

The Honorable Brian A. Tsuchida

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE UNITED STATES OF AMERICA,
Plaintiff,

v.

KEENAN A. GRACEY,
a/k/a Keenen A. Gracey,
a/k/a Xander Gracey,
a/k/a Xander Keenan,
Defendant.

CR19-001RSM
DETENTION MEMORANDUM

Hearing Date: January 18, 2019

I. INTRODUCTION

After a December 26, 2018, detention hearing, United States Magistrate Judge Alicia Rosenberg of the Central District of California entered an order requiring that defendant Keenan Gracey be detained pending trial. Judge Rosenberg found that Gracey presents both a risk of nonappearance and a danger to the community. At his January 11, 2019 initial appearance in this district, Gracey requested a second detention hearing, which the deputy clerk scheduled for January 18, 2019. The government submits the following Memorandum regarding that hearing.

As an initial matter, the government objects to a second detention hearing as impermissible under the Bail Reform Act. Judge Rosenberg’s order is not a temporary

1 | detention order; it requires that Gracey remain detained until trial. Under the plain terms of
2 | the Bail Reform Act, that order can be reviewed only by: (1) the magistrate judge that
3 | entered the detention order (and then only if there are changed circumstances); or (2) the
4 | assigned district court judge. For this reason, courts have held that where, as here, a
5 | magistrate judge in the arresting district enters a detention order, review of that order by a
6 | magistrate judge in the charging district is improper. Therefore, if Gracey wants to seek
7 | review of the detention order, he must file a motion before the assigned district judge, Judge
8 | Martinez. Accordingly, the Court should strike the scheduled detention hearing.

9 | Second, if the Court does entertain a detention hearing, it should affirm Judge
10 | Rosenberg's detention order. Keenan Gracey presents both an extreme risk of flight and a
11 | serious danger to the community. As to flight, Gracey is a foreign (Canadian) national with
12 | no employment, residence, or other ties to the community. Just over two months ago, after
13 | the SEC sued Gracey for securities fraud, and while he was under criminal investigation,
14 | Gracey's father provided Gracey with information about how to purchase a foreign passport
15 | and foreign residency. Moreover, Keenan Gracey has recently used aliases to obscure his
16 | identity; there is evidence he has access to large amounts of cash; and he made multiple false
17 | statements to the pretrial services office when he was interviewed in Los Angeles. Given
18 | these facts, the Court can have no confidence that Gracey will make his appearances as
19 | required.

20 | Gracey also presents a serious economic danger to the community. Last May, after
21 | Gracey swindled investors out of more than \$4 million, the SEC obtained a temporary
22 | restraining order prohibiting Gracey from offering securities for sale, and freezing his bank
23 | accounts. Gracey did not miss a beat. Despite these orders, he continued his fraudulent
24 | stock sales and conned investors out an additional \$2 million, stopping only when he was
25 | arrested on December 20, 2018. Thus, Gracey has given the Court every reason to believe
26 | that, if released, he will continue to destroy peoples' lives by conning them out of their life
27 | savings.

1 For these reasons, the Court should decline to hold the requested detention hearing. If
2 the Court does revisit the detention issue, it should affirm the existing detention order.

3 II. BACKGROUND

4 A. Nature of the Pending Charges

5 On January 3, 2019, the grand jury returned an indictment charging Keenan Gracey
6 with ten counts of wire fraud. Some of the evidence supporting the charges is summarized in
7 the Complaint, which is attached hereto as Exhibit 1. The charges allege that Gracey falsely
8 presented himself to investors as an extremely wealthy British investor. To create this
9 illusion, Gracey rented estates worth millions or tens of millions of dollars in Clyde Hill and
10 Mercer Island, Washington, and Beverly Hills and San Diego, California. Similarly, he
11 rented fleets of luxury cars like Bentleys, Rolls Royces, Mercedes and Lamborghinis, and
12 told investors that the cars and houses belonged to him.

