UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 3:16-cr-00117
v.	)	CHIEF JUDGE SHARP
	)	MAGISTRATE JUDGE NEWBERN
ROBERT F. ARNOLD	)	

MOTION TO REVOKE PRETRIAL RELEASE AND MEMORANDUM IN SUPPORT

The United States of America, by and through undersigned counsel, respectfully submits this memorandum in connection with the hearing scheduled for September 27, 2016. Pursuant to 18 U.S.C. § 3148, the Government is moving to have Defendant Robert Arnold's bond revoked and for him to be detained pretrial. As explained below, the Government submits that there is probable cause to believe that Arnold has committed a Federal, State, or local crime while on release, thereby triggering a rebuttable presumption of pretrial detention. The Government further submits that, even if Arnold were to carry his burden of rebutting the presumption of detention, detention would still be warranted in this case, because he poses a danger to the safety of another person or the community, and because he is unlikely to abide by the conditions of pretrial release.

I. BACKGROUND

A. Underlying Criminal Charges and Conditions of Release

Arnold is the Sheriff of Rutherford County. He, along with two co-defendants, were indicted in May on fourteen felony counts related to conspiracy, mail and wire fraud, honest services fraud, Hobbs Act extortion, bribery, and obstruction of justice. (DE# 1, Indictment.) In short, Arnold is charged with accepting tens of thousands of dollars in payments from JailCigs—

an electronic cigarette company controlled by his uncle and his Chief Administrative Deputy—in exchange for allowing JailCigs to do business at the Rutherford County jail on terms that were favorable to the company, at the expense Rutherford County, in violation of his fiduciary duties. The defendants are scheduled for trial on February 7, 2017.

Upon his arrest, the Government did not seek to have Arnold detained, and he was released by the Honorable John S. Bryant, U.S. Magistrate Judge, subject to certain conditions. (DE# 10, Order Setting Conditions of Release.) These conditions included the requirement that Arnold "not violate federal, state, or local law while on release." (*Id.*) Arnold was also advised that "[i]t is a crime punishable by up to ten years in prison . . . to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, [or] informant." (*Id.*) At the time, the Government agreed with defense counsel that it would not request the additional conditional that Arnold "not possess a firearm, destructive device, or other weapon." (*Id.*)

B. Initial Investigation into Domestic Assault

On September 6, 2016, the day after Labor Day, law enforcement began to hear rumors that there had been a domestic disturbance between Arnold and his wife during the previous weekend. Law enforcement also determined that two deputies from the Rutherford County Sheriff's Office had gone out to Arnold's house on the night of September 5. One of those deputies was Jamie Vanderveer, who is Arnold's cousin and the son of co-defendant John Vanderveer. Deputy Vanderveer also currently lives with the Arnolds.

This information was conveyed to Pretrial Services, who contacted both Arnold and his wife to investigate what had occurred. When the Pretrial Services officer spoke to Arnold over the

phone on September 6, she asked him whether there had been any sort of incident between him and his wife over the weekend. Arnold appeared dumbfounded and asked what the officer was referring to. Eventually, Arnold conceded that he and his wife had gotten into an argument, but he adamantly denied that he had made any physical contact with her.

On September 7, 2016, Arnold met with Pretrial Services as part of his regularly scheduled reporting date. During that meeting, he reiterated that nothing unusual had happened over the weekend. When asked to prepare a written statement about the events of the weekend, he simply wrote, "Nothing happened on September 3-5, 2016." Arnold eventually acknowledged, however, that two law enforcement officers had come out to his house on the evening of September 5. Arnold told Pretrial Services that he had called them himself. When asked why he would have called them if nothing had happened, Arnold said that he did not know, and that he had been very drunk at the time. Mrs. Arnold also told Pretrial Services that there had been no physical altercation on Labor Day.

The Tennessee Bureau of Investigation ("TBI") then opened an investigation into the incident. On September 9, 2016, agents attempted to speak to Mrs. Arnold. She indicated that no physical altercation had taken place, but that she wanted to speak to her attorney before talking with them further.

