

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- :

S2 14 Cr. 545 (CS)

SELIM ZHERKA, a/k/a "Sam Zherka, :
a/k/a "Sammy Zherka," :

Defendant. :

- - - - - x

**MEMORANDUM OF LAW IN SUPPORT OF
GOVERNMENT'S MOTION FOR PRE-TRIAL DETENTION**

Introduction

The Government respectfully submits this memorandum in support of its motion for the pre-trial detention of the defendant SELIM ZHERKA, a/k/a "Sam Zherka," a/k/a "Sammy Zherka." For the reasons set forth herein, ZHERKA should be detained on risk of flight and dangerousness grounds.

The Governing Legal Standards

The legal standards governing pre-trial detention are clear:

The judicial officer shall hold a hearing to determine whether any condition or combination of conditions ... will reasonably assure the appearance of such person as required and the safety of any other person and ... [u]pon motion of the attorney for the Government ... in a case involving (A) a serious risk that such person will flee; or (B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten or injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness.

18 U.S.C. §§ 3142(f)(2)(A)&(B). And,

If, after a hearing ... the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial".

18 U.S.C. § 3142(e)(1).

In determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, the judicial officer shall "take into account the available information concerning ... the nature and circumstances of the offense ... the weight of the evidence against the person ... the person's character ... [and] the nature and seriousness of the danger to any person or the community posed by the person's release." 18 U.S.C. § 3142(g). When considering the weight of the evidence, the Court must take into account the Supreme Court's pronouncement that "an indictment returned by a proper grand jury conclusively determines the existence of probable cause," *Kaley v. United States*, 134 S.Ct. 1090, 1098 n. (2014) (internal quotations and citations omitted).

Finally, it is clear from case law that obstruction of justice in the form of witness tampering - even in a white-collar crime case where there are no allegations of violence - is a form of danger to the community warranting pre-trial

detention. See *United States v. LaFontaine*, 210 F.3d 125, 134-135 (2d Cir. 2000). In fact, the Second Circuit has reasoned that pretrial detention is even more justified in cases of violations related to the trial process (such as witness tampering) than in cases where the defendant's past criminality is said to support a finding of general dangerousness. See *id.*

Relevant Facts

The facts set forth below demonstrate clearly and unequivocally that no condition or combination of conditions will suffice to assure ZHERKA's presence in court as required and/or the safety of other persons, and that consequently he should be detained before trial. More particularly, the facts show that ZHERKA is physically violent, an obstructor of justice, and an habitual liar who has no respect for the judicial system or the rule of law. Beyond that, he is a flight risk.

1. The Nature and Circumstances of the Offenses Charged

The Indictment charges that from 2005 through 2010, ZHERKA obtained more than \$146 million in bank loans by submitting falsified loan applications to three lending banks. ZHERKA repeatedly lied to the banks in question about the purchase prices of the commercial properties he was acquiring with the loan proceeds, the amounts of the downpayments he was contributing towards the purchases, his assets, his income, and

other matters as well. Additionally, the Indictment charges ZHERKA with numerous tax crimes, some of which relate directly to the false loan applications and others of which do not. Thus, for instance, ZHERKA is charged with understating on his tax returns capital gains related to his resale of some of the properties he had acquired with the fraudulently obtained loans by using the inflated purchase prices he had provided to the lending banks as his bases instead of using the actual prices he had paid for the properties in question. Likewise, ZHERKA is charged with overstating on his tax returns depreciation expenses related to some of the properties by using as his cost bases for them the false, inflated prices he had provided to the lending banks. Beyond that, ZHERKA is charged with habitually failing to file personal tax returns, notwithstanding the fact that he had significant income for the years in question and unquestionably knew that he had taxes due and owing and was required to file returns and pay taxes. ZHERKA is also charged with scheming to defraud an individual victim of his right to recover a judgment he had secured against ZHERKA almost 14 years ago. Finally, and significantly, he is charged with tampering with witnesses during the course of the investigation leading to the instant Indictment.