13 The Indictment alleges that Gracey defrauded investors by telling them he had special
14 access to “pre-IPO” stock that, Gracey said, would appreciate by a factor of 50 or more when
15 the stock went public in the near future. In fact, Gracey had no relationship to the companies
16 whose stock he claimed to sell. Between June 2016 and May 2018, Gracey collected over \$4
17 million from investors who believed they were purchasing valuable stock, but who in fact
18 received only worthless “share purchase agreements” from Gracey. Many of these investors
19 had liquidated their retirement accounts and taken on high-interest loans to “purchase”
20 Gracey’s phony stock.

21 On May 10, 2018, the Securities and Exchange Commission (“SEC”) filed a civil
22 complaint in the Central District of California alleging that Gracey engaged in securities
23 fraud in violation of the Securities Act of 1933 and the Securities Exchange Act of 1934.
24 *See* Central District of California Cause No. CV18-3872AB (the “SEC Action”). On May
25 10, 2018, United States District Judge Andre Birotte issued a temporary restraining order
26 that, *inter alia*, enjoined Gracey from selling securities. SEC Action Dkt. 4. On September
27 27, 2018, Judge Birotte granted the SEC’s Motion for Default Judgment. SEC Action Dkt.
28

23. On November 5, 2018, Judge Birotte ordered a permanent injunction prohibiting Gracey from selling securities. *Id.* Judge Birotte also ordered Gracey to disgorge \$4,403,500, finding that the “SEC submitted evidence that Gracey had obtained \$4,403,500 through his wrongful conduct.” *Id.* Judge Birotte also ordered an additional \$4,403,500 civil penalty.

The Indictment further alleges that, following the filing of the SEC action, and despite the restraining order against him, Gracey continued his fraud.¹ He continued to make the same “pre-IPO” pitch to investors, but simply changed the names of the companies involved. At times he used the alias “Xander Gracey” or “Xander Keenan” to prevent investors from linking him to the SEC Action. And, to avoid the SEC’s asset freeze, he funneled the fraud proceeds through bank accounts of a family member. Gracey collected an additional \$2 million from investors between the time of the SEC temporary restraining order and his arrest in December 2018.

B. Gracey’s Arrest and Detention Order

FBI agents arrested Gracey in Los Angeles on December 20, 2018. He was interviewed by pretrial services the same day. Gracey told pretrial services he had lived continuously for two years at an address on Beverly Park Lane in Beverly Hills. He said that he had graduated from university in the United Kingdom with a business degree, and that he was living off of his retirement as a professional soccer player.

Magistrate Judge Alicia Rosenberg held a detention hearing on December 26, 2018. The pretrial services office recommended detention and noted that, *inter alia*, Gracey had made “several contradicting statements about his background” in his interview. After a detention hearing, Judge Rosenberg entered a detention order, finding that Gracey presented both a risk of nonappearance and a financial danger to the community. Dkt. 3 at pp. 16-19. The order is not temporary: it provides that Gracey shall be detained “prior to trial.” Judge Rosenberg’s order cited the following factors as supporting her determination: “nature of the offenses, citizen of Canada, insufficient bail resources from proposed surety who sent emails

¹ An FBI 302 summarizing his contact with one victim is attached hereto as Exhibit 2.

1 re purchase of foreign passport; appears to have access to cash; indication of foreign
2 passport; inconsistent information re current residence.”

3 The United States Marshals Service transported Gracey to Seattle, where Gracey
4 made his initial appearance on January 11, 2019. At the request of the defense, the
5 arraignment was set over to January 18, 2019. The defense also requested a detention
6 hearing, which the deputy clerk set for the same day.

7 **III. GRACEY IS NOT ENTITLED TO REVIEW OF THE EXISTING**
8 **DETENTION ORDER BY THIS COURT**

9 The Bail Reform Act governs issues of release and detention. *See* 18 U.S.C. § 3141 *et*
10 *seq.* The Act provides two avenues for review of a detention order. Neither is applicable
11 here.

