UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:26-cr-20073-KMM

UNITED STATES OF AMERICA

v.

RISHI KAPOOR

Defendant.

DEFENDANT'S REPLY TO GOVERNMENT'S
RESPONSE TO DEFENDANT'S APPEAL OF DETENTION ORDER

A. Errors in the Government's Legal Argument

The government's legal argument presents an erroneous interpretation of this Court's role in reviewing the Magistrate's Judge's Detention Order in two respects. First, in its Response on page 10 (last sentence), the government states that in reviewing a magistrate judge's detention order, the findings of fact are reviewed under a clearly erroneous standard. That is incorrect. The *Hurtado* decision, *United States v. Hurtado*, 779 F.2d 1467 (11th Cir. 1985), repeatedly states that the district court's review is "*de novo*" (*id.* at 1480); it repeats that the standard of review by the district court is "plenary review" (*id.*); and then repeats again that the district court must subject the magistrate judge's decision to "independent review" (*Id*. at 1481). The government cites pages 1471-73 of the *Hurtado* decision for the proposition that the district court's review of a magistrate judge's findings of facts are subject to the "clearly erroneous" standard. But that portion of the Eleventh Circuit decision addresses the court of appeals' standard of review of the district court's order, not the district court's review of the magistrate judge's order.

Second, the government also errs in its concluding remarks (Response, p. 16), when it suggests that pursuant to 18 U.S.C. §3142(f)(2), the defense is required to make a showing of newly discovered evidence at this stage of the proceedings in order to argue that the district court should consider additional evidence. Section 3142(f)(2) applies to cases in which the defendant urges the magistrate judge to reopen the evidence at a new hearing, not to the initial appeal to the district court from a magistrate judge's decision. In fact, in *United States v. King,* 849 F.2d 485, 490 (11th Cir. 1988), the court explicitly states:

> [I]f the district court, after reviewing the detainee's motion [challenging a magistrate's decision], determines that additional evidence is necessary or that factual issues remain unresolved, the court may conduct an evidentiary hearing for these purposes.

The defense is prepared to present evidence at a hearing – and was prepared to do so on April 30 – to support his challenge of the Magistrate's decision.

B. These facts are not seriously in dispute

The government's Response provides no serious rebuttal to any of the facts or legal arguments that were presented in the Defendant's Appeal of the Magistrate Judge's Order.

1. Rishi Kapoor is a United States citizen.

2. He is 42 years old.
3. He has no criminal record.
4. The indictment in this case does not involve any violence.
5. There has never been a violent episode in Rishi Kapoor's past.
6. There is not a hint of any obstruction of justice in the years leading up to the indictment in this case (or in the somewhat related SEC litigation), or since the indictment was returned.
7. There has never been an incident of flight in Kapoor's past that would suggest Rishi Kapoor is likely to flee. In fact, the criminal investigation in this case was known to Rishi Kapoor and his attorneys for over a year prior to the indictment, and Rishi Kapoor did not flee, or prepare to flee, or talk to anybody about the prospect of fleeing.
8. The government initially agreed that release on bond in this case would be appropriate if Rishi Kapoor's family posted collateral; but the amount of collateral exceeded the family's capacity to pay. (Hr'g Tr. at 8-12). The defense offered to post property (belonging to the defendant's family) in the amount of approximately $2.7 million (and with the recent addition of his nephew's home, the combined value is at least $3 million, and according to some appraisals – noted in the initial appeal – as much as $4 million). The government insisted on $30 million. Thus, at the commencement of the

detention hearing before the Magistrate Judge, the parties were only negotiating about the amount of collateral (i.e, the conditions of bond), not the propriety of granting bond. It was only after the defense could not meet the government's $30 million demand that the government shifted to: "No bond, period." *See* 18 U.S.C. §3142(c)(2) ("The judicial officer may not impose a financial condition that results in the pretrial detention of the person").

9. The defendant's father, the defendant's stepmother, the defendant's brothers (and now a nephew, as well), have all offered to post their personal homes as collateral for the bond. These are the only homes they have, yet even that is apparently not enough for the government.

10. The government offers no rebuttal to the argument that there is no serious dispute that the collateral offered by the family members in support of bond will assure his appearance at trial. If Rishi Kapoor were to flee, he would leave his father and stepmother behind, his wife behind, his brothers, and nephew behind, and they would all be homeless.

11. The government offers no explanation, other than mere *ipse dixit* why the various conditions of release would not be sufficient to assure Rishi Kapoor's attendance at trial, including wearing a GPS ankle monitor, home confinement, strict curfew, relinquishing passport, no travel outside of 5-mile radius from home without pretrial supervision notice and approval. These

conditions – in addition to the posting of his family members' homes – are routinely relied on by magistrate and district court judges and are recognized as significant restrictions that do, in fact, assure that defendants do not flee.