2. The Weight of the Evidence Against the Defendant

After conducting an extensive investigation, we are in a position to inform the Court that the Government's evidence against ZHERKA is particularly strong. In addition to the expected testimony of several of the defendant's co-conspirators, the Government will present overwhelming documentary evidence - much of it in the form of emails unquestionably sent by ZHERKA and documents unquestionably signed by him - that is damning to say the least.

3. The History and Characteristics of the Defendant

a. FBI Records of ZHERKA's Involvement in Criminal Activity

As set forth below, information received by the FBI from a variety of independent sources indicates that ZHERKA has been involved in organized criminal activity:

- i) In January 2012, a ZHERKA associate reported that ZHERKA launders money through his strip clubs.
- ii) In October 2007, the owner of Cheetah's, a Manhattan strip club, reported that ZHERKA had come to his club with several other "big men," told him that he (ZHERKA) was the rightful owner of the club, and that he was taking it over. After the owner called the police, ZHERKA and his associates left the premises. The owner of Cheetah's believed that ZHERKA was there to "shake him down."
- iii) In October of 2007, an employee of Cheetah's verified the owner's statements above concerning ZHERKA's coming to the club and attempting to take it over using extortionate means.

iv) In January and February of 2008, a prisoner at Sing-Sing reported that ZHERKA was part of an Albanian crew operating primarily in Queens that sold and distributed narcotics there.

b. ZHERKA's Boasts of Involvement in Violence

According to ZHERKA's co-conspirators in this case, ZHERKA admitted his involvement in the following acts of violence:

i) Early one morning sometime during the 1990's, ZHERKA was called to Vertigo - one of his nightclubs - by a porter who was cleaning up the premises and who told ZHERKA there was something he wished him to see in the club's basement. Upon his arrival at the club, ZHERKA found a dead body duct-taped to a chair in the basement there. ZHERKA called his brother Ali who told him that he had roughed someone up, and ZHERKA then had Ali remove the body from the club.

ii) In or around 1999, ZHERKA was contacted by "Fat Sammy," a/k/a "Egyptian Sammy," the manager of the VIP Club, another one of ZHERKA's establishments. Fat Sammy informed ZHERKA that members of an Italian organized crime family were at the club to "shake them down." ZHERKA instructed Fat Sammy to tell the individuals in question that they should return at a time when ZHERKA would be at the club. ZHERKA then went to the club with several associates and confronted the individuals who were supposedly involved in the shakedown. ZHERKA told them that he was willing to die for his money and asked them if they were willing to die for his (ZHERKA's) money. ZHERKA and his associates then stripped the men of their clothes and assaulted them.

iii) In or around 2005/2006, one of ZHERKA's daughters was dating an African-American man. On one occasion, the daughter brought the man to ZHERKA's office to introduce him to ZHERKA. When the daughter stepped out of the office, ZHERKA pulled out a shotgun and told the man to stay away from his daughter or he would "blow his fucking head off."¹

¹ Although ZHERKA has never been convicted of a crime, he has a lengthy arrest record, principally for acts of violence: On

c. The Ryan Lawsuit

ZHERKA's dealings with Robert S. Ryan - which are the subject of charges in the Indictment - graphically illustrate his violent nature and why he cannot be trusted to abide by any bail order set by this Court.

