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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against - Docket No. 18–CR-681(WFK)

JEAN BOUSTANI,
also known as "Jean Boustany,"

Defendant.

- X

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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On January 8, 2019, the defendant Jean Boustani ("defendant") filed a motion for appeal of Magistrate Judge Peggy Kuo's detention order of January 2, 2019. As discussed below, the defendant is a flight risk with access to significant financial resources and no ties to the United States, and no condition or combination of conditions of release can reasonably assure the appearance of the defendant. Therefore, the government respectfully submits that the Court should deny the defendant's motion. The government's proposed findings of fact and conclusions of law are contained herein.

I. BACKGROUND

On December 19, 2018, a grand jury sitting in the Eastern District of New York returned a four-count indictment (the "Indictment") charging the defendant and others in connection with a $2 billion fraud, bribery and money laundering scheme. On January 2, 2019, the defendant was arrested at John F. Kennedy International Airport ("JFK"). He was arraigned later that day on the Indictment in the Eastern District of New York before Magistrate Judge Kuo. Following argument from the parties, Magistrate Judge Kuo issued a permanent order of detention. On January 8, 2019, the defendant filed a motion appealing that decision to this Court, requesting that he be released on a $20 million bond to home confinement under the 24-hour supervision of private armed guards paid for by the defendant's employer, Privinvest Group ("Privinvest"). (ECF No. 21). After the government filed an opposition brief (ECF No. 27) and the defendant filed a reply brief (ECF No. 29), the Court held oral argument on January 22, 2019, after which the parties were directed to submit proposed findings of fact and conclusions of law.

The government proffers the following as to the charged crimes and the defendant's role therein. See United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (when detention is at issue, the government may proceed by proffer).

A. The Charged Conduct

As alleged in the Indictment, the defendant was a central figure in a $2 billion fraud, bribery and money laundering scheme. The defendant and his co-conspirators created the scheme to obtain business and inflated profits for Privinvest, a family of companies based in the United Arab Emirates ("UAE"), and to personally enrich the defendant and his co-conspirators through government-sponsored maritime projects in Mozambique. The defendant and his co-conspirators arranged for international investment banks—including a bank identified in the Indictment as "Investment Bank 1"—to finance those projects through loans. For his role in the scheme, the Indictment charges the defendant with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and money laundering conspiracy, in violation of 18 U.S.C. § 1956(h).

To enable and promote the scheme, the defendant and his co-conspirators created three Mozambican state-controlled and state-owned entities whose ostensible purpose was to borrow the funds for the maritime projects: Proindicus S.A. ("Proindicus"), Empresa Moçambicana de Atum, S.A. ("EMATUM") and Mozambique Asset Management ("MAM"). Privinvest was selected and designated through a direct, no-bid contract outside the ordinary government channels in Mozambique to carry out the three maritime projects. With the defendant's assistance, the members of the conspiracy obtained loans for the Mozambican companies arranged by Investment Bank #1 and another investment bank. The loan agreements required that the loan funds be used exclusively for the maritime projects, and specifically forbade the payment of bribes and kickbacks to government officials.

In fact, Proindicus, EMATUM and MAM were simply front companies used by the defendant and other members of the conspiracy to enrich themselves and facilitate the bribe and kickback scheme. In total, the defendant and Privinvest diverted at least $150 million in loan proceeds to pay bribe and kickback payments to corrupt Mozambican government officials, and over $50 million in loan proceeds for bribe and kickback payments to investment bankers who arranged the financings. The defendant himself received more than $15 million from the conspiracy.

The Indictment alleges facts indicating that the defendant's use of bribery to accomplish the fraud was planned years before the maritime projects were consummated in 2013 and 2014. Beginning in late 2011, the defendant and a Mozambican government co-conspirator agreed that Privinvest would inflate the cost of goods and services of the contemplated project to account for the bribe payments; such costs would be "built in the project, and recovered." (Indictment ¶ 31(a)). In a thinly-veiled reference to bribes, on December 28, 2011, the Mozambican government co-conspirator requested from the defendant "50 million chickens," to which the defendant responded, "LOLLLLL. I love your chicken bro. Done." (Id. ¶ 32(a)). Years later, once loans for the projects were secured, the arrangement discussed in this email exchange resulted in the payment of $50 million in bribes to Mozambican government officials, which was added to costs of the first portion of Proindicus, and passed on to investors worldwide, including in the United States.