TBI agents also attempted to interview the two deputies that were called to Arnold's house on Labor Day. One of them, Jamie Vanderveer, initially refused to be interviewed. The other deputy, Todd Hammond, spoke to agents on September 9, 2016, and described receiving a call over the radio while on duty September 5, in which Arnold asked Hammond to call him on his cell phone. When Hammond called, Arnold asked him to come to his residence. As Hammond was

driving over, Arnold sent him text messages saying, "we have to mess Megan" [sic] and "I have here thing she is F" [sic]. When he arrived at the residence, Arnold asked Hammond to tell Mrs. Arnold that a person could be arrested for pinching someone's nipple. Hammond thought that the request was odd, and did not understand why he had been called to the house. Nevertheless, he explained to everyone there that conduct of that nature could be considered assault. Hammond indicated that he did not see signs of domestic violence, but that the mood at the house was tense, and Mrs. Arnold was generally looking down at her phone and seemed to have muttered something about divorce. After Hammond left, he received text messages from Arnold saying, "thank you" and "just having fun."

C. TBI Receives Recorded Phone Calls Involving Mrs. Arnold

On approximately September 15, 2016, TBI agents received copies of six recorded phone calls between Mrs. Arnold and a third party.[1] The third party had recorded the phone calls between approximately September 10 and September 14. In those calls, Mrs. Arnold—who did not know she was being recorded—describes how she and Arnold had gotten into an argument on Labor Day that turned violent. As she describes it, Arnold was in the bedroom when she approached, at which point "[h]e got up to go to close the door on me, and I tried to keep the door open, like we're pushing up against the door in opposite directions, you know how you try to keep somebody out of the door." At that point, Mrs. Arnold grabbed Arnold's nipple and "twisted it, really hard." She then describes what happened next:

[1] A disc containing these six recordings will be provided to the Court in advance of the hearing. Excerpts of the recordings will likely be played at the hearing, as well. No official transcript has been prepared, so the quotations that follow are unofficial, rough transcriptions from the audio recordings.

> And then he shoved me and he's like, "That fucking hurt!" and he shoved me down, and then when I was down, I kicked him, because he was over me. When I got up, because the kick hurt him so bad, he punched me in the arm. And then it sued [sic] from there. And when I tried to get back in the room, he tried to keep me out, and that's when I got pushed over to the closet, and that's where the tackling happened. And then he got the belt and all that.

When asked about the use of the belt, Mrs. Arnold responded, "Because he didn't want to touch me, so he grabbed his belt and tried to put it around me, like around my waist and pull me out, because he didn't want to put his hands on me. . . . And then when I was inching my way out of the belt this time, he took the belt and acted like—he didn't act, he lightly started hitting me on the leg with the belt, but not so hard that it was excruciating pain. But that's what he was doing with the belt." Afterwards, she states, "I think the one thing that scared me was when he got me on the bed, put all his body weight on me, and was yelling at me in the face. And I couldn't get up, I start freaking out, started shaking . . . . He said, 'This is what you want?' He said, 'I'll put all my body weight, you can stop breathing.' . . . . And then that's when I got him off me, and then he grabbed my ankles and pulled me off the bed."

On the same call, Mrs. Arnold explained that she wanted to speak to law enforcement about the assault, but was reluctant to do so. Part of this reluctance stemmed from Arnold's repeated demands that she not make any statement about what had happened. "[T]his is what Robert keeps getting me on, he keeps telling me, he said, 'What happens between, in these walls, stays in between these walls.' He said, 'We go to calls all the time when there's domestic violence and the people aren't talking, each of them aren't talking, and there's nothing we can do. . . . [H]e's going to tell them nothing happened, and he tells me that he wants me to tell them nothing happened, and it's an intimidation thing, and I called him out on it several times." She further notes, "He told

me not to make a statement. But I want to make a statement, so I'm fucking scared. . . . I'm not trying to protect him, I'm just fucking scared for me and my kids. I'm scared because my kids are home." She also explained that when the deputies came to the house on Labor day, "I didn't speak up because he was sitting right there."

