

## **Appendix A**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 20-10128  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**  
April 16, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHRISTOPHER AUNDRE FAULKNER, also known as Christopher A. Faulkner,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:18-CR-500-1

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Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:\*

Christopher Aundre Faulkner appeals the district court's denial of his motion to reconsider or revoke his pretrial detention, arguing that his prolonged detention violates due process. We review the ultimate legal question concerning a due process challenge de novo, *United States v. Burns*, 526 F.3d 852, 859 (5th Cir. 2008), deferring to the district court's underlying

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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factfinding unless it is clearly erroneous, *see United States v. Molina-Solorio*, 577 F.3d 300, 303 (5th Cir. 2009). *See also United States v. Stanford*, 394 F. App'x 72, 74 (5th Cir. 2010) (applying these standards to due process challenge to detention). In considering whether pretrial detention violates due process, we consider the original justification for the detention as well as “the length of the detention that has in fact occurred or may occur in the future, the non-speculative nature of future detention, the complexity of the case, and whether the strategy of one side or the other occasions the delay.” *United States v. Hare*, 873 F.2d 796, 801 (5th Cir. 1989).

Faulkner fails to show error in the district court’s rejection of his due process claim. Serious concerns about flight risk supported the original detention order. Faulkner was arrested while he was about to board a plane to London. He had in his possession gold bars, gold coins, more than \$10,000 in cash, and his birth certificate. The government had information that Faulkner’s mother was arranging for him to live in Lebanon. This strong basis for the original detention order weighs against Faulkner’s due process claim. *Id.*

Although the length of the detention (roughly 18 months) weighs in favor of a due process violation, this factor alone is not dispositive and courts have allowed much lengthier detentions. *Stanford*, 394 F. App'x at 75 (citing cases rejecting due process challenges to detentions lasting thirty or more months). The uncertain length of future detention also supports Faulkner, though the district court is working with the parties to set a trial date. But the complexity of this investment fraud case weighs against a due process violation, and we find no basis for disrupting the district court’s factual determination that the delay is not the government’s fault. *Id.* (noting these factors weight against a due process finding). Instead, much of the delay resulted from Faulkner’s

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withdrawal of his guilty plea after the district court rejected a plea agreement. That unusual situation and the resulting delay did not transform the purpose of this pretrial detention from a permissible regulatory one into an unconstitutionally punitive one.

AFFIRMED.

## **Appendix B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, )  
                                  )  
                                  Plaintiff, )  
                                  )  
vs.                           ) 3:18-CR-00500-B-1  
                                  )  
                                  )  
CHRISTOPHER AUNDRE FAULKNER, )  
                                  )  
                                  )  
                                  Defendant. )

MOTION HEARING  
BEFORE THE HONORABLE JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE  
JANUARY 17, 2020

A P P E A R A N C E S

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proceedings reported by mechanical stenography,  
transcript produced by computer.

SHAWNIE ARCHULETA, CSR/CRR  
FEDERAL COURT REPORTER - 214.753.2747

1 (In open court at 2:00 p.m.)

2 THE COURT: This is Case Number  
3 3:18-CR-500, United States v. Christopher Aundre  
4 Faulkner. We're here today on the motion to reopen  
5 the detention order. Let's hear from the  
6 government.

7 Who is here for the government?

8 MR. STOKES: Chris Stokes and Ryan  
9 Raybould.

10 THE COURT: Yes.

11 MR. ROSS: Good afternoon, Judge, Kevin  
12 Ross and Kristen Beckman for Mr. Faulkner.

13 THE COURT: Kristen what?

14 MR. ROSS: Beckman.

15 THE COURT: Beckley, okay.

16 MR. ROSS: Beckman, M-A-N, Your Honor.

17 THE COURT: Pardon?

18 MR. ROSS: Beckman, M-A-N.

19 THE COURT: Beckman. All right. I will  
20 have to remember that.

21 And I've got Mr. Raybould now, so I will  
22 have to remember Ms. Beckman.

23 Mr. Ross, why don't you come up here and  
24 give me the synopsis of why -- I see that  
25 Mr. Faulkner is here -- of why you are seeking this.

1                   MR. ROSS: Yes, Your Honor. We are  
2 seeking this motion asking the Court to reopen,  
3 because we believe that currently, as the case  
4 stands, that Mr. Faulkner's due process rights are  
5 being violated based on his pretrial detention as to  
6 no fault of his own.

7                   Procedurally, to give you some background,  
8 as I have stated in the motion, the government  
9 started this investigation criminally back in April  
10 of 2016, and there was a search warrant that was  
11 executed in which all discovery that is in this case  
12 was seized. Of course the case started off as a SEC  
13 civil complaint.

14                  THE COURT: Yeah, I know. When did the  
15 SEC start it?

16                  MR. ROSS: I believe that was back in  
17 2012, I believe, Your Honor.

18                  THE COURT: Okay. Okay.

19                  MR. ROSS: So the argument becomes this,  
20 is that in April of 2016, the government had the  
21 evidence in this case, and it's had it since 2016.  
22 Now, Mr. Faulkner was not arrested until back in  
23 June of 2018, when a federal criminal complaint was  
24 filed. The Court is aware of the procedure -- of  
25 the dates of -- what's happened on this case is

1 there, of course as the government cites, a waiver  
2 of time to file an indictment as they sought  
3 negotiations.

4 THE COURT: Right. And you-all agreed to  
5 that, right?

6 MR. ROSS: Absolutely, Your Honor. The  
7 problem becomes this: That when the Court rejected  
8 Mr. Faulkner's plea agreement --

9 THE COURT: When was that?

10 MR. ROSS: That would have been -- I  
11 believe it was April 2nd of 2019.

12 THE COURT: Okay.

13 MR. ROSS: And then allowed Mr. Faulkner  
14 two weeks to decide whether or not he wanted to  
15 withdraw his guilty plea because of the nature of  
16 the plea agreement allowing him to do so if it were  
17 rejected. He filed his motion to withdraw his  
18 guilty plea April 22nd, 2019. Shortly thereafter,  
19 about a month later, a little over a month,  
20 May 29th, the government filed a superseding  
21 indictment alleging 21 counts.

22 Your Honor, I came on this case as  
23 appointed counsel in August of 2019 after Mr. Poe,  
24 who was his former attorney, moved to withdraw.

25 In August of 2019, sought to engage the

1 government asking and requesting for discovery.

2 THE COURT: Okay. This was in August of  
3 2019.

4 MR. ROSS: Of 2019. And was -- had asked  
5 for discovery in the case. Mr. Stokes and I had a  
6 meet and confer in which he presented to me the  
7 massive amount of the electronic discovery and --  
8 that had been accumulated from the search warrant  
9 back in 2016. So up until this time in August, the  
10 discovery had not been processed and it had not been  
11 produced, which was surprise to me.

12 THE COURT: Well, wait a minute. I  
13 thought you were agreeing to hold off on all that  
14 stuff.

15 MR. ROSS: Your Honor, the agreement is  
16 not to hold off on the discovery. To waive the  
17 right to a speedy trial, sure. The right to, you  
18 know, extend the period of time to see if something  
19 could be negotiated, that -- that's not in dispute.

20 THE COURT: I agree. Were you asking for  
21 this discovery any time up before August 2019?

22 MR. ROSS: Your Honor, I was appointed in  
23 August of 2019.

24 THE COURT: Oh, oh, okay. All right.

25 MR. ROSS: So as soon as I was appointed,

1 the first thing that I did was contact Mr. Stokes  
2 and request or see what the status is of discovery.

3 THE COURT: But I had rejected the plea in  
4 April. Now, what about Mr. Poe? Had Mr. Poe been  
5 asking for the discovery? I'm going to ask  
6 Mr. Stokes this, too. But had he been asking for  
7 the discovery?

8 MR. ROSS: I would only assume that he  
9 had.

10 THE COURT: Okay. I will ask Mr. Stokes  
11 and see what he says.

12 MR. ROSS: And because just from a  
13 standard practice and knowing Mr. Poe and knowing  
14 his abilities as a defense attorney, that's the  
15 first thing a defense attorney would ask for is  
16 discovery to go and look through it.

17 Long and short of it, my argument is that  
18 the government has a responsibility when they arrest  
19 an individual for a federal offense and present a  
20 case to have the evidence produced to the defendant  
21 so he could prepare a defense. And there is nothing  
22 that I could point to in any statute or practice  
23 that would alleviate the requirement of the  
24 government to process and produce that evidence for  
25 the defense.

1                   THE COURT: Okay. Now, I understand that.  
2 But what about, you know, after that, did Mr. Stokes  
3 talk to you? Did you agree to a discovery plan?

4                   MR. ROSS: So when we met and he had  
5 provided to me spreadsheets of here's the amount of  
6 discovery, here's the -- the -- how it's broken down  
7 as they put it in buckets.

8                   THE COURT: Which is absolutely  
9 voluminous, right?

10                  MR. ROSS: To give you -- yes, it's  
11 between 83 and 86 terabytes of information.

12                  THE COURT: I thought so. Okay.

13                  MR. ROSS: The problem is that when I  
14 have -- the first production of this discovery, for  
15 it to be processed and produced, occurred in October  
16 of 2019. Now, mind you, we met in August of 2019 in  
17 which it was laid out how this discovery was going  
18 to be processed and produced. It has to -- and he  
19 can explain the process better than I can, but it  
20 went up to the Litigation Unit.

21                  THE COURT: To South Carolina.

22                  MR. ROSS: And they have to wait until it  
23 gets back. And so finally the first round of  
24 production that was produced in this case occurred  
25 in October of 2019. Again, the Federal Public

1 Defenders, the discovery coordinator on this case,  
2 they are hosting this information on their servers  
3 through Summation, and we have gone to get training  
4 on that. But the first round of production, Your  
5 Honor, wasn't actually accessible until the middle  
6 of November.