After agreeing to the first round of bribes and kickbacks, the defendant helped ensure that Mozambique would guarantee the loans required to fund the illicit payments. Referring to co-defendant Manuel Chang, Mozambique's then-Minister of Finance, as "Chopstick," the defendant obtained Chang's secret government guarantee for the loans, writing

in an email to a co-conspirator: "the only imperative matter for [Investment Bank #1] bro is Chopstick's [Chang's] signature of the guarantee for the loan." (Indictment ¶ 37). Between October 20, 2013 and December 4, 2013 alone, the defendant directed payments from Privinvest to Chang in the amount of over $5 million in bribes and kickbacks.

The defendant also participated in a scheme to use fake invoices to mask the true recipients of those bribe and kickback payments. For example, on or about October 17, 2013, the defendant wrote an email to one co-conspirator, "I need asap invoices in the name of: Logistics International Abu Dhabi. Invoices for everything my brother. Even for [Chang], a small paper say 'consultancy fees.'" (Indictment ¶ 77). The government alleges that shortly after the email, co-conspirators sent false invoices to the defendant to facilitate millions of dollars in corrupt payments flowing through U.S. correspondent bank accounts from Privinvest to front companies set up for the benefit of Mozambican officials, in an effort to conceal the illicit payments.

In addition, the defendant paid kickbacks to senior bankers at Investment Bank #1 who were critical to the scheme's success. For example, after Pearse opened bank accounts at Abu Dhabi Commercial Bank falsely claiming that he was a "tube welder" for a Privinvest company, the defendant and Privinvest proceeded to make a series of bribe and kickback payments to Pearse totaling approximately $45 million. (Indictment ¶ 56). Similarly, in response to an October 2013 email request from Pearse for a payment to co-defendant Surjan Singh, the defendant wrote an email to Privinvest's Chief Financial Officer, stating "Uncle :-) Surjan. Total of 4." (Id. ¶ 74). Almost immediately, Privinvest wired a series of payments totaling $4.49 million from its bank account and through correspondent bank accounts in the United States to an account Singh held in his own name in the UAE. (Id. ¶ 75).

The Indictment also details email evidence that shows that the defendant played a major role in negotiating the fraudulent loans and was familiar with the loan terms, including the plan to market the loans to international investors. For example, as early as June 25, 2012, an employee of Investment Bank #1 informed the defendant and others that financing for the first Mozambican maritime project would be "provided by a syndicate of international banks arranged by [Investment Bank #1.]"[1] Similarly, in an email on July 5, 2013, co-defendant Pearse sent an email copying the defendant that attached a PowerPoint regarding the second project, EMATUM, that said in no uncertain terms that the project would be funded through "the international bond markets."[2]

To sell the Proindicus, EMATUM and MAM loans to investors, the Indictment alleges that the defendant and his co-conspirators made material misrepresentations to investors and potential investors regarding, among other things, (i) the use of loan proceeds, (ii) bribe and kickback payments to Mozambican government officials and bankers, (iii) the amount and maturity dates of debt owed by Mozambique, and (iv) Mozambique's ability and intention to pay back the investors. (Indictment ¶ 24).

After conducting little or no business activity, in or about May 2016 and March 2017, Proindicus, EMATUM and MAM each defaulted on their loans, and proceeded to miss more than $700 million in loan payments.

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[1] A copy of this email was provided as part of the discovery the government provided by hand to defense counsel on January 22, 2019.

[2] A copy of this email was sent to defense counsel by email on January 18, 2019 along with certain other documents referenced in the government's opposition brief to the defendant's bail appeal.

B. Evidence That Defendant Facilitated Co-Conspirators' Travel to the UAE

In addition to the allegations detailed in the Indictment, the government also has evidence showing that the defendant facilitated his co-conspirators' travel to the UAE to negotiate the terms of the fraudulent scheme, and provided them with work and residency permits containing false information. For instance, on January 2, 2013, the defendant sent an email to a co-conspirator with the message, "Brother. Happy new year. The new year AD [Abu Dhabi] card :-)." Attached were three UAE employment permits issued to three Mozambican co-conspirators ("Co-Conspirator 1," "Co-Conspirator 2" and "Co-Conspirator 3"), each of which listed the Privinvest company Logistics International SAL Off Shore Abu Dhabi as the permit sponsor, and each of which falsely stated that the co-conspirators' professions were "petrol engine mechanic," "diesel engine mechanic" and "hydraulic mechanic." In fact, all three were members of the conspiracy who would receive millions of dollars of bribes and kickbacks for their roles in the scheme: Co-Conspirator 1 was acting in an official capacity for and on behalf of the Office of the President of Mozambique, Co-Conspirator 2 was involved in obtaining the Mozambican government's approval of the Proindicus project, and Co-Conspirator 3 was a close relative of the President. A copy of that January 2, 2013 email, and the attached employment permits with false information, is attached as Exhibit 1.[3]