12. The government does not contest the holdings or the significance of the cases cited by the defense in its appeal, *United States v. Kaplowitz*, No. 14-20323-CR-ALTONAGA, page 12-13; 2014 LX 13046, at *1 (S.D. Fla. May 22, 2014), and *United States v. Giordano*, 370 F.Supp. 2d 1256 (S.D.Fla. 2005). The government only offers some counter-examples of people who were denied bond, including the notorious Mr. Esformes – but the government relegates the significant facts of that case to a footnote in its brief (i.e., Mr. Esformes had engaged in overt obstruction of justice and had told other people if he were ever indicted, he would flee or commit suicide). Nothing in the government's brief challenges either the wisdom of the holdings in *Kaplowitz* and *Giordano*, or the analysis that stresses that the "weight of the evidence" is not, alone, sufficient to deny bond.

13. The government has argued – and does not retreat from the argument – that Rishi Kapoor's father could (and presumably would) provide the means for Rishi Kapoor to flee. This is based in part on the government's claim that his father (who is in his 80's and is sick and nearly deaf), has sufficient wealth to finance Rishi Kapoor's fugitivity. The defense has provided to the government

the father's most recent financial statement that was provided to a financial institution in connection with a loan application for a building renovation. The government is free to call Rishi Kapoor's father on the phone to ask about the financial statement, or to ask questions through defense counsel who will provide a signed declaration from the father to verify (1) the father's financial situation; (2) his understanding that the terms of Rishi Kapoor's bond would require him not to travel or flee; and (3) any financial support that the father provided to Rishi Kapoor that facilitated his flight would result in severe consequences (including potential criminal consequences) to the father (and of course, if Rishi Kapoor flees, the father loses his personal home). The declaration will also prove (as does the financial statement) that the father does not have the $30 million that the government insists is necessary to secure the bond in this case.

The second part of the government's theory is that at an SEC deposition three years ago, Brij Kapoor (Rishi's father) was uncertain about the status of a substantial investment he made in Rishi Kapoor's real estate business. Brij Kapoor was not sure if his investment was a loan or a capital investment. The government essentially argues that Brij Kapoor was basically saying that he would do anything for his son. Like the illusory yacht discussed below, Rishi Kapoor "has access" to his father's money.

Most fathers and mothers would say that they support their children. For sons and daughters, we would do just about anything. Most important, we would do everything to discourage our children from committing crimes (whether successful in that effort, or not); discourage them from fleeing, or from avoiding the consequences of committing a crime; or from becoming a fugitive for the remainder of their lives and thus abandoning their family, including mother, father, brothers, wife, in-laws, and nephews.

For the government to seriously contend in a pleading filed in federal court that when a father says that he loaned his son money (or possibly invested money in his son's business), that is evidence that a federal judge should consider in deciding whether the father would aid the son's fugitivity, reveals the inadequacies of the government's proof in this matter.

C. Ties to the Bahamas

Regarding the allegation that Rishi Kapoor and his wife have "strong ties" to the Bahamas, which the government repeats throughout its Response:

1. Rishi Kapoor owns no property in the Bahamas (and does not have "access to properties in the Bahamas") as claimed by the government. (Response, p. 5).
2. Rishi Kapoor has vacationed in the Bahamas in the past, though not since 2023.

3. Neither Rishi Kapoor, nor any member of his family own any property, or bank accounts, or any other assets in the Bahamas.
4. Rishi Kapoor does not have "ties" to a foreign country (the Bahamas), as alleged by the Government (Response, p. 9). Nor does he have "significant ties" to the Bahamas (Response, p. 8).
5. Though Rishi Kapoor previously owned a boat, it was repossessed in 2023; he does not own a boat of any kind. Not a yacht and not a canoe. He has no means to flee. It should be noted, moreover, that with the court's permission, he will urge the court to permit him to reside in Georgia, close to his family, and counsel. There are no yachts in Atlanta.
6. Rishi Kapoor knows a captain of a yacht that can be chartered by members of the public. But that captain is not willing to aid Rishi Kapoor flee; the captain does not own the boat; the captain works for the owner of the yacht who resides in California; the captain is not permitted to use the boat "for free" but only serves customers who charter the boat through the owner or the manager of the boat, generally for no less than $60,000 per charter. Rishi Kapoor has no ability to charter that boat, or use the boat for *any* purpose, including fleeing. The boat's location can be monitored at all times by the manager of the boat, so it cannot be highjacked.

Moreover, there are at least three other qualified crewmen on board and none of them would participate in an effort to aid a person's fugitivity or attempt to land the yacht at a location where the absence of a passport would create no problem. To do so would place the captain and all three crewmen at risk of prosecution in the Bahamas.