7 THE COURT: Okay.

8 MR. ROSS: Now, we recently, on January  
9 the 9th, received a letter from the government that  
10 stated production two is now in place. It has been  
11 hand-delivered through hard drive over to the  
12 Federal Public Defender's Office for processing.

13 THE COURT: So you have two productions of  
14 discovery now?

15 MR. ROSS: I have two productions, Your  
16 Honor. To put it in perspective, in my motion I  
17 stated it's a very small quantity. And if you add  
18 this up, we have under 400 gigabytes of 83,000-plus  
19 gigabytes.

20 THE COURT: Okay. When did you agree -- I  
21 mean in your plan, now, you agreed with Mr. Stokes  
22 this was going to work out. Because I know there  
23 was a joint motion for a continuance and status  
24 report and all this stuff in what, July or  
25 something?

1                   MR. ROSS: That occurred in August. I'm  
2 sorry, the status conference.

3                   THE COURT: Yeah.

4                   MR. ROSS: That was back, I believe, in  
5 November.

6                   THE COURT: But I thought you agreed to a  
7 plan that you told me about -- I don't know, I'm  
8 trying to remember when it was. But you told me  
9 about the plan, and it wasn't going to be a trial  
10 date, it was going to be a production date or  
11 something.

12                  MR. ROSS: Sure. And here's the issue  
13 with that, Your Honor, is we had no choice but to  
14 agree to a plan of discovery. There's nothing in  
15 this case that Mr. Faulkner has done that has  
16 delayed the production of discovery.

17                  THE COURT: Do you think Mr. Stokes has  
18 delayed the production of discovery?

19                  MR. ROSS: Your Honor, I do believe that.  
20 And this is the basis for that, is that the  
21 government had this discovery as early as April of  
22 2016. They issued an arrest for Mr. Faulkner in  
23 2018. And throughout this whole period of time, the  
24 discovery in this case had not been processed.

25                  THE COURT: Okay.

1                   MR. ROSS: They have had ample time to  
2 process the discovery. And so what we are faced  
3 with is that Mr. Faulkner has been detained in  
4 pretrial detention for over 18 months with no  
5 discovery being produced.

6                   THE COURT: Okay. But you did have an  
7 agreement -- okay. I know you didn't, but Mr. Poe  
8 had an agreement where he was going to plead guilty,  
9 right, for several months. Do you know how long  
10 that was?

11                  MR. ROSS: I don't know the --

12                  THE COURT: We'll find out.

13                  MR. ROSS: I think it's set forth in the  
14 government's motion as far as the timetables in that  
15 regard.

16                  Your Honor, my argument to that is, that  
17 still, even if there was an agreement to plea, that  
18 still does not alleviate the government's  
19 responsibility to have the evidence in the case  
20 produced to the defense. For instance, through that  
21 process -- I mean, it's kind of legally to think  
22 about this in terms of pleading and going through a  
23 PSR but yet not having any discovery, the evidence  
24 in the case, turned over to you.

25                  THE COURT: Yeah, but you will.

1                   MR. ROSS: Well, I will.

2                   THE COURT: I know.

3                   MR. ROSS: But the problem is, it's not  
4 coming until 18 months after, and he's been in  
5 pretrial detention as to no fault of his own. So  
6 what we are faced with --

7                   THE COURT: Yeah, okay.

8                   MR. ROSS: What we are faced with is that  
9 even if the government were to produce in a  
10 magnificent speedy capacity, there is still going to  
11 be an extremely lengthy period of time to process  
12 from the defense side this information.

13                  I can give you an example. In the first  
14 round of discovery that we have, electronic  
15 documents are great. They are easily searchable.  
16 But anything that was scanned, that is handwritten  
17 or a diagram or a map of anything, notes that are  
18 taken, that is not. We can't just run a search and  
19 that appears. And so there is a lengthy process  
20 that we are undertaking in going -- just going  
21 through the discovery.

22                  THE COURT: Did you say it was 85  
23 terabytes or something like that?

24                  MR. ROSS: The figures have become between  
25 84 and 86 terabytes, which is 83,000 gigabytes.

1                   Now, and -- and just again, Your Honor, if  
2 you look at files, that's just a sampling. If we  
3 look at files. Some files, one file, may consist of  
4 890 pages of documents in there. In one of the  
5 productions that just -- that the government just  
6 recently gave on January the 9th, there is 1,316,694  
7 files to go through. And the government has had  
8 this information since the execution of the search  
9 warrant in 2016.

10                  THE COURT: But they always have to go  
11 through the processing through the Federal Public  
12 Defender and up to South Carolina, would it not?

13                  MR. ROSS: Well, it does, but if it would  
14 have started --

15                  THE COURT: I know. I know.

16                  MR. ROSS: I'm sorry. So yes, Your Honor,  
17 that's the issue. As soon as they send it off, it  
18 gets put in a cue, and they process it. It gets  
19 sent back to the government, and the government  
20 walks it over to the PD's Office where their IT  
21 department uploads that information so we can have  
22 access to it.

23                  THE COURT: Um-hum.

24                  MR. ROSS: In the three months that this  
25 has started since October up until now, we've only

1 gotten less than 400 gigabytes in three months.

2 THE COURT: We're going to hear about that  
3 from Mr. Stokes.

4 Okay. So your main argument for the due  
5 process is just that you have not gotten the  
6 discovery timely and you haven't gotten it in any  
7 sense quick enough.

8 MR. ROSS: That's correct. And I think if  
9 you look at all the four factors in here, I think we  
10 meet those; that as far as when you look at the  
11 length of delay is a factor, but it's not the  
12 dispositive factor. I think we satisfy that factor.  
13 There has been a considerable length of time. And  
14 if you look forward into the future, there will be a  
15 very significant amount of time from the standpoint  
16 of processing and getting to trial in this case.

17 So the length of time -- number two, the  
18 reason for delay. I don't believe, Your Honor, that  
19 anything that has occurred in this case as far as  
20 delay goes can be attributed to Mr. Faulkner as  
21 it -- as it is to the discovery.

22 THE COURT: But he hasn't been pressing us  
23 for a trial, right?

24 MR. ROSS: Your Honor --

25 THE COURT: You know what I'm saying? You

1 know, it's only so fair, because you have been -- I  
2 know you're stuck with this late and voluminous  
3 discovery, but I don't think you've been pressing us  
4 for a trial.

5 MR. ROSS: So there are two things with  
6 that. So early on, there was the waiver of the  
7 Speedy Trial Act by Mr. Faulkner and Mr. Poe. The  
8 case right before I came on was declared complex,  
9 which, again, waives the Speedy Trial Act in that  
10 regard for this time. But we're not talking about  
11 the time to go to trial, we're talking about the  
12 basic fundamental right to have the evidence that  
13 the government is seeking to use to charge him and  
14 to seek to convict him of this offense. This is not  
15 a pretrial issue. And as far as pressing for a  
16 trial, Your Honor, I would love to tell you, let's  
17 have a trial tomorrow, but there's just no way we  
18 could do that.

19 THE COURT: When will you be ready for  
20 trial? "You" be ready for trial.

21 MR. ROSS: That is an incredibly  
22 speculative question, because I have no idea the  
23 amount of information that's going to continue to  
24 come, nor do I have a ballpark on this type of case  
25 that I can say that we can process and go through

1 this information in a timely and reasonable manner.

2 THE COURT: Okay. Now, I know that -- I  
3 don't think you've brought any evidence. I know  
4 you've got this due process argument, but do you  
5 have anything else like flight risk or anything like  
6 that? Because that was pretty serious last time.

7 MR. ROSS: Right. And as we have  
8 mentioned in the motion in that regard, those issues  
9 are really fairly, we would argue, moot right now.

10 For instance, as far as funds or assets to  
11 flee the country, that's not necessarily an issue  
12 anymore. All of Mr. Faulkner's assets have been  
13 frozen through the SEC, and the SEC receiver is  
14 going through meticulously and is accounting for  
15 where any asset might be.

16 THE COURT: Doesn't he have assets in  
17 Lebanon?

18 MR. ROSS: No, Your Honor. The assets,  
19 the checks, the around \$900,000 in money orders that  
20 were argued about going to Lebanon, that's not out  
21 there anymore, because not only was there a hold,  
22 but the receiver was able to negotiate with the  
23 bank. So there has been stop payments, and so that  
24 money, it's my understanding, is frozen.

25 THE COURT: Does the SEC have a case

1 filed? A case filed?

2 MR. ROSS: Yes, ma'am.

3 THE COURT: Where is it pending?

4 MR. ROSS: It's here in the Northern  
5 District.

6 THE COURT: I know, but I just wonder --

7 MR. ROSS: I would imagine it's in the  
8 SEC's office.

9 THE COURT: No, no, pending before what  
10 judge?

11 MR. ROSS: Fitzwater. Judge Fitzwater.

12 THE COURT: Okay. Okay. Thank you.

13 MR. ROSS: Sorry, Your Honor. So that's a  
14 nonissue, that's moot as far as assets go. That  
15 \$900,000 that was a concern that the government  
16 portrayed as being in Lebanon, that's no longer an  
17 issue. The fact that they argued that Mrs. Faulkner  
18 was in Lebanon or living in Lebanon, she is not.  
19 She is back in the United States. She's living  
20 here, established a residence here. We have family  
21 members here, Your Honor, as well to show --

22 THE COURT: Yeah, thank you for coming.

23 MR. ROSS: -- to show his family ties to  
24 the area. The fact that the government argues that  
25 he was attempting to flee because he had amassed

1 assets as far as what they found at the airport,  
2 that's not no longer present. Mr. Faulkner has  
3 turned over his passport to myself, so he doesn't  
4 have a passport -- I have a passport I could turn in  
5 to the District Clerk.