In addition, in a series of emails on February 6, 2013 and February 19, 2013, the defendant and another a co-conspirator at Privinvest assisted Co-Conspirator 1 and Co-Conspirator 2 in setting up bank accounts in the UAE with US dollar accounts. A copy of the

[3] The government has redacted the names of the referenced co-conspirators, as well as personal identifying information, from the attached exhibits. The government will separately provide unredacted copies of the same documents to the Court and to defense counsel.

February 6, 2013 emails are attached as Exhibit 2, and a copy of the February 19, 2013 emails are attached as Exhibit 3. The defendant and Privinvest would later wire bribe and kickback payments through correspondent bank accounts in the United States totaling $8.5 million to Co-Conspirator 1, and totaling $8.5 million to Co-Conspirator 2, at the bank accounts that the defendant and his Privinvest co-conspirators helped them open.

The government further alleges that the defendant procured UAE residency documents for co-defendants Andrew Pearse and Detelina Subeva while they were still employed at Investment Bank #1; the document for Subeva falsely stated that she was a "financial analyst" sponsored by a Privinvest company. A copy of a series of emails from March 21, 2013 involving the defendant and co-defendants Andrew Pearse and Detelina Subeva, along with an attached visa for Subeva, is attached as Exhibit 4. Similarly, on or about April 29, 2013, the defendant emailed co-defendant Pearse a UAE resident identity card, which Pearse then sent to an employee at Abu Dhabi Commercial Bank with the message, "Attached is a copy of my UAE ID card. Please process credit card as soon as possible." A copy of the April 29, 2013 email and the attached UAE resident identity card is attached as Exhibit 5.

C. The Defendant's Arrest, Arraignment and Detention

Based upon the then-sealed Indictment, on December 19, 2018, Magistrate Judge Steven M. Gold issued a warrant for the defendant's arrest. On the evening of January 1, 2019, the defendant traveled to the Dominican Republic, and authorities in the Dominican Republic denied the defendant entry into their country. On January 2, 2019, the defendant was expelled from the Dominican Republic and was arrested that same day upon his arrival at JFK.

On January 2, 2019, the defendant was arraigned on the Indictment in the Eastern District of New York before Magistrate Judge Kuo. Although a Pretrial Services report was not yet available, counsel argued for his client's release on bail, arguing that he was not a flight risk.

(See Transcript of Initial Presentment, January 2, 2019, ECF No. 15, attached hereto as Exhibit 6, at 5:11-18). Defense counsel indicated that he would find an apartment for the defendant, and that the defendant would surrender travel documents, limit his travel to the Southern and Eastern Districts of New York, consent to electronic monitoring and "would post a very substantial collateral of $2 million to secure the bond, whatever bond needs to be [inaudible]. We don't care about the size of the bond that would be secured by the $2 million in cash." (Id. at 6:19-22). Later in the proceeding, defense counsel stated, "Your Honor, . . . the moment that he has residency where he can set up electronic monitoring with a bond of—pick a number, $5 million, $10 million secured by $2 million in cash . . . ." (Id. at 9:1-4; see id. at 9:13-23).

The government opposed, requesting detention on the following bases: the defendant posed a flight risk; the seriousness of the offense and the overwhelming evidence against the defendant; the defendant's vast financial resources; the defendant's lack of ties to the Eastern District of New York; and the defendant's extensive ties to countries (Lebanon and the UAE) that do not extradite their citizens to the United States. (Exhibit 6 at 10:24-12:5). Specifically, the government noted that the defendant had, or had access to, enormous financial resources; not only did he personally receive $15 million from the fraud scheme, but the defendant's employer, Privinvest, is headed by a billionaire. Such resources and connections would permit the defendant to flee to, and sustain himself in, countries from which he could not be extradited, including his homeland of Lebanon. (Id. at 11:3-24). The government also argued that the defendant offered no specific bail conditions, but instead promised to develop a package of release conditions in the future. (Id. at 10:24-11:3).

After hearing argument from the parties, Magistrate Judge Kuo ordered the defendant permanently detained with leave to renew his bail application "once [the defendant] put[s] together a more concrete package." (Exhibit 6 at 12:15-17).

