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November 14, 2018

BY HAND AND ECF

The Honorable Nicholas G. Garaufis
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Keith Raniere, et al., Crim. No. 18-204 (NGG)

Dear Judge Garaufis:

Consistent with this Court's prior written decision filed on June 20, 2018 (Exhibit 1, Dkt. No. 46, Memorandum and Order 6/20/18) and the transcript of proceedings of June 12, 2018 (Ex. 2), the defendant Keith Raniere renews his motion for release pending trial by providing this Court with more information about his background with Nxivm and addressing this Court's concerns with the previous bail package.

1. The Teachings of Keith Raniere and Nxivm

The work Keith Raniere and others, many of whom are his co-defendants, have done is a source of great pride. Executive Success Programs ("ESP") was founded in 1998 by Mr. Raniere and Nancy Salzman, the predecessor to Nxivm which was founded in 2003. The company is a for-profit business entity that sells professional success training programs. The programs Nxivm offers include, among others, ethics, logical analysis and problem-solving skills based on a patent-pending system called Rational Inquiry.

Rational Inquiry is a complex, essential concept to the Nxivm teachings. However, in the simplest terms, it is the Socratic Method of pointed questioning. As any law student knows, a law professor may call upon him or her during a lesson and ask well-placed questions to determine what the student believes about a certain topic and where, if anywhere, that belief comes from.

What the law professor does in a law school classroom, Nxivm does elsewhere regarding how we view ourselves, form relationships and make decisions for ourselves and others.

Just as Socrates challenged the young people of Athens to question sacrosanct beliefs of the time, and indeed was executed for his disruption of a closed-minded system of government,[1] Nxivm challenges participants to question, rather than blindly accept, the fundamental content of their lives. Why, for example, are we practicing the religion we are? Do we really believe its precepts or is it just easier to not disappoint our parents? Do we have the relationships with our parents or our children that we really want? If not, why not? What can we do to have better relationships with the people we love? Nxivm challenges people to ask these questions and challenge one's own limiting beliefs that prevent attaining one's goals. The fundamental premise is that people are not made happy or fulfilled by material items. We are not happier because of a car or a house. Rather, we are happier when we have thought through the true content of our lives and have made a plan to improve ourselves and our relationships by thinking deeply about them, rather than taking them for granted. Nxivm provides its students with effective tools to achieve success and greater happiness.

Two hundred years ago these may have been some of the questions taken up by traditional religion or by students of philosophy. However, as mankind has generally become untethered from religion in favor of a version of spiritual and intellectual freedom,[2] many people find value and content in developing a system of thought and belief through which to address these eternal questions. An overriding theme of Nxivm is that we strive to be part of something larger than we are. That something is humanity. We participate in the progress or lack of progress of humanity in each of our choices.

Another important premise of Nxivm is that each of us harbor emotional associations with different events or triggers. Some of these experiences are positive; others are decidedly negative. If we can free ourselves of the negative ones—the ones that restrain our decision-making—we can be more free and happier. To illustrate the true nature of Nxivm and Keith Raniere, we have attached as Exhibit 3 a brief video that shows how Rational Inquiry transforms students' lives, and in some instances, even successfully helps people transform the debilitating symptoms of Tourette's Syndrome.[3]

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[1] Bertrand Russell, A History of Western Philosophy, Unwin Brothers Ltd. at p.105 (1946).

[2] The European existential philosophers saw this problem coming. Soren Kierkegaard, a devout Christian, heralded religion and the "knight of faith" as the bulwark against meaninglessness and internal suffering; the French existentialist Jean Paul Sartre studied the condition of man, alone in the absence of an involved God; Frederich Nietzsche famously said "god is dead. God remains dead. And we have killed him. How shall we comfort ourselves?" Nietzsche, Friedrich Wilhelm, The Gay Science at p. 125 (1974).

[3] We are hand-delivering Exhibit 3 on a DVD to the Court and it can also be viewed on YouTube at this web address: https://youtu.be/jBxvVxXOtro.

Nxivm is interesting to certain people because it challenges their existing belief systems, and even what it means to believe something. The valuable intellectual property of Rational Inquiry includes the technology, methods, procedures, discoveries, understandings, course-work, coaching materials and other aspects of a highly developed body of knowledge memorialized, in part, in written materials that Nxivm has developed over many years and which it is continuing to refine.

Intelligent, successful executives, politicians, actors and actresses agree to pay Nxivm for its training services, and decide to continue such training, precisely because of the company's well-developed methods and the confidential and proprietary information it has developed.

In addition to providing the intellectual content for these teachings, Mr. Raniere has lived nearly six decades without any criminal record. While the government raises the specter of danger, this is a case that lacks all the hallmarks of true danger. There are, for instance, no allegations of guns, knives or weapons of any type. There was no physical harm or danger visited upon anyone. To the contrary, Mr. Raniere is a *peaceful* man, whose work includes founding a company Anima, Inc.,[4] which produced and directed the Opening and Closing Ceremonies of the Central American and Caribbean Games in Veracruz, Mexico, in 2014.[5] The ceremonies recited a peace pledge that Mr. Raniere helped create and inspire, and were witnessed by nearly 23,000 live spectates and more than 150 million viewers. This same peace pledge is recited by people every Sunday in Mexico as a stand in solidarity against the violence which pervades their country.

We request a hearing at a time convenient to this Court to determine whether the combination of conditions proposed herein would permit Mr. Raniere, a New York resident with no substantial assets and no criminal record, to be released pending his March trial.

2. <u>The Proposed Release Conditions</u>

The proposed release conditions are as follows:

(1) A $1M personal recognizance bond;

(2) The bond shall be secured by the following three properties, with the owners of the properties signing onto the bond:

[redacted]

[4] https://www.facebook.com/animainc/posts/today-is-the-opening-ceremony-of-panamerican-games-guadalajara-2011the-biggest-c/10150324161806883/.

[5] The ceremonies were nominated for Telly awards for this production. (<u>See</u> http://animainc.com/en/produccion/vuela-veracruz-un-solo-corazon/.)

(3) Several other people—the identities of whom will be provided to the government and the Court in advance of any hearing, will also sign onto the bond;

(4) The defendant shall be on full home confinement in Clifton Park, NY;

(5) The defendant will be electronically-monitored by a GPS device that tracks his every movement;

(6) The defendant shall not leave the location of his home confinement, except for emergent medical matters and scheduled court appearances; his lawyers will be obligated to travel to this location for any meetings;

(7) When the trial starts, or if the defendant's presence at court is required on a more regular basis, he will live at a location near the courthouse, and will be accompanied by one of his attorneys from that location to the courthouse;

(8) The defendant shall not communicate with anyone by phone or in person aside from his attorneys or authorized members of their staff or unless his attorneys are present;

(9) The defendant shall have access to a computer to review the discovery provided in this case, but no internet access; and

(10) Surrendering of the defendant's passport and an agreement not to secure new travel documents.

The current bail proposal endeavors to reflect the specific concerns raised by the Court in prior proceedings. For instance, the current proposal does not involve armed security guards. As was apparent from the Court's comments and questions during the proceedings on June 12, 2018, the Court was uncomfortable with private armed guards ensuring Mr. Raniere's appearance. The Court noted concern with the guards' use of force and more generally with the social ramifications of allowing defendants to construct essentially private jail facilities. (Ex. 1: Memorandum and Order at 22.) Accordingly, that condition has been removed.

Moreover, the Court was concerned that the prior proposal did not involve co-signers with moral suasion over Mr. Raniere. (See Ex. 2 at 13.) In contrast, the renewed bail motion proposes a bond with several co-signers who have known Mr. Raniere many years, are confident that he will return to court as expected and have put their own hard-earned funds on the line. Even if he were able to flee, which he is not, Mr. Raniere would not do so because, among other reasons, he would not jeopardize the financial situations of the co-signers. Mr. Raniere has known his suretors for many years and cares for them, and their livelihoods.

In addition, these co-signers are willing to come to court and be questioned by Your Honor. As we have indicated in prior motions, there is significant apprehension shared by people who otherwise would be willing to co-sign a bond for Mr. Raniere. (Dkt. No. 116, Motion to Seal Co-Signer Names ("Mtn. to Seal") at 2-3.) The government has repeatedly sent federal agents to the homes of people who may be defense witnesses or are viewed by the government as assisting the

defense. Moreover, anyone showing allegiance to Mr. Raniere is defamed in blog sites to the potential detriment of their livelihoods.[6] These co-signers' willingness to sacrifice their resources and face public scrutiny, if not obloquy and defamation, further enhances the value of their commitment.

As the Court will undoubtedly note, the sum of money securing Mr. Raniere's bond is significantly less than for other defendants in this case. However, as this Court is aware, Mr. Raniere does not have any financial resources of his own. ("And every defendant is different. Mr. Raniere is different, he has no assets to speak of." (7/24/18 Tr. at 31)). While this was stated as an explicit concern of the Court in its written decision, we address this concern below.

3. The Section 3142(g) Factors

Following the initial bail hearing, the Court conducted an analysis of the Section 3142(g) factors. The defendant accepts the Court's analysis and offers these additional considerations in light of the renewed bail proposal.

A. The Nature and Circumstances of the Offense

Sex Trafficking has been deemed a significant enough crime to warrant a presumption of detention. However, this is far from a typical sex trafficking scenario, if indeed these facts satisfy the statute at all.[7] The crime of sex trafficking was intended to bring appropriately harsh sentences to individuals and groups who recruit women into, and profit from, prostitution. Without belaboring the point, the current facts are quite distinct. Accordingly, the defense contends that the fact alone that Mr. Raniere is charged with sex trafficking should not militate in favor of detention.

However, acknowledging that sex trafficking has a rebuttable presumption of detention, Mr. Raniere can rebut such a presumption with evidence that he does not pose a danger to the community and is not a risk of flight. (18 U.S.C. § 3142(c)(1)(B).)

B. The Weight of the Evidence

The Court noted in its decision that this factor "weighs at least weakly in favor of detention," while still recognizing Mr. Raniere's defenses. (Ex. 1 at 9.) Specifically, the Court noted the defense argument that women "joined and remained in the group willingly and that they engaged in any sexual activity with [Raniere] consensually" and "that 'there is no evidence that anyone engaged in a commercial sex act, within the meaning of the [sex-trafficking] statute.'" (Id.

[6] Frank Parlato, Court does not need to seal names of Raniere co-guarantors – Frank Report knows already, FRANK REPORT (Sept. 26, 2018), https://frankreport.com/2018/09/26/court-does-not-not-to-seal-names-of-raniere-co-guarantors-frank-report-knows-already/.

[7] This latter argument will be addressed in the defendants' motion to dismiss, which will be filed on November 16, 2018.

at 9-10.) In a thoughtful analysis of the proffered evidence, the Court concluded that it "lacks sufficient evidence from which to make a confident assessment as to the strength of the government's case…." (Id. at 10.)

However, the Court, as well as the defense, is being kept in the dark as to critical exculpatory evidence currently in the government's possession directly related to the sex trafficking charges. (See Dkt. No. 127, Letter re: Discovery, Trial Date, Particulars, and Brady at 6.) Specifically, the government has stated, and this Court accepted, that "DOS 'slaves' were also required to have sex with Defendant." (Ex. 1 at 2.) However, this assertion is absolutely false and the government now knows it is false. Specifically, the government has been informed directly by multiple women during interviews that these women were in DOS and were not required to have sex with Mr. Raniere.[8] Moreover, the government well knows that the overwhelming majority of women in DOS did not, were not asked to, and certainly were not required to, have sex with Mr. Raniere. And at trial, the defense will show that any sexual relationships with Mr. Raniere were entirely consensual and aggressively pursued by Mr. Raniere's partners. Yet, the government, in pressing for detention, conceals this information from the Court and counsel.