6 Those issues that the government pointed  
7 to in the beginning, based on over time, now, 18  
8 months later, they are no longer the same issues.  
9 The only issues that I could argue that I would  
10 think that the government would argue is to say,  
11 hey, we're not real sure judge, because Ms. Faulkner  
12 is here and we think she might help facilitate him  
13 leaving, so, therefore, Your Honor, he's going to be  
14 a flight risk and we have grave concerns.

15 However --

16 THE COURT: Where's he living?

17 MR. ROSS: I'm sorry?

18 THE COURT: I know he's in jail now, but  
19 when he's not in jail, where is he living?

20 MR. ROSS: He would be living --

21 THE COURT: Where is he living though?

22 MR. ROSS: Where is he living?

23 THE COURT: You know --

24 MR. ROSS: He was in California.

25 THE COURT: Yeah, but he was living off

1 the -- I guess Judge Toliver said he was living off  
2 the grid.

3 MR. ROSS: Well, let me address that. If  
4 he's living off the grid, and that's when you're  
5 seeking to try to find conditions therein, you're  
6 like, so where is he living? Well, what --

7 THE COURT: No residential ownership or  
8 residential lease in your own name; no personal bank  
9 accounts or no property of any significance that has  
10 or has not already been in the process of being  
11 liquidated, so. . .

12 MR. ROSS: Right. I mean, he's not going  
13 to have that now, either, being incarcerated for 18  
14 months.

15 THE COURT: Back to the living part.

16 MR. ROSS: Well, the living part, it's not  
17 so much where has he been living, it would be where  
18 would he be living if the Court released him on  
19 conditions. And that would be with Ms. Faulkner who  
20 is here in the area.

21 And I would point this out to the Court,  
22 Your Honor. You know, if there -- the -- the bail  
23 statute talks about reasonable assurance of  
24 appearance, reasonable assurance. If you put the  
25 most stringent conditions on Mr. Faulkner, GPS

1 electronic monitoring, house arrest, he's got to  
2 stay home. He has to seek permission to go here and  
3 there. Those are the most stringent conditions that  
4 a court can place on an individual short of the  
5 detention.

6 THE COURT: But his mother and he do have  
7 ties to Lebanon, right?

8 MR. ROSS: I don't believe that that's the  
9 case, Your Honor, not any longer.

10 THE COURT: Well, she was living in  
11 Lebanon, was she not?

12 MR. ROSS: Your Honor, if the Court wants  
13 me to put on evidence, she is here. I could --

14 THE COURT: Oh, no, no, it's okay. I know  
15 she's here, but, you know. . .

16 MR. ROSS: I don't believe that -- it's my  
17 understanding that she did not establish any type of  
18 residence in Lebanon.

19 THE COURT: But she has ties there, right?

20 MR. ROSS: Your Honor, I would be -- I  
21 don't -- I ---

22 THE COURT: Okay. All right. If you  
23 don't know, then that's fine.

24 MR. ROSS: I do not know, Your Honor. I  
25 don't believe that that's the case, though. There

1 hasn't been any indication that there's been any  
2 activity in seeking to travel internationally and to  
3 Lebanon or any contacts with Lebanon in this time  
4 period.

5 THE COURT: Okay. But he was getting on a  
6 plane for Lebanon, right?

7 MR. ROSS: No, Your Honor. He had gone to  
8 London and had come back to London. His journey  
9 from California in the airport was not to Lebanon.  
10 It was from a round trip ticket that he had to go to  
11 London for business purposes.

12 THE COURT: Okay.

13 MR. ROSS: And there was testimony as to  
14 that in the initial hearing.

15 THE COURT: I know, but FBI agent, Special  
16 Agent Brandon Scott testified at the hearing that a  
17 confidential source had provided information  
18 including copies of a WhatsApp transmission with  
19 Bennie in Lebanon evidencing Bennie was assisting  
20 Faulkner and his mother in locating to Lebanon.

21 MR. ROSS: Well, there's -- A, there's not  
22 any indication that there was a plane ticket. B,  
23 there's no indication -- and that comes from, you  
24 know, second, thirdhand hearsay.

25 THE COURT: Well, I know that -- okay.

1                   MR. ROSS: I know that that's admissible,  
2 you know, at the pretrial -- at a detention hearing.  
3 But Your Honor, it says -- that is all coming from  
4 an individual that says -- you take that further,  
5 Bennie says that the \$900,000 I think that was  
6 supposed to go to Lebanon to help facilitate his  
7 leaving Lebanon, all coming from them.

8                   THE COURT: Uh-huh. Uh-huh.

9                   MR. ROSS: But those issues are no longer  
10 in play. The money is not there. It's frozen.  
11 It's unattainable.

12                  THE COURT: Okay. But he was sending 16  
13 cashiers checks totaling 973,000 because he had --  
14 from the sale of his residence in -- and they were  
15 transmitted to Bennie in Lebanon, correct?

16                  MR. ROSS: Your Honor, that was the  
17 testimony that they said occurred. However, those  
18 were never, never cashed. And they're on hold, and  
19 that money is no longer there. Now, I think that  
20 when you look at flight risk, that -- that was the  
21 testimony then. But when you look at what we are  
22 here today as far as the due process for pretrial  
23 detention --

24                  THE COURT: Yeah, yeah, I'm going to  
25 hear -- I'm going to hear about that.

1                   MR. ROSS: I would argue to the Court that  
2 if you are going to hold that issue, that argument  
3 at that time and you look now, though, and you see  
4 how circumstances and facts have changed,  
5 Ms. Faulkner is no longer in Lebanon. The funds to  
6 try to pull that off, as the government argued at  
7 the detention hearing, are no longer available.

8                   Mr. Faulkner doesn't have the assets that  
9 the government may have thought that he had had at  
10 the time. And when you couple that with the fact  
11 that you have an SEC receiver who is diligently, you  
12 know, tracing and looking at all these assets, he's  
13 not in a position to flee.

14                  THE COURT: Okay. I'd like to hear from  
15 Mr. Stokes, if you are finished. Are you finished,  
16 Mr. Ross?

17                  MR. ROSS: Your Honor, the last thing I  
18 would say is, I would direct the Court's attention  
19 to the case of the 2nd Circuit that I cited,  
20 Claudio, which I think is right on point.

21                  THE COURT: What page is it in your brief?

22                  MR. ROSS: In my brief --

23                  THE COURT: Oh, I have it. It's 806  
24 F.3d -- F.2d 334. It's United States v. Gonzales  
25 Claudio, yeah.

1 MR. ROSS: That is correct, Your Honor.

2 THE COURT: Page 6 and 7.

3 MR. ROSS: If the Court looks at this case  
4 and goes through the factors, I think the Court will  
5 find that this case is precisely on point almost on  
6 all four legs.

7 THE COURT: Was that a white collar case?

8 MR. ROSS: In Claudio, it was not a white  
9 collar case, Your Honor, it was a drug case.

10 THE COURT: That right there makes a huge  
11 difference.

12 MR. ROSS: The reason that it doesn't,  
13 Your Honor, is because the reasons that the Court  
14 ruled that it was a problem was because the  
15 government in Gonzales Claudio had wiretaps, and  
16 they were ordered to translate those wiretaps from  
17 Spanish into English. And the government had failed  
18 to do that, and . . .

19 THE COURT: Yeah, but that's a major  
20 downfall of the government. I mean, I can see in  
21 that case. In this case, Mr. Stokes has got to  
22 transport this stuff up to -- for the Public  
23 Defender's Office and up to South Carolina and back.

24 MR. ROSS: Well, the problem, though, Your  
25 Honor, is we have to look back in time. They are

1 just now doing this three years later.

2 THE COURT: We are saying the same thing.

3 Let me hear from Mr. Stokes.

4 MR. ROSS: Thank you.

5 THE COURT: Mr. Stokes, please. And I  
6 want to hear about the delays and whatnot in  
7 discovery from Mr. Poe and all that. Go ahead.

8 MR. STOKES: Your Honor, the history of  
9 the discovery, defense counsel is correct, on  
10 April 2016 there was a search warrant which  
11 collected a lot of digital evidence.

12 THE COURT: April 2016.

13 MR. STOKES: Okay. We had the digital  
14 evidence at that point in time. The search warrants  
15 are typically early in the investigation. After  
16 that time, agents were reviewing that information,  
17 investigating and accumulating evidence to determine  
18 whether we had a provable crime. We had a pretty  
19 good case based on what we learned in the SEC.

20 THE COURT: When did you indict it?

21 MR. STOKES: It was indicted in June of  
22 2018. Actually, it was July. We filed a complaint,  
23 because we heard he was getting on board an airplane  
24 fleeing the United States. We filed a criminal  
25 complaint. So the timing of the indictment was not

1 up to us. It was more of a forced deal by this  
2 defendant, so we indicted him. Let me back up. We  
3 arrested him on a plane in June immediately after  
4 the detention litigation, which involved two days,  
5 and he took it up on appeal. He nearly began plea  
6 negotiations in which at least on two occasions he  
7 agreed to delay the indictment, waive speedy trial  
8 because of plea negotiations --

11 MR. STOKES: We provided him information  
12 that he requested. It was certainly enough for this  
13 defendant to enter a plea of guilty, a plea  
14 agreement and an actual plea.

15 THE COURT: Did you give him everything  
16 you had or what?

17 MR. STOKES: Had what was available. We  
18 gave them the crucial things --

19 THE COURT: That you had.

20 MR. STOKES: -- an expert report, a  
21 60-page expert report that summarized the financial  
22 evidence.

1                   MR. STOKES: No. It wasn't processed at  
2 that point. It had been reviewed by the agents, but  
3 it wasn't processed in a form that could be readily  
4 exploited by the defense.