D. The Defendant's Appeal of Magistrate Judge Kuo's Permanent Order of Detention

By letter brief dated January 8, 2019 (ECF No. 21 ("Def. Appeal")), and additional letters submitted on January 14, 2019 (ECF No. 25) and January 18, 2019 (ECF No. 28 ("Def. Reply")), the defendant appealed his permanent order of detention to this Court. In his appeal, the defendant asked the Court to order his release on a $20 million personal recognizance bond secured by $1 million in cash, on the conditions that he would restrict his travel to the Eastern and Southern Districts of New York, surrender his travel documents, be supervised by Pretrial Services and be subject to home confinement with GPS monitoring at a secure apartment selected by private security firm Guidepost Solutions ("Guidepost"). (Def. Appeal at 2). The defendant indicated that Guidepost would provide a virtual private jail, with 24-hour surveillance by private security during the entire pendency of the matter. (Id. at 2-3).

The defendant promised that Guidepost would be retained at no cost to the government (Def. Appeal at 2-4) and would be paid for by Privinvest (Def. Reply at 4 n.3), but did not indicate the source of his offered $1 million cash bond, or how the government would collect on his proposed $20 million bond. (Def. Appeal at 2-4).

In addition to his self-financed security arrangement, the defendant argued that bail is appropriate because the government's case is infirm and he faces a short jail term, if any, upon conviction. The defendant argued that he was unaware that the fraudulent loans would be securitized, syndicated and sold in the United States. (Def. Appeal at 11-12). Further, although the defendant did not dispute that the Mozambican companies have all defaulted and have

missed more than $700 million in loan payments thus far, he asserted that, even if convicted at trial, "any sentence of incarceration would be relatively short, given the applicable Sentencing Guidelines," arguing that there is no actual or intended loss here. (Id.).

E. The Government's Opposition

By letter dated January 16, 2019 (ECF No. 27 ("Gov. Opp.")), the government opposed the defendant's appeal. The government argued that Magistrate Judge Kuo's order of detention was correctly decided because the government had proven the defendant was a flight risk by a preponderance of the evidence and that no combination of conditions could reasonably assure his appearance here. (Gov. Opp. at 1-2). The government did not argue that the defendant is a danger, but argued that all of the other 18 U.S.C. § 3142(g) factors strongly favored his detention. (Id. at 7-10). The government argued that the very serious nature and circumstances of the offense support detention, explaining that the offenses involve more than $700 million in missed loan payments to investors thus far, which result in a recommended Sentencing Guidelines range of life imprisonment for the defendant, truncated to the cumulative statutory maximum applicable to him of 55 years' imprisonment. (Id. at 7). Next, the government argued that the overwhelming evidence —including the emails and bank records showing the defendant's orchestration of the scheme, the receipt by the defendant and Privinvest of approximately all $2 billion in loan funds, and the subsequent misappropriation and diversion by the defendant and others of more than $200 million to pay bribes and kickbacks to pay Mozambican government officials and bankers at Investment Bank #1—further militate in favor of detention. (Id. at 7-9). The government also argued that the defendant's history and characteristics favor his detention. (Gov. Opp. at 9-10). The government argued that his bad character was demonstrated by his conduct set out in the Indictment over the course of the fraud scheme from 2011 through 2018, his steps to provide fraudulent UAE residency documents to

co-conspirators and his steps to avoid detection of the fraud scheme in anticipation of an inquiry from Investment Bank #1. (Id.). The government also argued that the defendant's financial resources, including $15 million received from the fraud scheme, and his apparent access to Privinvest's vast financial resources and the funds of the billionaire owner of the company, heightened his flight risk. (Id. at 10). The government argued that the defendant's lack of any ties to the Eastern District of New York and the United States other than this fraud scheme, and his strong ties to the UAE where Privinvest is based and Lebanon where the defendant is a citizen, both countries which have no extradition treaties with the United States, favor his detention here. (Id.).

Finally, the government argued that there was no set of conditions that could reasonably assure the defendant's appearance here and his offer of a virtual private jail solution was inappropriate for a number of reasons. The government raised concerns that a virtual private jail could lead to disparate treatment of defendants in the case based upon each defendant's wealth. The government also raised the practical challenges of a private jail solution, including the private jailers being effectively the defendant's employees, and whether the armed guards could and would use deadly force to stop the defendant if he attempted flight. (Gov. Opp. at 10-12). The government argued that funds from Privinvest and its billionaire owner, which received $2 billion from this fraud scheme, should not be used to give the defendant a private jail with jailers who would be his employees and might give him the opportunity to flee.