With Mr. Raniere's pretrial liberty currently on the line, the government should be compelled to inform the Court of how many women in DOS have told the U.S. Attorney's Office and/or the FBI that DOS had nothing to do with sex with Mr. Raniere and similar facts. (See Ex. 3 at 6.) In the absence of the government being candid with the Court on this central fact, the Court will be compelled rule on Mr. Raniere's liberty based upon false, misleading and materially incomplete information. This is unfair both to the Court and to Mr. Raniere.

C. Defendant's History and Characteristics

The Court had two overriding concerns with the defendant's history and characteristics that bear explanation. First, the Court concluded that the defendant moved to Mexico at least partly to evade law enforcement. Again, without objecting to the Court's conclusion, we point out that the government repeatedly made factual assertions that were patently false and misleading about Mr. Raniere's travel to Mexico that unfairly colored the Court's view of him. Second, the Court expressed concern about Mr. Raniere's financial situation, specifically that he lacks his own resources. These will be addressed in turn.

i. Mr. Raniere Did Not Flee the Government in Mexico

As stated in our earlier memorandum, Mr. Raniere did not flee the United States for Mexico. (Dkt. No. 43, Deft. Mtn. for Release at 10-15.) He is a United States citizen who has lived in New York for his entire life. There is no basis to believe he will do anything but fight this case, in keeping with his character. He has only been out of the country a handful of times in the past few years—twice to visit Fiji, and most recently, to be with the mother of his child and his infant

[8] That the government still refuses to provide the defense with the substance of these interviews, despite repeated requests for this information as clear Brady material, will be addressed in a Brady motion to be submitted on November 16, 2018.

child in Mexico after her visa expired in October 2017 such that she could not remain in the United States. (Id. at 12-14.)

The government's repeated and knowingly misstatements as to Mr. Raniere's dates of travel in several sworn affidavits are highly misleading. Specifically, in the government's Complaint and Affidavit in Support of Mr. Raniere's arrest, Special Agent Michael Lever swore to the following facts:

> In or about October 2017, the New York Times published an article revealing the existence of DOS. Several weeks after that article was published and after the FBI began interviewing witnesses, Raniere flew to Mexico with an heiress "the "Heiress" who is a member of Nxivm's Executive Board and is a known financial backer of RANIERE and Nxivm. Prior to this trip, RANIERE had not flown out of the country since 2015, when he visited the Heiress's private island in Fiji. RANIERE is currently believed to be residing in Monterrey, Mexico, where Nxivm maintains a center, with a branded DOS slave.

(Complaint ¶ 34; see also United States v. Real Property at 8 Hale Dr. et al., Dkt. No. 1 ¶ 34.) The government additionally argued in their Detention letter that "[a]fter law enforcement began interviewing witnesses about the defendant's criminal conduct, he fled to Mexico where he was apprehended only after a month-and-a-half of active searching." (Dkt. No. 4, Gov't Detention Ltr. at 6; see also id. at 4 ("Shortly after the government began interviewing witnesses and victims in November 2017, the defendant flew to Mexico."). The suggestion is clear: Keith Raniere went to Mexico because of an investigation and newspaper article. As stated in our earlier memorandum and reiterated herein, these statements are inaccurate and contradicted by the records that were in the government's possession at the time.

The truth is that Mr. Raniere did not leave the country because of The New York Times article, but rather came back into the country the day the story was published. As stated in our earlier memorandum:

> The mother of Raniere's child is a Mexican citizen, who most recently entered the United States on a B1/B2 visitor's visa on April 15, 2017. Pursuant to that visa, she was only authorized to remain in the United States until October 14, 2017. The six-month duration of this stay in the United States is corroborated by the second date on the I-94 form of October 14, 2017. This means that she was required to leave the United States no later than October 14, 2017 or be in violation of United States law. On advice of counsel, Raniere and the mother of his child were advised to arrange for her to leave the country. Wanting to be close to his home and business, Raniere and the mother of his child rented an Airbnb in [Montreal] Canada for the family to live in while they resolved the immigration issues. However, when they attempted to enter Canada on October 13, 2017, Immigration, Refugees and Citizenship Canada ("Immigration Canada") denied them entry. With less than 24 hours to be in compliance with United States immigration law, on October 14,

> 2017, to comply with the visa, Raniere, the mother of his child and his child flew to San Diego and entered Mexico by crossing the San Ysidro port of entry.

(Deft. Mtn. for Release at 12.)[9] These facts were not rebutted by the government. Moreover, the government had this information, yet it was not disclosed in its detention letter. Shortly after getting his child and the mother of his child settled in Monterrey until her visa situation could be sorted out, Mr. Raniere *flew back to Albany*. (Id. at 13, Ex. 7.) He stayed in Albany until November 10, 2017 to be at his deceased long-time partner, Pamela Cafritz's home on November 7, 2017, the one-year anniversary of her passing.

This Court stated that Mr. Raniere did not explain why he traveled back to Mexico in November. (Ex. 1 at 11.) Mr. Raniere traveled back to Mexico to be with his three-month-old son who was with the mother as she was awaiting a new visa. Mr. Raniere travelled back to Monterrey, Mexico, to be with them. And, in an abundance of caution, hired a well- respected attorney, Michael Sullivan, the former United States Attorney for the District of Massachusetts to interface with any governmental entities that may be investigating any charges stemming from false allegations of coercion. (Id. at 10-11.) Mr. Sullivan openly communicated with the U.S. Attorney's Office in the Northern District of New York, thereby demonstrating Mr. Raniere had no intention of fleeing or hiding.

While we believe this narrative is clear evidence of Mr. Raniere's willingness to cooperate with law enforcement, we do wish to provide greater transparency—to the extent that we did not include enough information into the first memorandum—into Mr. Raniere's stay in certain locations while in Mexico. At the June 12th hearing, this Court asked "what about the situation with him going down to…Puerto Vallarta, Mexico and staying in a gated community and operating an [encrypted] email account….Why would you do that if you were not trying to evade law enforcement?" (Ex. 2 at 17-18.)

First, as we have written in previous memoranda, for nearly two decades, people associated with ESP and Nxivm have been the targets of threats, computer-hacking and blatant false statements on websites and other media specifically to damage their reputations, business and lives. (Mtn. to Seal at 2.) One hacking defendant John Tighe even pleaded guilty to the felony of Computer Trespass, in violation of New York Penal Law Section 156.10(2) in Albany County Court. (Id. at 7-8.) Most recently, in the summer of 2017, before Mr. Raniere and the mother of his child went to Mexico to comply with her visa requirements, Nxivm became aware that the login credentials of former students, Sarah Edmondson, Jennifer Kobelt and J.O. were accessing Nxivm servers from Canada. These accounts deleted data, stole ESP student profiles and documentation and cancelled over $100,000 credit card payments. (Id. at 8-9.) Conspicuously, days later, personal and identifying information about Nxivm clients was published on the internet. (Id. at 10.)

[9] As Mr. Raniere's child did not have a passport, the only way for the mother and child to leave together was by land, not air. This route was the safest option for the family because most areas to cross the border into Mexico are violent.

Second, as we stated in earlier memoranda, anti-NXIVM press was and continues to be associated with a prolific blogger named Frank Parlato, who is currently under indictment in the Western District of New York. (Id. at 6.) Parlato is an active antagonist who has admitted time and again that he is obsessed with ruining Mr. Raniere and others supportive of the organization. Apparently, this obsession does not stop with posting photos of Mr. Raniere's newborn baby. On multiple occasions, Parlato published the exact location of Mr. Raniere's whereabouts in Monterrey, Mexico, and even published multiple photos of him walking his child in the daytime.[10]

It is no wonder, then, that with the presence of this blogger posting Mr. Raniere's daily whereabouts together with photographs of his four-month-old child, that Raniere would choose to leave Monterrey to protect his child. Moreover, with a recent Nxivm server breach and misappropriation of electronic information, Mr. Raniere chose to use an encrypted email shortly after Sarah Edmondson's story was published in The New York Times.[11] Rather than trying to evade law enforcement, Mr. Raniere chose a more secure location to reside, and an email server that could prevent hacking from a mobilized group of enemies who were ready and willing to hack in the past and willing to publicize their illegally seized information.

Third, Mr. Raniere was arrested in a gated resort near Puerto Vallarta where he was on a vacation openly socializing with friends from Albany and different parts of Mexico. The friends were all together for the weeks leading up to "Holy Week" in Mexico. Many of the Mexican families left the resort near Puerto Vallarta on March 25th to begin the Holy Week celebrations with their families and some guests stayed, including Mr. Raniere and guests from Albany. Therefore, Mr. Raniere's presence in the Puerto Vallarta area was simply to go on a vacation with his friends, many of whom he had not seen since leaving Albany in November 2017.

Lastly, the Court also observed that at the time Mr. Raniere was arrested, the mother of his child was residing in Monterrey and not at the resort in Puerto Vallarta. (See Ex. 2 at 19.) Indeed, the mother of his child and his child were in Puerta Vallarta beginning on March 16th and stayed with Mr. Raniere until March 25th, the day before Mr. Raniere's arrest. (See Ex. 4: Flight Itinerary.) That day, they left just a few hours earlier with friends so that their child could continue his language development at a school in Monterrey. Because companions and others from Albany were still vacationing in the Puerto Vallarta resort, Mr. Raniere stayed behind and planned to join the mother of his child and his child later.

Therefore, we respectfully submit that Mr. Raniere was not attempting to evade law enforcement. While Mr. Raniere was residing in Mexico not in the United States at the time because the mother of his child did not have a visa to stay in the United States, he retained respected

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[10] Frank Parlato, Raniere photographed in Monterrey – with Mariana and baby, FRANK REPORT (Dec. 18, 2018), https://frankreport.com/2017/12/18/raniere-photographed-in-monterrey-with-mariana-and-baby/.

[11] Meier, Barry, Inside a Secretive Group Where Women Are Branded, NEW YORK TIMES (Oct. 18, 2017), https://www.nytimes.com/2017/10/17/nyregion/nxivm-women-branded-albany.html.

counsel in the United States to engage in productive discussions and to ensure that he would not undermine the law.

ii. Mr. Raniere's Lack of Personal Wealth

The Court understandably expressed concern with the fact that Mr. Raniere's lack of personal wealth means that he has little to lose if he flees. (Ex. 1 at 12.) While it is true that virtually everyone is concerned with losing money, there are other things that one can fear losing. Mr. Raniere's life has not been about money or wealth. He has had the support of people with substantial means, no doubt. His long-time partner, Pamela Cafritz, with whom he had shared his life for nearly thirty years before she passed away on November 7, 2016, had means.[12] At the risk of sounding too trite, Mr. Raniere had two things primarily that he risks losing: love and respect. If he were to leave, his life's work and his reputation would be lost.

The government has lamented in several filings that people paid a lot of money and spent a lot of time to go to Mr. Raniere's birthday celebration (See Compl. at ¶ 9; Dkt. No. 4; Gov't Detention Ltr. at 2.) These people were not forced to celebrate Mr. Raniere's birthday, nor did they go because they were brainwashed, nor because they would lose their "cult" status if they failed to go. They went for the same reason that one might go to another person's birthday party: because they love him. This love is precisely why people are willing to sign on as suretors, despite the negative effect it will have on their lives. The respect, love and admiration of the people whose lives he has touched is ultimately all Mr. Raniere has. Fleeing a court obligation would be cowardly, unethical, wrongful, illegal, and morally-weak. If Mr. Raniere were to do that, he would lose everything he ever had.