5                   THE COURT: Okay. So what did you give  
6 Mr. Poe?

7                   MR. STOKES: An expert report, summary of  
8 the evidence, a written summary, the copy of the  
9 search warrant affidavit which summarizes the case,  
10 it's about a 50-60 page affidavit. I think that's  
11 probably --

12                  THE COURT: Okay. Was he asking you, was  
13 he complaining he didn't have more?

14                  MR. STOKES: There were no specific  
15 requests or anything specific or complaints.

16                  THE COURT: Okay. He didn't file  
17 anything.

18                  MR. STOKES: No.

19                  THE COURT: He didn't ask for anything.

20                  MR. STOKES: No.

21                  THE COURT: Okay. Okay. Go ahead.

22                  MR. STOKES: So --

23                  THE COURT: How long was this plea  
24 discussions in place until I rejected it in April of  
25 2018?

1                   MR. STOKES: Nine months, and I can tell  
2 you the progress. In July he was indicted. For  
3 almost three months there were plea negotiations and  
4 waiver of speedy trial and agreements to put off the  
5 indictment. Plea agreement was reached. It was  
6 filed in October, October the 4th. And between  
7 October and March 21st, the sentencing hearing, we  
8 had the plea of guilty, the adjudge of guilty, the  
9 preparation of the presentence report, a continuance  
10 by this Court.

11                  THE COURT: Were you getting more stuff by  
12 then? Did you have a lot more stuff by the time of  
13 the sentencing?

14                  MR. STOKES: No, it was all the same, Your  
15 Honor. But we didn't process it, because the case,  
16 as far as we know, was --

17                  THE COURT: Okay. You didn't process  
18 anything by sending it to the PD's office and up  
19 to -- okay.

20                  MR. STOKES: That started when he withdrew  
21 his plea of guilty.

22                  THE COURT: So you weren't sitting on  
23 anything.

24                  MR. STOKES: We had it, but we didn't  
25 actively process it.

1                   THE COURT: Okay. Okay. Go ahead.

2                   MR. STOKES: So for nine months, that nine  
3 months, half of his detention is either at his  
4 request or a strategic advantage, and certainly no  
5 action or strategy on the part of the government.  
6 And the due process analysis is in United States  
7 versus Hare, a 5th Circuit case, it's not the  
8 2nd Circuit case he's talking about.

9                   It has to be the action of the government  
10 that has caused unnecessary prolonged delay. But  
11 when that delay is the complexity of the case, it  
12 remains detention regulatory. It's not punitive, it  
13 doesn't trigger due process. And as soon as we  
14 indicted this case, immediately Mr. Poe, without any  
15 input from me, approached the public defender and  
16 told me he wanted to file a motion to get the  
17 discovery coordinator appointed to process the  
18 discovery.

19                   THE COURT: And you did that.

20                   MR. STOKES: I agreed. I said that just  
21 expedites what we have to provide them. It makes it  
22 more efficient for them to prepare for trial. It's  
23 not in our advantage to put this trial off by  
24 delaying discovery.

25                   THE COURT: How much do you have left to

1 give him?

2 MR. STOKES: Well, I don't have that  
3 figure, Your Honor. But let me assure the Court  
4 that we -- 91 digital devices, 87 terabytes, we had  
5 right off the bat, after the indictment in August,  
6 we had a meet and confer. We designated 14 devices  
7 that we looked at. The PST accounts that we had  
8 reviewed, the email accounts, and ones we were going  
9 to review --

10 THE COURT: And does he have those?

11 MR. STOKES: That's the last tranche.

12 THE COURT: Okay. Okay.

13 MR. STOKES: That's what's taking a fair  
14 amount of time. But we started off giving him the  
15 first batch in October. He calls it minimal. But  
16 it's important stuff. That's what the three  
17 agencies collected, witness interviews, documents --

18 THE COURT: Couldn't you make it go any  
19 faster than this?

20 MR. STOKES: Believe me, we tried.

21 THE COURT: All right.

22 MR. STOKES: I think that the -- there's  
23 all sorts of technical issues. Just last week, the  
24 LTSC notified us there was a technical issue with  
25 one of the PST accounts. We had to redo -- I --

1 I -- I -- we do have a status conference on  
2 March 26th. I think by that time we will be much  
3 farther down the road. I don't want to guarantee  
4 anything. I've learned a hard lesson, that when  
5 dealing with the LTSC and technical stuff, things  
6 happen. Even the discovery coordinator took a month  
7 because of their -- to get it posted.

8 THE COURT: So how much more do you have  
9 left to give him? A whole bunch more? More than  
10 half?

11 MR. STOKES: It's going to be -- it's  
12 going to be -- I don't know the approximate size.

13 THE COURT: But would you say it's  
14 three-quarters of the discovery or half of the  
15 discovery?

16 MR. STOKES: I would say at least half.

17 THE COURT: Okay. Okay.

18 MR. STOKES: I'm really speculating,  
19 because I don't know the sizes of the PST accounts.

20 THE COURT: When do you think you can get  
21 this to him, because I know you have dates.

22 MR. STOKES: I -- I hope to get it to him  
23 by March. And I am told --

24 THE COURT: All of it.

25 MR. STOKES: Substantially all -- yeah,

1 what we've got being processed. Now, there may be  
2 some dribs and drabs of some other things we will be  
3 providing. But the digital discovery that we looked  
4 at, we will have to -- I'm -- you know, I'm told  
5 weeks before we get it. So if that holds true, it  
6 will be well in advance of March. But I hate to go  
7 on the record and say for sure, Your Honor.

8 THE COURT: Okay. Now, do you have  
9 anything to say about the flight risk stuff that  
10 Judge Toliver did? I don't want to hear a big  
11 argument, but do you have anything to say about what  
12 he says is not a point anymore?

13 MR. STOKES: Yes, it's a serious flight  
14 risk, Your Honor. First of all, we spent two days  
15 before Judge Toliver. Judge Fitzwater reviewed that  
16 de novo. And you can tell he looked at it, because  
17 he detailed a lot of information that even Judge  
18 Toliver doesn't even have, and that was affirmed by  
19 the 5th Circuit.

20 This argument that he has no assets, now,  
21 well, because the receiver is on the trail after  
22 him, well, who knows? And more importantly, Your  
23 Honor, you don't have to have a lot of assets to be  
24 risk of nonappearance. You can flee if you have the  
25 proper motivation, and this defendant has that

1 motivation. And it's only become more serious since  
2 the detention hearing, as I indicate in my response.  
3 He has additional accounts. He's seen his  
4 presentence report, which is calculated 43 to life  
5 in imprisonment.

6 THE COURT: With a lot of potential jail  
7 time.

8 MR. STOKES: Yeah. And that is just only  
9 one factor. This Lebanon and Carole Faulkner, Judge  
10 Toliver referred to her as a conspirator mother.  
11 There was information that she had been in Lebanon  
12 for months. We had testimony provided through a  
13 confidential source that she was spending amounts of  
14 money. She was -- they were aiding her in finding  
15 an apartment. There was overtures to find out if  
16 there were warrants for Chris Faulkner. These  
17 WhatsApp transmissions had been going on for months  
18 that we arrived at.

19 It's in my view and the magistrate and  
20 Judge Fitzwater that there was reasonable evidence  
21 to believe he was fleeing to Lebanon. His flight to  
22 UK -- you go to UK before you go on to Lebanon. He  
23 was found in possession of gold, large amount of  
24 money, his birth certificate.

25 THE COURT: I know. I know.

1                   MR. STOKES: There's no need to  
2 re-litigate that issue. In fact, when you look at a  
3 due process argument, you look at those factors.  
4 And as I set forth in my response, I think they are  
5 more serious; it's not just a matter of risk of  
6 flight. He wants to argue that there's some change  
7 of material circumstances so this Court should  
8 reconsider. Well, under 3142, Section 3142, number  
9 one, you cannot do that simply with the fact that he  
10 had been in jail for a long time.

11                  THE COURT: I know. And he says things  
12 have changed about his life.

13                  MR. STOKES: Things have changed. Much of  
14 which I pointed out were known to the magistrate,  
15 his marriage, residing in California, even a hold on  
16 the cashier's checks were known at the time and made  
17 known to the magistrate. Yes, the mother has  
18 returned to Tarrant County. As I point out, that's  
19 not reassuring. She has been held in contempt by  
20 Judge Fitzwater for attempting to aid and hide  
21 assets, these assets, Faulkner's assets from the  
22 receiver. She's been, as he found in the SEC  
23 action, engaged in various schemes jointly with this  
24 defendant, and he's found that the --

25                  THE COURT: It's okay.

1 MR. STOKES: So.

2 THE COURT: It's okay. Let me hear from  
3 Mr. Ross again.

4 Mr. Ross, anything else?

5 MR. ROSS: Just briefly, Your Honor.

6 And forgive me if I'm redundant.

7 THE COURT: No, that's okay.

8 MR. ROSS: But I want to bring the Court's  
9 attention that we would not have this discovery  
10 issue problem if the government would have been  
11 processing the discovery when they brought the case.

12 THE COURT: Yeah, but Mr. Poe and he  
13 agreed on it -- well, they didn't agree, but they  
14 have these plea discussions going on. Go ahead.

15 MR. ROSS: Irrespective, Your Honor, if  
16 there were plea negotiations going on, that does  
17 not --

18 THE COURT: I know. I know what you're  
19 saying.

20 MR. ROSS: Undue to the fact that the  
21 government has the responsibility to provide that,  
22 the delay in the constitutional argument of due  
23 process rests on the fact that it is the government  
24 and solely the government that has caused the delay  
25 as where we are now because of the lack of

1 processing and producing the discovery.

2 I believe in the Northern District there's  
3 a standing order that when the case is brought, that  
4 the government is to produce discovery. And in this  
5 particular case, there was an order when the  
6 indictment came out, I believe it was in May, that  
7 stated that the government is to provide discovery  
8 to the defense. That was not done.