F. Oral Argument

On January 22, 2019, the Court held oral argument lasting approximately an hour, permitting the parties to further address the arguments made in their papers. During the oral argument, the government admitted one exhibit, Court Exhibit 1, a copy of a December 7, 2016 letter from the government in United States v. Ng Lap Seng, S5 15-cr-706 (VSB), ECF No. 340.

Following oral argument, the parties were directed to submit proposed findings of fact and conclusions of law.

II. GOVERNMENT'S POST-HEARING SUBMISSION

The government respectfully submits that based on the evidence it has presented at prior court appearances and in its opposition brief, supplemented by that contained herein, the Court should, in light of the relevant legal standard and applicable case law, make the findings of fact and conclusions of law proposed below.

A. Legal Standard

Under the Bail Reform Act, 18 U.S.C. § 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. 18 U.S.C. § 3142(e) (detention warranted where "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"). A finding of risk of flight must be supported by a preponderance of the evidence. United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985).

The Bail Reform Act lists the following four factors as relevant to the determination of whether detention is appropriate: (1) the nature and circumstances of the crimes charged, (2) the weight of the evidence against the person, (3) the history and characteristics of the defendant and (4) the seriousness of the danger posed by the defendant's release. See 18 U.S.C. § 3142(g).

Evidentiary rules do not apply at detention hearings, and, among other means, the government is entitled to present evidence by way of proffer. See 18 U.S.C. § 3142(f)(2); see also United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (government entitled to

proceed by proffer in detention hearings); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995) (same); United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986) (same). Indeed, Section 3142(f)(2)(B) expressly states that the Federal Rules of Evidence do not apply at bail hearings; thus, courts often base detention decisions on hearsay evidence. See United States v. Abuhamra, 389 F.3d 309, 320 n.7 (2d Cir. 2004).

B. Relevant Legal Precedent Regarding Private Jails

Courts have long been troubled by private jail proposals which, "at best 'elaborately replicate a detention facility without the confidence of security such a facility instills.'" United States v. Orena, 986 F.2d 628, 632 (2d Cir. 1993) (citations omitted)); see United States v. Banki, 369 F. App'x 152, 153-54 (2d Cir. 2010) (summary order) (While "troubled by [the] possibility" of wealthy defendants being allowed to construct a private jail, this Court has not yet had occasion to decide whether district courts "routinely must consider the retention of self-paid private security guards as an acceptable condition of release before ordering detention."); United States v. Sabhnani, 493 F.3d 63, 78 n.18 (2d Cir. 2007) ("The government has not argued and, therefore, we have no occasion to consider whether it would be 'contrary to the principles of detention and release on bail' to allow wealthy defendants 'to buy their way out by constructing a private jail." (citations omitted)); United States v. Valerio, 9 F. Supp. 3d 283, 292, 295 (E.D.N.Y. 2014) ("[T]here is a debate within the judiciary over whether a defendant, if she is able to perfectly replicate a private jail in her own home at her own cost, has a right to do so under the Bail Reform Act and the United States Constitution."). As this Court observed in United States v. Bruno, even if a defendant had the financial capacity to "replicate a private jail within his own home," among other things, the Court was not convinced that such "disparate treatment based on wealth is permissible under the Bail Reform Act." 14-CR-556 (WKF), 89 F. Supp. 3d 425, 431 (E.D.N.Y. 2015).

A recent Southern District of New York decision reasoned that the private jail proposal presented did "not appear to contemplate 'release' so much as describe[] a very expensive form of private jail or detention." United States v. Zarrab, 2016 WL 3681423, at *10 (S.D.N.Y. June 16, 2016); see also United States v. Dan Zhong, 682 F. App'x 71 (2d Cir. 2017) (summary order) (affirming district court's rejection of private jail proposal). Indeed, "such [private prison] arrangements are never one hundred percent infallible[.]" United States v. Cilins, 2013 WL 3802012, at *3 (S.D.N.Y. July 19, 2013) (quoting Borodin v. Ashcroft, 136 F.Supp.2d 125, 134 (E.D.N.Y. 2001)).