D. Danger to the Community

We appreciate the Court's concern that the nature of the charges connotes a form of danger. However, as we have noted, this case lacks all of the hallmarks of true danger. Mr. Raniere has no arrest history and has lived and worked in New York state for his entire life. There are, for instance, no allegations of violence, guns, knives, or weapons of any type; there is no suggestion that

[12] Prior to her death, Ms. Cafritz established a living trust and Mr. Raniere is named the sole beneficiary and trustee. In accordance with her Will, the entirety of Ms. Cafritz' Estate will be transferred to the trust. However, the full extent of the Estate's liabilities have not been identified and must be identified before monies can be distributed to the trust. Accordingly, no transfers from the Estate have yet been made. In light of the as yet unidentified liabilities, Mr. Raniere's interest in the Estate assets is best described as an unknown contingent interest. Mr. Raniere renounced his status as Executor of the Estate and therefore has no control over the Estate assets. Nor is he able to access any Estate funds. Although it is unlikely that any monies will be transferred to the trust in the near future, we will immediately notify the court should a transfer occur. Mr. Raniere understands that if a distribution to the trust occurs while he is released on bond, this Court may wish to revisit his status.

someone stole another person's money[13] or that the Nxivm classes were bogus;[14] there are no physical injuries, no black eyes, no bloody noses, no fists, punching, slaps or pulling hair. This is an organization that has advocated peace and humanity to the exclusion of all else. It is a group of people that has taken tremendous pride in their accomplishments. As a result, there is no violence and no danger. However, there is one feeling that apparently has afflicted a certain number of people: regret. Apparently, certain people have regrets about choices they made and things they did of their own adult volition. While regret may be painful, it is thankfully not a cognizable form of violence or danger under the Bail Reform Act.

The second form of danger that must be addressed is this notion that Nxivm harassed people who left the group through litigation. As we set forth in great detail in a prior filing, and which has not been factually contradicted by the government, a group of people, including members of the press, repeatedly hacked into Nxivm's confidential computer system. Nxivm sued these people because they committed both a criminal and civil wrong against them. On another occasion, a group of nine women sent an extortionate letter on the eve of a well-publicized event stating that if a large sum of money was not paid, these former Nxivm members would make false and disparaging statements to the press. Legal measures were taken to address this situation. These are but two examples of instances where former clients or contractors of Nxivm took unlawful actions and were then faced with legal process to address these actions. To characterize these reasonable legal measures as harassment of potential witnesses is brutally unfair and untrue.

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[13] The closest thing to this is that the government says that Mr. Raniere and the mother of his child used Pamela Cafritz's credit card after her death. (See Superseding Indictment at ¶ 40 (Count Seven); Gov't Detention Ltr. at 7.) It is undisputed that Ms. Cafritz and Mr. Raniere were live-in lovers, partners and the best of friends for the better part of three decades. Mr. Raniere had an unlimited Power of Attorney over her affairs, was her estate's executor, and sole beneficiary. So, the notion that Mr. Raniere misappropriated funds from an estate of which he was the beneficiary, with the goal of committing tax evasion on tax not yet due, is ridiculous.

[14] The government alleges that Nxivm classes can cost up to $5,000 and participants "are encouraged to keep attending classes and to recruit others into the organization in order to rise within the ranks" of the organization. (Dkt. No. 1, Complaint at ¶ 6.) First, Nxivm offers classes that anyone can pay for and attend. Second, if one chooses to advance up the "stripe path" within the organization, students must achieve certain goals or skills. When one attains the goals, students could advance. It is hardly a "recruit"-based system of advancement.

Moreover, the government has alleged that "only a small percentage of Nxians make a significant income and a much larger percentage find themselves in significant debt to the organization." (Gov't Detention Ltr. at 3.) This is, of course, ironic because the government's star witness, Sarah Edmondson, who has repeatedly spoken publicly about her apparent experience in Nxivm recently told a CBC podcast that once she started recruiting students into Nxivm she "got out of debt." Needless to say, the government has *never* alleged, nor could they ever allege, that the classes the organization offered are bogus.

Third, the government has made factual assertions to the Court that Mr. Raniere has an alleged "decades' long history of abusing women and girls," which he flatly denies. In support of this allegation, the government has stated, and even now indicted, an instance where Mr. Raniere purportedly "ordered the long-term confinement of a Nxivm member who was approximately in her early-20s to heal an 'ethical breach' because she had developed romantic feelings for someone other than him." (Gov't Detention Ltr. at 3.) The thousands of emails and handwritten notes from this adult woman show that this woman willingly stayed in her *unlocked* bedroom for a year and a half to work on many issues, such as the fact that she would constantly steal from people in the community. In addition, she lived in the house *with her family*, who bought her fresh food and prepared her meals for her. Incredibly, and what the government conveniently leaves out, is that her mother stayed in the room next door to the woman for nearly a year, also entirely of her own volition.

The government proffers that "[w]hen the woman finally did leave the room, the defendant, as he had threatened, had her driven to the Mexican border and ordered to walk across, without money or identification papers." (Dkt. No. 44, Govt. Response at 6.) Notably, once this woman wanted to leave her bedroom, she was driven to Mexico *by her father* and another person.

4. Changes in Circumstance That Impact on This Court's Bail Analysis

Since the last bail application, there have been several developments that impact the Court's decision as to Mr. Raniere's release. Specifically, at the time of the prior bail application in June of 2018, the only defendants in this case were Mr. Raniere and Allison Mack. At the June 12, 2018 Court proceeding, the Court expressed concern about a number of issues that were at the time unknown to the Court. First, the Court was concerned that someone, specifically Clare Bronfman, may facilitate Mr. Raniere's departure from the jurisdiction. (See Ex. 2 at 14, 21.) At the time, Ms. Bronfman had not yet been indicted and the Court knew nothing about her financial situation, except for representations by the government. (See id. at 25: "It is really unimaginable wealth and limitless wealth that we're talking about here. So the idea that any amount of money would not be worth it to this person to allow the defendant to flee…is unimaginable.") Moreover, because Ms. Bronfman was not yet a defendant, the Court had no power to influence her actions.

This situation has completely changed in the last several months. In July 2018, Ms. Bronfman and three others were arrested. The Court has since received a great deal of information about Ms. Bronfman's financial situation, and, most importantly, she is subject to stringent conditions and pretrial supervision. Moreover, this Court has received assurances from her trust advisors that they have "the ability to and propose to enter into a binding agreement in a form acceptable to the Court to limit distribution to Clare to pay for certain expenditures that are encompassed within the overall purview of Clare's health, education, maintenance, and support…" (Dkt. No. 68-2 at ¶ 12; 68-3.) Notably, *these expenditures do not include supporting Mr. Raniere.* In an abundance of caution, the advisors provided comfort to the Court that they will "inform Pretrial Services three days in advance of any proposed individual distribution from the Trust greater than $25,000 for any reason other than legal fees associated with Clare's criminal case or necessary medical expenses." (Id. at ¶ 13.) What may have once been an "unknown" in June of 2018 is now very much "known." Accordingly, the Court need not have the concerns it once had

about the possibility that Clare Bronfman could arrange for Mr. Raniere's departure from the District.

Finally, since the Superseding Indictment, the government "has produced over 96,000 pages of discovery" and has made available "forensic copies of nearly all the devices seized from the residence of defendant Nancy Salzman." (Dkt. No. 188, Gov't Ltr. Providing Status Update on Discovery at 1.) The volume of discovery that the government has turned over is enormous. In fact, the government repeatedly characterizes as 144 "library floors" of data. (9/13/18 Tr. at 7; Dkt. No. 129, Gov't Ltr. Requesting Complex Case Designation at 2.) Among other reasons, Mr. Raniere requests to be released from prison so that he and his lawyers can prepare for trial and so Mr. Raniere can assist in reviewing the vast amounts of discovery that have recently been produced to counsel. (See Gov't Ltr. Providing Status Update on Discovery at 1.)

5. The Current Bail Package Addresses Any Issues with Flight, Danger and Witness Matters

Under the proposed conditions, Mr. Raniere will be without his passport, will be on full-time GPS monitoring and under the strict supervision of Pretrial Services. In addition, he has absolutely no means to flee, as he lacks any of his own money. Also, as noted, to the extent that the Court was once concerned that Ms. Bronfman may help Mr. Raniere flee, that concern has been eliminated with her arrest and current pretrial conditions.

Similarly, the proposed package eliminates any potential danger to a witness or to anyone in the community. Since Mr. Raniere will be permitted to speak only to his counsel and others in the presence of his counsel, the potential danger to witnesses is fully eliminated.

6. Conclusion

For these reasons, we ask that the Court approve the bail package set forth above.

Sincerely,

/s/
Marc Agnifilo

cc: All Counsel (via ECF)

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA,

-against-

KEITH RANIERE,

Defendant.
----------X

MEMORANDUM & ORDER

18-CR-204-1 (NGG)

NICHOLAS G. GARAUFIS, United States District Judge.

Defendant Keith Raniere has been indicted on charges of sex trafficking by force, threat of force, fraud, or coercion; conspiracy to commit sex trafficking by force, threats of force, fraud, or coercion; and conspiracy to cause another to engage in forced labor. (Indictment (Dkt. 14) ¶¶ 1-3.) On June 5, 2018, he filed a motion for release on bail pending trial, which the Government opposed. (Def. Mot. for Pretrial Release ("Def. Mot.") (Dkt. 43); Gov't Opp'n to Def. Mot. ("Gov't Opp'n") (Dkt. 44); Def. Reply. in Supp. of Def. Mot. ("Def. Reply") (Dkt. 45).) On June 12, 2018, the court denied the motion without prejudice and stated on the record its reasons for doing so. (See Tr. of June 12, 2018, Hr'g ("Hr'g Tr.") (Dkt. Number Pending).) The court issues this opinion to provide a fuller statement of its reasons.

I. BACKGROUND

Defendant is the founder and philosophical leader of Nxivm, a self-help organization headquartered in Albany, New York, that offers "classes promising personal and professional development." (Compl. (Dkt. 1) ¶¶ 3-6; Def. Mot. at 5-6.) In his own words, Defendant is an "ethicist" whose "ethical teachings . . . have focused on raising the level of humanity within each person." (Def. Mot. at 5.) According to the Government, Nxivm "operates largely in secrecy" and "maintains features of a multilevel marketing scheme, commonly known as a pyramid

scheme, in which members are recruited via a promise of payments or services for enrolling others into the scheme." (Compl. ¶¶ 7-8.)

This case stems from allegations that Raniere oversaw an otherwise all-female "secret society," going by the name "DOS" or "The Vow," within Nxivm. (Id. ¶ 11.)[1] According to the Government, DOS also operates as a pyramid scheme, in which more senior women in the organization (referred to as "masters") recruit more junior women (referred to as "slaves") to serve them and "masters above them in the DOS pyramid." (Id. ¶ 13.) To join DOS, a "slave" must turn over "collateral" (for example, confessions to crimes, statements accusing loved ones of crimes and other bad acts, and embarrassing personal material) that can be released if the "slave" leaves DOS, reveals its existence, or fails to perform her DOS obligations. (Id. ¶¶ 15-16, 18-19.) DOS obligations include serving the "masters," engaging in "acts of self-denial," and performing "readiness drills" night or day. (Id. ¶¶ 20-21, 25-29.) According to the Government, DOS "slaves" were also required to have sex with Defendant, whose role as the ultimate DOS "master" was concealed from all but the highest-ranking DOS "slaves"; to maintain low-calorie diets to conform to Defendant's alleged preferences; and, in some cases, to be branded with Defendant's initials and/or those of his co-defendant, Allison Mack. (Id. ¶¶ 17, 22-24, 30-32.)

Defendant does not dispute that DOS exists, that DOS members were required to provide "collateral" as a condition of joining the organization, or that several DOS members were branded. (Def. Mot. at 6-8.) He argues, however, that DOS was not formally connected to Nxivm, and that DOS members voluntarily joined the organization, provided "collateral," and

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[1] The Government alleges that "DOS" standards for "Dominus Obsequious Sororium," a broken Latin phrase roughly translating to "Lord/Master of the Obedient Female Companions." (Compl. ¶ 11 n.1.)

agreed to be branded. (Id.) He also argues that the "collateral" was never connected to a requirement to have sex with him (or anyone else) and that the collateral was never actually released. (Id.; see also id. at 16-17.)