On another recording, she explains that it is hard to "be married for 13 years and then put him in jail." She also notes that Arnold has been "saying to me every day" that "you're going to ruin our lives" by making a statement, and that he will make her "look bad" if she does. In light of these fears, Mrs. Arnold asks whether she can "make a statement without Robert knowing," and whether Arnold will "ever see what was said." She also states that she is willing to talk to law enforcement, but "[i]t's just a matter of telling them, and them figuring out how they can put him in jail, how they can violate him."

In another call, Mrs. Arnold says that she had recently told Arnold, "I'm going to tell what happened. I'm going to tell the truth." In response, Arnold got "pissed. He's like, 'You don't have to talk, you know that. You don't have to say anything.'"

In several calls, Mrs. Arnold expresses frustration with her inability to get in touch with her attorney, who had recently been hospitalized after a serious accident. At one point, she explains, "Let me talk to my attorney first. If he says, 'Go ahead and write a statement,' then I'm going to call [the TBI agent] and we're going to meet today." On another call, she says, "I texted my attorney and asked him if he could meet as soon as possible. If I don't hear from him, I'm calling [the TBI agent]. . . . By 3:00, if I don't hear anything, I'm calling [the agent]. Because I need to tell him what's going on." On yet another call, she reiterates that once her attorney gets out of the hospital, "[I]t's coming out, he's going to jail." When it is pointed out to her that the

TBI agent will likely ask her why she did not come forward sooner, she responds, "Fear. . . . I'm not doing anything because you guys won't lock him up immediately." In another call, Mrs. Arnold says that Arnold has told her that he has had a private investigator following her and listening to her calls.

D. TBI Meets Again with Mrs. Arnold

On approximately September 15, 2016, Mrs. Arnold was made aware of the fact that TBI had received copies of phone calls in which she had discussed the domestic assault. She then called TBI Special Agent Brian Harbaugh and said that she would meet with him to make a statement. She met with Special Agent Harbaugh and Special Agent James Scarbro that evening and described the incident that had occurred on Labor Day. She was scheduled to leave town the next morning for a trip, but told the agents that she would call when she returned on September 19, and would then review and sign the written statement that the agents had prepared. The statement that Special Agent Harbaugh prepared for her to sign, on the basis of that conversation, included the following:

> On Monday, September 5, 2016 Robert and I were at a friend's pool with our children. Robert had been drinking throughout the day. We returned home around 5:00 PM. As the kids were playing in the house I was unpacking from the pool and prepping my kid's lunch for the next day. Robert continued to drink and consumed an Ambien. He stated to me that he was going to go to sleep, however after being in the bedroom for a short time, he came out of the bedroom and stated that he was rested. Robert then went outside and began pulling weeds around the house and spraying off the driveway with the garden hose. It was clear to me that Robert was staying up in an effort to have sex with me. I don't like dealing with him when he is drinking, as he tends to get angry easily. At one point while Robert was spraying off the driveway I decided that I would have sex with him in an effort to get him to go to bed. We went in our home office and began to have sex, however once we started I could not continue due to Robert's condition and to an extent the current condition of our marriage. In the past, Robert and I have rarely been intimate

together. When I stopped us from having sex, Robert became angry with me. He stormed off and eventually went into our bedroom to be by himself. Robert routinely spends time in the bedroom by himself as a substitute for us not being intimate together. After a few minutes I tried to get in to the bedroom but Robert would not let me in. The door to our bedroom was partially open while Robert was pushing to close the door and I was pushing to open the door. While struggling with each other by pushing the door, I reached out to Robert and twisted his nipple. Robert then immediately let go of the door. Robert then pushed me to the ground and with his right arm punched me on my right arm near my shoulder. I then kicked him and we began to struggle with each other. During this struggle, Robert grabbed a belt and wrapped it around me. He was trying to use this belt in an effort to drag me out of the room, without putting his hands on me and leaving any marks. As he would get the belt around my waist, I would repeatedly slip out of it. Eventually Robert got on top of me, pinning me down on the bed. He had all of his weight on top of me and it was difficult to breath. This really scared me. He told me that if he put his whole weight on me, then I would stop breathing. Eventually the fighting stopped and I went downstairs to the living room.