The Zarrab decision highlights a number of legal and practical uncertainties regarding the proposed use of private jail services, all of which are applicable here. In denying the defendant's proposal, the Zarrab court reasoned that private jail "substitutes judicial oversight and management for (more appropriate) reliance upon trained, experienced, and qualified professionals from the Bureau of Prisons and the Marshals Service." Id.; see also id. at *11-12 (holding that "judicial involvement [was] inherent in the proposed privately funded armed guard regime" because the court could be asked to "decide whether the private security guards should be armed or unarmed[,] . . . determine the appropriate level of force that may be used to secure Mr. Zarrab . . . [, and] to make attorney/client determinations for Mr. Zarrab"). The court also found Mr. Zarrab's proposal for private jailing unreasonable because "it raise[d] serious issues of liability surrounding the use of force against [Mr. Zarrab] and persons who may interact with him." Id. at *12 (questioning whether signed "waivers from defendants permitting the 'future use of reasonable force' against them" were valid, enforceable, and reasonable); see also id. ("There are some conditions that are simply not appropriate to be contracted out, and detention under armed guard would seem to be one of those." (quoting Valerio, 9 F. Supp. 3d at

295)). Lastly, the court determined that Mr. Zarrab's proposal to use a "privately funded armed [security company was] unreasonable because it helps to foster inequity and unequal treatment in favor of a very small cohort of criminal defendants who are extremely wealthy, such as Mr. Zarrab." Id. at *13 (citing cases for the proposition that distinguishing defendants based on their financial situations is entirely inapposite to long-standing legal precedent); see also id. ("[I]t is contrary to underlying principles of detention and release on bail that individuals otherwise ineligible for release should be able to buy their way out by constructing a private jail, policed by security guards not trained or ultimately accountable to the government, even if carefully selected." (quoting Borodin v. Ashcroft, 136 F. Supp. 2d 125, 134 (E.D.N.Y. 2001))).

C. Specific Findings of Fact and Conclusions of Law

1. The government has shown by a preponderance of the evidence that the defendant is a flight risk, and that no condition, or combination of conditions, will reasonably assure his appearance here. Thus, Magistrate Judge Kuo's permanent order of detention is upheld.

2. The Court considers each of the 18 U.S.C. § 3142(g) factors in turn, other than 18 U.S.C. § 3142(g)(4) (danger posed by the defendant's release), because the government does not argue that the defendant's release poses a danger to the community.

3. The nature and circumstances of the offense are very serious and favor detention here. 18 U.S.C. § 3142(g)(1). As a result of the scheme, the Mozambican companies and the Mozambican government have defaulted on $2 billion in loans, and have already missed more than $700 million in loan payments. Even if the Guidelines loss amount was calculated using only the $700 million in loan payments missed thus far, or the more than $200 million in loan funds misappropriated and diverted for use for bribes and kickbacks, the defendant would face a recommended Guidelines' sentence of life imprisonment, which would be truncated to the

cumulative statutory maximum applicable to him, which is 55 years' imprisonment. In addition to this serious potential sentence, the real world effect of the defendant's actions underscore the seriousness of the case. Following Mozambique's default, the International Monetary Fund withheld financial support to Mozambique, which exacerbated a severe financial crisis in that country.

4. The overwhelming evidence against the defendant also favors his pretrial detention. 18 U.S.C. § 3142(g)(2). The Indictment quotes emails in which the defendant negotiated and orchestrated the $200 million in bribes and kickbacks paid to Mozambican government officials and investment bankers. In addition, the government indicates that correspondent bank records and other bank records it has gathered during its investigation confirm that these bribes and kickback payments in fact occurred. The government also indicates that it has gathered emails and bank records expressly showing that the defendant planned and executed a money laundering scheme with his co-conspirators involving, among other things, the use of false invoices to mask payments to co-defendants and co-conspirators. (See Indictment ¶¶ 77-78). As this Court has previously observed, "When the evidence of a defendant's guilt is strong, and when the sentence of imprisonment upon conviction is likely to be strong . . . . a defendant has stronger motives to flee." Bruno, 89 F. Supp. 3d at 431 (quoting United States v. Iverson, 14-CR-197, 2014 WL 5819815, at *4 (W.D.N.Y. Nov. 10, 2014)). Accordingly, the overwhelming evidence against the defendant favors his detention because it provides him with a motive and incentive to flee.

