

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 2:19cr189
)	
JAVAID PERWAIZ,)	
)	
Defendant.)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR REVOCATION OF DETENTION ORDER

The United States of America by and through its attorneys G. Zachary Terwilliger, United States Attorney for the Eastern District of Virginia, and V. Kathleen Dougherty, Elizabeth M. Yusi, and E. Rebecca Gantt, Assistant United States Attorneys, responds in opposition to defendant JAVAID PERWAIZ's Motion for Revocation of Detention Order. ECF No. 20.

PROCEDURAL HISTORY

On November 8, 2019, Dr. Javaid Perwaiz – a certified obstetrician-gynecologist – was named in a two-count criminal complaint and charged with Health Care Fraud, in violation of 18 U.S.C. § 1347, and False Statements Relating to Health Care Matters, in violation of 18 U.S.C. § 1035. ECF No. 3. The affidavit details an extensive scheme, perpetrated for nearly a decade, in which the defendant performed unnecessary gynecological surgeries – including hysterectomies, dilation & curettages, removal of ovaries and fallopian tubes, and others – on unsuspecting patients and submitted materially false, fraudulent, and fictitious claims to two health care benefit programs, seeking reimbursement for these surgeries. ECF No. 4. Dr. Perwaiz was arrested and made his initial appearance on Friday, November 8, 2019, accompanied by his retained counsel. At that time, the United States moved under 18 U.S.C. § 3142(f)(2)(A) to detain the defendant, who was born in Pakistan, citing concerns over Dr. Perwaiz's risk of flight. The

court granted the motion and directed that both a preliminary hearing and a detention hearing be held on Thursday, November 14, 2019. In advance of these hearings, the United States filed a Motion for Pretrial Detention, outlining the many factors that supported detention in this matter, and appended one exhibit: a copy of paperwork recovered from Dr. Perwaiz's medical office. See ECF Nos. 11, 11-1. As this paperwork included personally identifiable information about Dr. Perwaiz, the United States made certain redactions to it. See E.D. Va. Local Crim. R. 47(C)(1); Fed. R. Crim. P. 49.1.

On November 14, 2019, before United States Magistrate Judge Robert J. Krask, Dr. Perwaiz waived his right to a preliminary hearing and the parties fully litigated the issue of detention. The United States submitted two additional exhibits for the court's consideration: an unredacted copy of the paperwork recovered from Dr. Perwaiz's office, and a letter from the Commonwealth of Virginia, Department of Health Regulatory Boards, Board of Medicine to Dr. Perwaiz, dated June 22, 1984. ECF No. 12.

After considering the evidence presented and the fulsome arguments of the parties, Magistrate Judge Krask ordered Dr. Perwaiz detained pending trial in this matter, concluding that the United States had proven by a preponderance of the evidence that no condition or combination of conditions of release would reasonably assure the defendant's appearance as required. ECF Nos. 12, 15. In his written order of detention, Judge Krask cited multiple reasons for this conclusion, including that Dr. Perwaiz has a prior criminal history, will be subject to a lengthy period of incarceration if convicted, lacks significant community or family ties to the Eastern District of Virginia, and has significant family or other ties outside the United States. ECF No. 15 at 2-3. Finding the defendant to present a "substantial risk of flight," the court ordered him detained. Id.

Dr. Perwaiz filed a motion to revoke the detention order on November 25, 2019.¹ ECF No. 20. In it, he submits that his long ties – personally and financially – to this community, his United States citizenship, and the fact that he has not personally traveled to his native Pakistan since 2003 all indicate that he is not a flight risk. He addressed the court’s concern about his assets with some additional information about the value of his four Mercedes Benz automobiles and one Bentley automobile, but does not otherwise dispute that he has substantial financial resources. The defendant did not address the several other factors supporting Judge Krask’s accurate conclusion that he poses a significant risk of non-appearance.

On December 5, 2019, a federal grand jury sitting in Norfolk returned an eleven-count indictment charging Dr. Perwaiz with Health Care Fraud, in violation of 18 U.S.C. § 1347 (Counts One through Five), False Statements Relating to Health Care Matters, in violation of 18 U.S.C. § 1035(Counts Six through Nine), and Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A. ECF No. 21. He is set to be arraigned on these charges on December 18, 2019. Because no condition or combination of conditions can ensure Dr. Perwaiz’s appearance at future court proceedings, he should remain detained.

DISCUSSION

In evaluating whether there are conditions of release that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community, this Court should examine the factors set forth by Congress in 18 U.S.C. § 3142(g), to wit; the nature and circumstances of the offenses charged, including whether the offense is a crime of

¹ Under 18 U.S.C. § 3145(b), if a person is ordered detained, the person may file a motion for revocation or amendment of the order with the court having original jurisdiction over the offense.

violence or involves a minor victim; the weight of the evidence against the person; the history and characteristics of the person and dangerousness of the person.

