U.S. Department of Justice

United States Attorney
Eastern District of New York

WMN:SCJ
F. #2013R01203

271 Cadman Plaza East
Brooklyn, New York 11201

May 28, 2015

By Hand and ECF

The Honorable Eric N. Vitaliano
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Kyleen Cane
Criminal Docket No. 14-399 (ENV)

Dear Judge Vitaliano:

The government respectfully submits this letter in response to the letter of defendant Kyleen Cane, filed May 26, 2015, requesting that her bail conditions be modified so as to permit her to obtain a new passport and travel internationally for ten days. The stated purpose of this trip is to allow Cane to travel with her 18-year old son to his college located in the United Kingdom. The government respectfully submits that the Court should deny the defendant's request due to the risk of flight abroad based on the strong evidence against Cane, the lengthy jail term Cane faces if convicted and the significant assets at Cane's disposal which would allow her the means to live abroad comfortably if she chose to not return to the United States.

II. Argument

A. The Legal Standard

Under the Bail Reform Act, Title 18, United States Code, Section 3141, et seq., federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. See 18 U.S.C. § 3142(e) ("no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community"). In determining whether the defendant should be released, the Court must consider whether "there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(g).

The Bail Reform Act lists four factors to be considered in this analysis: (1) the nature and circumstances of the crimes charged, (2) the history and characteristics of the defendant, (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g). A finding of risk of flight must be supported by a preponderance of the evidence. See United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985).

As described in the Indictment, Cane is charged with participating in a stock market manipulation scheme, and the evidence against her consists of, among other things, her own statements regarding coordinated purchasing of the manipulated stock captured over a court-authorized wiretap. If convicted, the government estimates that the applicable range of imprisonment under the current version of the United States Sentencing Guidelines for Cane would be 262 to 327 months, assuming Cane falls within Criminal History Category One.[1]

At the detention hearing held in this district on July 29, 2014, the transcript of which is attached as Exhibit A, Magistrate Judge Reyes previously determined there are conditions of release that will reasonably assure the appearance Cane as required: those conditions included surrendering her passport, signing a $1,000,000 personal recognizance bond, co-signed by two others, and posting real property as collateral. Over the government's objection, Cane has been permitted to travel freely in the United States, provided she provides advance notice to Pretrial Services in Nevada, and she is permitted to fly her own plane within the United States. Ex. A at 8-9.

B. Cane Poses a Substantial Risk of Flight and Should Not be Permitted to Have Access to Her Passport and Travel Abroad

As noted above, Cane is facing a substantial term of imprisonment if convicted. Cane's youngest son is about to move abroad for at least the next four years, possibly longer. In addition, Cane notes that she is preparing to change careers, which indicates that her prior career as a lawyer and the operation of her own law firm in Las Vegas no longer roots her to her community as they previously did.

Also, when she was arraigned in New York, it appeared, based on her statements to Pretrial Services, that Cane had personal assets in excess of $5 million plus part ownership of business assets estimated to be worth more than $13 million. Ex. A at 7-8.

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[1] This sentencing range assumes a total offense level of 39, based on a base offense level of 7 (U.S.S.G. § 2B1.1(a)(1)), plus 28 levels for an intended loss of over $200,000,000, (U.S.S.G § 2B1.1(b)(1)(M)), plus 2 levels for the use of sophisticated means (U.S.S.G. § 2B1.1(b)(10)(C)), plus 2 levels for abuse of a special skill. The intended loss is based on the market capitalization of the manipulated stock at its peak of approximately $200 million.

The one piece of real property that she posted to secure the $1 million bond appears to be worth less than $400,000.

Cane argues that her 18-year old son needs her assistance in relocating to a college abroad. Cane was indicted before her son chose his college and Cane's counsel previously argued to the government that Cane's desire to visit colleges with her son around the United States as he was deciding where to go was one of the reasons she needed to be able to travel freely. Cane's family must have understood that the pending charges would limit Cane's availability to travel abroad. Furthermore, based on Cane's letter, it appears that Cane's former spouse is also planning to travel with their son. While it might be the preference of the family to have both parents travel to the United Kingdom, at least one parent will be available to help the son move.

While Cane argues that she could be extradited from the United Kingdom if she failed to return on schedule, once Cane has her passport in hand and permission to board an international flight, the government will not be able to prevent Cane from traveling from that initial destination to an unknown location where extradition might not be possible, even assuming the government is able to locate her. Cane has travelled abroad on a number of occasions over the last several years, including to Italy, Panama and China. Ex. A at 9.

The fact that Cane has not yet fled, despite having opportunities to do so, does not mean that she does not pose a flight risk. Indeed, the logical extent of Cane's argument essentially supports a claim that if a person has abided by bail conditions for a certain amount of time, those conditions are unnecessary and should no longer apply. The Court should not countenance such an argument. There have been multiple instances in this district where individuals charged with financial crimes fled either shortly before or after trial. For example, in 2009, Julian Tzolov, a former Credit Suisse banker charged with fraud, cut his electronic bracelet and jumped bail shortly before his trial, and Tzolov remained a fugitive for over a month before he was arrested in Spain. 08 CR 370 (JBW). In another case, Thomas Qualls, a currency trader, jumped bail in 2008 during his trial and fought extradition from Canada for approximately four years before he was returned to this district. 07 CR 14 (DLI).

III. Conclusion

For these reasons, the government respectfully requests that Your Honor deny Cane's request that her passport be returned to her and that she be permitted to travel abroad.

Respectfully submitted,

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