5. The defendant's history and characteristics also favor his detention. 18 U.S.C. § 3142(g)(3). The Indictment details how the defendant and his co-conspirators orchestrated a massive $2 billion fraud and corruption scheme spanning seven years (from 2011

to 2018), and planned and paid $150 million in bribes and kickbacks to officials at the highest levels of Mozambican government, as well as $50 million in bribes and kickbacks to key bankers at Investment Bank #1 who helped get the suspect loans approved. In addition, the government has provided evidence that the defendant procured visas and employment documents for the UAE with false information so that co-conspirators could enter the UAE as part of the scheme, and also assisted them with opening bank accounts in the UAE where they would be paid as part of the scheme. In sum, the defendant has a demonstrated ability to bribe government officials, and to use fraudulent documents to assist his co-conspirators in their travel to foreign jurisdictions.

6. The defendant also has ties to vast financial resources that he could use to aid in his flight, including both the $15 million the government alleges the defendant received for his role in this scheme, and the assets of his employer Privinvest and its owner, who is a billionaire.[4] The government's indictment and filings make clear that both the defendant and Privinvest are the center of this conspiracy. The Indictment details that the $2 billion in loan funds in this case went to Privinvest, and the defendant and Privinvest charged grossly-inflated prices for equipment and services they provided to Mozambique and paid $200 million in bribes and kickbacks. (Indictment ¶¶ 24-26). As this Court has observed, when a defendant's "alleged ties to a large [] syndicate indicate that he has strong connections to people who have the resources to, ability to, and interest in helping him flee the jurisdiction," that favors denying bail.

[4] Underscoring the defendant's vast financial resources, the defendant indicates that Privinvest is willing to pay for a virtual private jail for the defendant, which the government indicates based upon another case in this district, may cost as much as $144,000 a month. The defendant does not dispute that monthly sum.

Bruno, 89 F. Supp. 3d at 432 (involving both serious flight risk and danger to the community).[5]

7. Finally, the defendant has no ties to the United States and the Eastern District of New York other than this fraud scheme, and is closely tied to UAE and Lebanon, two countries that do not have extradition treaties with the United States. This factor regarding the defendant's history and characteristics also strongly favors his detention. The defendant has nothing that binds him to stay in the United States, and admitted that he had no intent to travel to the United States. If the defendant escaped to UAE or Lebanon, he could not be extradited.

8. Despite these serious risks of flight, the defendant requests his release on a $20 million bail secured by $1 million posted in cash, and his release to home-confinement while watched by two armed private security guards from Guidepost paid for by Privinvest. By proposing his extensive security arrangement that is, in effect, detention, the defendant all but concedes that there is no condition or combination of conditions that would assure his attendance at these proceedings. The only question he poses is whether he can detain himself or he should be detained by the Bureau of Prisons. Based upon the factual record before the Court, the defendant must be detained by the Bureau of Prisons.

9. There are a number of significant problems with the defendant's requested bail package. The defendant admits that he has no assets in the jurisdiction or the United States. As a result, it is not clear how, if the defendant fled, the government could collect anything other

[5] Defense counsel points out that Privinvest is a robust international ship-building business, and while conceding that the government believes it paid bribes here, argues that Privinvest is not an entirely corrupt organization, such as an organized crime syndicate. While Privinvest may in fact conduct other legitimate business, it appears that with respect to the government's allegations in the Indictment, Privinvest was at the center of a $2 billion fraud scheme. Thus, Privinvest appears to have an incentive to assist one of its executives to flee so that the corrupt practices that he and Privinvest engaged in to carry out this $2 billion fraud are not detailed at a public trial.

than the $1 million being posted. The defendant has also thus far not indicated the source of $1 million in cash he is posting, and whether it is traceable to funds from the fraud scheme the government charges, or comes from Privinvest's billionaire owner.

10. I further find that the defendant's proffered private jail solution is untenable, and does not reasonably assure the defendant's appearance here, for a number of other reasons. First, I find that a private jail solution, where the defendant would be in effect the employer of his jailers, does not reasonably assure his appearance here. The December 7, 2016 Letter from the U.S. Attorney's Office for the Southern District of New York in the Ng Lap Seng case that was admitted as Court Exhibit 1 underscores this inherent deficiency in a private jail solution like the one the defendant proposes. Court Exhibit 1 indicates that the defendant in that case, who was released to private armed guards from Guidepost in an arrangement similar to what the defendant proposes here, was outside of his apartment virtually all day, every weekday; was visited by a masseuse for a total of 160 hours in a 30-day period; and went on an unauthorized visit to a restaurant in Chinatown with his private guards in tow on at least one occasion, during which government personnel who happened to be there photographed him. See Court Exhibit 1 at 3, and attached photos.