12 The first avenue for review, 18 U.S.C. § 3142(f), provides that after a judicial officer
13 holds a detention hearing and issues a detention or release order, the matter “may be
14 reopened by *the judicial officer* if, at any time before trial, the judicial officer finds that
15 information exists that was not known to the movant at the time of the hearing and that has a
16 material bearing” on the issues relevant to detention. (Emphasis added). As courts have
17 held, “by its terms, this section applies only to reconsideration of a detention or release order
18 by the *same judicial officer* who entered the initial order.” *United States v. Cisneros*, 328
19 F.3d 610, 614 (10th Cir. 2003) (holding that magistrate judge in charging district lacked
20 authority to review detention order entered in district of arrest); *United States v. Cannon*,
21 711 F. Supp. 2d 602, 606 (E.D. Va. 2010) (Section 3142(f) “provides for the reconsideration
22 of a detention order only by the same judicial officer that conducted the original detention
23 hearing, and only when there is new evidence”); *United States v. Patterson*, 2013 WL
24 5375438 at *2 (E.D. La. 2013) (magistrate judge in charging district “lacked authority to
25 hold a detention hearing or otherwise review the detention order of another magistrate judge”
26 in the district of arrest).

27 The second avenue for review, 18 U.S.C. § 3145(a), allows for review of a detention
28 order “by the court having original jurisdiction over the offense,” that is, the assigned district

1 judge. *United States v. Evans*, 62 F.3d 1233, 1235 (9th Cir. 1995) (Section 3145 “provides
2 for review of the magistrate judge’s order by the district court”). “The motion should be
3 considered and ruled upon in the first instance by a *district judge* in the court of original
4 jurisdiction.” *Cisneros*, 328 F.3d at 615 (magistrate judge in charging district lacked
5 authority under Section 3145(a) to review detention order entered in district of arrest) (*citing*
6 *Evans*, 62 F.3d 1233 at 1239)(emphasis added); *Cannon*, 711 F. Supp. 2d at 608 (“if
7 Congress intended to give a defendant who is arrested in one district on charges pending in
8 another district an extra ‘bite at the apple,’ the Bail Reform Act would provide as much”; the
9 defendant “must appeal [the detention order] directly to a district judge of this Court, and not
10 first to a magistrate judge”).

11 Because the issue of detention has already been adjudicated, and that adjudication can
12 be reviewed only by Judge Martinez, the Court should decline reopen the issue of detention.

13 **IV. THE BAIL REFORM ACT REQUIRES CONTINUED DETENTION**

14 Even if the Court were to review the merits of the detention order, the Bail Reform
15 Act requires Gracey’s continued detention.

16 **A. Applicable Law**

17 The Bail Reform Act provides that a defendant should be detained pending trial if “no
18 condition or combination of conditions . . . will reasonably assure the appearance of the
19 person as required and the safety of any other person and the community.”

20 18 U.S.C. § 3142(f). A defendant is properly detained pending trial if the court finds, by a
21 preponderance of the evidence, that a defendant poses a risk of flight or, by clear and
22 convincing evidence, that the defendant poses a danger to the community.
23 18 U.S.C. § 3142(e)(2); *see United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). To
24 meet its burden, the government may present evidence by proffer or hearsay. *United States*
25 *v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986).

26 The Act identifies four factors a court should consider in ruling on detention: (1) the
27 history and characteristics of the person, including the person’s character, family ties,
28

1 employment, financial resources, community ties, past conduct, and record of appearance at
2 court proceedings; (2) the weight of the evidence; (3) the nature and circumstances of the
3 offense charged; and (4) the nature and seriousness of the danger to any person or the
4 community that would be posed by the person's release. 18 U.S.C. § 3142(g).

5 **B. Gracey Presents an Extreme Risk of Nonappearance.**

6 Gracey presents an extreme flight risk for several reasons.

7 *First*, Gracey has no personal or economic ties to the community (apart from
8 committing fraud on its residents). Gracey is a Canadian citizen. He has never had
9 significant employment in the United States. He has lived in a series of short-term rental
10 homes, which he financed with fraud proceeds. While Gracey's father used to live in the
11 district, he has relocated to the East Coast. And, while Gracey's wife lives here, the two
12 have been separated since early 2015, when she discovered that Gracey had lied to her about
13 his identity.

14 Gracey is highly transient. While Gracey falsely told the Los Angeles pretrial
15 services officer that he lives on Beverly Park Lane, and had resided there for the previous
16 two years. In fact, emails and information provided by the property owner establish that
17 Gracey rented the house through Airbnb beginning in January 2018, and ending when
18 Gracey was evicted for nonpayment of rent on October 1, 2018. Ex. 3. Further, King
19 County Superior Court filings establish that Gracey was similarly evicted from a house on
20 Clyde Hill for nonpayment of rent in early 2018 (part of the period when he told pretrial
21 services he was living in Beverly Hills). Ex. 4. In the weeks prior to his arrest, the FBI
22 observed that Gracey was staying most nights at the apartment of a friend in Hollywood,
23 California.

24 *Second*, there is significant evidence that Gracey was investigating the possibility of
25 fleeing the country prior to his arrest. On November 4, 2018, Gracey's father sent Gracey
26 two emails with links to information about the possibility of buying a foreign passport. Ex 5.
27 Along the same lines, on September 23, 2018, Gracey's father sent Gracey scanned images
28

1 of Gracey's Canadian and British passports. Ex. 6. All of this occurred during the period
2 when the FBI was investigating criminal charges against Gracey.

3 Gracey has a very strong motive to flee. The government estimates that the low end
4 of his guideline range will exceed 15 years following a trial. Gracey already faces a civil
5 judgment of nearly \$9 million from the SEC Action. And, as Judge Rosenberg found,
6 Gracey not only has the incentive to flee, but has the resources to do so. For example, on
7 September 29, Gracey emailed a third person a photograph of 17 stacks of \$100 bills, stating
8 that "this is what's arriving for me total." Ex. 7.

9 *Third*, Gracey made multiple false statements to pretrial services in Los Angeles. A
10 defendant who is dishonest with pretrial services cannot be trusted to honor his conditions of
11 release, and therefore poses a flight risk. *United States v. Vega*, 206 F.R.D. 266, 271 (N.D.
12 Cal. 2001) (ordering detention based in part on defendant's "conduct of providing false
13 information, including to Pretrial Services"); *see also United States v. Cornish*, 12 Fed.
14 Appx. 363, 363-4 (6th Cir. 2001) (affirming detention order where trial judge found "the
15 defendant was not truthful with either the court or Pretrial Services"); *United States v.*
16 *Herndon*, No. 1:10MJ89, 2010 WL 2607154 at * 7 (M.D.N.C. June 21, 2010) (dishonesty
17 with pretrial services "strongly weighs" against release "because it undermines any basis . . .
18 for concluding that he would obey conditions").

19 Here, Gracey told many of the same lies to pretrial services that he told his victims.
20 Pretrial services states that Gracey made "several contradicting statements about his
21 background." As noted above, he said that he had lived at the Beverly Park Lane estate for
22 the previous two years, when in fact he had been evicted months earlier, and, prior to that,
23 had stayed there for less than ten months. Ex 3. It is likewise false that Gracey lives off a
24 soccer retirement, as he claimed to pretrial services. The FBI has reviewed Gracey's bank
25 records back to 2016, and has determined that he had paid his living expenses entirely, or
26 almost entirely, with fraud proceeds. It also appears that Gracey lied when he told pretrial
27 services he had received a business degree in the United Kingdom. The FBI has conducted
28 extensive investigation into Gracey's background and has seen no evidence consistent with

1 college education in the U.K., and Gracey's father reported no knowledge of it. Finally, the
2 government notes that Gracey told pretrial services that he suffers from a serious disease, but
3 his father reported that Gracey was perfectly healthy.

4 *Fourth*, more broadly, Gracey has shown a character for extreme dishonesty that is
5 utterly inconsistent with supervision. This extreme dishonesty is reflected in evidence
6 summarized in the Complaint, which establishes that Gracey lied to dozens of victims about
7 his identity and background. *See* Ex 1 at ¶¶ 7, 17; Ex 8 (photograph that Gracey texted to a
8 victim depicting Gracey with luxury car and Beverly Hills estate). Further, as stated in the
9 Complaint, Gracey's wife told the SEC that he had lied to her about his identity: he told her
10 that he was a professional athlete from United Kingdom; that his father still lived in England
11 (when in fact he lived in Washington); that Gracey worked in stock trading; and that he is the
12 beneficiary of a trust fund. *Id.* ¶ 21. Gracey's wife reported that she separated from Gracey
13 in 2015, after having a child with him, when she learned that Gracey had lied about his
14 background.

15 *Fifth*, Gracey has a history of using alias names and other tactics to avoid detection.
16 During the period leading up to the SEC lawsuit, Gracey used a Google email account to
17 defraud his victims. When a recipient received an email from that account, the name
18 "Keenan Gracey" appeared as the sender. However, on May 30, 2018, following the SEC
19 lawsuit, Gracey opened a new Google email account, but configured the account so that the
20 name "Xander Gracey" would appear as the sender when he sent an email. Ex 9. Further,
21 the government has identified fraudulent financial documents created after May 2018 in
22 which Gracey identified himself as "Xander Gracey." *E.g.*, Ex 10. Gracey is also known to
23 use the name "Xander Keenan" in other fraudulent documents. *E.g.*, Ex 11. This history of
24 using aliases heightens Gracey's flight risk.

25 *Sixth*, Gracey has a poor history of making court appearances. While he has had only
26 limited contact with the judicial system, his record reflects two instances of bail forfeiture.
27 Further, last June, Gracey failed to appear as required for a hearing in state court. Gracey
28 also failed to appear in the SEC case, resulting in a default judgment against him.

1 All of this evidence easily establishes, by a preponderance of the evidence, that
2 Gracey poses a risk of flight.

3 **C. Gracey Poses an Economic Risk to the Community**

4 Detention is also necessary where the government establishes, by clear and
5 convincing evidence, that the defendant presents a danger to the community. 18 U.S.C.
6 § 3142(f). This includes circumstances where the defendant poses an economic, rather than
7 physical, danger. *United States v. Reynolds*, 956 F.2d 192, 193 (9th Cir. 1992); *United*
8 *States v. Possino*, 2013 WL 1415108 at * 7 (N.D. Cal. 2013) (ordering detention where
9 defendant continued securities fraud scheme while on pretrial release).

10 Here, Magistrate Judge Rosenberg correctly found that Gracey presents a serious
11 financial danger to the community. The evidence in the Complaint establishes that Gracey
12 engaged in extremely predatory behavior. He destroyed his victims' financial lives by
13 persuading them to liquidate their retirement funds and take on high-interest debt, only to
14 steal their money and use it to defraud other investors. Of particular significance, even after
15 being sued by the SEC for securities fraud, and while subject to a temporary restraining
16 order, Gracey continued to defraud investors out of an additional \$2 million. Gracey's
17 willingness to flout a federal restraining order leaves little doubt that conditions of release
18 would be insufficient to prevent Gracey from engaging in further fraud.

19 //

20 //

V. CONCLUSION

Because a magistrate judge has already entered a detention order, Gracey’s request for a detention hearing is improper and should be denied. However, if the Court does take up the issue of detention, it should find that Gracey presents a serious risk of nonappearance and a danger to the community, and order that Gracey remain detained pending trial.

Dated: January 16, 2019

Respectfully submitted,

ANNETTE L. HAYES
United States Attorney

/s/ Seth Wilkinson
SETH WILKINSON
Assistant United States Attorney
United States Attorney’s Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

CERTIFICATE OF SERVICE

I certify that on January 16, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Seth Wilkinson
SETH WILKINSON
Assistant United States Attorney