

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	Crim. No. H-09-342
	§	
ROBERT ALLEN STANFORD	§	
a/k/a Sir Allen Stanford	§	
a/k/a Allen Stanford	§	

**MOTION FOR STAY PENDING DISTRICT COURT’S
DE NOVO REVIEW OF RELEASE ORDER**

The United States requests a stay of the order the magistrate court issued yesterday setting bail at \$500,000 until this Court conducts a *de novo* review of the detention hearing. The stay is appropriate because there is a strong likelihood that the extraordinary flight risk indicators in this case will lead this Court to order Stanford's detention or, at a minimum, set a substantially higher bond. The bond set by the magistrate court is essentially meaningless in light of the evidence presented that Stanford is a citizen of Antigua, that his Antiguan passport is missing (a passport he did not disclose to pretrial services), that upon conviction he likely faces the rest of his life in prison, that he has extensive international contacts, and that he has realistic access to huge sums of money, some of which may remain in offshore bank accounts.

I. A STAY IS WARRANTED BECAUSE THERE IS A SUBSTANTIAL LIKELIHOOD THIS COURT WILL ORDER DETENTION OR SET A SUBSTANTIALLY HIGHER BOND.

A. The Magistrate Court's Release Order

On June 25, 2009, after hours of testimony presented by the government and no witness testimony from the defense, United States Magistrate Judge Frances Stacy found that Stanford was a flight risk given the serious allegations made by the grand jury, Stanford's international ties, and his potential access to substantial sums of money that to this date have not been located. But Judge Stacy then held that a bond of \$500,000 with a \$100,000 cash deposit, along with other conditions such as GPS monitoring and home detention, was sufficient to reasonably assure Stanford's appearance at trial.¹

After Judge Stacy announced her ruling, the United States announced its intent to seek *de novo* review of the bond determination in the district court and requested an immediate stay pending the district court's decision. Judge Stacy agreed to stay Stanford's release until 4:30 p.m. on June 26, 2009, so that the United States would have time to seek a broader stay from the district court.

¹The magistrate court required three sureties. One of those sureties is defendant Stanford's father who for years served on the Stanford Financial Group Board of Directors and has filed a declaration invoking the Fifth Amendment in the SEC civil action pending in Dallas.

B. A Stay Is Appropriate When The District Court Is Reviewing A Release Order

“If a person is ordered release by a magistrate judge . . . the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release. . . . The motion shall be determined promptly.” 18 U.S.C. § 3145(a). The district court reviews a release order *de novo*. See *United States v. Rueben*, 974 F.2d 580, 585-86 (5th Cir. 1992) (“[T]he district court acts *de novo* and must make an independent determination of the proper pretrial detention or conditions of release.”); *United States v. Delker*, 757 F.2d 1390, 1394-95 (5th Cir. 1985). The “simple preponderance standard” governs the flight risk determination, that is, a detention order should issue if “the judicial officer should determine that it is more likely than not that no condition or combination of conditions will reasonably assure the accused’s appearance.” *United States v. Fortna*, 769 F.2d 243 (5th Cir. 1985) (distinguishing this standard governing the flight risk determination with the higher “clear and convincing” burden of proof that governs detention based on danger to the community).

Just last month, the Fifth Circuit reaffirmed a district court’s authority to issue a stay pending its *de novo* review of a release order. See *United States v. Brigham*,

2009 WL 1395839, at *8 (May 20, 2009). The Fifth Circuit explained that “given that the issue being reviewed involves a person's release from custody pending further legal proceedings, the absence of stay authority could render the district court's review power illusory.” *Id.* (citing numerous recent cases in which courts stayed pretrial release orders pending district court review). *Brigham* also observed that because the review of a release order shall be determined “promptly,” defendants are “protected from prolonged interim detention if a release order is later upheld.” *Id.*

The “chief” factor in the traditional stay inquiry is “whether the movant has shown a likelihood of success on the merits of the appeal.” *Libertarian Party v. Dardenne*, 2008 WL 4375782, at *2 (5th Cir. Sept. 26, 2008) (unpublished). *Brigham* explains why the other traditional factors relevant to a stay analysis, such as irreparable harm to the moving party and whether a stay will substantially injure the other party, will typically favor the issuance of a stay when review of a release order is being sought. *See Brigham*, 2009 WL 1395839, at *8 (May 20, 2009) (“[I]f the district court disagrees with the magistrate judge's determination regarding release versus detention, but no stay is in place, the person in question may have . . . disappeared by the time the district court's ruling is rendered and detention is ordered.”).