In 1995, Ryan entered into a contract with ZHERKA whereby he (Ryan) would sell his interest in a night club at 27 West 20th Street, New York, New York, to ZHERKA. ZHERKA never paid Ryan all the money he owed under the contract. On April 12, 1996, Ryan went to the club to discuss a business arrangement that would allow new owners to take it over and pay him the balance

October 11, 1994, ZHERKA was arrested for assault with intent to cause physical injury (a misdemeanor); the case was dismissed subsequent to an adjournment in contemplation of dismissal. On November 11, 1996, ZHERKA was arrested for assault with intent to commit serious physical injury (a felony) and criminal possession of a weapon in the third degree, namely a loaded firearm (a felony); he was convicted on a plea of disorderly conduct. On May 26, 1998, ZHERKA was arrested for assault with intent to commit serious injury with a weapon (a felony) and criminal possession of a weapon in the fourth degree (a misdemeanor); the charges were dismissed. On January 26, 1999, ZHERKA was arrested for aggravated harassment (a misdemeanor); the charges were dismissed. On February 6, 2002, ZHERKA was arrested for assault in the second degree (a felony); the charges were dismissed. On March 8, 2003 ZHERKA was arrested for criminal impersonation in the second degree; the charges were dismissed. On October 31, 2008, ZHERKA was arrested for disorderly conduct (a violation); he was convicted after trial on February 23, 2010 when he was sentenced to, among other things, one year of conditional discharge. Notably, one of the conditions of the discharge was that ZHERKA "not violate any federal, state or local laws." Yet ZHERKA violated that condition by committing a number of the tax crimes charged in the Indictment.

of what he was owed. Shortly after his arrival at the club, Ryan was brutally assaulted by ZHERKA and ZHERKA's brother Ali in the club's basement offices.² They repeatedly punched Ryan in the head until he bled, knocked him into a wall, kicked him in the ribs, dragged him by the hair, and ultimately threw him into a bathroom. During the course of the assault, ZHERKA "placed a gun to [Ryan's head] and threatened to kill him and his family and/or assault and rape his wife and three daughters."

Complaint in *Ryan v. Zherka et ano.*, Supreme Court of the State of New York, County of New York, Index No. 601678/97 (attached hereto as Exhibit A) at ¶¶ 45-46.³

Thereafter, Ryan, based on what had occurred on and before April 12, 1996, sued ZHERKA for breach of contract and assault. The case was tried before a jury in Manhattan, and on April 4, 2000, the jury found for Ryan on both the breach of contract and assault claims, and awarded him damages on both. See Jury Interrogatories (attached hereto as Exhibit B). The ensuing judgment against ZHERKA (attached hereto as Exhibit C), entered on July 25, 2000, directed him to pay \$125,647.76 to Ryan.

² Ali Zherka is a felon, having been convicted of Hobbs Act robbery charges in this district in 2008 before the Honorable Victor Marrero, Dkt. No. 07 Cr. 837 (VM).

³ Ryan would later testify that ZHERKA had stuck a gun to his head and had threatened to kill him and rape his wife if Ryan reported the assault to the police. In light of such threats, it is not surprising that Ryan never made such a report.

As of this writing, fourteen years later, ZHERKA, who never appealed the Ryan judgment, has not paid it. Instead, he has played an elaborate shell game, moving his assets about and placing them in various corporate and other names in order to defeat and evade it. Thus, for instance, when he purchased a real estate parcel in Somers and built his family's home on it in 2005/2006, ZHERKA sought to judgment-proof the home by putting it in the name of a corporation - ASM Holdings, Ltd. - and by subsequently assigning ownership of that company to the Zherka Family Irrevocable Trust. And in proceedings where Ryan has sought to levy on the 2000 judgment, ZHERKA has said of the Zherka Family Irrevocable Trust in open court: "I have no interest in the trust, I have nothing to do with the trust, I don't have check writing ability for the trust." Transcript of pre-trial proceedings of February 7, 2014 in *Ryan v. The Zherka Family Irrevocable Trust, Selim Zherka, et al.*, Supreme Court of the State of New York, County of Westchester, Index No. 69626/2013 (attached hereto as Exhibit D) at 35-36.

Notably, in 2011, when Ryan took ZHERKA's deposition to obtain information about his assets so that he could levy on them to satisfy the 2000 judgment, he asked about ZHERKA's home, and ZHERKA testified, under oath, as follows:

Q: And you gave us your address as 4 Hageman Court in [Katonah] New York?