11. Second, I find that a private jail solution raises serious issues related to the use of force. Specifically, the Court is concerned about the possibility that private armed guards may use deadly force in the streets of Manhattan in order to prevent the defendant from fleeing. That is why detained prisoners are typically detained in facilities run by trained personnel from the Bureau of Prisons and the United States Marshals Service. Furthermore, if the defendant agrees that Guidepost may use force, it is not clear that such agreement would be legally valid. And neither the government nor the defendant have advised me if the United States District

Court or the United States could potentially be sued if the use of force occurred.

12. Third, it is not clear what recourse the government or this Court would have if Guidepost does not fulfill its duties appropriately and the defendant fled.

13. Fourth, while this defendant may have the financial capacity to "replicate a private jail within his own home," the Court is not convinced that such "disparate treatment based on wealth is permissible under the Bail Reform Act." Bruno, 89 F. Supp. 3d at 431. While the Second Circuit has permitted private jail solutions in certain settings where there was no possibility that an "indigent defendant might be detained while a wealthy defendant could be released with a private guard solution," United States v. Esposito, 18-CR-923, 2018 WL 4344332, at *3 (2d Cir. September 11, 2018), this defendant is the first defendant before me in this case, and thus, this case may in fact present the circumstance where there would be disparate treatment based upon wealth because other co-defendants may not currently possess the vast financial resources necessary to pay for the private jail solution the defendant requests.

14. I also find unpersuasive the defendant's arguments that his proposed conditions of release are sufficient. The defendant argues that he should be released to a private jail because the government agreed to similar release conditions with respect to several defendants in the Federation Internationale de Football Association ("FIFA") cases in this District. However, those defendants had all voluntarily waived extradition to the United States, most were from countries that extradite to the United States and none of them was alleged to have procured false documents to enter another country. In this case, however, the defendant did not come to the United States voluntarily; he was deported from the Dominican Republic and arrested at JFK on January 2, 2019. Further, he is closely tied to countries that do not extradite to the United States, and the government has provided extensive documentation indicating that

he provided false entry documents for co-conspirators so that they could travel to the UAE as part of the fraud scheme.

15. I also find unpersuasive the defendant's argument that United States v. Sabhnani, 493 F.3d 63 (2d Cir. 2007) requires his release to private jailers. In Sabhnani, the government negotiated specific conditions with defendant's counsel, including private jail conditions, that the parties believed would reasonably assure the defendant's return to Court, id. at 70, but the government ultimately reversed course and opposed the defendant's release. See also id. at 79 ("Because the government has now identified for this court those further conditions that it deems necessary to assure defendants' attendance at trial and because defendants are willing to abide by these conditions, we conclude that the district court order of detention must be vacated and the case remanded to allow the parties to provide the assurances and finalize the arrangements referenced in the Appendix Agreement. . . ."). Moreover, the defendants in that case were "naturalized United States citizens who had resided in this country" for more than 25 years. Id. at 76-77; see id. at 65. Here, instead, the government has consistently indicated that it believes no combination of conditions will reasonably assure the defendant's appearance here. Further, the defendant is not a United States citizen, and has not been present in the United States at all, let alone 25 years.

16. Accordingly, for the reasons summarized above, I find that the private jail solution that the defendant offers would not reasonably assure his appearance, and that no condition or combination of conditions would reasonably assure his appearance. See Zhong, 682 F. App'x 71 (affirming Judge Sterling Johnson's order of detention where defendant sought release to a private jail); United States v. Raniere, 18-CR-204 (NGG), 2018 WL 3057702, at*7-8 (E.D.N.Y. June 20, 2018) (detaining defendant based upon flight risk where defendant had no

declared assets but appeared to have access to enormous resources offered to be guarded by a private security company); Zarrab, 2016 WL 3681423, at *10 (detaining defendant and rejecting private jail); United States v. Kassim Tajideen, 17-CR-46 (RBW), ECF No. 115 (D.D.C March 15, 2018) (detaining defendant based upon flight risk and rejecting proposed private jail to be provided by Guidepost for the defendant); United States v. Patrick Ho, 17-cr-00779, ECF No. 49 (S.D.N.Y. Feb. 5, 2018) (Tr. Hrg pages 66-76, detaining defendant based upon flight risk and rejecting private jail solution).

III. CONCLUSION

The government submits that, based upon the evidence proffered and the applicable law, the Court should make the proposed findings of fact and conclusions of law detailed above, and affirm Magistrate Judge Kuo's permanent order of detention as to the defendant Jean Boustani.

Dated: Brooklyn, New York
January 29, 2019

Respectfully submitted,

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