C. The Motion To Revoke The Release Order Is Likely To Succeed As The Evidence Demonstrates Stanford Is A Serious Flight Risk

The United States will file a motion pursuant to 18 U.S.C. § 3145(a) asking the district court to revoke the release order and detain Stanford. Stanford has the motive, means and opportunity to leave the United States prior to trial. There is no condition or combination of conditions that would eliminate these risks and ensure his appearance for trial. Undoubtedly the \$500,000 bond set by the magistrate court is not sufficient.

1. Stanford Has The Motive To Flee.

The indictment in this case alleges that Stanford orchestrated an extraordinary fraud scheme involving more than seven billion dollars in money due investors. Upon conviction, Stanford is likely facing a sentence that would result in him spending the rest of his life in prison. Few cases involve such a strong incentive for the defendant to flee.

The indictment charges Stanford with one count of conspiracy to commit wire, mail and securities fraud; seven counts of wire fraud; ten counts of mail fraud; one count of conspiracy to obstruct an SEC proceeding; one count of obstructing an SEC proceeding; and one count of conspiring to launder money from places in the United States to places outside the United States and vice versa. The statutory maximum

Stanford faces if convicted of all counts is 375 years. The Sentencing Guidelines range that would apply to such convictions is literally “off the chart” and thus effectively calls for a life sentence.²

Moreover, Stanford lacks real economic or family ties to Houston that would counter his strong incentive to flee. His “residence” in Houston and the planned move of two of his children to Houston is of recent vintage—having taken place only after the appointment of the Receiver and Stanford’s learning of the criminal investigation. *See* Stanford’s Memorandum In Support of His Right to Release at 7-8 & n.3.

2. Stanford Has The Means To Flee.

Stanford has substantial means to act on his strong incentive to flee. Stanford’s reported wealth, the willingness of his international network of wealthy acquaintances to provide him financial support, his realistic access to the substantial sums of Stanford International Bank Ltd. (SIBL) investor money that still cannot be located,

²A cursory review of the fraud Guidelines reveals that upon a conviction the base offense level would be 7, loss in excess of \$400 million would result in a 30-point enhancement, more than 250 victims would result in a 6-level enhancement, a substantial part of the fraudulent scheme being committed offshore would result in a 2-point enhancement, and an offense substantially jeopardizing the safety and soundness of a financial institution would add another net of 2 points. *See* U.S.S.G. § 2B1.1. That results in a Guidelines score of 47 even before considering other sections of the Guidelines that would likely apply such as role in the offense and abuse of trust. *See* U.S.S.G. § 3B. The highest score on the Guidelines sentencing table is 43, which results in an sentencing range of life imprisonment even for a person with no criminal history. *See* U.S.S.G. § 5 (Part A-Sentencing Table).

and the fact that bank accounts continue to be located which do not appear to be listed in official Stanford Financial Group (SFG) records demonstrate that he has the financial means to flee.

In September 2008, Forbes magazine reported that Stanford was the 205th richest American with a net worth over \$2 billion. While the court-appointed Receiver has frozen all of Stanford's assets located to this date, one illustration of Stanford's ability to obtain funds for his benefit is his apparent "convincing" of a person Stanford first meet in April of this year to provide \$36,000 to pay a full year's rent for Stanford's lease of an apartment in Houston.³

Moreover, a forensic accountant retained by the Receiver testified that he has been unable to trace approximately \$1 billion in investors' deposits.⁴ Stanford's

³Robert Jones testified at the detention hearing that he funded Stanford's rental without any promise of repayment other than a representation from Stanford's daughter that Jones might share in "insurance." According to Jones, Stanford's daughter further confided in him that she had been told by her lawyers that she should not provide funds herself to Stanford.

⁴The approximately \$1 billion of investor money that went into Stanford International Bank which cannot be traced or located is a different issue than the allegation in the indictment that the \$8 billion in purported bank *assets* actually was inflated by billions. The indictment alleges that approximately \$4.8 billion of the purported \$8 billion in assets backing the CDs consisted of grossly inflated real estate and loans to Stanford. The analysis by the forensic accountant, aimed at finding where deposited investor funds went, indeed found that approximately \$2 billion was diverted to entities Stanford personally owned and in which the bank did not have an interest, such as airlines and a company promoting cricket matches. The analysis also found that approximately \$1.1 billion had been spent on operating expenses, primarily paying commissions to the financial advisors selling CDs, and thus that is not a present asset. Indeed, the analysis summarized at the detention hearing found less than a billion actually going into investments such as private equity and real estate, thus confirming that there is a