According to the Government, the existence of DOS became public in mid-2017 following the defection of a DOS "slave" who was also a high-ranking Nxivm member. (Compl. ¶ 33.) In mid-October 2017, The New York Times published an article that relayed a number of disturbing allegations about Nxivm and DOS. See Barry Meier, Inside a Secretive Group Where Women are Branded, N.Y. Times (Oct. 17, 2017), at A1. Several weeks later, "after the FBI began interviewing witnesses," Raniere allegedly flew to Mexico, where he lived in a gated resort in Puerto Vallarta. (Compl. ¶ 35; Gov't Opp'n at 8.)

On March 26, 2018, Defendant was detained by Mexican authorities, deported to the United States, and arrested in connection with this case. (Def. Mot. at 8-9.) The Government sought a permanent order of detention, arguing that Defendant posed both a flight risk and a danger to the community. (Gov't Mar. 26, 2018, Letter in Supp. of Order of Detention ("Gov't Mar. 26 Ltr.") (Dkt. 4).) On April 13, 2018, Magistrate Judge Steven Tiscione entered an order of detention without prejudice to Defendant's presentation of a bail package. (Apr. 13, 2018, Min. Entry; Order of Detention (Dkt. 13).)

On June 5, 2018, Defendant presented this court with the instant bail motion. In it, Defendant proposes that he should be released pending trial, subject to a number of conditions. (See Def. Mot. at 3-4.) First, Defendant would sign a $10 million bond. (Id. at 3.) His travel would be restricted to the Southern and Eastern Districts of New York, and he would surrender his passport and agree not to secure new travel documents. (Id.) He would be confined to a residence selected by a private security company and would be subject to both GPS monitoring

and round-the-clock supervision by two armed guards. (Id. at 4.) He would have access to a computer and telephone, but the computer would lack internet access and would be used only to review materials related to this case, and the telephone would be used only to make and receive calls to and from phone numbers agreed to by the Government, including those of his counsel and the mother of his child. (Id.) Finally, he would not have contact, outside the presence of his counsel, with his co-defendant(s), alleged co-conspirators, or any other current or former affiliate of Nxivm or any affiliated entity. (Id.)

II. DISCUSSION

Pretrial detainees have a right to bail under both the Eighth Amendment to the U.S. Constitution, which prohibits the imposition of "[e]xcessive bail," as well as the Bail Reform Act, 18 U.S.C. § 3141 et seq. Under the latter, the court must release a defendant "subject to the least restrictive further condition, or combination of conditions, that [it] determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(c)(1)(B). Only if, after considering the factors set forth at 18 U.S.C. § 1342(g), the court determines 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" may the court order the defendant to be held without bail. Id. § 3142(e)(1).

If, however, there is probable cause to find that the defendant committed one of the offenses specifically enumerated by § 3142(e)(3), a rebuttable presumption arises "that no condition or combination of conditions will reasonably assure" the defendant's appearance or the

safety of the community or others. Id. § 3142(e)(3).[2] Where such a rebuttable presumption arises, "the defendant 'bears a limited burden of production . . . to rebut that presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight.'" United States v. English, 629 F.3d 311, 319 (2d Cir. 2011) (quoting United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001)); see also United States v. Rodriguez, 950 F.2d 85, 88 (2d Cir. 1991) ("[A] defendant must introduce some evidence contrary to the presumed fact in order to rebut the presumption." (emphasis added)). If the defendant offers such evidence, the presumption favoring detention does not fall away but "remains a factor to be considered among those weighed by the district court" under 18 U.S.C. § 3142(g). English, 629 F.3d at 319 (quoting Mercedes, 254 F.3d at 436). Even in such a "presumption case," however, "'the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community,' and 'by the lesser standard of a preponderance of the evidence that the defendant presents a risk of flight.'" Id. (quoting Mercedes, 254 F.3d at 436); see also United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986).

A. Defendant Is Subject to the Presumption in Favor of Detention

As the parties agree, this is such a "presumption case." (Def. Mot. at 21 n.8; Tr. of June 12, 2018, Hr'g ("Hr'g Tr.") (Dkt. Number Pending) 30:3-7.) The Bail Reform Act's list of enumerated offenses includes any "offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed." 18 U.S.C. § 3142(e)(3)(D). That describes all three offenses with which Defendant has been charged. Each offense is proscribed

[2] A different rebuttable presumption arises if the defendant recently committed one of certain offenses while on release pending trial. See id. § 3142(e)(2). This case does not implicate this presumption.

by Chapter 77 of Title 18 of the U.S. Code. The sex-trafficking and sex-trafficking conspiracy charges are both punishable by up to life in prison, see 18 U.S.C. §§ 1591(b)(1), 1594(c), and the forced-labor-conspiracy charge is punishable by up to 20 years' imprisonment, see 18 U.S.C. §§ 1589(d), 1594(b). And Defendant's indictment by a grand jury conclusively establishes that there is probable cause to believe that he committed the offenses charged in the indictment. See United States v. Contreras, 776 F.2d 51, 53 (2d Cir. 1985). Thus, the court begins with the presumption that no condition or combination of conditions of pretrial release will reasonably assure the Defendant's appearance and the safety of the community. See 18 U.S.C. § 3142(e)(3).

B. Defendant Is a Flight Risk Notwithstanding the Proposed Conditions

The court next considers whether Defendant has introduced evidence rebutting the statutory presumption that he is a flight risk and a danger to the community and others. In support of his bail motion, Defendant has attached several photographs of immigration documents, as well as receipts for flights and a canceled reservation for an Airbnb in Canada. (See Def. Mot., Exs. 1-7, 9 (Dkts. 43-1 to 43-7, 43-9).) He contends that these documents undermine the Government's account that he traveled to Mexico in November 2017 to flee from law enforcement, and instead corroborate his explanation that he traveled to Mexico in October 2017 to be with the mother of his child, a Mexican citizen whose U.S. visa was expiring. (Def. Mot. at 12-14.) Defendant has also provided the court with a copy of a document, filed in the New York Surrogate's Court, Saratoga County, in January 2018, in which he renounced his appointment as executor to the estate of his deceased romantic partner, Pamela Cafritz. (See Renunciation of Nominated Executor and/or Trustee (Dkt. 43-8).) This document was notarized by a Mexican notario publico who provided his name and location (Guadalajara, Jalisco) on an

apostille to the document. (See id. at ECF p.7.) Defendant argues that the fact that he filed this document in state court shows that he did not conceal his location from U.S. authorities.

Defendant has carried his "limited burden of production . . . by coming forward with evidence that he does not pose a . . . risk of flight." English, 629 F.3d at 319 (internal quotation marks and citation omitted). That is not to say that this evidence is particularly persuasive: As the court explains further below, these documents only weakly support Defendant's account that his relocation to Mexico, use of encrypted email, and decision to stop using his phone had nothing to do with law enforcement's increased interest in him following publication of the New York Times article. Because Defendant has provided "some evidence" that he is not a flight risk, the court turns to whether the Government has carried its ultimate burden of persuasion on this issue. See Rodriguez, 950 F.2d at 88. (Because, as stated below, the court denies Defendant's motion based on a finding that he poses a flight risk, it need not decide whether he has proffered any "evidence that he does not pose a danger to the community." See English, 629 F.3d at 319 (internal quotation marks and citation omitted).)

The court considers the question of whether the Government has shown that there are no conditions of release sufficient to reasonably assure Defendant's appearance before the court in light of the factors listed by 18 U.S.C. § 3142(g):

> (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of [18 U.S.C. §] 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
>
> (2) the weight of the evidence against the [Defendant];
>
> (3) the history and characteristics of the [Defendant], including—
>
> > (A) the [Defendant]'s character, physical and mental condition, family ties, employment, financial resources,

> length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
>
> (B) whether, at the time of the current offense or arrest, the [Defendant] was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
>
> (4) the nature and seriousness of the danger to any person or the community that would be posed by the [Defendant's] release. . . .

As the court explains below, these factors, taken together, support the conclusion that Defendant remains a flight risk notwithstanding his proposed bail conditions.

1. The Nature and Circumstances of the Offense Charged

The first § 3142(g) factor weighs heavily in favor of continued detention. This factor specifically directs the court to consider whether the defendant seeking pretrial release has been charged with "a violation of [18 U.S.C. §] 1591," a sex-trafficking statute that Defendant has been charged with violating and conspiring to violate. "By specifically enumerating the type of violation alleged here, the statute suggests that [Defendant]'s alleged actions militate in favor of detention." United States v. Goodwin, No. 15-CR-101, 2015 WL 6386568, at *2 (W.D. Ky. Oct. 21, 2015).

The offenses with which Defendant has been charged are also subject to extremely lengthy sentences. If convicted, Defendant faces a maximum sentence of life imprisonment for the sex-trafficking and sex-trafficking-conspiracy charges, as well as up to 20 years' imprisonment for the forced-labor-conspiracy charge. See 18 U.S.C. § 1591(b)(1) (sex trafficking by force, threat, fraud, or coercion); id. § 1594(c) (conspiracy to violate § 1591); id.

§§ 1589(a), (d), 1594(b) (forced-labor conspiracy).[3] Additionally, Defendant faces a 15-year statutory minimum sentence if convicted on the substantive sex-trafficking charge. Id. § 1591(b)(1). Faced with the possibility that, if convicted, he may spend the rest of his life in prison, Defendant clearly has "a strong motive to flee." United States v. Sabhnani, 493 F.3d 63, 76 (2d Cir. 2007); see also United States v. Khusanov, — F. App'x —, 2018 WL 1887339, at *1 (2d Cir. 2018) (summary order).

2. The Weight of the Evidence

The second § 3142(g) factor weighs at least weakly in favor of detention. There appears to be substantial evidence against Defendant. A grand jury has determined that there is probable cause to believe that Defendant committed the charged offenses. The Government has also proffered a number of text messages sent by Defendant that suggest that, as the Government puts it, Defendant "created DOS," that "there was a significant sexual component to DOS and that some DOS slaves would be recruited to have sex with [him]," and "that his identity as the head of DOS would be concealed from some DOS slaves." (Gov't Opp'n at 3; see id. at 3-6.)

There are, however, reasons to proceed cautiously at this point in the proceedings. From Defendant's motions and his counsel's statements to the court, it appears that his defense will rely heavily on arguments that the so-called "DOS slaves" joined and remained in the group willingly and that they engaged in any sexual activity with him consensually, not because they feared that their "collateral" would be released. (See, e.g., Def. Mot. at 17.) Defendant also contends that "there is no evidence that anyone engaged in a commercial sex act, within the

[3] Violations of 18 U.S.C. § 1589 that "include[] . . . aggravated sexual abuse" are punishable by up to life imprisonment. Id. § 1589(d). The Government has not, however, charged Defendant with an aggravated-sexual-abuse enhancement.

meaning of the [sex-trafficking] statute." (Id.) At this early stage in the case, the court lacks sufficient evidence from which to make a confident assessment as to the strength of the Government's case on these points.

3. Defendant's History and Characteristics

The third § 3142 factor, however, weighs especially strongly in favor of detention, notwithstanding Defendant's proposed conditions of bail.

a. Defendant is a flight risk.

Defendant's history and characteristics strongly support the conclusion that he is a flight risk. Certain aspects of Defendant's history and characteristics weigh in his favor. He is a longtime resident of upstate New York, and the court is not aware of any indication that he has a prior record of arrests or convictions, a substance-abuse problem, or a history of missed court appearances. See 18 U.S.C. § 1342(g)(3)(A). Nor was he on probation, parole, or other release at the time of his arrest for the charged offenses. See id. § 1342(g)(3)(B). The court is troubled, however, by evidence of Defendant's conduct in recent months, his lack of an ordinary job or personal financial resources that could secure a meaningful bond, and his apparent access to extensive financial resources supplied by anonymous third parties. These factors all point to a substantial risk of flight.