9 The waiver, as far as -- and even  
10 declaring this case complex does not undo the fact  
11 that the government is required to produce  
12 discovery. This is not a pretrial or a speedy trial  
13 issue. It's undisputed that there was an agreement  
14 to push it off because of the voluminous nature of  
15 the case.

16 But, Your Honor, if you look at where we  
17 are now, January of 2020, that we've gotten less  
18 than 400 gigabytes of what the government has said,  
19 there's 84 terabytes of information out there, for  
20 the government to say that they have given us half  
21 of the discovery in this case is -- I don't know how  
22 that they can say that. I don't know how you all of  
23 a sudden go from 400 gigabytes, and that's half of  
24 the 83,000 gigabytes that are out there.

25 Now, the government also stated that we

1 provided an expert summary report --

2 THE COURT: Yeah.

3 MR. ROSS: -- a search warrant  
4 affidavit --

5 THE COURT: Uh-huh.

6 MR. ROSS: -- and -- which, in a summary  
7 that they wrote to Mr. Poe. The expert's summary  
8 was from the -- an SEC forensic accounting firm.  
9 There is nothing in that expert report that -- there  
10 is nothing attached to the expert report that  
11 provides the substance to review it to see if it is  
12 accurate.

13 THE COURT: Okay.

14 MR. ROSS: And same thing with the search  
15 warrant, Your Honor.

16 THE COURT: I don't see anything in here  
17 that orders discovery, but maybe I'm missing it. I  
18 know that they have obligations to provide  
19 discovery, but I don't see any order.

20 MR. ROSS: Your Honor -- well, I believe  
21 it -- maybe -- I'll go back and check. But I  
22 believe there's a standing order because the courts  
23 don't want defense --

24 THE COURT: Maybe there's a standing  
25 order --

1 MR. ROSS: -- attorneys --

2 THE COURT: -- yes.

3 MR. ROSS: -- to file motions that are  
4 already set forth. And one of those is the time  
5 period --

6 THE COURT: Okay. Standing order by  
7 somebody.

8 MR. ROSS: Well, I think it was adopted  
9 by --

10 THE COURT: Okay.

11 MR. ROSS: -- all the judges --

12 THE COURT: Okay.

13 MR. ROSS: -- in the --

14 THE COURT: Okay.

15 MR. ROSS: -- Northern District, Your  
16 Honor.

17 But even with that, I believe that there  
18 is a -- when the Court set the scheduling order  
19 after the withdrawal of the plea, there is that  
20 provision in there that discovery is to be produced  
21 to the defense. And it just has not been complied  
22 with. And what we are faced with is a serious  
23 prolonged, excessive prolonged pretrial detention of  
24 Mr. Faulkner. And we would argue that violates his  
25 due process rights, Your Honor.

1                   THE COURT: Thank you, very much.

2                   Anything else, Mr. Stokes?

3                   MR. STOKES: No, Your Honor.

4                   THE COURT: All right. You know, I -- I  
5 think you are right, Mr. Ross, to come forward on  
6 this, because I worried about him being in jail for  
7 18 months and who knows how much longer it will be.  
8 So I think it's good to revisit all this and see how  
9 much has changed, but I don't see it.

10                  You know, on the discovery problem, you've  
11 got 84 terabytes of information. You disagree with  
12 me, and I suppose -- Mr. Poe wasn't asking for  
13 discovery. Mr. Poe thought, for nine months thought  
14 he had a plea agreement, and so he wasn't asking for  
15 discovery. He just got what he got. And, you know,  
16 whether that's good or bad, I don't know, whether  
17 the government should have done something, I don't  
18 know. But then once they got the plea rejected,  
19 then they went to work.

20                  And, you know, it's not like a drug case  
21 where you have wires. It is something that they  
22 have to have processed and on the cloud or whatever.  
23 I don't even understand it all. But they have to  
24 get it to the PD's office and then it has to go to  
25 South Carolina.

1                   I know it's not going as fast as you would  
2 like. And I know you think there was -- I don't  
3 know how much time -- how much time did you say  
4 there was no discovery? How much period of time?

5                   MR. ROSS: Your Honor, for the first 18  
6 months.

7                   THE COURT: Well, first --

8                   MR. ROSS: First 16 -- from the date that  
9 he was arrested, 16 months before we got the first  
10 letter that says, "Hey, we're going to start  
11 producing."

12                  THE COURT: Okay. Well, nine months -- is  
13 it nine months, Mr. Stokes?

14                  MR. STOKES: Between the detention hearing  
15 and the withdrawal of the plea, that's correct.

16                  THE COURT: Was it nine months for all of  
17 that?

18                  MR. STOKES: Yes.

19                  THE COURT: Okay. So you have nine  
20 months, take that out from the 18, and you have nine  
21 months where they have tried to get this to you. I  
22 mean, they are trying. They are doing as much as  
23 they can. I really do believe that. With 80 --  
24 I'll just say 83 terabytes of information, that is a  
25 lot. And Mr. Stokes has got an obligation, and I'm

1 telling him he's got an obligation and he knows he's  
2 got an obligation to produce that to you. I'm sorry  
3 it's taking so long. But I don't think this is a  
4 due process violation, I really don't, because of  
5 the 83 terabytes of information. For nine months, I  
6 don't know what happened. But I think that Mr. Poe  
7 wasn't pressing for discovery, and they weren't  
8 giving it to him except for what little bit they  
9 gave him, and I don't know about that. I really  
10 don't think that they had to do it. And I don't  
11 know of a standing order that requires that. And if  
12 there is a standing order, we should know about it  
13 because -- and I don't know about it. So let me  
14 just say that.

15 And then as far as the flight risk goes, I  
16 really don't think much as changed. I know that  
17 Mrs. Faulkner is living here now. But, you know, I  
18 agree with Judge Toliver and Judge Fitzwater, all  
19 those same facts occurred -- are still -- are still  
20 at issue. When he was arrested at the airport, he  
21 was in possession of a large amount of U.S. Currency  
22 and two new mobile telephones, a large quantity of  
23 gold and an official copy of his birth certificate.

24 You know, living off the grid in the  
25 United States, he was. He had no residential

1 ownership or residential lease in his own name, no  
2 personal bank accounts, no property of any  
3 significance that has not already been or in the  
4 process of being liquidated.

5 For years, the defendant did not have a  
6 bank account in his own name. So he uses his  
7 mother's address when he was applying for a passport  
8 I think it was.

9 So -- yeah. And his mother and he have  
10 been in sync with each other amassing assets  
11 overseas in Lebanon. I don't know how that's doing  
12 right now, but I know they were doing it. They both  
13 have ties to Lebanon. And I told you all the stuff  
14 about Bennie.

15 And Judge Fitzwater had a contempt finding  
16 against him imposed by Magistrate Judge Horan for  
17 manipulating digital evidence in a related civil  
18 case. And then Judge Fitzwater, himself -- let me  
19 just see what he had. He had a contempt order  
20 against her, Mr. Stokes, is that right?

21 MR. STOKES: It was -- yes, Judge  
22 Fitzwater found Carole Faulkner in contempt of  
23 Court.

24 THE COURT: In contempt. Yeah, so all the  
25 reasons Judge Fitzwater said, all the reasons that

1 Judge Toliver said I think are ample evidence of  
2 flight risk, and I don't think you've got a due  
3 process violation. I applaud you for bringing it.  
4 But this is not a wire case, this is a different  
5 kind of case. So I can't blame Mr. Stokes for not  
6 submitting that for processing when he thought he  
7 had a plea.

8 So for all those reasons, I'm going to  
9 deny your motion. Okay?

10 MR. STOKES: Your Honor, may I bring up  
11 one issue? The Court recited something --

12 THE COURT: Come up here.

13 MR. STOKES: The Court made a statement  
14 and directed the government to process all 83, 84  
15 terabytes. This might be a misunderstanding. We  
16 collected 91 digital devices from their offices,  
17 which total about that. That is too much. We only  
18 looked at 14 of the devices, and we are processing  
19 those plus the email accounts we're focused on.

20 THE COURT: You don't have anything you're  
21 not processing.

22 MR. STOKES: Well, most of that stuff --  
23 the secretary and the coroner who had nothing -- no,  
24 we've -- now, I represented to defense counsel at  
25 the meet and confer, if there's anything on these

1 devices you want, we will give you an image, just  
2 let us know. And they can host it and do their own  
3 FTK through the Public Defender. But we can't  
4 process all 83 terabytes. That will take years.

5 THE COURT: Okay. And the case has been  
6 declared complex. I mean, that doesn't mean that  
7 much. But in this case it does, because it's really  
8 complex. So I'm not going to ask you to do all 83  
9 terabytes, but you have to give him everything you  
10 have.

11 MR. STOKES: Yes.

12 THE COURT: What you think is relevant.

13 MR. STOKES: Yes, we are doing that.

14 THE COURT: Okay. I'm sorry, Mr. Ross. I  
15 will have an order out tomorrow -- no, it won't be  
16 tomorrow, it will probably be Tuesday.

17 MR. ROSS: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 (Court in recess at 2:44 p.m.)

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1 C E R T I F I C A T E

2 I, Shawnie Archuleta, CCR/CRR, certify  
3 that the foregoing is a transcript from the record  
4 of the proceedings in the foregoing entitled matter.

5 I further certify that the transcript fees  
6 format comply with those prescribed by the Court and  
7 the Judicial Conference of the United States.