realistic access to any of this missing billion should be considered in light of the evidence presented at the detention hearing that over \$100 million was removed during December 2008 from an account at Societe Generale in Switzerland on which only Stanford and CFO Jim Davis had signatory authority. Chief Investment Officer Laura Pendergest-Holt told the Receiver that she was not aware of this account and when it was mentioned, Davis and Stanford asked her to leave the room. Email traffic established that this same Swiss bank account was used in 2008 to fund unexplained additional monthly payments to the individual in Antigua responsible for SIBL's outside "audits" over and above the regular monthly payments for audit fees. The United States also presented evidence from one of Stanford's pilots that he flew Stanford to Libya in January 2009, and then on to Zurich, where Stanford stayed for about three days, which was unusually lengthy in light of previous trips in which the pilot had flown Stanford to Switzerland.

3. Stanford Has The Opportunity To Flee.

Stanford's extensive international ties are another highly unusual fact about this case and afford him the opportunity to flee. Stanford is a dual citizen of the United States and Antigua. Although Stanford failed to disclose his Antiguan passport to pretrial services, evidence at the detention hearing established that Stanford has an

multibillion dollar gap between the bank's reported assets and its actual assets.

Antiguan passport the current whereabouts of which is unknown and the magistrate judge has not required him to produce it prior to release.

Stanford's United States passport shows that he traveled to the following foreign countries: Antigua, Aruba, the Bahamas, Barbados, Bermuda, Brazil, the Cayman Islands, Colombia, the Dominican Republic, Ecuador, France, Grenada, Italy, Jamaica, Libya, Malaysia, Mexico, the Netherlands, the Netherlands Antilles, Panama, Singapore, South Africa, St. Kitts and Nevis, St. Lucia, Sweden, Switzerland, Thailand, Trinidad & Tobago, the United Arab Emirates, the United Kingdom, and Venezuela. During 2008 alone, Stanford's United States passport shows more than 40 entries into Antigua. The passport also reveals multiple occasions in which there is an exit stamp for Antigua but no corresponding entry stamp, or an entry stamp with no corresponding exit stamp.

Stanford accomplished this far-flung travel via private plane. Stanford insisted on privacy concerning his travel plans and often asked his pilots to prepare and file flight plans within an hour of takeoff. Stanford's pilot recalled an incident in February 2009, after Stanford had been subpoenaed by the SEC, in which he was informed that he would be fired if he revealed Stanford's location to others.

Stanford's Antiguan citizenship and passport, his extensive international travel, and his numerous wealthy international business and banking contacts some of whom

served on Stanford's advisory board, presents an even more serious risk of flight in light of the grand jury's allegation that Stanford bribed at least one foreign official—the head of the Antiguan Financials Services Regulatory Commission. *See* Indictment ¶ 38. This willingness to bribe foreign officials, combined with Stanford's extensive international ties and experience in private jet travel, demonstrate that Stanford has ample opportunity to act on his strong incentive to flee.

CONCLUSION

This case presents a rare combination of flight risk indicators. The defendant is facing the serious prospect of spending the rest of his life in prison. He is the sole shareholder of a collapsed financial services company from which approximately one billion dollars remains unaccounted for. And he has a missing Antiguan passport, widespread international contacts, experience using private jets at a moment's notice, and is charged with bribing a foreign official. These facts demonstrate that Stanford is a serious flight risk and that this Court is likely to detain Stanford or impose a substantially higher bond.

For these reasons, the United States requests a stay of the magistrate court's release order until this Court issues its ruling on the forthcoming motion to review the release order. The United States has requested an expedited transcript of Thursday's detention hearing and will make that available to the district court and defense as

CERTIFICATE OF SERVICE

I certify that the Motion for Stay was served on counsel for the defendant, Dick DeGuerin, via ECF and email on June 26, 2009.

S:_____

Gregg Costa

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	Crim. No. H-09-342
	§	
ROBERT ALLEN STANFORD	§	
a/k/a Sir Allen Stanford	§	
a/k/a Allen Stanford	§	

ORDER

Having reviewed the United States's Motion for Stay Pending District Court's *De Novo* Review of Release Order, it is hereby ORDERED that the magistrate court's release order is STAYED and that defendant Stanford is ordered detained pending this court's ruling on a motion to revoke the release order.

It is further ORDERED that the United States shall file its motion for revocation of the release order by _____. The United States shall also furnish the court with a transcript of the detention hearing held on June 25, 2009, as soon as it is available. A hearing on the motion for revocation is scheduled for _____.

Signed on June ___, 2009, in Houston, Texas.

Honorable David Hittner
United States District Judge