First, the court finds that it is more likely than not that Defendant moved to Mexico last fall at least partly to elude law enforcement. Despite having little history of international travel, Defendant relocated to Mexico soon after attention turned to his alleged activities in connection with Nxivm and DOS. The Government avers that, while in Mexico, Defendant also began using end-to-end encrypted email and stopped using his phone. (Gov't Mar. 26 Ltr. at 6; Gov't

Opp'n at 8.) As a result, the Government avers, it took a month and a half for authorities to track Defendant down.

Defendant has innocent explanations for his change of scenery and behavior. He avers that he traveled to Mexico last October to be with his child and with the child's mother when her U.S. visa expired. (Def. Mot. at 12-14.) While he admits to using different phones and email addresses, he states that he did so not to evade authorities but to evade an anti-Nxivm group that he says harassed him for years. (Id. at 15.) Finally, he contends that the Government was, or should have been, aware of his location because of the document he filed in Saratoga County Surrogate's Court and because "his attorney left a phone number with the Department of Justice on two occasions by which he could be reached." (Id. at 14, 15.)

These explanations are not persuasive. While it may be the case that Defendant traveled briefly to Mexico in October to be with the mother of his child in Monterrey, that does not explain why he traveled back to Mexico the following month—or why, when he did, he moved hundreds of miles away, to Puerto Vallarta. (See Hr'g Tr. 18:23-19:14.) If Defendant had been seeking to avoid anti-Nxivm activists, not the Government, it is not clear why he would have stopped using his phone entirely, as the court is not aware of how the former would have the ability to track Defendant's phone. That Defendant's attorney left a callback number with prosecutors does not imply that Defendant was forthcoming with authorities about his location. Finally, the court does not see how law enforcement could have inferred that Defendant was residing in Puerto Vallarta from the fact that he filed in Saratoga County Surrogate's Court a document notarized in Guadalajara, about a five-hour drive from Puerto Vallarta. See Directions from Guadalajara, Jalisco, to Puerto Vallarta, Jalisco, Google Maps,

https://www.google.com/maps/dir/Guadalajara,+Jalisco,+Mexico/Puerto+Vallarta,+Jalisco,+Mexico/ (last visited June 14, 2018).

Second, the court also has grave concerns about Defendant's financial situation. According to Defendant's financial affidavit, he is self-employed and has no income or assets other than a partial interest in a home in Clifton Park, New York, worth approximately $60,000. (Financial Aff. (Dkt. 44-2).) Even accepting that this affidavit is truthful, Defendant has little to lose if he were to flee, and nothing with which to secure a meaningful personal bond. (But see Gov't Mar. 26 Ltr. at 4 (stating that Defendant has made purchases using a credit card in the name of a deceased romantic partner and has drawn extensively on a bank account in her name containing $8 million).) Besides having no income or assets of his own, Defendant also appears to have access to enormous financial resources contributed by anonymous third parties. The Government contends that Defendant is financially backed by "independently wealthy women," including a liquor-fortune heiress whom the Government contends has provided Defendant with millions of dollars and access to private air travel and to a private island in Fiji. (Gov't Mar. 26 Ltr. at 4.) Indeed, Defendant himself proposes that he should be released into home detention, guarded by a private security company at a cost of at least $40,000 per month, to be paid for by an unidentified trust funded by anonymous third parties. (Gov't Opp'n at 7 n.7.) This arrangement only underscores the court's concern that Defendant may have access to extensive but unknown financial resources.

In light of these concerns, the court must conclude that Defendant poses a serious risk of flight if he is released pending trial.

b. The proposed conditions of release do not adequately mitigate this risk.

Defendant's proposed conditions of release do not mitigate these concerns. Defendant proposes release on a $10 million bond, but the court views such a bond as basically worthless in light of Defendant's lack of personal assets. Without anything to offer as collateral, Defendant would have nothing to lose if he were to flee. Nor does Defendant offer a surety (such as a family member or other loved one) who would stand to lose something if he were to flee. Accordingly, as his counsel admitted at oral argument, the court lacks any moral suasion over Defendant to induce him to remain here and face trial. (Hr'g Tr. 13:18-14:2, 17:7-9.)

To compensate for his inability to post such collateral, Defendant proposed an "admittedly unorthodox" bail package, under which round-the-clock armed guards would be responsible for keeping him confined to a selected residence. (Id. 16:23) While the court commends Defendant's counsel for both his creativity in structuring this proposal and for his candor in describing it to the court, the proposal does not mitigate Defendant's flight risk.

Defendant seems to accept that armed guards are necessary to ensure his appearance at trial. As the Second Circuit has observed, however, the conclusion that "deadly force may need to be used to assure defendant['s] presence at trial . . . . would, in fact, demand a defendant's detention." Sabhnani, 493 F.3d at 74 n.13. As other courts in this circuit have mused, "What more compelling case for an order of detention is there than a case in which only an armed guard and the threat of deadly force is sufficient to assure the defendant's appearance?" United States v. Zarrab, No. 15-CR-867 (RMB), 2016 WL 3681423, at *12 (S.D.N.Y. June 16, 2016) (quoting United States v. Valerio, 9 F. Supp. 3d 283, 295 (E.D.N.Y. 2014)); see also United States v. Colorado-Cebado, No. 13-CR-458, 2013 WL 5852621, at *6 (W.D. Tex. Oct. 30, 2013).

It is also not clear that these guards could actually prevent Defendant from fleeing, if he were to attempt to escape. Defendant indicated that he would consent in advance to the use of force against him if he attempted to escape, but he would not—nor, it seems, could he—consent to the use of deadly force against him. (Hr'g Tr. 11:22-12:1.) Nor could Defendant consent to the use of deadly force against any Nxivm or DOS acolytes who might plausibly attempt to help him escape. (See Gov't Opp'n at 12.) As the Government also correctly notes, any escape attempt would also present the risk of a confrontation between armed guards and Defendant (or his followers) in the streets of New York City, which would mean that any reduction in the Defendant's flight risk from this proposal would be at least partially offset by a greater risk to the community. (See id.)

Nor does the court have any basis for concluding that the proposed private security firm could keep Defendant confined. The court in no way impugns the private security firm that Defendant has proposed. This firm appears to employ a number of experienced law-enforcement veterans, and it would surely have a strong reputational incentive to keep Defendant confined. The court nevertheless has general concerns about the use of a private security company to monitor a defendant's home confinement, particularly where the company has been chosen by the defendant, where the Government "exercises no hiring, training, or supervisory control" over it, Valerio, 9 F. Supp. 3d at 295, and where the court knows nothing about the individuals who would be responsible for monitoring the defendant on a day-to-day basis. Cf. Sabhnani, 493 F.3d at 78 (noting that, in that case, the government had chosen the private firm responsible for monitoring the defendant's home confinement, so it was "not a case in which government reservations about either the competency or integrity of a private security firm might give a court pause about the effectiveness of home confinement in deterring flight"). These generalized

misgivings about the use of private security firms in this context are exacerbated by the unique circumstances of this case, in which Defendant is accused of running an organization with a number of devoted adherents, faces strong incentives to flee, and may have access to substantial financial resources. In such a case, broad assurances about the private security company's experience or reputational incentives are no substitute for an actual jail. See Valerio, 9 F. Supp. 3d at 295.

Finally, the court is also troubled by the lack of clarity about who would actually pay for these armed guards. As Defendant cryptically avers in his reply, the guards would be "paid by an irrevocable trust funded by third-party contributors." (Def. Reply at 2.) His proposed bail package offered no information about the terms of the trust, its corpus, or its settlors. Indeed, at oral argument, it emerged that the parties did not know to a certainty exactly who was funding the trust (although they speculated that the aforementioned liquor-fortune heiress was responsible). (Hr'g Tr. 22:21-28:2.) The court cannot make a reasoned assessment of the adequacy of Defendant's proposed home confinement without knowing who would actually pay for Defendant's round-the-clock armed guards.

4. The nature and seriousness of the danger to any person or the community that would be posed by Defendant's release.

Fourth, the court concludes that the last § 3142 factor also weighs in favor of detention. Defendant is charged with serious felonies based on his alleged role in running a secretive, cult-like organization in which "slaves" are allegedly branded with his initials and tasked with serving him and other senior members of the organization. In light of these charged offenses, see United States v. Nikolow, 534 F. Supp. 2d 37, 39 (D.D.C. 2008), and the Government's representations that Nxivm critics and defectors have faced harassment (Gov't Mar. 26 Ltr. at 5,

7; Gov't Opp'n at 12 n.11), there is at least some risk that if Defendant is released, he may unlawfully exploit women or obstruct justice.

5. The presumption in favor of detention.

Finally, the court notes again that Defendant has been charged with offenses triggering a presumption of detention. Although he has rebutted that presumption by introducing evidence that he is not a flight risk, the presumption remains to be considered by the court alongside the aforementioned four § 3142(g) factors.

* * *

The court concludes that the Government has easily shown that Defendant's proposed conditions are insufficient to reasonably assure his appearance. Because it is at least conceivable that Defendant could address the court's concerns, this denial is without prejudice to refiling a revised bail package. Because the court determines that Defendant remains a flight risk notwithstanding the proposed bail conditions, it need not consider at this time whether the Government has also shown by clear and convincing evidence that no condition or set of conditions would reasonably assure the safety of others and the community.

III. CONCLUSION

Defendant's motion for release on bail (Dkt. 43) is DENIED without prejudice.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
June 18, 2018

NICHOLAS G. GARAUFIS
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

KEITH RANIERE AND ALLISON MACK,

Defendants.

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18-CR-204(NGG)

United States Courthouse
Brooklyn, New York

June 12, 2018
2:00 p.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES SENIOR DISTRICT JUDGE

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engage in plea negotiations. At this time the government is still willing to engage in such plea negotiations, but we have not heard from defense counsel.

THE COURT: Let's start with Ms. Mack's counsel.

Does Ms. Mack's counsel consent to the exclusion of time?

MR. BUCKLEY: Your Honor, we have no objection to the exclusion. We understand that additional discovery is forthcoming as soon as this week, so we have no objection because we need the additional time to review discovery and consider motions.

THE COURT: Mr. Agnifilo.

MR. AGNIFILO: We do not consent to the exclusion.

THE COURT: All right. Under the statute, the time is excluded as Ms. Mack's counsel has not objected to the exclusion of time between now and July 25th. The time is excluded between today and July 25th, 2018, in the interest of justice for the continuation of discovery delivery and plea negotiations.

MS. PENZA: Thank you, Your Honor.

THE COURT: So that brings us to the next issue.

MR. AGNIFILO: Yes, Your Honor.

Your Honor, we've given the Court a fairly length written submission, the government has responded, we replied. I think given the circumstances of this case, a reasonable and

appropriate set of bail conditions would be to have Mr. Raniere released on a 10 million-dollar bond; he would be secured by, at a minimum of two armed security professionals with TorchStone, and we have the former director of the U.S. Secret Service is sitting in the second row, third from the right, Mark Sullivan, who would be working with torch -- there he is, he has his hand up in the air, Judge. Who would be working with TorchStone as part of the security detail.

Let me put a few things --

THE COURT: I'm really curious about this concept that someone would be on house arrest basically guarded by people with guns. What is the purpose of having armed guards? Is the purpose of having armed guards that in case the individual being guarded tries to flee, they have the authority to stop him or her and possibly use their guns to stop the defendant? In other words, to shoot and kill somebody, which sounds absurd to me frankly on its face, or is it to stop people from coming in, like reporters or people who feel wronged by the individual, and then protect the individual by shooting the intruder. What is the purpose of an armed guard?

MR. AGNIFILO: Sure. So to Your Honor's first question, it is my understanding of the state of the law that someone can consent to physical force being used on him or her but cannot legally consent to deadly physical force being used

on him or her. So we would consent to physical -- let me --

THE COURT: So then you need a couple of Karate experts, you don't need someone with a gun.