8 This day of 2020.

9

10

11

s/Shawnie Archuleta  
Shawnie Archuleta CCR No. 7533  
Official Court Reporter  
The Northern District of Texas  
Dallas Division

12

13

14 My CSR license expires: December 31, 2020

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18 Telephone Number: 214.753.2747

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**SHAWNIE ARCHULETA, CSR/CRR  
FEDERAL COURT REPORTER - 214.753.2747**

## **Appendix C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, §  
§  
Plaintiff, §  
§  
v. § CRIMINAL NO. 3:18-CR-0500-B  
§  
CHRISTOPHER AUNDRE §  
FAULKNER, §  
§  
Defendant. §

MEMORANDUM OPINION & ORDER

Before the Court is Defendant Christopher A. Faulkner's Motion to Reconsider and Revoke the Pretrial Detention of Defendant (Doc. 90). Faulkner moves the Court to reconsider and revoke his pretrial detention for two reasons: (1) changed circumstances render the grounds for his detention moot; and (2) his continued detention violates due process. For the reasons that follow, Faulkner's motion (Doc. 90) is **DENIED**.

I.

BACKGROUND

The twenty-one count superseding indictment in this case charges Faulkner with six counts of securities fraud, in violation of 15 U.S.C. §§ 77q(a) and 77x; seven counts of mail fraud, in violation of 18 U.S.C. § 1341; six counts of engaging in illegal monetary transactions, in violation of 18 U.S.C. § 1957; and two counts of attempting to evade and defeat tax, in violation of 26 U.S.C. § 7201. Doc. 72, Superseding Indictment. The Government alleges that these charges stem from a seven-year fraudulent oil and gas investment scheme in which Faulkner purported to sell working

interests to investors. Faulkner allegedly underpaid these investors' returns and obtained these funds for his own use.

On June 18, 2018, Faulkner was arrested on a criminal complaint at the Los Angeles International Airport ("LAX") as he attempted to board a flight to London Heathrow. Doc. 20, Detention Order, 4. At the time of his arrest, he was carrying 10 one-ounce gold bars, gold coins, \$10,726.00 in cash, two brand-new cell phones, and his birth certificate. *Id.* The Government alleged that Faulkner was attempting to flee the United States for Lebanon. Doc. 7, Br. in Supp. of Gov't's Mot. for Detention, 2. The Government moved for pretrial detention of Faulkner on the basis that he was preparing to flee the United States to avoid prosecution and that he posed a serious risk of flight. *Id.* at 1.

On July 12 and 16, 2018, United States Magistrate Judge Renée Harris Toliver held a hearing on the Government's motion. Doc. 20, Detention Order, 2. At the hearing, Judge Toliver heard testimony from three special agents as witnesses for the Government, and a private investigator as a witness for Faulkner. *Id.* at 2–3.

One special agent testified that in October 2017, the Government had learned through a confidential source that Carole Faulkner, Faulkner's mother and former attorney, was working with a person named "Bennie" in Lebanon to secure living arrangements for Faulkner. *Id.* at 2–3. The agent testified that Carole traveled to Lebanon in April 2018, and that she was still in Lebanon at the time of the hearing. *Id.* at 3. The agent also testified that Carole's Colleyville, Texas house was listed for sale and that Bennie was helping Carole sell the house. *Id.*

The Government's other witnesses testified that later, on May 2, 2018, the Government met with Faulkner's counsel for a reverse proffer to preview the Government's case against Faulkner.

*Id.* At this meeting, the Government explained that Faulkner could face a life sentence. *Id.* Faulkner was not present at the meeting because he was vacationing in Mexico, but he returned to the United States on May 5, 2018. On May 16, 2018, Bennie sent a message to the Government's confidential source via WhatsApp, asking if there were any arrest warrants or flight-risk alerts on Faulkner. *Id.* On June 4, 2018, the Government gave Faulkner a plea offer, which included a term of imprisonment. *Id.* at 4. On June 14, 2018, the Government learned that Faulkner had booked a round-trip ticket to London, departing on June 18. *Id.* Then, on June 15, 2018, the Government filed a criminal complaint, see Doc. 1, and obtained an arrest warrant. Doc. 20, Detention Order, 4. On the day of his departure, Faulkner was arrested at LAX with the money, gold, phones, and birth certificate, as described above. *Id.*

Judge Toliver heard testimony from Faulkner's witness, a private investigator, that Faulkner was leaving the United States for a business meeting in London. *Id.* The investigator testified that Faulkner planned to return to the United States after his meeting based on the return ticket he purchased. *Id.* The investigator also testified that Faulkner was not a flight risk because he was in Mexico when he learned of the Government's charges through the reverse proffer, yet he returned to the United States shortly thereafter. *Id.*

After hearing this testimony and considering the 18 U.S.C. § 3142(g) flight-risk factors, Judge Toliver concluded that the Government had shown by a preponderance of the evidence that no condition or combination of conditions of release would reasonably assure Faulkner's appearance as required. Doc. 15, Judge Toliver's Order of Detention, 2–3. Judge Toliver based her decision on, amongst other things, the lengthy period of incarceration that Faulkner faced if convicted and Faulkner's significant family or other ties outside the United States. *Id.* Judge Toliver also credited

the Government's evidence that Faulkner had made plans to leave the country for Lebanon, likely with the intent to avoid prosecution. *Id.* at 3. Judge Toliver found that the timing and circumstances of his arrest were "suspicious" based on the items he had with him. *Id.* She also found it significant that Faulkner "was essentially 'living off the grid,' in the United States, in that he has no residential ownership or residential lease in his own name, no personal bank accounts, and no property of any significance that he has not already been, or is [in] the process of, being liquidated." *Id.* Judge Toliver noted there was evidence that Faulkner was, with "his mother/co-conspirator," amassing assets overseas in Lebanon in the months before his arrest. *Id.* As for Faulkner's witness, Judge Toliver found "less-than-credible the hearsay statements of Defendant's spouse and mother, as recounted by" the private investigator. *Id.*

Finally, Judge Toliver noted that Faulkner had a "history of failing to abide by rules of court as evidenced by District Judge Fitzwater's contempt finding against him and the sanctions imposed against him by Magistrate Judge Horan for manipulating digital evidence in a related civil action: SEC v. Faulkner, No. 3:16-CV-1735-D." *Id.*

After Judge Toliver issued her order of detention, Faulkner moved to revoke that order under 18 U.S.C. § 3145(b) and to be released on conditions while awaiting trial. Doc. 18, Mot. to Revoke. Judge Fitzwater conducted a *de novo* review of the evidence presented at the detention hearing, and denied Faulkner's motion. Doc. 20, Detention Order, 1. Judge Fitzwater likewise found that the Government had proved by a preponderance of the evidence that no condition or combination of conditions would reasonably assure Faulkner's appearance as required. *Id.* at 6. He also found that the "totality of the § 3142(g) factors demonstrate that Faulkner is a flight risk." *Id.*

Faulkner then sought an interlocutory appeal of Judge Fitzwater's order. Doc. 21, Notice of

Appeal. Applying a deferential review standard equivalent to the abuse-of-discretion standard, the Fifth Circuit held that “the evidence as a whole supports the conclusions of the proceedings.” Faulkner appealed the detention order, and the Fifth Circuit affirmed. See *United States v. Faulkner*, 744 F. App’x 861 (5th Cir. 2018) (quoting *United States v. Rueben*, 974 F.2d 580, 586 (5th Cir. 1992)).

Starting in July of 2018, Faulkner and the Government started to engage in plea negotiations. Doc. 92, Gov’t’s Resp., 5. On July 20, 2018, pursuant to these discussions, the parties filed a joint motion requesting that the Court continue the time to indict until September 15, 2018. Doc. 16, Joint Mot. to Continue, 2. Magistrate Judge Rutherford granted the motion that same day. Doc. 17, Order. On September 5, 2018, the parties filed a second motion to continue the time to indict until October 13, 2018. Doc. 25, Second Joint Mot. to Continue. In the motion, signed by both Faulkner and his counsel, the parties represented that they were “engaged in plea negotiations which could negate the need for an indictment and avoid the unnecessary expenditure of resources by both the judiciary and the parties. Because of the complexity of the issues to be resolved both parties believe that this additional time is necessary to reach an agreement.” *Id.* at 2. In connection with this motion, Faulkner and his counsel executed a “Statute of Limitations Waiver,” whereby Faulkner acknowledged that any delay in indictment was at his request and waived any defenses he may have had under Rule 48(b) or the Sixth Amendment. Doc. 92-2, Statute of Limitations Waiver (Ex. 2).

Subsequently, on October 4, 2018, the parties entered into a plea agreement. Doc. 32, Plea Agreement. Faulkner pleaded guilty to a three-count Information for securities fraud, illegal monetary transactions, and tax evasion. *Id.* at 1–2. Pursuant to Rule 11(c)(1)(C), the parties agreed that an appropriate term of imprisonment for this case would be 144 months. *Id.* at 2. On October

23, 2018, Faulkner entered his plea of guilty to the Information before Judge Toliver. Doc. 36. On November 26, 2018, the Court entered an order accepting the guilty plea and adjudging Faulkner guilty of the offenses charged in the Information. Doc. 41, Order Accepting Guilty Plea.

The Court held Faulkner’s sentencing hearing on March 21, 2019. Doc. 54. At the hearing, the Court informed the parties that it was rejecting the plea agreement. The Court gave Faulkner two weeks from the date of the hearing to decide whether to withdraw his guilty plea. *Id.* On April 15, 2019, Faulkner filed his unopposed motion to withdraw his plea, which the Court granted on April 21, 2019. Doc. 59, Faulkner’s Mot.; Doc. 61, Order.