A: Yes.
Q: Is that a property owned by you?
A: No.
Q: Who owns that property?
A: It is owned by a corporation.
Q: What is the name of the corporation?
A: ASM Holdings Corp.
Q: Who lives at that address 4 Hageman?
A: My wife, six kids.
Q: What is your wife's name?
A: Carmella.
Q: And what is your interest in ASM Holdings Corp.
A: No interest.
Q: Who owns that company?
A: It's owned by my wife and kids.
Q: **And did you ever have an interest in 4 Hageman Court?**
A. **No.**

Deposition of Sam Zherka of June 10, 2011 at 10-11, (attached hereto as Exhibit E). (Emphasis supplied).

Beyond demonstrating the games ZHERKA has played with his assets to defeat and evade the Ryan judgment, the above exchange is notable for what it says about ZHERKA's lack of candor. His answer to the last question in the transcript segment quoted above is indisputably perjurious. In 2007, when ZHERKA applied to Sovereign Bank for a \$63.5 million dollar loan to finance his purchase of several apartment house complexes in Tennessee, he submitted a "Statement of Financial Condition (Net Worth Statement)," (attached hereto as Exhibit F). He listed thereon his net worth as \$49,325,411, which included **his** "Residence - 4 Hageman Court, Katonah, NY," which he valued at \$4 million. Additionally, when refinancing one of the Tennessee apartment

house complexes in 2008, ZHERKA informed Sovereign in an email, (attached hereto as Exhibit G), that **he** owned a home at 4 Hageman Court, Katonah, NY valued at \$3.5 million. In addition to claiming outright ownership of the home on the loan applications submitted to Sovereign, ZHERKA filed federal tax returns for 2004-2006, (attached hereto as Exhibit H), stating that he was the 100% owner of ASM Holdings. As the 100% owner of the company that owned the home, he clearly had an interest in it and thus was lying under oath when he claimed he never did.

ZHERKA also lied to Sovereign about the Ryan judgment itself. In 2007, ZHERKA was queried by a bank official about the unpaid Ryan judgment, which turned up during the bank's due diligence in connection with ZHERKA's 2006 application for the \$63.5 million loan. ZHERKA, knowing the bank would never extend financing to him if he told the truth - *i.e.*, that he had welshed on a contractual debt and then brutally assaulted the man to whom he owed the debt - lied to the banker who queried him, stating:

the Robert Ryan judgment came from an incident from a lounge that I owned in NYC. A man, Robert RyAN [*sic*], was at my establishment, go drunk, left, [*sic*] my establishment and was severely hurt. I was sued, and he received a judgment in this amount. I clearly had nothing to do with it, but the jury thought that my establishment namely my employees should have been more responsible, and not allowed it to happen.

Email from ZHERKA dated April 5, 2007 (attached hereto as Exhibit I). In other words, ZHERKA attempted to convince Sovereign that Ryan had sued him on a dram shop/*respondeat superior* theory, i.e., that Ryan was injured after leaving ZHERKA's club because he had had too much to drink at the club and that he (ZHERKA) was responsible for his employees' having failed to cut off Ryan at the bar. Of course, that version of events, as demonstrated unequivocally by the above-mentioned documents from the court file on the case (as well as the complete trial transcript), is entirely untrue.⁴ Ryan testified that he was beaten by ZHERKA and ZHERKA's brother Ali in the club's basement. ZHERKA, for his part, testified that on the night in question he attended a meeting in the club's basement with Ryan and others, but did not assault Ryan or observe an assault upon Ryan, and left before anything had happened to Ryan. There was no testimony at all about Ryan's having gotten drunk and having been injured after leaving the club. Accordingly, as ZHERKA well knew, there was no way the jury in that case could have formed such conclusions. Beyond that, ZHERKA failed to inform Sovereign that the judgment, in part,

⁴ In fact, a review of both Ryan's testimony and ZHERKA's testimony from the trial shows that nothing even remotely like that reported by ZHERKA to Sovereign ever occurred.

stemmed from his breach of his contract with Ryan to buy Ryan's interest in the club from him - a lie by material omission.⁵

In November 2013, we informed counsel for ZHERKA of the then-putative charges in this case. Among other things, we informed counsel that ZHERKA's false statements to Sovereign about a New York State judgment would be the subject of false loan application and bank fraud charges against him. At a December 9, 2013 meeting with ZHERKA's defense counsel, we elaborated, informing them that the judgment in question was the Ryan judgment. Armed with this knowledge, ZHERKA and one of his attorneys who had been present at the above meeting endeavored to obstruct justice in this case. On February 21, 2014, ZHERKA and that attorney met with an attorney representing Ryan in connection with Ryan's multiple attempts to levy on the 2000 judgment. ZHERKA's attorney - in ZHERKA's presence - told Ryan's attorney, in substance, that Ryan's decade-plus efforts to execute on the judgment had proven futile and that ZHERKA had money tied up in overseas trusts that Ryan would never be able

⁵ ZHERKA, in what can only be described as supreme irony, said in his statement to Sovereign explaining the Ryan judgment that he "owned" the club in question and that his "employees" were responsible for whatever had happened, when at the trial he testified under oath that he was merely a promoter hired by the club to drum up business there, that he had never concluded a contract with Ryan to buy a share in the club from him, and that as of the date of the alleged assault he had not even been at the club for five or six weeks.

to reach. ZHERKA's attorney then proposed that to settle the case, ZHERKA would pay Ryan \$37,500⁶ if Ryan would sign a statement absolving ZHERKA of any complicity in the underlying assault. In other words, after skirting the judgment for nearly 14 years, ZHERKA, when he learned it would become the subject of criminal charges, had one of his attorneys (who was representing him both on the civil case and vis-à-vis our investigation) offer to pay a witness in our case to change his story. Ryan, of course, refused to participate in ZHERKA's endeavor to obstruct justice.

Thus, ZHERKA: 1) refused to make good on a contractual debt owed to Ryan; 2) brutally assaulted Ryan when he came to the club to make business arrangements insuring that he would be paid the balance of what he was owed; 3) fraudulently conveyed assets to defeat and evade the Ryan judgment relating to his breach of contract and assault on Ryan; 4) lied under oath in the Ryan deposition about the ownership of his residence at 4 Hageman Court; 5) lied to Sovereign in connection with his application for a \$63.5 million loan when asked about the Ryan judgment; and 6) endeavored to obstruct justice in this case by offering to pay Ryan a five-figure sum if he would recant his testimony at the 2000 trial that ZHERKA had assaulted him.

⁶ The judgment with interest was then/is now worth in excess of \$317,000.

Beyond that, our investigation has revealed that ZHERKA has bragged to a number of close associates about the beating he and his cohorts administered to Ryan. These facts demonstrate beyond any doubt that ZHERKA is violent, that he poses a danger to others, and that as one with no respect for the judicial system or the rule of law he cannot be trusted to comply with court orders commanding his presence in court. His conduct in connection with the Ryan case alone warrants his immediate remand. But, as we show below, there is yet much more.

d. Other Attempts to Obstruct Justice in this Case

ZHERKA's attempt to pay off Ryan to change the latter's testimony was not an isolated instance of obstruction of justice, but rather part of a pattern of obstruction that will likely continue if he is allowed to remain at liberty in this case. In addition to the corrupt offer to Ryan, ZHERKA engaged a private investigator who attempted to have at least two witnesses sign written statements relating to the facts of this case even though he (the investigator) had already been told by the witnesses that the information contained in the written statements was not true.

e. The Fraudulent Connecticut Lawsuit

ZHERKA's contempt for the judicial system is further demonstrated by his participation in a collusive and fraudulent lawsuit in the District of Connecticut. In 2007, ZHERKA

obtained the above \$63.5 million loan from Sovereign Bank that he used to purchase several apartment house complexes in Tennessee. The complexes were populated largely by military families, and troop deployments after ZHERKA's purchase of the complexes soon left him with high vacancy rates in some of them and financial difficulties making it difficult for him to meet mortgage payments to Sovereign. Believing that his best defense was a good offense, ZHERKA decided he would sue Sovereign, laying all of his financial problems with the Tennessee apartment houses at the bank's feet. But ZHERKA knew that suing the bank directly might appear to be too obvious a ploy. So, instead, he decided that he would: a) have one of his co-investors in the Tennessee apartments sue him and Sovereign Bank in federal court in Connecticut (where the co-investor resided), claiming that he (ZHERKA) and Sovereign had profited at the co-investor's expense and b) then use this as an opportunity to cross-claim against Sovereign, claiming that that bank had lured all of them (ZHERKA and all of his co-investors in the Tennessee apartment houses) into making a bad investment decision by providing them with fraudulently inflated appraisals for the properties in question.

ZHERKA and his co-investor followed through with this devious plan. They went to a corrupt attorney in Connecticut who filed the action on behalf of the co-investor against ZHERKA

and Sovereign in the United States District Court for the District of Connecticut. ZHERKA then cross-claimed against Sovereign claiming he had appraisals for the Tennessee properties that would show they were worth far less than the appraisals furnished to him by Sovereign in 2007. When we subpoenaed ZHERKA's companies - the ones he had used to purchase the Tennessee properties - for the appraisals he claimed to have, they (not surprisingly) produced none. The Honorable Charles S. Haight, a Southern District of New York judge sitting by designation in the District of Connecticut, ultimately threw out the co-investor's fraudulent lawsuit as well as ZHERKA's fraudulent cross-claims against Sovereign.

f. *The Westchester Guardian* Article

ZHERKA, in addition to being the owner/operator of two strip clubs in New York City - V.I.P. and Cheetah's - is the publisher and president of *The Westchester Guardian* ("The Guardian"). Under a banner headline in the March 27, 2014 edition of *The Guardian*, naming the prosecutors involved in this investigation and calling them "Unethical And Corrupt Hypocrites," an article - purportedly written by one Ted Zelman⁷

⁷ Zelman is described at the end of the article as "...a Westchester county [sic] resident who has been writing on the issue of prosecutorial misconduct and government abuse for eight years...." As far as we have been able to determine, there is no one by the name of Ted Zelman who lives in Westchester County.

- lambasted the federal investigation of ZHERKA that led to the instant indictment of him on numerous false loan application and tax fraud charges. (A copy of the article is attached hereto as Exhibit J). The article is not only replete with multiple lies and false defamatory statements against the prosecutors, but includes not-so veiled threats, identifying the towns in which the prosecutors live and wishing each a "happy belated birthday." The towns where these prosecutors live and their birthdays was clearly irrelevant to the points being made in the article. And the only conceivable reason for including that was as a message that ZHERKA was investigating the prosecutors and had personal information about them.

4. Zherka is a Flight Risk

In addition to the fact that ZHERKA poses a danger to others and that if, at liberty, he would likely continue to obstruct this prosecution, ZHERKA is also clearly a flight risk.

a. ZHERKA's Exposure To Jail Time

ZHERKA's exposure to significant jail time in this case provides him with a very strong incentive to flee. His Sentencing guidelines range for the false loan application counts alone is 210 to 262 months' imprisonment (*i.e.*, 17 years and 6 months to 21 years and 10 months).⁸

⁸ ZHERKA's offense level for the false loan application counts charged in the Indictment is 37, which is comprised of the

b. ZHERKA's Foreign Assets

Beyond that, ZHERKA has the financial means and wherewithal to flee. ZHERKA has significant resources abroad. When he applied to Sovereign for the loan to buy the Tennessee apartment house complexes, he informed that bank that he had "assets in Europe, Kosovo, and Albania." ZHERKA loan application to Sovereign Bank, (attached hereto as Exhibit K). And, as set forth above, in recent discussions with Ryan's attorney, an attorney for ZHERKA - in ZHERKA's presence - stated that ZHERKA had money tied up in overseas trusts. Moreover, at a February 7, 2014 court conference in the New York State Supreme Court

following: a base offense level of 7 under §2B1.1(a)(1), 22 levels for loss of over \$20 million under §2B1.1(b)(1)(L) (Sovereign and FNMA collectively lost between \$45 and 50 million on the Tennessee loans), 2 levels for sophisticated means under §2B1.1(b)(10)(C), 4 levels for being an organizer or leader under §3B1.1(a), and 2 levels for obstruction under §3C1.1. Assuming a Criminal History Category of I, his Sentencing Guidelines range would be that stated above. We expect the defense to argue that the losses incurred by Sovereign and FNMA in connection with the Tennessee loans cannot, for Sentencing Guidelines purposes be attributed to ZHERKA. Assuming, without conceding that were the case, ZHERKA would still be at offense level 32 computed as follows: a starting offense level of 24 under §§2B1.1(b)(16)(A)&(D) because the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense and his offense level was otherwise less than 24; 2 levels for sophisticated means under §2B1.1(b)(10)(C), 4 levels for being an organizer or leader under §3B1.1(a), and 2 levels for obstruction under §3C1.1. Assuming a Criminal History Category of I, ZHERKA's Sentencing Guidelines range under this scenario would be 121-151 months' imprisonment (i.e., 10 years and 1 month to 12 years and 7 months) on the false loan application counts alone.

(Westchester County) action where Ryan is seeking to recover an asset in order to satisfy, in part, his 2000 judgment against Zherka, Zherka confirmed the existence of such foreign trusts. See Exhibit D, *supra*, at 31.⁹

**c. ZHERKA's Offer To Surrender/Pledge His Home In
Katonah As Security For A Bail Bond**

We anticipate that ZHERKA will argue that he is not a flight risk because, *inter alia*, he has known about this investigation for years and has not fled, and because earlier this year his attorneys offered to surrender him in the event he was indicted. For the reasons set forth below, those arguments should be rejected by this Court.

First, it is one thing to know one is under investigation and quite another to know that one has been indicted for

⁹ While, as far as we can determine, ZHERKA has no American passport, he clearly believes he has the wherewithal to leave the country if and when he wishes. After being arrested in Mount Vernon on charges of Disorderly Conduct in the fall of 2008 - charges on which he was later convicted after trial - ZHERKA met with Mount Vernon Mayor Clinton Young at an Eastchester, New York restaurant, and secretly recorded him. During the conversation, ZHERKA, who was asking Mayor Young to fire his police commissioner in retaliation for the arrest, discussed, among other things, the administrative staff in his (ZHERKA's) office. Said ZHERKA, "I got five girls who work for me.... I can go live in Albania, or I can go live in Italy, or anywhere in the world and come back and know they're managing my stuff like its their own...." (The conversation between Mayor Young and ZHERKA is posted to YouTube in six segments and the conversation in question appears at about the four minute mark on segment number four). Not surprisingly, ZHERKA lists Albania and Italy [Europe] as places where he can reside outside of the United States, two places where he has said he has significant assets.

multiple counts of serious crimes and is actually - not theoretically - facing a lengthy term of imprisonment in a federal penitentiary. In fact, at or about the same time that ZHERKA's attorneys first offered to surrender him if he were indicted, ZHERKA was telling his co-conspirators that he expected to resolve this case with a corporate plea and a fine. Accordingly, he was not behaving like one who truly appreciated the gravity of what he was facing, and thus little or no weight can be given to his lack of pre-indictment flight and/or his attorney's offers to surrender him if indicted.