Pre-trial release is to be denied in those cases where the district court finds the defendant poses an unreasonable risk of flight or a danger to any other person or the community. The United States must prove that the defendant is an unreasonable risk of flight by a preponderance of the evidence. United States v. Chimurenga, 760 F.2d 400 (2d Cir. 1985); United States v. Fortna, 769 F.2d 243 (5th Cir. 1985); see also United States v. Stewart, 19 F. App'x 46, 48 (4th Cir. 2001). In order to impose pretrial detention, “the lack of reasonable assurance of either the defendant’s appearance or the safety of others or the community, is sufficient; both are not required.” Stewart, 19 F. App'x at 48.

In reviewing a motion to revoke or amend a Magistrate Judge’s release or detention order, this court “acts de novo and must make an independent determination of the proper pretrial detention or conditions of release.” Stewart, 19 F. App'x at 48 (citing United States v. Rueben, 974 F.2d 580, 585-86 (5th Cir. 1992)). Such review does not require an evidentiary hearing – rather, it can be based upon a review of the parties’ submissions and the transcript of the original detention hearing. See United States v. Boyd, 484 F. Supp. 2d 486, 487 (E.D.Va. 2007) (noting that the district court “need not conduct a new pretrial detention hearing; rather, the court may base its decision on the transcript of the original detention hearing and any additional evidence proffered by counsel.”); United States v. Williams, 753 F.2d 329, 331 (4th Cir. 1985) (noting that the district court did not hold an evidentiary hearing “because a full transcript of the proceedings before the magistrate judge had been prepared”).

The multiple factors supporting detention in this case are fully outlined in the government’s Motion for Pretrial Detention and Judge Krask’s Detention Order, and the United States will not

belabor them here. ECF Nos. 11, 15. Importantly, very little has changed since the hearing on November 14, 2019, and Dr. Perwaiz does not put forth any new information in his Motion that would undermine the conclusion that he is a substantial flight risk.

A. Nature and Circumstances of the Offenses

As detailed in the affidavit in support of the criminal complaint, and echoed in the indictment returned last week, Dr. Perwaiz has been charged with perpetrating a long-running health care fraud scheme in which he performed unnecessary gynecological procedures, including surgeries, on women. He abused his position of trust, and his medical training, for his own financial gain and to the severe detriment of many of his patients. The underlying facts of the case are “deeply disturbing and give rise to a strong motive to flee.” ECF No. 15 at 3.

Indeed, in reflection of the seriousness of health care fraud offenses, Congress has dictated that a violation of 18 U.S.C. § 1347 is punishable by up to ten years in prison, or more if “serious bodily injury” results. Persons convicted of a violation of 18 U.S.C. § 1035 may be imprisoned for a term of up to five years. A conviction under 18 U.S.C. § 1028A – with which the defendant was first charged on December 5, 2019 – carries a term of two years imprisonment, to run consecutively to the underlying felony offense. If convicted, Dr. Perwaiz would be subject to a lengthy period of incarceration.

B. Weight of the Evidence

The weight of the evidence against this defendant is very strong. To date, the investigative team has interviewed more than 50 current and former patients of Dr. Perwaiz. They have also reviewed Medicaid claims details (noting that the defendant is an outlier for billing Medicaid for hysteroscopies), records regarding maintenance of medical equipment used to justify these surgeries, and patient files. Other evidence includes a voluntary, consensual interview of Dr.

Perwaiz, and a recorded phone call placed by a current patient having second thoughts about her pending surgery – during which he informed the patient that she had “tumors” requiring surgery.

Additionally, Dr. Perwaiz “has a history of engaging in similar misconduct and fraud.” ECF No. 15 at 3. As detailed in the June 22, 1984, letter from the Department of Health Regulatory Boards admitted at the detention hearing, the defendant’s staff membership and clinical privileges at a local hospital were terminated due to poor clinical judgment, unnecessary surgery, lack of documentation, and discrepancies in recordkeeping – including performing abdominal and vaginal hysterectomies without appropriate medical indications and contrary to sound medical judgment. The letter further describes allegations that the defendant performed a diagnostic laparoscopy procedure on a 17-year old patient, without appropriate medical indications and contrary to sound medical judgment. Dr. Perwaiz’s history of harm to his patients, which factored into the magistrate judge’s detention order, has not changed.

Importantly, since the detention hearing, the investigative team has also obtained documentation from one of the health care benefit programs from which the defendant sought reimbursement for gynecological procedures and surgeries. In July 2012, this health care benefit program initiated a review of Dr. Perwaiz based upon a long-standing concern that he was over-utilizing certain procedures and taking an overly aggressive approach in treating his patients. After conducting a random audit of patient records, the health care benefit program resolved the matter through discussions with Dr. Perwaiz regarding his aggressive approach and suggested conservative treatments. This review provides additional support to the already strong evidence that the defendant has engaged in a long-running scheme to perform unnecessary procedures on his patients.