On May 29, 2019, the Government filed a twenty-one count indictment against Faulkner that superseded the October 2018 Information. Doc. 72, Superseding Indictment. The Court then issued an amended scheduling order, setting trial for August 8, 2019. Doc. 75, Scheduling Order. On June 19, 2019, Faulkner filed an unopposed motion requesting that the Court appoint the Federal Public Defender (“FPD”) as coordinating discovery attorney because of the “voluminous discovery” related to this case. Doc. 76, Mot. to Appoint, 3. The motion was granted on June 21, 2019. Doc. 78, Order. Shortly thereafter, on June 22, the parties filed a joint motion to continue the trial setting and to designate the case as complex under 18 U.S.C. § 3161(h)(7)(B)(ii). Doc. 79, Joint Mot. The parties represented that the case was complex due to “the nature of the prosecution, the complexity of the facts underlying the indictment, and the voluminous nature of the discovery.” *Id.* at 1–2. The parties asked the Court to grant an “ends of justice” continuance on the basis that it outweighed “the best interests of the public and the defendant in a speedy trial.” *Id.* at 1. The parties recommended that the Court schedule a status conference “in approximately 6 months for the parties to advise the Court as to the status of discovery, outstanding issues, and to consider the

scheduling of motion and trial deadlines.” *Id.* at 3. On July 16, 2019, the Court granted the parties’ motion and declared the case complex. Doc. 81, Order Decl. Case Complex. The Court set trial for March 16, 2020. *Id.* The Court also set a status conference for November 21, 2019.

On August 16, 2019, Kevin Ross was appointed as substitute counsel for Brian Poe, who had to withdraw from his representation of Faulkner. Doc. 86, Order Appointing Att’y. On August 29, 2019, the Government, Mr. Ross, and the FPD discovery coordinator conducted a “meet and confer” on the discovery-related issues in the case. Doc. 92, Gov’t’s Resp., 9. The Government explained at the meeting that a “rolling” production of discovery was necessary due to its volume. *Id.* This meant that the discovery materials need to be processed at the Department of Justice’s Litigation Technology Service Center (LTSC) in Columbia, South Carolina, and then, once processed, they are made available to the FPD discovery coordinator, who can then host the materials on their software for the defense. *Id.* Also at this meeting, the Government provided defense counsel with a written inventory of the ninety-one digital devices it had imaged from a search warrant. *Id.* Only fourteen of these devices had been reviewed by the Government and were being processed. *Id.* The Government also identified 144 PST accounts that were imaged, thirty-six of which were deemed relevant to the investigation. *Id.* The Government agreed that it would, upon request, provide defense counsel with electronic imaging of any device that the Government had not reviewed and processed. *Id.* Finally, the Government provided defense counsel with an inventory of investigative and grand-jury materials that had been collected thus far. *Id.*

On October 17, 2019, the Government delivered the first installment of the rolling production to the discovery coordinator. *Id.* at 10. The Government represents that this production included “witness and victim interviews, all documents obtained by Grand Jury subpoenas, some

financial records, and hard copy records seized from the search of the defendant's company offices." *Id.* at 10 n.1. The Government delivered its second production to defense counsel on January 9, 2020. Doc. 92, Gov't's Resp., 10. On November 21, 2019, the Court held a conference to determine the status of the discovery disclosures. Doc. 87, Elec. Minute Entry. The parties represented that they would submit a joint proposed scheduling order by December 6, 2019. *Id.* On December 5, the parties filed a joint motion to remove the case from the Court's trial docket. Doc. 88, Joint Mot. The parties represented that discovery would not be completed until the end of March 2020 because more time was needed for the Government to complete its disclosure and for defense counsel to organize, analyze, and process the discovery. *Id.* at 2. The Court granted the order and set another status conference for March 26, 2020. Doc. 89, Order.

It is with this background in mind that the Court turns to Faulkner's motion to reconsider his order of detention. Doc. 90, Mot. to Reconsider. Faulkner filed his motion on January 2, 2020, asking that this Court reconsider and revoke the August 2, 2018 Detention Order (Doc. 20). Faulkner argues that his excessively prolonged pretrial detention now violates due process. Doc. 90, Mot. to Reconsider, 1. He asserts that this delay is attributable solely to the Government. *Id.* Faulkner also claims that the facts that previously supported his pretrial detention are no longer at issue. *Id.* The Government filed a response in opposition to Faulkner's motion. Doc. 92, Gov't's Resp.

On January 17, 2020, the Court held a hearing on Faulkner's motion. The Court heard argument from the parties, but took no witness testimony. The Court ultimately denied Faulkner's motion. This memorandum opinion provides the reasons for that order.

## II.

### LEGAL STANDARD

#### A. *Reopening a Detention Hearing Under 18 U.S.C. § 3142(f)*

18 U.S.C. § 3142(f) provides that a detention hearing:

may be reopened . . . at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

#### B. *Due Process Clause and Pretrial Detention*

“The Due Process Clause of the Fifth Amendment forbids pretrial detention that is punitive, rather than regulatory, in nature.” *United States v. Stanford*, 394 F. App’x 72, 2010 WL 3448524, at \*1 (5th Cir. 2010) (citing *United States v. Salerno*, 481 U.S. 739, 747–48 (1987)). “Absent an expressed intention to punish, whether detention constitutes impermissible punishment or permissible regulation turns on whether the government has a nonpunitive reason for detention and whether detention ‘appears excessive in relation to’ the nonpunitive purpose.” *United States v. Stanford*, 722 F. Supp. 2d 803, 806 (S.D. Tex. 2010) (quoting *United States v. Millan*, 4 F.3d 1038, 1043 (2d Cir. 1993)). “Pretrial detention to prevent flight from the jurisdiction is an important, nonpunitive, regulatory purpose.” *Id.* (citing, *inter alia*, *Salerno*, 481 U.S. at 749). “But ‘excessively prolonged’ detention may become so unreasonable in relation to the regulatory goals of detention that it violates due process.” *Id.* (citing *Salerno*, 481 U.S. at 747 & n.4; *United States v. Hare*, 873 F.2d 796, 800–01 (5th Cir. 1989)).

In deciding whether there has been a due-process violation, the district court must consider on a case-by-case basis:

not only factors relevant in the initial detention decision, such as the seriousness of the charges, the strength of the government's proof that the defendant poses a risk of flight or a danger to the community, and the strength of the government's case on the merits, but also additional factors such as the length of the detention that has in fact occurred or may occur in the future, the non-speculative nature of future detention, the complexity of the case, and whether the strategy of one side or the other occasions the delay.

*Hare*, 873 F.3d at 800.

### III.

#### ANALYSIS

Faulkner makes two arguments in support of his motion to revoke his pretrial detention. First, he argues that the factors that the Court previously relied on in ordering him detained are now moot. See Doc. 90, Mot. to Reconsider, 5. Second, Faulkner asserts that, based on the factors set out in *Hare*, his pretrial detention is and will be "excessively prolonged," thus violating due process. *Id.* at 4. For the reasons that follow, the Court rejected these arguments and **DENIED** Faulkner's motion.

A. *Faulkner Presented No Material Information that Justifies Reopening His Detention Hearing.*

To start, the Court notes that delays or potential delays in trial are not considered in determining whether to reopen a detention hearing under § 3142. See *United States v. Simpson*, 2010 WL 3283053, at \*2 (N.D. Tex. Aug. 19, 2010) ("*Hare* holds that 'the length of [the defendant's] current or potential future detention [cannot] be considered under [18 U.S.C. § 3142(f)] since it is not material to the issue of risk of flight[.]" (quoting *Hare*, 873 F.2d at 799) (alterations in *Simpson*)). Thus, the Court does not consider Faulkner's arguments related to delays here.

Nonetheless, Faulkner argues two things have changed since the Court's previous detention order. First, Faulkner claims that he no longer has the financial means to flee the country because all his assets were seized or frozen. Doc. 90, Mot. to Reconsider, 5. For example, the SEC receiver

in the related civil action issued a stop payment on the cashier's checks that he was sending to Lebanon. *Id.* Second, he asserts that his mother Carole is no longer in Lebanon, but instead is living in Tarrant County, Texas. *Id.* He also asserts that the rest of his family, including his wife, is in California. *Id.* Thus, Faulkner concludes, this is new material information that changes the analysis under § 3142(f).

The Government responds that this additional information is not new or was not unknown to Faulkner at the time of the detention order. Doc. 92, Gov't's Resp., 11–12. The Government argues that the presence of Faulkner's wife in California was known to Faulkner at the time of his arrest. *Id.* at 12. Moreover, this fact did nothing to dissuade Faulkner from fleeing in the first instance, according to the Government. *Id.* Next, the Government asserts that Judge Toliver knew of the stop payment on the cashier's checks at the time of her detention order, as one of the Government's witnesses testified to this. *Id.* As for the fact that Carole Faulkner has returned to the United States, the Government admits that this is a "new development," but argues that this development should be counted against Faulkner. *Id.* The Government notes that Carole Faulkner has been described as a "co-conspirator" by Judge Toliver and has been held in civil contempt by Judge Fitzwater in the related SEC enforcement action. *Id.* The Government states that her presence in the United States "only heightens the government's concern that if released the defendant will flee." *Id.* at 12–13.

The Court finds that Faulkner has not sufficiently shown new or previously unknown information exists that has a material bearing on whether conditions of release exist that will reasonably assure his presence in court as required. See *Simpson*, 2010 WL 3283053, at \*1–2 (citing § 3142(f)). The only new or previously unknown circumstance Faulkner presented is that his mother

no longer resides in Lebanon. But the Court tends to agree with the Government that this fact does not indicate he is less of a flight risk. As other judges in this district have noted, Faulkner and Carole Faulkner “had a history of working together in various schemes . . .” see Doc. 20, Detention Order, 7, and are potentially “coconspirators.” Doc. 15, Judge Toliver’s Order of Detention, 3. Moreover, Carole Faulkner has some history of disregarding orders from this Court. See Doc. 20, Detention Order, 8 (noting that both Faulkner and Carole Faulkner were held in civil contempt in the SEC civil enforcement action).