MR. AGNIFILO: If I were more imaginative I would have led with that. So the idea really at the end of the day is it's an emphasis on trust rather than arms. And it's a matter of integrity, it's a matter of reputation. The last thing, frankly, I want, the last thing that TorchStone wants, Mr. Sullivan wants is for this to go in the wrong direction, because that's -- we'd have to come back in front of Your Honor and nobody wants to be in that position. So the guns are, I don't know, the icing on the cake. What really keeps him there is there are guards -- let me back up. This goes to Your Honor might have been wondering why I structured the bail application the way I did and there's a reason.

There is a trust, a defense trust that has been created since the inception of this case. It's being administered by a trustee. The trustee has a lawyer and no defense costs -- and I say this because the renting of the apartment, the paying of the armed guards would be defense costs which could not be paid unless it were ordered by Your Honor. So the guard, just to be clear, the guards and the apartment would be paid from this irrevocable trust that's been created. Right now there is no apartment because there's no bail condition authorizing the expenditure of money on an

apartment. So the idea is this --

THE COURT: I'm like the co-trustee if I agree to this.

MR. AGNIFILO: I --

THE COURT: It's a condition precedent to the expenditure of the funds that the Court agree to something of this nature.

MR. AGNIFILO: It ends up being that, but it's not that by design. It's that because they can't spend anything unless it's a reasonable defense cost and it's not currently, as we sit here today, a reasonable defense cost because it's not been ordered.

THE COURT: Well, I'm not aware of the trustee's name, I'm not aware of who the settlors are of the trust, I'm not aware of the funds that are in the trust, but put all that aside, this is not your client's money.

MR. AGNIFILO: Correct.

THE COURT: No one is coming forward to be a -- to sign on this bail application, right?

MR. AGNIFILO: The way it's currently situated, that's correct.

THE COURT: Right. The purpose of having individuals act in that capacity is that they place some moral suasion on the defendant to adhere to the terms of the release. But there is no one to do that in this case, the way

you have structured it.

MR. AGNIFILO: That's correct.

THE COURT: I'm only talking about your concept.

MR. AGNIFILO: Yes.

THE COURT: This is a concept.

MR. AGNIFILO: That's right.

THE COURT: And so someone can write a check for a large sum of money, take a million dollars just out of air here, put it into an irrevocable trust and that trust could be used for the purposes that you have outlined, but there's no moral suasion placed upon the defendant to adhere to the terms of the bail because, frankly, he has nothing to lose. The only people who have something to lose are the settlors of the trust and perhaps the trustee for some fiduciary misbehavior, if that should happen, but there's nothing really that keeps the defendant in tow in effect or -- he has no family members who are going to sign the bond, he's just -- it's just him.

And so the question then becomes, assuming that we go forward with something like this, how does -- apart from the fact that there is money available, how does this guarantee that your client doesn't get on an airplane at Teterboro Airport without any kind of travel documentation and fly on a private plane to a place where he gets off the plane and nobody knows where he is, the flight plan changed in mid-flight, that happens, and he's gone? And then the only

thing that's out there is the bond company, which has to pay $10 million because he absconded.

MR. AGNIFILO: There is two things: First, Mr. Sullivan and the other agents of TorchStone aren't going to let him do that. They're not going to let him leave.

Now, I think to Your Honor's other question, the rules of engagement, as I understand it -- and it's a direct question, I want to give Your Honor a direct answer -- I don't believe they've been authorized to shoot him unless it were an independently dangerous situation. It's a complicated analysis and probably not one that I'm able to make. But that's what -- we have very experienced former law enforcement personnel who are putting their reputations on the line and rather than moral suasion, we have guards. Moral suasion is usually the thing that's compelling in these courtrooms for bringing something back. Here we have something that's more immediate and more compelling, I submit, which is that we have actual guards, at least two of them depending on the location, who are not going to let him leave and who, if there was any inkling of him trying to leave or do anything inappropriate whatsoever in violation of Your Honor's condition, would immediately tell anybody Your Honor wanted us to tell, including the prosecutors, including pretrial, including the Court if the Court wanted to be involved in that. Anybody Your Honor wanted us to tell they're going to tell. This is

not the kind of thing where anybody is going to want that to happen.

My job in this case is if the case goes to trial, I try the case. The guard's job is to make sure Mr. Raniere is safe, secure, that he comes back to court each and every time he has to come back to court through the end of this proceeding. So what we lack in moral suasion, and Your Honor is right about that, I think we more than make up for in armed personnel who are going to secure an apartment that, not that Mr. Raniere chooses, that they choose. We're happy to have pretrial services or anyone from the government or the FBI involved in that process. We're not trying to keep anybody out.

And the benefits really are these, and I think this is a significant one. We have a very, appropriately so, restrictive protective order in this case. I think it is easier, it's safer, it's more secure to review discovery not in a prison setting and to prepare a defense in a fairly complicated case, and a complicated case where there might be superseding indictments into the future and we all know the government is continuing to investigate, not in a prison setting.

And here while it's a little, admittedly, unorthodox the way we structured the bond package, I think it's very effective. He won't have his passport, he can't apply for new

passports and he's going to be watched by guards with a GPS monitor. So there really are belts and suspenders on this one. He can't leave because Pretrial Services will have a GPS monitor on his ankle. He can't leave because he doesn't have a passport to leave and he can't leave because he has armed guards who are former very high level law enforcement officials whose own credibility -- and I mean that's really at the end of the day I think, you know, a form of moral suasion and not on the defendant but on the integrity of the process. The last thing these guys are going to want to have to happen is Keith Raniere sneaks out behind their back. That would be a disaster for them professionally. It would be a disaster for me professionally, I'll say that in front of Your Honor. Nobody wants that to happen, that would be horrible.

And I have every reason to expect that he's going to come back to court, he's going to fight this case. I don't want to get too much into the merits of the case, I think it's a triable case, it's an interesting case, it's a serious case and it's a triable case.

THE COURT: What about the situation with him going down to, what was it, Puerto Vallarta --

MR. AGNIFILO: Mexico.

THE COURT: -- Mexico and staying in a gated community and operating an email account with the protection that he couldn't be -- he couldn't be checked as to his email.

MR. AGNIFILO: So I think for better or worse --

THE COURT: Why? Why would you do that if you were not trying to evade law enforcement?

MR. AGNIFILO: Because there are two, in what I've seen, well-entrenched, passionate factions having nothing to do with law enforcement that surround Mr. Raniere. There are people in Nxivm and in DOS, some of whom are very loyal to Mr. Raniere, and there are people who have left Nxivm and/or DOS who are, from what I've seen, equally passionate anti-Raniere folks.

And I don't tend to reference the press in Court matters, but I think it's interesting to note, I think The New York Times magazine piece the journalist noted people were taking photographs of her and others at different points in time. So there's no reason to think -- and I can go through the details of Mexico, there is no reason to think Mr. Raniere was evading law enforcement. I think he was trying to remain secure in the face of people who I don't think mean him well. And that's certainly his belief and that's the belief of some other people. I don't besmirch these people, they are entitled to their views. But Your Honor asked why would he do that and I think that's the reason.

The reason more pointedly, and I know the government was concerned about his trip to Mexico, the mother of his child's visa was about to expire and they traveled to Mexico

and when they traveled to Mexico -- we have this in our written submission --

THE COURT: But they are not living in Puerto Vallarta, they are living five hours away somewhere.

MR. AGNIFILO: I think you're right, I don't think they're in Puerto Vallarta.

THE COURT: He's in one place and they are more than down the road, they are in another area of the country.

MR. AGNIFILO: I can double check, I thought they were all together. Just give me one second, Your Honor.

MS. PENZA: Your Honor, at the time of the defendants apprehension in Mexico the mother of his child I believe was in Monterrey, while the defendant was in the Puerto Vallarta area with DOS slaves.

THE COURT: With who?

MS. PENZA: With DOS slaves including his co-defendant, Ms. Mack.

THE COURT: Oh, you called them DOS slaves, I see. All right.

MR. AGNIFILO: So --

THE COURT: So, look, I understand that your presentation, very extensive, clear presentation, I'm concerned about the fact that what could happen is that you've got these law enforcement people, who retired, who are in this organization, this company, and if he has people who are mad

at him then everybody is at risk because he's at risk. If these people come after him and then you've got people protecting him with guns. This is not your ordinary bail application, you understand that.

MR. AGNIFILO: I do, I do. But I don't think there's any reason to think that anyone is going to resort to violence.

THE COURT: No.

MR. AGNIFILO: We haven't had that. This group, and what I mean by the group sometimes it was one group, and then people left, are much more in to trying to figure out who is speaking to who and what they are saying. I mean, they are much more likely to try and hack into -- I'm not suggesting any of this, I'm just saying what I think the reasonable fear would be, they are trying to hack into different communications rather than hurt someone. I don't think there's -- I have not seen any evidence of anyone trying to hurt anyone and so we don't have that problem under our situation because he's not going to have any Internet access. If Your Honor permits him to have a computer on site, it's not going to be hooked up to the Internet. We're going to basically stick a disk in it and go through the government's discovery to the extent that we can. So I don't think we're setting up a situation where we're going to have violence. I think we're just setting up a situation where he is more able

to defend himself, easier for his lawyers to see him, easier for his lawyers to spend time with him and spend time going through the extensive discovery that we've gotten and will be getting on the computer and preparing this case for trial. I mean --

THE COURT: All right.

MR. AGNIFILO: Thank you, Judge.

THE COURT: Is there anything you would like to say about any of this, ma'am?

MS. PENZA: Your Honor, only if you have any questions, I believe our submission was fairly extensive.

THE COURT: Well, you're concerned about the fact that we don't know where this money is coming from and the fact that people who have private jets can fly people wherever they want to fly them and they don't necessarily have to have travel documentation in order to do that, and we really don't know whether in effect we're setting up a private jail here, and does the Court have to start taking into account the fact that what the Court may be sanctioning is in effect a private jail with all the accoutrements of a mansion perhaps. People with a great deal of money can set up a private jail with all kinds of amenities, then it sort of makes a mockery of the system of justice, while other people can't get a hundred dollars together to get out of Rikers Island.

I think this is a really big problem. It's not just

a social problem, it's a criminal justice problem and I don't know that I want contribute to it unless I know who is providing the money and how much we're talking about. If it's going to be a hundred thousand dollars a month for private gun-toting guards and placement in some sort of a home that I don't know the nature of, then I'm a little bit concerned about it, even apart from the issue of the possibility of flight.

I'm concentrating on flight, but I think that if we get past the issue of flight and we move on to some of these other issues, I know that some courts have addressed these other issues, I'd prefer not to have to do that, but does the government have a position on all of that?

MS. PENZA: Yes, Your Honor. So, Your Honor, the government absolutely believes that the private jail concept has inherent problems, but this case in particular is a case where it clearly is not the right outcome. The only cases in which this type of private jail has been allowed, which does have enormous policy implications, have been cases in white collar criminal cases where the defendants themselves were putting up enormous sums of their own money. And in this situation, Your Honor, the defense counsel has given his best guess as to who is financing the trust in this case --

THE COURT: You mean he's given a guess?

MS. PENZA: Yes, Your Honor.

THE COURT: He doesn't know.

MS. PENZA: He doesn't know.

THE COURT: Let's put it this way, he hasn't indicated that he knows.

MS. PENZA: He hasn't indicated that he knows. He has indicated who he believes may be funding the trust.

MR. AGNIFILO: I -- it's better that I guess. I mean, I don't know in that I've never seen the trust documentation, but, you know, I'm -- I'm --

THE COURT: When a surety comes in here I get to question the surety. I get to say, what is your relationship? How do you know this person? What's in it for you? Are you going to be able to cast moral suasion on this individual to guarantee that this person is going to come back? I get to do that.

What your structure or the structure that's been sort of devised eliminates is the role of the Court in making a fair judgment as to whether if, by releasing someone, they're likely to show up again in court absent, you know, gunfire. So I'm just concerned about that as much as I'm concerned about anything else.

MR. AGNIFILO: Just so Your Honor -- I didn't want to interrupt the prosecutor.

THE COURT: Continue.