In short, despite the government's repeated and inaccurate claims to the contrary, Rishi Kapoor does not have "access" to a yacht to flee. Both the government in its Response (pp. 5, 8, 9) and the Magistrate Judge in her Order (pp. 5-6) erroneously stressed the Kapoors' "strong ties to the Bahamas" and their "access to a yacht" in concluding that *no* condition would assure his presence at trial. The boat captain provided a signed declaration that was attached to the defendant's initial Appeal memorandum; and he will be available to appear in court and testify on May 14, as well, if the AUSAs or the court wish to ask him any questions. His sworn testimony will provide the facts, rather than supposition and speculation about Rishi Kapoor's "access" to the yacht and his ability to flee.

7. The photographs in Gov. Ex. 8 which the government claimed proved recent contacts with the Bahamas, accomplish no such thing. The defense provided the metadata to the government (and made an expert witness available to the government) that proves to a mathematical certainty that the pictures were

taken on a boat in Miami. Both the boat captain and Jennie Kapoor denied that Jennie (or Rishi) was on a Caribbean Island in January 2025. The *only* time Jennie was *ever* on the boat was one time in 2024. Both the boat captain and Jennie Kapoor were in court on April 30 prepared to testify to this fact.[1] They will also be available on May 14 to testify or to answer any questions from the AUSAs between now and then if the government wants to verify what is recited here.

8. These points are not meant to suggest that Rishi Kapoor has no ties. He does have ties. To his father, and stepmother, and brothers, and nephews. And most of all to his wife. He has ties in the Fort Lauderdale community (dozens of professional colleagues, as well as friends) and in the Georgia community where he grew up and where most of his immediate family lives. He has a lease on a house where he lives with his wife in Fulton County, Georgia, and has spent considerable time with his father in the past year helping him with his medical appointments, and with his business (primarily developing an office building). He is willing to reside either in Georgia under the supervision

[1] On April 22, the Court ordered the parties, "to attend the calendar call, scheduled for April 30, 2026, at 2:00 PM in Miami, prepared to argue both as to the Motion for Continuance [37] and Defendant's Appeal of Magistrate Judge Elfenbein's Order [35]." [DE 38] The defense was prepared to argue the Bond Appeal at the April 20 calendar call and had witnesses available in support of the Appeal.

of pretrial in the Northern District of Georgia, or in Fort Lauderdale if that is the Court's decision.

The government's suggestion that he would flee and leave all this behind is not supported by any evidence and should not be credited by the court.

D. Strength of the Government's Case

Regarding the government's argument about the "strength of the case" as a reason to deny bond, the defense has cited cases from this district that stress that a white collar, non-violent crime will rarely be alone sufficient to deny bond. And for good reason: there is a constitutional presumption of innocence. There is also a statutory presumption of innocence (18 U.S.C. § 3142(j)). The government essentially urges the court to disregard the presumption entirely and accept its proffer (Hr'g Tr., pp. 17–36), coupled with a copy of the indictment, as sufficient proof that the case is indefensible from the defendant's point of view and he must therefore be detained.

According to the United States Sentencing Commission Sentencing Sourcebooks, in the Southern District of Florida, 1,377 individuals were sentenced for a criminal offense in 2024; in 2025, the number of sentenced individuals was 1,457. Presumably, the evidence was strong in each of these cases. Yet, hundreds of defendants are released on bond ever year in this District. That would not be consistent with the government's theory. If the government has enough evidence to get an indictment (and ultimately a guilty plea or a guilty verdict at trial), according to the government, the court should deny bond based on the strength of the government's case. Presumably, under the government's theory, even the proverbial "ham sandwich" that a grand jury would indict, should be detained once the grand jury returns an indictment.

The government seriously contends that because the defense did not challenge the allegations in the indictment count-by-count at the detention hearing, this is proof that the case is strong, and bond should be denied for that reason (Response, p. 4).[2] The defense *is* prepared to present its anticipated defense to allegations in the indictment.

E. Summary of Defenses to the Indictment

In Count I of the Indictment, Conspiracy to Commit Wire Fraud, the major monetary damage to the Investors claimed is that the Defendant raised $84 Million falsely because he claimed he and his partner invested approximately $13 million in Location Ventures LLC ("LV Parent") and Location Ventures Projects ("Projects") when they only invested one-half of that amount. The Defendant will establish he and his partner actually invested the entire $13 million through a combination of

[2] The government even insisted that the defense should not be permitted to question the veracity of the charges during the detention hearing: "I offered Agent Steelman as a proffer on certain enumerated facts. I think the indictment speaks for itself on the probable cause determination for the underlying charges." (Hr'g Tr., p. 38). The Magistrate Judge overruled the government's objection at that point.

cash, development properties, cancellation fees owed to them, and existing general partner ("GP") shares, the valuation of which was conservatively estimated at $5 million. The original and subsequent LV Partners knew and accepted these facts to give the new rolled-up company assets and projects to commence with. The Indictment further alleges that the Defendant was only entitled to $400,000 a year in compensation and instead he took close to $5 Millon over four years.