Second, when ZHERKA's attorneys first offered to surrender him in the event he were indicted, they indicated that he would pledge his home in Katonah as security for a bail bond. This is the same home a) the ownership of which he has lied about under oath and b) that he has cloaked in multiple layers of entity ownership so as to place it beyond the reach of Ryan and perhaps other creditors. He has even gone so far as to state in court, *supra*, that he has no interest in the Zherka Family Irrevocable Trust, the entity to which he assigned his ownership of ASM Holding, Ltd., the corporation that purportedly owns his home. This Court and the Government would and could have no assurances that ZHERKA would not engage in some other scheme to place it beyond the reach of the Government should he abscond and the Government then try to forfeit it as a consequence. Given

ZHERKA's track record with this asset, it simply cannot be considered adequate security for a bail bond, and, more to the point, his offer to post it as such security demonstrates just how empty his offer to surrender was and is.

Third, when ZHERKA's attorneys offered to surrender him in the event he were indicted, they indicated that his wife, Carmela Dimarzo, would co-sign the bail bond. Carmela Dimarzo was convicted in this district in 1994 for bank fraud and served an 18 month jail sentence in connection with that conviction. The conviction arose from Dimarzo's scheme to defraud several banks of hundreds of thousands of dollars by depositing numerous checks then-recently stolen from postal relay boxes and containing forged signatures into multiple accounts and thereafter withdrawing funds from said accounts. See *United States v. Carmela Dimarzo, a/k/a Carmela Demarco*, Dkt. No. 93 Cr. 247 (RPP). When arrested by the FBI and the United States Postal Inspection Service in that case, Dimarzo told the case agents that: 1) she had met two men - Jeff Lulanai and "Sammy Zherka" - at Flashdancers while working there as an exotic dancer; 2) she had borrowed \$6,000 from Lulanai and \$7,000 from ZHERKA; and 3) she had used at least part of the proceeds of her crime to pay off these debts. Additionally, our investigation has shown that Dimarzo was a participant in the scheme to defraud Ryan of the judgment he obtained against ZHERKA, a

scheme charged as a wire fraud in this very indictment.

Dimarzo, a convicted felon/fraudster, who used the proceeds of her own crime to benefit her husband, and who has been one of the prime beneficiaries of his crimes and a participant in one of them, is hardly in a position to exercise moral suasion over him and is clearly not a suitable surety.¹⁰ Beyond that, ZHERKA's offer of his wife as a surety again demonstrates just how empty his offer to surrender was and is.

Finally, as is apparent from the forfeiture allegations in the Indictment, we intend to forfeit the defendant's residence, as proceeds from the false loan application offenses were used to pay down his mortgage (and also because it is a substitute asset). In such circumstances, it provides no security for the defendant's bail.

Conclusion


For the reasons stated above, "no condition or combination of conditions will reasonably assure [ZHERKA's] appearance ... as required and the safety of any other person and the community," Title 18, United States Code, Section 3142 (e)(1). He is violent by nature and presents a danger to the community at large and to witnesses; he has a long history of violent acts, a number of which he has admitted; he has endeavored to

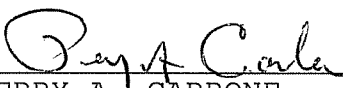
¹⁰ Additionally, prior to her bank fraud conviction, Ms. Dimarzo had a lengthy criminal record - going back to 1979 - for a variety of offenses.

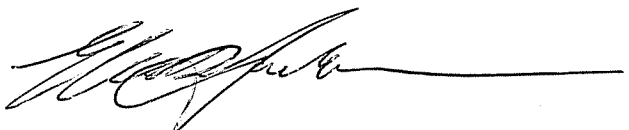
obstruct the grand jury investigation that resulted in the instant indictment by tampering with witnesses and can give absolutely no meaningful assurances that he will not continue to obstruct the prosecution of this case if released on bail; he has every incentive to flee and substantial means to flee; and he has a history of both ignoring and abusing judicial process when it suits his purposes. Consequently, the Government respectfully submits that he should be detained pending trial.

Dated: White Plains, New York
September 18, 2014

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