C. Background of the Defendant

Dr. Perwaiz was born in Pakistan and attended medical school at the University of the Punjab in his home country. He traveled to the United States for his medical residency training at West Virginia University, and began practicing medicine in Chesapeake, Virginia, shortly thereafter. Though a naturalized United States Citizen, he has no family ties to this country – no spouse, children, or blood relatives – but does have at least two family members living in Pakistan with whom he has weekly phone contact. He is close with his Pakistani brother – to whom he has given Power of Attorney over his (the defendant’s) assets. He also regularly sends money to Pakistan through PakRemit² to support his family members residing there. Though he has not traveled to Pakistan since 2003, his financial and familial ties to that country are strong. Further, the fact that he completed medical school in his home country shows the potential for viable employment there if he chooses to flee.

Though the defendant declined to disclose his finances to the court, the investigative team has been able to determine that he has significant financial assets. As presented to Judge Krask, he has \$40,000 spread across three bank accounts, five luxury automobiles, multiple pieces of real property³, and claimed to have \$200,000 in “Gold/Art” in his home during a 2016 submission to a bank in support of a loan application. The investigation has since determined that Dr. Perwaiz has significant assets in a retirement account, from which he takes regular disbursements. In fact, between September 2014 and September 2019, the defendant took over \$450,000 in disbursements from this account.

2 PakRemit is the brand name of the National Bank of Pakistan’s remittance product – a money-transfer service similar to Western Union.

3 Dr. Perwaiz owns three pieces of real property, together valued at more than \$1.3 million.

The United States submitted to Judge Krask documents obtained from Dr. Perwaiz's medical office in Chesapeake, Virginia, during a search on October 29, 2019, that indicated Dr. Perwaiz had directed his medical office staff to falsify his date of birth when filling out certain paperwork. Specifically, the document – which was written in handwriting consistent with that known to be Dr. Perwaiz's – identified a particular date as his "Real B.D.," then directed "Always use [a different date] on all official/Business legal etc. Matters." ECF No. 11-1. In his Motion, Dr. Perwaiz notes that his birth certificate, passport, court documents, and other documents are all consistent as to his date of birth, and insists that he has never used multiple birth dates. ECF No. 20 at 2.

In addition to the exhibit submitted to Judge Krask, the United States has recently located multiple additional birth dates used by Dr. Perwaiz on paperwork he submitted to a local bank (noting a date of birth in December) and to a financial services company (noting a February birthday) in setting up accounts. In total, then, at least four different dates of birth are potentially attributed to Dr. Perwaiz. Again, this use of alias/alternate dates of birth is deeply concerning to the United States, particularly when coupled with the nature of his alleged offense – one marked by fraud and deceit.

Additionally, and as highlighted by Judge Krask in his detention order, Dr. Perwaiz is a federal felon, having being convicted in this court in 1996 for income tax evasion. His history of providing false information to government agencies, as well as to his patients, "increases the risk of flight and noncompliance with conditions of release." ECF No. 15 at 3.

D. No Conditions Will Secure the Defendant's Appearance

In this case, Dr. Perwaiz has the resources to flee, the incentive to flee, and no combination of conditions will adequately assure his appearance before this Court. He has been engaged in a

lengthy scheme that involved repetitive acts of fraud to deceive various health care benefit programs and – more gallingly – patients, in order for the defendant to line his own pockets. As set forth above, the defendant is facing a significant period of time of imprisonment if convicted, in addition to the rapidly mounting threat of civil malpractice lawsuits.

Tellingly, in his Motion, Dr. Perwaiz does not put forth any individual as a viable third-party custodian who would be able to provide sufficient assurances to the court that they would take responsibility for the defendant's compliance with terms of any release. Further, given his familial, financial, and educational connections to Pakistan, electronic monitoring would not be sufficient to ensure his appearance. At base, any defendant with international ties requires the court to place some measure of trust in the individual defendant. But Dr. Perwaiz has a history of engaging in acts of fraud, and clearly has every incentive to leave the United States.

CONCLUSION

Judge Krask carefully weighed the evidence before him against the statutory factors governing release and detention. His conclusion that Dr. Perwaiz “presents a substantial risk of flight, and that no set of conditions will reasonably assure his appearance at further proceedings” was accurate and well-supported by the facts of this case and the defendant’s history. ECF No. 15 at 3. Accordingly, the defendant’s Motion for Revocation of the Detention Order should be denied and Dr. Perwaiz should remain detained pending trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed electronically using the CM/ECF system, on this 9th day of December, 2019, which will result in notification to:

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