Beyond that, without conceding that $13 Million was not invested, the $13 Million investment representation was ONLY made to investors in the LV PARENT. Thus, it could not form the basis of an $84 Million fraud. There was no such representation made to investors in the various Projects, which were separate LLC's. Although the total investment capital in the LV Parent, when you exclude the Defendant's $13 Million investment, the investment by outside investors in LV Parent was $32Million not the $84 million alleged by the Indictment. The lower sum is important as it lowers the Defendant's guidelines, if convicted, by approximately 4 levels under the newly amended sentencing guidelines (which were approved by the Sentencing Commission in April and will formally take effect in November), and, with acceptance of responsibility, could result in a guidelines range of under 10 years. In fact, with good time credits and First Step Act credits, his sentence could be as low as six or seven years. This significantly undercuts the government's suggestion that the prospective sentence based on an $84 million loss is a crucial factor in establishing impetus to flee.

The other categories have nothing to do with the raise and alleged $13 Million misrepresentation fraud. They include specific Projects, Urban Parent and Urban specific projects (separate LLCs) and had separate and distinct capital raises, some of which predated LV Parent capital raise, and were not predicated on the $13 Million investment representation.

The indictment further alleges that the Defendant was only entitled to $400,00 a year in compensation and instead he took close to $5 million over four years. But, as argued at the detention hearing, the Defendant did not take more than that to which he was contractually entitled. The LV Parent management agreement limited his salary to $300,000-400,000 annually. The Government's FBI witness at the hearing conceded that the Operating Agreements of many of the Projects and Urban Projects entitled Rishi to earn millions of dollars in various fees.

There is clear, written evidence that will show any direction by Defendant on the use of consumer deposit proceeds was supported by the advice of legal counsel and high-level financial professionals. In addition, the defense can prove that the government mistakenly narrowly construes the applicable Florida Statutes' definition of development and construction activity.

On the allegedly inappropriate fees and compensation received by Defendant, the government suggests that Defendant used improper funds to purchase a luxury home, yachts and personal property. They ignore more than $3.5 million of non-company funds used for these purposes. In addition, the money Defendant used from the company was money to which he was entitled pursuant to the abovementioned fees.

As to Money Laundering the Indictment only focuses on a part of the email communications regarding the Winmar Construction payment. The totality of the email communications and testimony from Winmar will demonstrate that there was an appropriate loan between the parties and thus no predicate for the offense of money laundering.

Unfortunately, as with the SEC, the government here mistakenly concludes the Defendant received all of the project's profit from around August 2022. Instead, Defendant received $1.3 million of various fees to which he was entitled, of which there are detailed written communications explaining to what each component of the distribution was related. It is pure coincidence that the timing and amounts are similar to the projects' sales profit in question.

As to income taxes, first, the government is mistaken on their position regarding personal taxes regarding the 2019 Tax Year. The Defendant paid over $200,000 directly to the U.S. Treasury through its online portal. This can be corroborated by Defendant's personal bank statements at Bank of America.

For 2020 – 2022 there were extensions and there were significant losses that the Defendant was trying to calculate with the CPA which would have shown Defendant owed no taxes. However, due to Covid and subsequent problems with the financial records, the amount of the losses, which would carry forward to the later years, could not be calculated. The drafts which the accountants initially prepared did not account for the losses. Had the drafts been amended to adjust for the carry forward and subsequent losses it is believed that the Defendant would not owe any tax payment to the United States Treasury for these years.

For 2023, the Defendant had an extension, minimal compensation, and accounting for substantial carry forward and current losses. The defendant did not owe any taxes that year.

All Payroll Taxes were paid in full in the summer of 2023.

CONCLUSION

Rishi Kapoor is going nowhere when he is released. He will actively and diligently work with his lawyers (in Georgia and Fort Lauderdale) to prepare his defense. He will not sail away into the sunset and, at the age of 42, face the next 50+ years as a fugitive. He will not abandon his wife and family (and his wife will not leave with him and face her own criminal exposure to say nothing of abandoning her mother and father).

The defense urges the court to set a reasonable bond and reasonable conditions in support of Rishi Kapoor's release pending trial.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

By: *<u>/s/ Donald F. Samuel</u>*
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