MR. AGNIFILO: Go ahead.

MS. PENZA: So, Your Honor, the person who the government believes, based on Mr. Agnifilo's guess --

THE COURT: We've all guessed. We've all read the article in The New York Times magazine, all right. I made a promise in my life never to finish any article in The New York Times magazine because they're all too long, but I made an exception regarding this article. I read the whole thing, so I've read everything that was put forward there.

MS. PENZA: All the way to my shoes, Your Honor.

THE COURT: That's all I know about this case is what I read in The New York Times magazine and the Albany Times Union. Okay?

MS. PENZA: Understood, Your Honor.

THE COURT: So that's the extent of my understanding. And so based on that, I could reach certain guesses.

MS. PENZA: Okay, so, Your Honor, based on that guess, this is a person who the government does believe has acted as a co-conspirator in criminal activity with the defendant.

THE COURT: Who has?

MS. PENZA: The person who is funding this trust --

THE COURT: Yes.

MS. PENZA: -- has acted as a co-conspirator of the defendant over many years. And given that, and in addition to

the fact that over years she has given -- when we're talking about amounts of money --

THE COURT: He or she.

MS. PENZA: Yes, Your Honor. He or -- this person on one occasion, just to give Your Honor an example, provided a 65 million-dollar loan to the defendant for the commodities market, which then all of that money was lost and has never been repaid. So this is the type of amounts of money. It is really unimaginable wealth and limitless wealth that we're talking about here. So the idea that any amount of money would not be worth it to this person to allow the defendant to flee, should we end up in that situation, is unimaginable.

And she -- this person, is also somebody who, Your Honor, is equally capable along with the defendant of trying to live off the grid. We're talking about people with private islands, talking about people with access to private air travel, which the defendant has participated in. People who have also been using encrypted email. People who have also been dropping their phones so that the government is unable to track them. So this is the environment we're operating in, Your Honor, and so we do believe that the risk of flight is significant in this case. But, Your Honor, we also believe that this, unlike many cases in which private jails have been proposed, is a case where there is real danger to witnesses, to victims if the defendant is released.

This is somebody who has a network operating around the world that literally one text message he can mobilize hundreds of people who could do his bidding and so that, with all due respect to Mr. Sullivan, there is nothing that Mr. Sullivan is going to be able to do on a day in, day out basis to prevent something like that from happening, Your Honor, and people are truly petrified of the defendant. This is an organization that has operated for years by manipulating people, by abusing people and by intimidating them.

THE COURT: Anything else before I rule?

MR. AGNIFILO: Yes. So we have spoken about this and Your Honor's right, Your Honor's suspicion of who is funding the trust, whether that's a hundred percent or 99.5 percent, that's exactly what it is.

THE COURT: My suspicion is not a suspicion, I'm just saying that in the ordinary course sureties come before the Court and explain what their relationship is with a defendant and attempt to give the Court some assurance that as a surety they are doing so voluntarily, that they have a relationship, that they will do everything they can to oversee the defendant's behavior to the extent that the defendant will return to court, and provide that sort of assurance or group of assurances so the Court can feel that there is a strong likelihood that the person will not abscond, among other things.

MR. AGNIFILO: I understand. I understand the Court's concern completely. I can absolutely attempt to make that happen. I don't control this person, this person has her own lawyers, but Your Honor's concern is very well taken by me. I hear the Court loud and clear and if that's something that --

THE COURT: But then there is this other issue that's raised obliquely by the government that this supposed financial backer of this irrevocable trust may be either an unindicted co-conspirator or subsequently an indicted co-conspirator with the defendant, where are we then? That complicates the analysis substantially it would seem to me.

MR. AGNIFILO: It would complicate it in one regard, I don't think there's any suggestion that this person's money -- we know who we're talking about and her money is inherited, is not ill-gotten gains, so I don't think there is a fear that --

THE COURT: I'm not talking about money that -- this isn't an organized crime case, all right, where the money was the result of illegal activity, I would assume based on what's believed by everybody in this room as to the source, but there is the issue of the fact that if one party, one defendant is supporting another defendant financially, then that raises other issues, wouldn't you say?

MR. AGNIFILO: I agree. I agree. But as we sit

here today, there has been no charge --

THE COURT: Right.

MR. AGNIFILO: And --

THE COURT: Okay.

MR. AGNIFILO: -- the money is clean money.

THE COURT: I understand.

MR. AGNIFILO: I understand.

THE COURT: I'm just putting that on the table for you to chew on it.

MR. AGNIFILO: I appreciate that. I am chewing.

THE COURT: Good. Anything else? That's it?

MR. AGNIFILO: That's it for me.

THE COURT: All right. The defendant, Keith Raniere, has been charged with sex trafficking, conspiracy to commit sex trafficking, and conspiracy to cause another to engage in forced labor. The defendant has moved for release on bail pending trial. The Court finds that the government has shown that the defendant is a flight risk, notwithstanding the proposed conditions. The Court, therefore, denies the defendant's motion without prejudice.

Pretrial detainees have a right to bail under both the Eighth Amendment and the Bail Reform Act. The latter provides that a court must release a defendant, quote, subject to the least restrictive further condition, or a combination of conditions, that it determines will reasonably assure the

appearance of the person as required, the safety of other persons, and the community, end quote. Only if, after considering the factors set forth in Title 18 United States Code Section 1342(g), the Court determines that, quote, 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, end quote, may the order -- the Court order the defendant to be held without bail. If, however, there is probable cause to find that the defendant committed one of the offenses enumerated by the Bail Reform Act, a rebuttable resumption arises, quote, that no condition or combination of conditions will reasonably assure, end quote, the defendant's appearance or the safety of the community or others. In such a case, quote, the defendant bears a limited burden of production to rebut that presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight, end quote. *United States v. English*, 629 F.3d. 311, Second Circuit, 2011.

If the defendant offers such evidence, the presumption favoring detention does not fall away, but, quote, remains a factor to be considered among those weighed by the district court, end quote. Even if such a presumption case, however, quote, the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community, and by the lesser standard

of preponderance of the evidence that the defendant presents a risk of flight, end quote. Quoting *United States v. English*.

The parties agree that this is a presumption case; isn't that right?

MR. AGNIFILO: That's correct, Judge.

THE COURT: Right?

MS. PENZA: Yes, Your Honor.

THE COURT: The defendant has been indicted by a federal grand jury on sex trafficking and sex-trafficking conspiracy charges for which the maximum sentence is life in prison. The grand jury's indictment conclusively establishes that there is probable cause to believe that the defendant committed these offenses. The only questions before the Court, then, are whether the defendant has rebutted the presumption in favor of detention, quote, by coming forward with evidence that he does not pose a danger to the community or a risk of flight, end quote. Quoting, again the *English* case, and whether the government has shown that the defendant is dangerous or a flight risk notwithstanding the proposed conditions.

The defendant has presented the Court with a bail package that includes a number of conditions of release. These proposed conditions include a 10 million-dollar appearance bond; travel restrictions; home detention enforced by GPS monitoring and round-the-clock armed guards; and

restrictions on defendant's access to computers and phones and contact with his co-defendant, alleged co-conspirators, and other Nxivm affiliates.

The government contends that this bail package is insufficient to reasonably assure the defendant's appearance at trial, to protect the safety of the community, or to mitigate the risk that he will obstruct justice.

After considering the four Section 3142(g) factors, the Court agrees with the government that the proposed bail package is inadequate to reasonably assure the defendant's appearance at trial. In the Court's view, all four of these factors, the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the history and characteristics of the defendant, and the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release, weigh in favor of continued detention. As the Court will explain, the first and third of these factors particularly support continued detention.

First, as to the nature and circumstances of the offenses charged, the Court notes that the charges on which the defendant has been indicted are extremely serious. The sex trafficking and sex-trafficking conspiracy charges are each punishable by a sentence of life imprisonment, and the forced labor conspiracy charge is punishable by up to 20 years

imprisonment. Because the defendant is charged with sex trafficking by, quote, force, threat of force, fraud, or coercion, end quote, the substantive sex trafficking charge is also subject to a 15-year minimum sentence under Title 18 United States Code Section 1591(b)(1). Faced with the possibility that, if convicted, he may spend the rest of his life in prison, the defendant clearly has, quote, a strong motive to flee, end quote. *United States v. Sabhnani*, 493 F.3d 63, Second Circuit, 2007.

Second, as to the defendant's history and characteristics, the Court finds that this factor strongly supports detention to avoid the risk of flight. Certain aspects of the defendant's history and characteristics support his pretrial release. He is a long-time resident of upstate New York, and there is no indication that he has a criminal record, a substance abuse problem, or a history of missed court appearances. The Court is troubled, however, that defendant's conduct in recent months, his lack of an ordinary job or personal financial resources that could secure a meaningful bond, and his access to third parties' extensive financial resources all show that he may flee if given the opportunity.

The Court is troubled by indications in the record that the defendant attempted to allude law enforcement by moving to Mexico last fall. According to the government,

once, quote, law enforcement began interviewing witnesses about defendant's criminal conduct, end quote, he fled to Puerto Vallarta, Mexico, where he lived in a luxury villa, began using fully encrypted email, and stopped using his phone.

In response, defendant argues that he traveled to Mexico to be with his child and his child's mother, a Mexican citizen whose U.S. visa expired last October. While he admits he used different phones and email addresses, he contends that he did so not to evade law enforcement but to evade anti-Nxivm -- an anti-Nxivm group that he says harassed him for years.

Finally, defendant contends that the government was or should have been aware of his location because he filed a document in state court resigning as executor of the estate of his deceased significant other. That document identified by name and location the Mexican notary before whom defendant appeared, which he argues shows that authorities knew his location.

Defendant's explanations are not persuasive. Even if the Court were to accept defendant's explanation for why he traveled to Mexico, this explanation would not give the Court -- I'm sorry, would still give the Court pause as it would indicate that the defendant has close personal ties to Mexico and thus may be a flight risk. In any event, this

explanation rings false, as defendant's motion indicates that the mother of his child lives in or near Monterrey, but Monterrey is hundreds of miles from Puerto Vallarta. The Court is skeptical of defendant's explanation that he began using fully encrypted email and stopped using his phone to evade Nxivm critics, not law enforcement, as the Court is not aware how the former could have the ability to track his phone. Nor is the Court persuaded by defendant's argument that his filing of the executorship document in state court indicates that he did not attempt to conceal his location from the government. The document states that the Mexican notary before whom he appeared was located in Guadalajara, Jalisco. According to Google Maps, Guadalajara is about a five-hour drive from Puerto Vallarta. The Court does not see how the government should have inferred this location from this document.

The Court also has grave concerns about the defendant's financial resources. According to defendant's financial affidavit, he is self-employed and has no income and no assets other than a 50 percent interest in a home in Clifton Park, New York, worth approximately $60,000. He thus has nothing material tying him to this district, or this state beyond his half interest in the Clifton Park, New York real estate. On the other hand, defendant appears to have access to enormous financial resources contributed by third parties.

According to the government, these resources include millions of dollars as well as access to private air travel and to a third party's private island in Fiji. Defendant himself proposes that he should be subject to home detention, monitored by armed guards at the cost of at least $40,000, and possibly more like $140,000 per month, to be paid through a special trust funded by third-party contributors. This access to third parties' extensive financial resources exacerbates the Court's concern that the defendant might attempt to abscond if given the opportunity to do so.

Nor do defendant's proposed conditions of release cure these concerns. Defendant proposes release on a $10 million bond, but this Court views this bond as basically worthless, in light of defendant's lack of personal assets. To cure this defect, defendant proposes that he should be monitored by armed guards. At this point, however, the Court is not satisfied that the armed guard condition is a reasonable alternative to pretrial detention.

