORNEY

s/Daniel A. Brown
DANIEL A. BROWN (0023147)
Assistant United States Attorney
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-2200
Dan.Brown@usdoj.gov

s/Noah R. Litton
NOAH R. LITTON (0090479)
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Government response regarding Defendant John Anderson Rankin's motion to revoke was filed with the Clerk of Court for the United States District Court for the Southern District of Ohio using the CM/ECF system, which will send notification of the filing to the defendant's standby counsel, Keith Yeazel, and was e-mailed to the defendant as well, on this 4th day of October, 2017.

s/Noah R. Litton
NOAH R. LITTON (0090479)
Assistant United States Attorney
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-2200
Noah.Litton@usdoj.gov