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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE No. 3:21-MJ-70212-MAG (JST)
)	
Plaintiff)	NOTICE OF MOTION AND MOTION TO
)	REVOKE DETENTION ORDER AND
vs.)	MEMORANDUM IN SUPPORT
)	
MIRANDA DEVLIN,)	
)	DATE: May 7, 2021
Defendant.)	TIME: 9:30 a.m.
)	COURT: Hon. Jon S. Tigar

TO THIS HONORABLE COURT; TO COUNSEL FOR THE GOVERNMENT

PLEASE TAKE NOTICE that in the above-referenced Court, Defendant Miranda Devlin, by and through her attorney, will move this Honorable Court to revoke the detention order entered by Magistrate Beeler on March 11, 2021. *See* Dkt. # 18.

This Motion is made on this Notice, the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and on such additional papers and arguments as may be presented at or before the hearing on this matter.

Dated: April __, 2020

Respectfully Submitted,

/s/ Mark Goldrosen
Mark Goldrosen
Attorney for Defendant
MIRANDA DEVLIN

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The order detaining Miranda Devlin must be revoked because the government has failed to meet its burden of proving either by clear and convincing evidence that no release conditions will reasonably assure the safety of the community or by a preponderance of the evidence that no release conditions will prevent flight. Ms. Devlin has substantial community ties and is not charged with a crime that involves violence or a weapon. Conditions of release can be crafted that will reasonably assure her appearance in court and protect any person or the community from harm.

II. STATEMENT OF THE CASE

On February 5, 2021, the government filed a complaint against Ms. Devlin, charging her with making false statements in violation of 18 U.S.C. § 1014 and mail fraud in violation of 18 U.S.C. § 1341. Dkt. # 1. With respect to the first charge, the complaint alleges that Ms. Devlin made false statements in an application for a Paycheck Protection Program Loan. Ms. Devlin received a loan in the amount of \$32,700. With respect to the second charge, the complaint alleges that Ms. Devlin used the mail to obtain a state bar card in the name of another person in order to practice law without a license.

On February 12, 2021, Magistrate Beeler released Ms. Devlin on a \$500,000 appearance bond, with \$250,000 of the bond secured by property posted by Ms. Devlin's husband. Ms. Devlin's release conditions included GPS monitoring that would be supervised by pretrial services. Dkt. # 6.

Pretrial services alleged that Ms. Devlin violated her release conditions by tampering with her GPS transmitter. Ms. Devlin was arrested and Magistrate Beeler held a detention hearing on March 8, 2021. At the hearing, Magistrate Beeler ordered that Ms. Devlin be detained, finding that she posed a significant economic danger to the community and that she was flight risk. The Court's decision was without prejudice to Ms. Devlin's "right to seek review of defendant's detention or to file a motion for reconsideration if circumstances warrant it." Dkt. # 18 at 2.

On April 13, 2021, Ms. Devlin filed a motion for reconsideration of her detention based

1 primarily on two new circumstances. The first was that Ms. Devlin had developed a medical
 2 problem, an apparent breast implant rupture that could not be properly treated at Santa Rita Jail.
 3 In addition, Ms. Devlin's two teenage daughters were having problems at their respective schools
 4 and did not have a stable place to live while Ms. Devlin was incarcerated. *See* Dkt. # 29.
 5 Magistrate Beeler denied the motion for reconsideration on April 15, 2021, *See* Dkt. # 32.¹

6 **III. LEGAL STANDARDS**

7 A detention order by a magistrate judge is reviewed de novo. *United States v. Koenig*,
 8 912 F.2d 1190, 1193 (9th Cir. 1990). Under this standard, the Court "should review the
 9 evidence before the magistrate and make its own independent determination of whether the
 10 magistrate's findings are correct, with no deference." *Id.* The Court may "hold additional
 11 evidentiary hearings," if needed. *Id.* "[T]he ultimate determination of the propriety of detention is
 12 . . . to be decided without deference to the magistrate's ultimate conclusion." *Id.*

13 In general, the Bail Reform Act requires a Court to order the pretrial release of a
 14 defendant on personal recognizance or unsecured bond, unless "such release will not reasonably
 15 assure the appearance of the person as required or will endanger the safety of any other person or
 16 the community." 18 U.S.C. § 3142(a), (b). If the Court determines that release on an unsecured
 17 bond will not reasonably ensure the defendant's appearance or will endanger others, the Court
 18 can fashion conditions of release that will satisfy these concerns. 18 U.S.C. § 3142(c).

19 With respect to pretrial detention, the government bears the burden of showing that the
 20 defendant is a flight risk by a "preponderance of the evidence" or a danger to the community by
 21 "clear and convincing evidence." *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir.
 22 1985). "To find danger to the community under this standard of proof requires that the evidence
 23 support such a conclusion with a high degree of certainty." *United States v. Chimurenga*, 760
 24 F.2d 400, 405 (2d Cir. 1985).

25 Further, the defendant's dangerousness "must be demonstrated in fact, not 'in theory.'"

26
 27 ¹Transcripts of the relevant hearings before the magistrate judge are attached. *See* Exhibit
 28 A (February 12, 2021 - initial bail hearing); Exhibit B (March 3, 2021 - hearing after Ms.
 Devlin's arrest); Exhibit C (March 8, 2021 - detention hearing); and Exhibit D (April 15, 2021 -
 hearing to reconsider the detention order).

1 *Obregon v. Sessions*, No. 17-cv-01463-WHO, 2017 U.S. Dist. LEXIS 60552, at *20-21 (N.D.
 2 Cal. Apr. 20, 2017) (quoting *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991)).
 3 “[T]he relevant inquiry is whether the defendant will pose a risk of danger on release, not
 4 whether defendant’s underlying crime posed a risk of danger to potential victims.” *United States*
 5 *v. Shelby*, No. 2:17-CR-395 JCM, 2018 U.S. Dist. LEXIS 5157, at *7 (D. Nev. Jan. 11, 2018).

6 In assessing whether detention is warranted, the Court must consider (1) the nature and
 7 circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3)
 8 the history and characteristics of the person; and (4) the nature and seriousness of the danger to
 9 any person or the community that would be posed by the defendant’s release. 18 U.S.C. § 3142
 10 (g)(1)-(4). Detention is only warranted if the government establishes that “no condition or
 11 combination of conditions will reasonably assure the appearance of the person or the safety of the
 12 community.” 18 U.S.C. § 3142(e)(1).

13 The Bail Reform Act provides numerous conditions of release that the Court may impose
 14 and “[t]he wide range of restrictions available ensures, as Congress intended, that very few
 15 defendants will be subject to pretrial detention.” *United States v. Orta*, 760 F.2d 887, 891-92 (8th
 16 Cir. 1985). The conditions are intended to “reasonably assure” the defendant’s appearance and
 17 the safety of others, *id.*; the Bail Reform Act “does not seek ironclad guarantees.” *United States*
 18 *v. Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal. 1992); *see also United States v. Barnett*, 986 F.
 19 Supp. 385, 400 (W.D. La. 1997) (“As much as it may be desirable to eliminate even this slight
 20 possibility of danger to the community, the law does not permit the court to require guarantees of
 21 safety before granting pretrial release.”). “Only in rare cases should release be denied, and doubts
 22 regarding the propriety of release are to be resolved in favor of the defendant. *United States v.*
 23 *Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2014).

24 **IV. ARGUMENT**

25 **A. THE GOVERNMENT HAS NOT MET ITS BURDEN OF PROVING** 26 **THAT MS. DEVLIN POSES A FLIGHT RISK AND THAT NO** 27 **CONDITIONS OF RELEASE CAN REASONABLY ASSURE HER** 28 **APPEARANCE IN COURT**

Ms. Devlin is a 37-year old citizen of Iran. She lawfully came to the United States in

1 1995 to join her father who had already immigrated to Los Angeles and was married to a United
2 States citizen. Ms. Devlin has substantial ties to the community. In 2004, she moved to the Bay
3 Area and has lived here continuously since then. For the past 11 years she has rented an
4 apartment in San Francisco. There, she lives with her four daughters. Her two oldest daughters,
5 ages 14 and 15, are from her prior marriage to Anthony Agpaoa, who lives and works in Marin
6 County. Ms. Devlin's two youngest daughters, ages four and eight, are with her current, but
7 estranged, husband, Tad Devlin, a San Francisco attorney. Ms. Devlin also rents office space in
8 San Francisco.

9 Ms. Devlin does not have a passport and has not traveled internationally since coming to
10 the United States. She became a lawful permanent resident of the United States effective July 17,
11 1997, but later was ordered removed following a state court conviction for attempted grand theft.
12 That order was withheld on in 2004 while Ms. Devlin sought political asylum. According to
13 Pretrial Services' Post Bail Report, there is a final order of removal dating from August 15, 2007.
14 Ms. Devlin, however, states that there are still asylum proceedings ongoing in immigration court.

15 At the detention hearing, Pretrial Services alleged that Ms. Devlin tampered with her GPS
16 device on February 26, 2021. Ms. Devlin denies any tampering. The problem with the device was
17 the result of an accident. When Ms. Devlin exited from taking a shower, the bracelet caught on a
18 nail that was protruding from an unfinished wall. Ms. Devlin tripped and fell to the floor causing
19 injury to herself (scraped and bleeding leg) and damage to the GPS device. The device did not
20 come off Ms. Devlin's ankle, but the battery was dislodged and a cable embedded in the strap
21 became exposed. Ms. Devlin immediately attempted to repair the device with tape and glue so
22 that it would properly function.

23 In the meantime Pretrial Serviced Officer Jalei Kinder received notice of possible
24 tampering with the device as a result of Ms. Kinder's fall. Ms. Kinder attempted to contact Ms.
25 Devlin over the next few minutes, but Ms. Devlin was not near her phone and did not notice the
26 calls. At 11:38 a.m., about four minutes after Ms. Kinder first called, Ms. Devlin responded. She
27 explained about the accident and was directed to report to the San Jose Pretrial Services Office.
28 Ms. Devlin complied, arriving in San Jose at about 2:15 p.m. There, Ms. Kinder removed the

1 device from Ms. Devlin's ankle and replaced it with a new monitor.

2 Pretrial Services also alleges that Ms. Devlin later violated her release conditions by
3 placing tape on the replacement monitor. Ms. Devlin does not dispute that she put tape on the
4 monitor, but explains it was done for an innocent purpose. Ms. Devlin shared her bedroom with
5 one of her younger daughters and the light from the monitor kept the daughter awake at night. In
6 addition, wearing the monitor was embarrassing to Ms. Devlin. She did not want to call other
7 people's attention to the monitor, which she believed was likely to occur if the light was visible
8 or sounds were coming from the speaker. Ms. Devlin was not trying to prevent Pretrial Services
9 from monitoring her. And, in fact, as Pretrial Services concedes, taping the light and speaker did
10 not interfere with its ability to do just that.

11 While it is reasonable that Pretrial Services would be concerned about what happened
12 with the GPS device, it must be kept in mind that Ms. Devlin never attempted to flee. That is true
13 even before Ms. Devlin began wearing the GPS monitor. Ms. Devlin was initially released from
14 custody on February 12, 2021, but was not fitted with the device under February 16, 2021, after
15 the holiday weekend. If Ms. Devlin had planned to flee, one would have expected her to do so
16 during that window when she was not being monitored. But she did not. Nor did she attempt to
17 flee after the device broke on February 26, 2021. Instead, she answered Ms. Kinder's call and
18 complied with her directive to report immediately to the San Jose office for a replacement.

19 Ms. Devlin is without a passport and cannot leave the United States. She has no ties to
20 any community other than the Bay Area. Her four minor children, who depend on her for so
21 much, are all here. If again released, Ms. Devlin will timely appear in Court as directed. The Post
22 Bail Report does not indicate she has ever failed to appear in Court in the past.

23 **B. THE GOVERNMENT HAS NOT MET ITS BURDEN OF PROVING**
24 **THAT MS. DEVLIN POSES A DANGER TO OTHER PERSONS OR THE**
25 **COMMUNITY AND THAT NO CONDITIONS OF RELEASE CAN**
REASONABLY ASSURE HER APPEARANCE IN COURT

26 It is well settled that the facts of the case are the least important of the various factors the
27 Court considers in determining whether to release a defendant. The Bail reform Act makes it
28 clear that it does not "modify[] or limit[] the presumption of innocence." 18 U.S.C. § 3142(j).

Moreover, the Court must focus on the “risk of danger on release, not whether defendant’s underlying crime posed a risk of danger to potential victims.” *Shelby*, 2018 U.S. Dist. LEXIS 5157 at *6-7.

Here, Ms. Devlin is not charged with crimes of violence or crimes that involve the use or possession of weapons. In addition, the government has presented no “evidence to suggest that [Ms. Devlin] intends to commit additional criminal acts in the future.” *United States v. Eischeid*, 315 F.Supp.2d 1033, 1036-37 (D. Ariz. 2003).

Like the current charges, Ms. Devlin’s prior offenses do not involve violence or weapons. All are related to theft or fraud. Moreover, they are remote in time. The felony crimes occurred over a five month period between November 2000 and April 2001, more than 20 years ago.² The misdemeanor occurred in 2008, more than 13 years ago. Remote offenses shed “little light on the issue of [a defendant’s] potential danger to the community if released.” *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (denial of bond was inappropriate given the remoteness of the charges, even though defendant had a prior conviction for manslaughter). “[P]resenting danger to the community at one point by committing [a] crime does not place [a defendant] forever beyond redemption.” *Id.* (quoting *Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1998)).

In addition, there is no indication that during the time Ms. Devlin was released she engaged in any conduct that threatened the safety of other persons or the community. Magistrate Beeler imposed strict conditions prohibiting Ms. Devlin from obtaining new lines of credit, making changes to her financial accounts, and obtaining new forms of identification. With these release conditions in place, other persons and the community will be remain safe during the pendency of Ms. Devlin’s case.

C. OTHER FACTORS WEIGH IN FAVOR OF REINSTATING MS DEVLIN’S PRETRIAL RELEASE

In her motion asking Judge Beeler to reconsider the detention order, Ms. Devlin set forth

²All of the felony convictions were previously expunged. In addition, according to Ms. Devlin, the convictions were recently set aside on the ground that the superior court did not properly advise her of the immigration consequences of her no contest pleas.

1 additional factors that support her release.

2 1. Ms. Devlin Has Health Problems That Are Not Being Adequately
 3 Diagnosed and Treated at Santa Rita Jail

4 While incarcerated, Ms. Devlin began to experience pain and swelling in both breasts and
 5 especially in her right breast, with pain spreading to her right armpit and as high as her neck and
 6 face. At times, the pain caused Ms. Devlin to sweat, and to feel dizzy and nauseous. On April 1,
 7 2021, after Ms. Devlin reported her condition to the Santa Rita medical staff, she had an
 8 ultrasound performed on her breast implants. The ultrasound did not disclose any abnormality,
 9 but the report noted that “[s]ince breast ultrasound has a low sensitivity and specificity[,] consider
 10 obtaining an MRI if implant rupture is a consideration.” The report also suggested “obtaining a
 11 mammogram to further evaluate the breast parenchymal issue.”

12 Ms. Devlin’s pain did not subside and she had further consultations with the Santa Rita
 13 medical staff. The doctors observed that there was a “a fluid filled appearing area . . . in R axilla
 14 area which has now extended down ribcage to mid torso region.” It was further determined that
 15 the Santa Rita medical staff did not have the expertise or equipment to properly diagnose Ms.
 16 Devlin’s condition. Santa Rita consulted with specialists at Highland Hospital who said that Ms.
 17 Devlin “needs an MRI of breasts, R Axilla for further evaluation of implants/soft tissue and
 18 referral to Highland breast clinic for further specialized treatment of complaint.”

19 On April 7, 2021, the administrative assistant requested permission from the U.S.
 20 Marshal to allow Ms. Devlin to be brought to Highland Hospital “for MRI and an Gyn office
 21 visit.” That request was approved. Subsequently, however, Ms. Devlin was informed that
 22 Highland Hospital does not have the specialized MRI machine needed for her breast evaluation.
 23 She was told she can be brought to Highland to consult with a breast specialist, but will have to
 24 be taken elsewhere for the MRI imaging. The Santa Rita medical staff is now looking for another
 25 medical facility that both has the needed equipment and can accommodate the transfer of an
 26 inmate for evaluation. *See* Medical Records filed under seal as Exhibit E.

27 In light of the above, Ms. Devlin may well have a serious medical condition that
 28 endangers her health. If one of her implants ruptured, she will likely need surgery to remove it.

1 The Santa Rita medical staff, and even Highland Hospital, does not to have the expertise and
2 equipment to properly diagnose or treat this condition. Moreover, visits to outside medical
3 facilities require permission in advance from the U.S. Marshal and need to be coordinated with a
4 security detail. If released, Ms. Devlin will be able to obtain a diagnosis as well as treatment,
5 including surgery, much more quickly than while incarcerated. She will also be able to obtain a
6 second opinion regarding proper treatment and make her own choice about which medical doctor
7 treats her. Ms. Devlin also notes that she suffers from thalassemia, a blood disorder, that may
8 complicate any surgery.

9 2. Ms. Devlin's Teenage Children Are Suffering in the Absence of Her
10 Supervision and There Is No One Else Who Can Supervise Them at the
11 Present Time

11 Ms. Devlin has two teenage daughters, ages 15 and 14, with her ex-husband, Anthony
12 Agpaoa. The family court granted full custody of the girls to Ms. Devlin. Prior to Ms. Devlin
13 being detained, the girls lived with her and their two younger daughters in their San Francisco
14 home. With Ms. Devlin incarcerated, the teenage girls do not have parental supervision to ensure
15 that they are attending their respective high schools or that they are safe. Mr. Agpaoa is unable to
16 provide close supervision because he works almost everyday, from 11:15 a.m. to 8:15 p.m. at
17 Mollie Stones's in Sausalito. In addition, the girls cannot live with him because he rents a single
18 room in a San Rafael house and there is not space enough for the girls to stay with him on a long
19 term basis. Mr. Agpaoa hopes to have his own place in six or seven months, and at that time can
20 have his daughters live with him. In the meantime, however, while Mr. Agpaoa has some contact
21 with his daughters, he cannot closely supervise them.

22 It was hoped that the girls could be monitored by and live with Ms. Devlin's estranged
23 husband, Tad Devlin while Ms. Devlin was in jail. Mr. Devlin is the father of Ms. Devlin's two
24 younger daughters, ages eight and four. Mr. Devlin, however, is simply spread too thin to pay
25 careful attention to the teenage girls. To begin with, Mr. Devlin is has his plate full with being a
26 single parent to the two younger daughters he shares with Ms. Devlin while also being employed
27 as an attorney. On top of that, in February 2021, Mr. Devlin's father passed away, leaving his 78-
28 year mother alone at the family home in Corte Madera. Mr. Devlin is now the primary caregiver

1 for his mother, who suffers from diabetes and early dementia. He is constantly back and forth
 2 between his mother's home and his own home, and cannot keep a close eye on Ms. Devlin's
 3 older daughters. Recently Mr. Devlin's mother was taken by ambulance in the middle of the
 4 night to the hospital emergency room and then briefly hospitalized.

5 In Ms. Devlin's absence, her teenage daughters appear to be suffering greatly. According
 6 to Mr. Agpaoa, the older daughter has moved in with a friend's family in San Anselmo. She is
 7 supposed to be attending high school by Zoom, but has been absent from many classes. The high
 8 school sends emails to Ms. Devlin's email address when there is an unverified absence from a
 9 class. Mr. Devlin has access to Ms. Devlin's account and has located numerous notices of
 10 unverified absences from the school. At the hearing on the motion for reconsideration, Judge
 11 Beeler was presented with documents showing that the older teenager was absent from one class
 12 on March 3, 2021, one class on March 9, 2021, one class on March 10, 2021, one class on
 13 March 16, 2021, one class on March 17, 2021, one class on March 18, 2021, one class on
 14 March 19, 2021, two classes on March 22, 2021, three classes on March 24, 2021, one class on
 15 March 25, 2021, one class on March 29, 2021, two classes on March 30, 2021, one class on April
 16 2, 2021, and one class on April 12, 2021.³ See School Records filed under seal as Exhibit F.

17 The situation with Ms. Devlin's younger teenage daughter is even more concerning. She
 18 suffers from depression and ADHD, has had thoughts of suicide, and has previously been
 19 committed to Aurora mental hospital in Santa Rosa. According to Mr. Agpaoa, she and her
 20 mother are particularly close and she relies heavily on her mother's emotional support. Mr.
 21 Agpaoa further reports that his younger daughter is currently out and about, with no stable living
 22 arrangement. Recently, she was temporarily living with friends in Martinez and also spent a
 23 couple of days at the San Francisco home without supervision. Mr. Agpaoa believes she is using
 24 drugs and "hanging out" with her boyfriend in unsafe San Francisco neighborhoods such as the
 25

26 ³It appears that the notice is sent to the parent whenever the student has an "unverified
 27 absence." The notice further directs the parent to contact the attendance office if the "student was
 28 absent." According to the notice, "Any absence not cleared within 48 hours after the student
 returns to class will remain an unexcused absence" While in custody, Ms. Devlin is unable to
 follow-up regarding the absences.

1 Tenderloin, the Mission, and the Bayview.

2 Before being taken into custody, Ms. Devlin spent a significant amount of time at home
 3 helping her younger teenage daughter with her homework and making sure she attended her
 4 Zoom classes. School records submitted to Judge Beeler showed that the daughter's academic
 5 performance has deteriorated in Ms. Devlin's absence. On January 31, 2021, she had grades of A
 6 in all of her high school classes. On March 7, 2021 and March 14, 2021, however, her grade in
 7 Physics was F. Also, on March 14, 2021, her World History grade had gone down to C. As of
 8 April 4, 2021, she had improved her Physics grade to B, but her World History grade had
 9 dropped to D, with two missed assignments. In addition, she had unexcused absences for one
 10 class on March 9, 2021, two classes on March 11, 2021, one class on March 12, 2021, two
 11 classes on March 16, 2021, three classes on March 22, 2021, one class on March 26, 2021, three
 12 classes on April 5, 2021 and two classes on April 7, 2021. She was also tardy to a class on March
 13 23, 2021. *See* School Records filed under seal as Exhibit G.

14 Ms. Devlin's two teenage daughters are greatly in need of a stable home environment
 15 where they can be closely supervised and protected from harm. Ms. Devlin's release from
 16 custody will allow that to happen. Just as importantly, the responsibility of providing supervision
 17 for her teenage daughters will heavily weigh against any risk that Ms. Devlin will flee the
 18 jurisdiction or endanger the community with new economic crimes. Similarly, Ms. Devlin's need
 19 to address her health problems will be an incentive to strictly abide by her conditions of release.

20 **V. CONCLUSION**

21 For all of the foregoing reasons, it is respectfully requested that Ms. Devlin's appearance
 22 bond be reinstated with any additional conditions that the Court believes are warranted.

23 Dated: April 28, 2021

Respectfully Submitted,

25 /s/ Mark Goldrosen
 26 Mark Goldrosen
 27 Attorney for Defendant
 28 MIRANDA DEVLIN