First, the Court does not yet understand how defendant intends to pay for the cost of private security. The defendant cryptically avers that the guards will be paid, quote, by an irrevocable trust funded by third-party contributors to pay for reasonable defense costs in connection with the instant prosecution, end quote. What the Court does not have in front of it, however, is any information about the

trust; its detailed terms; its corpus; or its settlors. Without such information, the Court cannot make a reasoned assessment of the armed guards' ability to assure defendant's appearance.

The Court, likewise, has in number of questions about who would be guarding the defendant and their ability to prevent him from fleeing. How, for example, was TorchStone selected as the proposed security company? Who does TorchStone employ as guards, and what sort of background check and security screenings are these guards subject to? While the Court has no intention of impugning TorchStone's or its employees' integrity by asking these questions, it is concerned that without a great deal more of information it cannot make an informed assessment of these guards' ability to prevent the defendant from fleeing.

And I might add, that the Court really isn't in a position to be assessing law enforcement techniques and the qualifications of law enforcement officers. We have law enforcement officers who work for the government and, with all due respect to retired law enforcement officers, I don't think that it's the job of the Court to be micromanaging the activities of law enforcement or replacements for law enforcement. And this is particularly true here where the defendant may have both access to extraordinary financial resources and a number of loyal adherents, which could easily

facilitate his escape at some point.

For the aforementioned reasons, the Court concludes that the proposed conditions of release are insufficient to reasonably assure the defendant's appearance at trial. The Court therefore denies the defendant's motion for bail. This denial is, however, without prejudice to the refiling of a revised bail package that provides greater transparency about the defendant's access to financial resources and the proposed terms of his home detention and armed guards. Because the Court determines that the government has shown that these conditions are insufficient to reasonably assure the defendant's appearance, the Court need not consider at this time whether the government also has shown that these conditions are insufficient to protect the community and others.

So the application is denied without prejudice. And you understand what the concerns of the Court are.

MR. AGNIFILO: Very much so, thank you.

THE COURT: All right. Is there anything else from the government today?

MS. PENZA: No, Your Honor, thank you.

THE COURT: All right.

Now with respect to the government, if for any reason we require a meeting before, I think it's the 25th --

MS. PENZA: Yes, Your Honor.

THE COURT: -- of July, please give adequate notice to both of the defendants, because I'm requiring that the defendants appear including Ms. Mack at every status conference.

MS. PENZA: Understood, Your Honor.

THE COURT: All right.

MS. PENZA: Thank you.

THE COURT: That's your obligation to keep them informed so that they can give Ms. Mack adequate time to get here, because that's the requirement of this Court in this very significant case.

MS. PENZA: Absolutely, Your Honor.

THE COURT: Got it?

MS. PENZA: Yes.

THE COURT: Is there anything else from you, sir?

MR. BUCKLEY: No, thank you, Your Honor.

THE COURT: Anything else from you, sir?

MR. AGNIFILO: No, thank you, Your Honor.

THE COURT: All right. We're adjourned.

(Matter concluded.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/ Georgette K. Betts June 13, 2018

GEORGETTE K. BETTS DATE

EXHIBIT 4

viva aerobus

RÉGIMEN FISCAL: RÉGIMEN GENERAL DE LEY DE PERSONAS MORALES
RAZÓN SOCIAL: AEROENLACES NACIONALES S.A. DE C.V.
RFC: ANA050518RL1
DOMICILIO FISCAL: CARR. MIGUEL ALEMÁN KM. 24 COL. APODACA CENTRO APODACA, NUEVO LEÓN, MÉXICO, CP. 66600

¡YA ESTAS LISTO PARA VOLAR!

Revisa a detalle el itinerario de vuelo

Clave de Reservación: [redacted]
Modalidad: **VIVASMART ***

⚠ESTO NO ES UN PASE DE ABORDAR

DETALLES DE PRECIOS

Vuelo de Ida	1 Adultos	MXN $	1,273.04	MXN	$	1,603.30
	1 Infantes	MXN $	0.00			
	Total Tarifa	MXN $	1,273.04			
	Impuestos	MXN $	330.26			

Beneficios Adicionales	MXN	$	732.76
IVA	MXN	$	320.93
Total:	**MXN**	**$**	**2,656.99**

DETALLES DE VUELO

Salida

Puerto Vallarta(T) - Monterrey(TC) 16:25 - 18:00

DOM. 25 MAR. 2018

Vuelo [redacted]

DETALLES DE PASAJEROS

Pasajeros

1 Adulto(s)

Nombre: [redacted]

1 Infante(s) (Menor de 2 años)

Nombre: [redacted]

Contacto

Nombre: VB Ventas MTY Apto POS
Teléfono: 0
Teléfono Móvil (Celular):
Dirección de correo electrónico: [redacted]

DETALLES DEL PAGO

Tarjeta de Crédito

Número de Pago:22006816	Fecha de Pago:25/03/2018	Monto: MXN $ 1,806.99	Estatus: Aprobado
Número de Pago:22006843	Fecha de Pago:25/03/2018	Monto: MXN $ 850.00	Estatus: Aprobado

Monto pendiente: MXN $ 0.00

BENEFICIOS ADICIONALES

VIVASMART *

Incluye equipaje de mano de 15 Kgs + equipaje documentado de 25 Kgs + Pase VIP + Viva Express + Cambios de fecha ilimitados + Pase Flex

Incluído

Selección de Asientos

Incluído

Puerto Vallarta - Monterrey

[redacted] ASIENTO 2F

Pase VIP

Incluído

!Bien jugado! Serás de los primeros en abordar al avión.

Viva Express

Incluído

!Bien hecho! Serás de los primeros en documentar el vuelo, utilzando la Fila de abordaje Viva Express.

Equipaje Documentado

MXN $ 732.76

Equipaje de 25Kg (M)
1 Maleta Extra 15Kg (CH)

¡Tú si sabes ahorrar! - Te acabas de ahorrar hasta un 80% en tu equipaje adicional documentado.

Recuerda que cualquier maleta documentada no deberá medir más de 158 centímetros lineales.
*158 cm = Altura + ancho + el largo

Equipaje de Mano — Incluído

Equipaje de Mano de 15 Kg.

[redacted]

Podrás llevar en cabina una maleta de mano y un artículo personal, que entre los dos, no midan más de 55 x 40 x 25 centímetros.

Cargo de Conveniencia — MXN $ 0.00

Ver términos y condiciones

Pase Flex — Incluído

Total: MXN $ 732.76

COMPENSACIONES

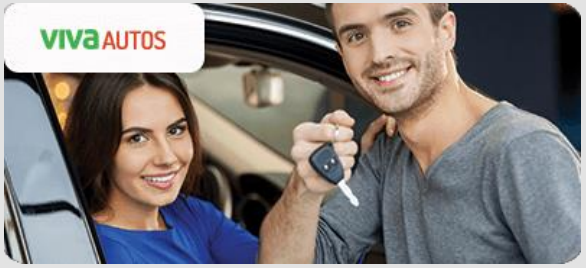
Obtén las mejores ofertas con Viva Aerobus

¿Buscas algún lugar donde hospedarte? VivaHoteles cuenta con cientos de habitaciones disponibles, desde la básica hasta la más lujosa, todas ellas a precios con descuento.

Buscar Hoteles

¿Pensando en rentar algún auto durante tu viaje? VivaAutos te permite comparar los precios con las mejores arrendadoras de autos para que siempre obtengas el mejor precio disponible.

Buscar Autos



¿Necesitas transportación desde o hacia el Aeropuerto? Ahora es más fácil que nunca con VivaTransfers. Negociamos con las compañías líderes en Transporte Terrestre para traerte múltiples opciones a precios increíbles.

Buscar Transfers

¿Buscando alguna actividad o tour durante tú viaje? VivaAtracciones cuenta con cientos de opciones en Tours, Atracciones y Actividades en tu destino, siempre a precios con increíbles descuentos.

Buscar Atracciones

¡NOTIFICACIÓN IMPORTANTE A PASAJEROS!

En Viva Aerobus operamos una estricta política de "NO EFECTIVO" en todos los mostradores de documentación y puertas de abordaje. Se les informa que cualquier cargo generado en el aeropuerto, tendrá que ser pagado con tarjeta de crédito o débito.

Aceptamos tarjetas Master Card, Visa o American Express.

El presente documento no representa un comprobante para efectos fiscales. En caso de que desee facturar su reservación, favor de acceder a facturacion.vivaaerobus.com

IMPORTANTE – FAVOR DE LEER ANTES DE TU VUELO

La factura electrónica de tu compra la puedes obtener con nuestros agentes de venta en mostradores, llamando a nuestro Centro de Atención Telefónica o en el portal de Facturación Electrónica en el enlace: http://facturacion.vivaaerobus.com/. Tienes 30 días naturales para generar la factura una vez que la reserva está confirmada como pagada. Para mayor detalle consultar el aviso de Facturación Electrónica en el siguiente enlace: https://www.vivaaerobus.com/mx/mi-vuelo/genera-tu-factura-electronica

1.- Identifica el tipo de reserva que compraste: Tu confirmación indica el tipo de reservación que adquiriste y tu franquicia de equipaje, revísala muy bien para evitar contratiempos el día de tu viaje y poder identificar si requieres algún servicio adicional y poderlo comprar con tiempo y ahorrar.

2.- Revisa tu franquicia de equipaje (VivaLight, VivaBasico y VivaOTA) Asegúrate de que tu equipaje cumpla con los requisitos de la franquicia de equipaje que elegiste, y que viajes con el peso que requieras y puedas ahorrar.

3.- Limitaciones para transportar líquidos, geles, cremas y aerosoles en el equipaje de mano: Asegúrate que líquidos, geles, aerosoles y cremas en tu equipaje de mano estén en envases de máximo 100 ml y colocados en una bolsa de plástico transparente. Si contienen más de 100 ml deberán ser transportados en el equipaje documentado.

4.- Artículos prohibidos: Asegúrate que líquidos, geles, aerosoles y cremas en tu equipaje de mano estén en envases de máximo 100 ml y colocados en una bolsa de plástico transparente. Si contienen más de 100 ml deberán ser transportados en el equipaje documentado. Da click aquí

5.- Proceso de documentación: Debes presentarte 2 horas antes de la salida del vuelo (nacionales) y 3 horas antes (internacionales) en los mostradores de documentación. El vuelo se cierra 45 minutos antes de su salida (nacionales) y 60 minutos (internacionales), por lo que es muy importante llegar con tiempo o de lo contrario perderás tu vuelo.

6.- Identificacion oficial válida para viajar: Debes presentar una identificación oficial para poder viajar, incluyendo pasajeros menores de edad.Da click aquí para mayor información

7.- Identifica los servicios adicionales que adquiriste con tu reservación: Tu confirmación indica los servicios adicionales que adquiriste. Si requieres algún otro servicio, te recomendamos lo compres antes de tu vuelo para que puedas ahorrar hasta un 75% ya que el costo en el aeropuerto es más alto.

8.- Términos y condiciones: Es importante que antes de viajar leas los términos y condiciones que aceptaste al adquirir tu vuelo con Viva Aerobus, los puedes leer en el siguiente link: https://www.vivaaerobus.com/mx/info/terminos-y-condiciones

9.- ¿Viajas con menores de edad? Si viajas con menores de edad, consulta la siguiente información sobre los requisitos necesarios para cuando viajan solos o pasajeros viajando con infantes Da click aquí para mayor información

10.- Adultos mayores y requerimientos especiales: ¿Viajas con un adulto mayor y tienes algún requerimiento especial? Viva Aerobus cuenta, en cumplimiento de la normatividad exigida por la DGAC, con procedimientos ya establecidos para brindar apoyo a pasajeros con movilidad reducida o alguna discapacidad, conoce nuestros servicios en el siguiente link https://www.vivaaerobus.com/mx/info/terminos-y-condiciones#Discapacidad

11.- Devolución del costo del Boleto: El Pasajero tiene derecho a cancelar sin cargo alguno su Reservación, siempre y cuando lo solicite dentro de las 24 horas siguientes a la compra de su Reservación y con al menos 7 (siete) días previos a la fecha de vuelo.