Further, the Court is not reassured that Faulkner no longer has ties to Lebanon or elsewhere. The previous detention orders gave credit the Government agent’s testimony related to the unknown person “Bennie” from Lebanon, with whom the Faulkners were communicating. See Doc. 15, Judge Toliver’s Order of Detention, 3; Doc. 20, Detention Order, 2–3. And this contact could still be available to the Faulkners. Thus, the Court is not persuaded that Faulkner no longer has ties to that country or elsewhere based solely on the fact that his mother now resides in Tarrant County. The Court agrees with the Government that the other grounds that Faulkner raises were known by Faulkner at time of the detention order. And Faulkner still has not shown that he has any stake in the United States, such as a residence or financial interests, that would militate against fleeing. In other words, there is no indication that Faulkner would no longer be living “off the grid,” as Judge Toliver noted, if released. Doc. 15, Judge Toliver’s Order of Detention, 3. Thus, the previous factors that both Judge Toliver and Judge Fitzwater relied on in ordering Faulkner detained still remain. The Court thus concludes that Faulkner has not met the § 3142(f) standard to reopen his detention hearing.

B. *Faulkner’s Continued Detention Is Permissible Under the Due Process Clause.*

As stated above, whether detention is or will be excessively prolonged such that it becomes punitive must be determined on a case-by-case basis. *Simpson*, 2010 WL 3283053, at \*2 (citing *Hare* 873 F.2d at 801). The Court addresses each of the *Hare* factors in turn.

1. Factors Relevant to Initial Detention Decision

The Court first must consider the factors relevant in the initial detention decisions—e.g., the seriousness of the charges, the strength of the Government’s proof that Faulkner poses a risk of flight, and the strength of the Government’s case on the merits. *Hare*, 873 F.2d at 801. The analysis in Part A of this Order is relevant here and weighs against a due-process violation—as the Court noted, Faulkner has not presented any new or previously unknown information that indicates he would be more likely to appear as required, and the previous circumstances that supported his pretrial detention remain. Moreover, in his memorandum opinion and order, Judge Fitzwater conducted a thorough *de novo* review of these factors based on the evidence presented at the detention hearing before Judge Toliver. Doc. 20, Detention Order, 6–9. Judge Fitzwater’s decision was then affirmed by the Fifth Circuit. Doc. 42, Mandate of Fifth Circuit. The Court finds that the facts and reasoning of Judge Fitzwater’s order remain applicable under this *Hare* factor and support Faulkner’s continued detention. See *Simpson*, 2010 WL 3283053, at \*2 (finding that, absent new material evidence supporting his release, a previous detention order supported continued detention) (citing *Stanford*, 722 F. Supp. 2d at 807–08).

Additionally, as the Government notes, some of the original factors weigh heavier against Faulkner now. For example, the charges against him have only grown more serious—he now faces a twenty-one count indictment as opposed to a criminal complaint for three statutory violations. Doc. 92, Gov’t’s Resp., 14. Faulkner is also now aware of his guidelines offense level through the

presentencing report prepared after his now-withdrawn guilty plea, which calculates his total offense level as 43 with a sentence of life. *Id.* In sum, the Court finds that the original flight-risk factors still support continued detention.

2. Length of Detention That Has Occurred or May Occur

The Court now turns to the first additional factor to consider, which is the length of the detention that has in fact occurred or may occur in the future. *Hare*, 873 F.2d at 801. “Although the length of pretrial detention is one factor courts are to consider, it alone is not dispositive and carries no fixed weight in a due process analysis.” *Stanford*, 722 F. Supp. 2d at 807 (collecting cases). “Indeed, length of detention ‘will rarely by itself offend due process.’” *Id.* at 807–08 (quoting *United States v. Orena*, 986 F.2d 628, 632 (2d Cir. 1993)). Currently, Faulkner has been held in pretrial detention for 18 months. Doc. 90, Mot. to Reconsider, 5. This case has already been declared complex, and both parties have represented it as such in numerous filings to this Court. *See supra* at 5–8. In similarly complex matters, other courts have found that comparable delays do not violate due process. *See Simpson*, 2010 WL 3283053, at \*3 (holding that 16-month delay in a complex matter did not violate due process); *Stanford*, 722 F. Supp. 2d at 808–09 (holding that 19-month delay in complex securities and mail fraud case was not punitive in nature).<sup>1</sup> While the Court acknowledges that the length of the delay—both that has occurred and that has yet to occur—weighs in Faulkner’s

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<sup>1</sup> As the Fifth Circuit has noted, other courts have upheld much longer pretrial detentions. *See United States v. Stanford*, 394 F. App’x 72, 2010 WL 3448524, at \*2 (citing *United States v. El-Hage*, 213 F.3d 74, 77–79 (2d Cir. 2000) (upholding thirty-month pretrial detention despite unforecastability of continued delay); *Millan*, 4 F.3d at 1044 (considering thirty-month detention)). The Court is also persuaded by the cases cited by the Government. *See Doc. 92, Gov’t’s Resp.*, 16 (citing, *inter alia*, *United States v. Swinton*, 251 F. Supp. 3d 544, 555 (W.D.N.Y. 2017) (holding that four-year pretrial detention did not violate due process in complex case where the defendant faced potential life sentence) and *United States v. Akinola*, 2016 WL 3566958, at \*2–3 (D.N.J. June 28, 2016) (finding five-year pretrial detention did not violate due process)).

favor, the Court is not convinced that it outweighs the others that must be considered.

3. The Nonspeculative Nature of Future Detention

There is currently no trial date set for this case. The Court previously set trial for March 16, 2020. *See* Doc. 81, Order Declaring Case Complex. The Court vacated the trial date based on a joint motion from both parties that more time was needed to complete discovery. Doc. 88, Joint Mot., 2–3. Instead of continuing the trial date, the parties asked that the Court remove the case from the trial docket and schedule a status conference in March 2020, at which the parties believe they will be in a better position to advise the Court on what discovery issues remain and “a realistic trial date given the complexity and voluminous nature of the case.” *Id.* At the hearing held on the current motion, the Government was reluctant to guarantee that production would be finished by the time of the status conference, but was generally optimistic it could be accomplished in that time frame. Based on the representations from the hearing, the Court is confident that a trial date will be set at the March status conference. Regardless, the reason there is no trial date rests as much with Faulkner as it does with the Government.

4. The Complexity of the Case

No one has disputed that this case is complex. Both Faulkner and the Government have made this representation to the Court on numerous occasions during the course of this litigation. The Court has declared the case complex. Doc. 81, Order Declaring Case Complex. And since the original detention order, this case has only become more complex with the withdrawal of Faulkner’s guilty plea, the twenty-one count indictment, and the necessity of a discovery coordinator for the defense team. The allegations involve a fraudulent scheme that went on for seven years and involved almost \$150 million in investor funds. Doc. 88, Joint Mot., 2–3. The parties have represented that

discovery involves over 86 terabytes of data. *Id.* “When the complexity of a case is a reason for the length of the detention, the detention continues to be regulatory in nature rather than penal.” *Simpson*, 2010 WL 3283053, at \*3 (quoting *Stanford*, 2010 WL 2745780, at \*4). That is undoubtedly the case here, and this factor weighs heavily in favor of continuing Faulkner’s pretrial detention.

5. Whether the Strategy of One Side or the Other Occasions the Delay

The last factor the Court considers is whether the strategy of one side or the other occasions the delay. “Any delay occasioned by prosecutorial strategy may be a basis upon which an exceedingly lengthy pretrial detention offends due process.” *Simpson*, 2010 WL 3283053, at \*3 (quoting *Stanford*, 722 F. Supp. 2d at 810). Faulkner argues that the Government’s delay in processing and producing discovery has caused the delay in this case and weighs heavily in favor of finding a due process violation. Doc. 90, Mot. to Reconsider, 8–9. The Government responds that most of the delay that has occurred in this case was due to Faulkner’s plea-related conduct. Doc. 92, Gov’t’s Resp., 17–18. The Government notes that since Faulkner withdrew his plea, it has been working diligently to process and produce the remaining discovery, and has not engaged in any dilatory action to slow production. *Id.* In fact, on January 9, 2019, the Government delivered its second production of 188 gigabytes of SEC records to Faulkner. *Id.* at 10.

The Court agrees with the Government that no strategic decision on its part has occasioned the delay here. Indeed, as laid out in Section I above, Faulkner has moved for or agreed to every delay that has occurred thus far in this case. Before this motion, Faulkner has not complained of the Government’s tactics or discovery procedures. Nor has Faulkner’s counsel pressed for discovery it was not receiving. Instead, much of the delay has resulted from the plea-related occurrences and Faulkner’s attorney change. The Court tends to agree with Faulkner that the Government could

have initiated the process sooner. However, this did not amount to a strategic decision on the part of the Government to slow the case down and punish Faulkner with a lengthy detention. The Court is instead convinced that the complexities of this case and the related discovery are the main culprits for this delay. The process that needs to occur before discovery can be produced—which includes sending the unprocessed discovery to a DOJ site in South Carolina, then back to Dallas, where the FPD office can host the discovery on their software for defense counsel—is not typical for a criminal case. *See id.* at 9–10. But it appears necessary based on the quantity and complexity of the information involved.

In sum, considering the above factors together, the Court finds that Faulkner’s continued pretrial detention has not crossed the line from regulatory to punitive, such that it violates due-process rights. *Hare*, 873 F.2d at 801.

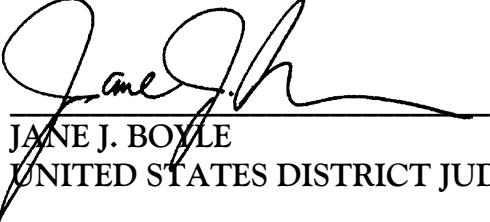
#### IV.

#### CONCLUSION

For the aforementioned reasons, Defendant Christopher A. Faulkner’s Motion to Reconsider and Revoke the Pretrial Detention of Defendant (Doc. 90) is **DENIED**.

SO ORDERED.

SIGNED: January 23, 2020.



JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE