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December 8, 2016

VIA ECF & FACSIMILE (212-805-7986)

The Honorable Paul G. Gardephe
United States District Judge
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007-1312

Re: United States v. Kaleil Isaza Tuzman, No. S7 15 Cr. 536 (PGG)

Dear Judge Gardephe:

We represent defendant Kaleil Isaza Tuzman and respectfully submit this letter in reply to the government's December 6, 2016 opposition ("Opposition," ECF No. 184) to Mr. Isaza Tuzman's motion for a modification of the terms of his bail conditions (the "Motion," ECF No. 175), namely, the removal of home detention and the lessening of travel restrictions, while maintaining electronic monitoring. The bail review hearing is scheduled for Friday, December 9, 2016 at 12:30 p.m.

In its Opposition, the government maintains its misguided position that Mr. Isaza Tuzman is a flight risk and a danger to the community. But, as detailed below, the facts relied on by the government in support of risk of flight and dangerousness are either untrue, distorted, or inherently unreliable. For example, the government's Opposition relies largely on the self-serving hearsay statements of co-defendant Omar Amanat, an individual who has a proven history of claiming he is being physically threatened during business disputes. And the allegations relied on by the government are the very same ones it knew about when it agreed to recommend Mr. Isaza Tuzman's release solely on electronic monitoring. The government's about-face and continued insistence upon home detention, despite all the evidence proffered in our moving papers, is perplexing and punitive.

Remarkably, the government's Opposition fails to rebut the following:

- **The government ignores the well-reasoned conclusions of Mr. Isaza Tuzman's court-appointed mental health experts that home detention is impairing the defendant's much-needed mental health treatment.** Both his therapist and psychiatrist agree that Mr. Isaza Tuzman should be removed from home detention in order to progress in his mental health treatment, which is much needed because he suffers from PTSD and depression. These court-appointed professionals are obligated to carry out

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their duties to the Court and Pretrial Services, with candor and forthrightness. They do not shade their views. The fact that they have spoken with such uniformity speaks volumes.

- **The government fails to credit the recommendation of Pretrial Services to eliminate home detention.** The government's only mention of that recommendation is reduced to a footnote that merely references Pretrial Services's preference for travel restrictions. After having supervised Mr. Isaza Tuzman for nearly 5 months, Pretrial Services recommends against home detention, and has concluded that stand-alone GPS monitoring would be sufficient to reasonably assure Mr. Isaza Tuzman's future appearance and the safety of the community. That conclusion deserves deference, particularly since the government has offered no explanation for why electronic monitoring – which would provide Pretrial Services a minute-by-minute account of Mr. Isaza Tuzman's whereabouts 24 hours a day and 7 days a week – is insufficient to achieve the goals of the Bail Reform Act.
- **The government fails to reference let alone satisfy its high standard of proof for dangerousness, which must be by clear and convincing evidence.** 18. U.S.C. § 3142(f); *see United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995). Literally, the words “clear and convincing” do not even appear in the government's Opposition. Just as Magistrate Judge Maas flatly rejected any claim of dangerousness at the bail hearing in July 2015, *see* Motion, Ex. 1 at at 51:1-5, this Court should similarly find that the government's evidence fails to satisfy the lower probable cause standard, let alone clear and convincing evidence. This is not surprising given that the government has proffered not a single contemporaneous piece of objective evidence to corroborate the claims of threats made by Omar and Irfan Amanat, co-defendants in this case whom the government has accused of fraud.
- **The government concedes that it reneged on an agreed-upon bail package that involved no home detention, which the government reached with knowledge of the allegedly “threatening” emails it now relies on to support a finding of dangerousness.** Leaving aside the merits of the allegations – which we vigorously dispute below – the government's agreement for several months not to seek home detention for Mr. Isaza Tuzman calls into question whether the government actually believes the content of the emails. It is noteworthy, of course, that the government has proffered not a single contemporaneous piece of objective evidence to corroborate the fanciful claims of threats made by Omar and Irfan Amanat, co-defendants in this case whom the government has accused of fraud.

In short, the government's analysis is deeply flawed, relies on “evidence” that should not be credited, and the position it takes is unnecessarily punitive to Mr. Isaza Tuzman. The government cannot meet its high burden to show that the proposed bail conditions, which include continued electronic monitoring by Pretrial Services, would be insufficient to ensure Mr. Isaza Tuzman's future appearance and the safety of the community. Accordingly, the Court should modify Mr. Isaza Tuzman's conditions of bail to remove home detention and expand his

permissible travel.

A. The Government's Allegations Of Dangerousness, And Its Reliance on Co-Defendant Omar Amanat's Statements, Are Not Credible and Fall Short of Satisfying the Government's Heightened Burden of Proof

1. The Amanats' Claims Of Being Threatened Are Untrustworthy

First, the emails on which the government relies only prove Mr. Isaza Tuzman's lack of violence. Opposition, Ex. C, D. As discussed in our moving brief, the 2009 email exchanges were selectively excerpted by the government for many months, and read in context, they do not support any claim of threatened or actual violence. As revealed in those exchanges, Mr. Isaza Tuzman believed that Mr. Amanat had defrauded KIT digital of millions of dollars, and was trying to get money back for his company as a fiduciary. Far from threatening physical violence, Mr. Isaza Tuzman simply said he "will do everything within my power and *within the limits of the law* to enforce KIT Digital's right and take action where appropriate." Motion, Ex. 12 at 3. Nowhere in any of these emails does Mr. Isaza Tuzman remotely threaten physical violence. For example:

- Opposition, Ex. E – In an April 29, 2009 email from Mr. Isaza Tuzman to Irfan Amanat, Mr. Isaza Tuzman writes that he will "hold [Irfan] responsible" for "steal[ing] my [Mr. Isaza Tuzman's] money and then . . . refus[ing] to make good? You make me stick to my stomach. SICK TO MY STOMACH. BE A MAN FOR ONCE IN YOUR LIFE AND LIVE UP TO YOUR OBLIGATIONS." Nowhere in this email does Mr. Isaza Tuzman remotely suggest or convey a threat to Irfan Amanat. Opposition, Ex. E at 1 (all capitals in original).
- Opposition, Ex. C – In a March 26, 2009 email, Mr. Isaza Tuzman responds to Omar Amanat's allegations that he "hired 'special collection agents' from Colombia and Spain to pursue the collection efforts;" and to Amanat's statement that "I believe in the sanctity of human life, even if you loose [sic] all your money or someone robs it from you, killing is unacceptable. Kaleil has told me he believes it is ethical and justifiable under those circumstances. I believe this is what Kaleil was referring to earlier about me and him coming from 'two very different ethical places.'" In his response, Mr. Isaza Tuzman sets the record straight, making clear both that he was *not* threatening violence and that he was aware of Amanat's ruse: "ACTUALLY, THIS IS NOT AT ALL WHAT I MEANT WHEN I REFERRED TO TWO VERY DIFFERENT ETHICAL PLACES, BUT YOU KNOW THAT. ... YOUR 'SPECIAL COLLECTION AGENTS' AND THREATS AND SANCTITY OF HUMAN LIFE COMMENTS ARE ALL A RUSE THAT HIDE THE SIMPLE FACT THAT MONEY WE SENT YOUR BROTHER DISAPPEARED INEXPLICABLY AND WITHOUT AN AUDIT TRAIL..." *Id.*, Ex. C at 2 (all capitals in original; underlining added).
- Opposition, Ex. C – In the next section of the same email exchange, Mr. Isaza Tuzman again responds to Omar Amanat's false claims that "collection agents 'made contact'" with his

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associate; and that he “received a call” from a collection agent stating that as long ‘as the funds are delivered to KIT by year end, no one in my family will get hurt.’” Having already disclaimed any violence, Mr. Isaza Tuzman states, “I AM NOT GOING TO ADDRESS THE PARAGRAPHS ABOVE, OMAR, BECAUSE YOU KNOW THAT THEY ARE RIDDLED WITH FALSEHOODS – EITHER DIRECT OR BY OMISSION. AS I SAID BEFORE, FRAUD/THEFT HAS SERIOUS CONSEQUENCES, AND WE ARE NOT THE ONLY ONES INVOLVED HERE. ENABLE HAS BILKED A LOT OF PEOPLE. I WILL DO EVERYTHING WITHIN MY POWER, AND **WITHIN THE LIMITS OF THE LAW,** TO ENFORCE KIT DIGITAL’S RIGHTS AND TAKE ACTION WHERE APPROPRIATE. THE ‘CLEAN-UP’ DOCUMENT I THINK REPRESENTS A CONSTRUCTIVE STEP FORWARD.” Here, far from threatening violence, Mr. Isaza Tuzman tells Amanat he will employ strictly lawful means to collect his debt and offers a legal document as a “constructive step forward.” *Id.* at 2-3 (all capitals in original; underlining and bold added).

- Opposition, Ex. C – Additional statements Mr. Isaza Tuzman makes in the same email exchange similarly show that he intends to act not only lawfully, but also ethically, professionally and constructively. These statements include: “THE SOLUTION NEEDS TO BE MUTUAL, AND WE ALL NEED TO WORK PRODUCTIVELY;” “WE HAVE THE OPPORTUNITY TO FIX THIS IN A POSITIVE WAY FOR ALL CONCERNED. I AM FINE FOR THIS EMAIL TRAIL TO STOP AND FOR US TO FOCUS ON THE SOLUTION;” and “LET’S AGREE TO DISAGREE AND MOVE FORWARD.” *Id.* (all capitals in original). These statements further disprove any actual or threatened violence by Mr. Isaza Tuzman and in fact speak to Mr. Isaza Tuzman’s rationality and level-headedness..
- Opposition, Ex. D – In another April 29, 2009 email from Mr. Isaza Tuzman to Irfan Amanat, Omar Amanat and others, Mr. Isaza Tuzman forwards legal documents and again makes clear that he is lawfully trying to collect a debt owed to his company: “Given the sequence of events (money lost within days of deposit, numerous lies and mischaracterizations, Irfan’s commitment to myself and other executives at KIT digital that he would personally guarantee Enable funds, etc.), these documents are very generous to Irfan.” *Id.*, Ex. D at 2.
- Opposition, Ex. F – In a May 2010 email exchange Mr. Isaza Tuzman responds to Omar Amanat’s complaint that “Your arbitrary and capricious deadlines are what they are ... All of the conditions in [the settlement agreement] have been unequivocally met ... if you choose to dispute this we will seek to protect our rights to the fullest extent of the law.” *Id.*, Ex. F at 2 (emphasis added). In response, Mr. Isaza Tuzman writes, “Whatever putz ... You are the most incredible bullshit artist I have met in my life.” *Id.* at 1. The fact that the two businessmen are bickering about “arbitrary and capricious deadlines,” standard fare in any business negotiation, underscores that there were never any collection agents or threats of violence a year earlier.

Far from showing dangerousness, or a propensity for violence, the above emails prove that Mr. Isaza Tuzman was merely trying to collect on a debt, from two brothers who owed his

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company a debt and who, at the time, he believed had defrauded his company. He makes no threats of violence, disclaims having made any threats of violence or having hired “special collection agents,” even when baited on the subject, and quite to the contrary, expressly states that he is *not* making a threat of violence.

Second, that Omar and Irfan Amanat claim in these emails and elsewhere that Mr. Isaza Tuzman threatened them is part of a proven *modus operandi* to make accusations of threats of violence when being legally pressed to repay business obligations. Presumably, this is done to elicit sympathy, create a record trail of signing settlements “under duress”, and to distract from their own wrongdoing.

The government relies on Irfan Amanat’s assertion that Mr. Isaza Tuzman tried to intimidate him, on one occasion claiming Mr. Isaza Tuzman “screamed he would ‘**hunt me down**’ because I stole his money’ and I couldn’t hide, if I didn’t sign [a settlement agreement] he would come after me.” Opposition at 8 (quoting Ex. E at 1). This is not the first time the Amanat brothers have accused a creditor of screaming “hunt me down.” In a high profile dispute involving Aman Resorts and Russian billionaire Vladislav Doronin, Omar Amanat claimed in his March 2014 court documents that Mr. Doronin made the exact same threat to him – using the *exact same words* – when Mr. Doronin realized Amanat had defrauded him of millions of dollars:

Mr. Amanat met with Mr. Doronin in order to attempt to resolve the difference between the two of them. In the event, Mr. Amanat ended up having a heated discussion with Mr. Doronin ... During this conversation, Mr. Doronin said to Mr. Amanat: “if I feel you tried to screw me *I will **hunt you down** and shoot you.*”

Excerpt of Claim filed by Aman Resorts in the High Court Of Justice, Chancery Div., at 2 p. 10, ¶ 37.1, attached hereto as Exhibit 2 (emphasis added).

The fact that Amanats’ claim of threats is manufactured is evidenced on the face of the email chain relied upon by the government. Indeed, in Exhibit E to the Opposition, Mr. Isaza Tuzman emails Irfan Amanat on April 29, 2009 imploring Irfan to “be a man for once in your life and live up to your obligations.” In response, Irfan agrees to sign a settlement agreement and asks Mr. Isaza Tuzman not to call Irfan’s “house and threaten me again.” Then nearly two years later on February 5, 2011, Irfan’s brother, Omar, *forwards the email chain just to his brother* and asks, “What did he say when he called and threatened you?” Irfan replied purporting to quote Mr. Isaza Tuzman: “[h]e screamed he would ‘hunt me down’ . . .” Opposition, Ex. E at 1. Again, the “hunt me down” threat mirrors exactly the one allegedly made to Omar by his litigation adversary in the Aman resorts dispute, under similar circumstances. *See* Ex. 2. The fact that Omar and Irfan Amanat are revisiting a purported threat two years after the fact, demonstrates that this was a contrived exchange in an effort to manufacture a threat where none existed. It is highly plausible that Omar Amanat was resorting to a his *modus operandi* of papering a non-existent threat when he baited his brother Irfan to reply with the “hunt me down” language two years after the fact.