After the assault Robert pretended to call James Vanderveer. I later found out that he had not actually called him though. I telephoned James Vanderveer and asked him to come to the residence. I explained to him that Robert was drunk and that I needed his help in getting him to go to bed. A short time later, James came to our residence, then Robert called Todd on the radio and told him to call his personal phone. Todd then called Robert's phone and the next thing I know, Todd had arrived at our residence. While they were with Robert and I, Robert kept "picking" at me and kept telling me how pinching his nipple could warrant being arrested for a domestic assault. I did not let either James or Todd know about being assaulted by Robert.

This is the first time in our marriage that Robert has physically assaulted me. In the past he has thrown things out of anger and he has punched walls while angry. The main form of abuse I have experienced is mental and emotional abuse. Manipulation every day.

Since that incident Robert and I have talked several times about it. He has told me what I am going to report and what I will not report. Robert has repeatedly made it clear, that he does not want me reporting the truth about what happened. He kept telling me that if I reported it he would go to jail and I would lose the house and everything I have ever had.

After Mrs. Arnold returned to town on September 19, she called Special Agent Harbaugh. She told him that when she had arrived home, Arnold was waiting there with her mother to stage "an intervention." The intervention consisted of Arnold berating her for several hours about how she would ruin both of their lives by making a statement to law enforcement. She told Special Agent Harbaugh that she would call him the next morning to schedule a time to meet and review the statement.

On September 20, 2016, Mrs. Arnold spoke to Special Agent Scarbro, and she agreed to meet with him over her lunch break to review the statement.[2] Special Agent Scarbro met with Mrs. Arnold and reviewed the statement with her. She affirmed that the statement was accurate. Nevertheless, she said that she was not ready to sign it, because she did not want Arnold to go to jail. She also indicated that Arnold had successfully persuaded her mother that she should not make a statement to law enforcement, and that she needed to speak to her mother further before deciding what to do next.

E. Pretrial Services Petitions the Court

The U.S. Attorney's Office then provided the written statement and audio recordings to the U.S. Probation Office. On the basis of those materials, and their own discussions with Arnold and his wife, Pretrial Services submitted a petition to the Court in which it recommended that the Court issue a summons and hold a hearing to amend the conditions of Arnold's pretrial release. As noted in the petition, the U.S. Attorney's Office disagreed with this recommendation and requested the

[2] On the afternoon of September 19, 2016, Special Agent Harbaugh submitted his letter of resignation to TBI, for reasons completely unrelated to this case. Special Agent Scarbro was then designated as the lead case agent.

issuance of an arrest warrant, followed by a revocation of Arnold's bond. The hearing on the alleged violations has been scheduled for September 27, 2016 at 1:30 p.m.

II. APPLICABLE LAW

"A person who has been released under section 3142 of this title, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court." 18 U.S.C. § 3148(a). A court "*shall* enter an order of revocation and detention" if, after a hearing, it finds that two criteria are met. *Id.* § 3148(b) (emphasis added). The first criterion is that the Court find either (a) that there is probable cause to believe that the defendant has committed a Federal, State, or local crime while on release, or (b) that there is clear and convincing evidence of any other violation of the conditions of release. *Id.* § 3148(b)(1). The second criterion is that the Court find either (a) that there is no condition or combination of conditions of release that will assure that the defendant will not flee or pose a danger to the safety of any other person or the community, or (b) that the defendant is unlikely to abide by any condition or combination of conditions of release. *Id.* § 3148(b)(2).

Accordingly, at the September 27 hearing, the Court should first determine whether there is probable cause to believe that Arnold has committed a crime while on release. "To find probable cause, the evidence must 'warrant a man of reasonable caution in the belief' that the defendant has committed a crime while on bail.'" *United States v. Gentry*, 156 F.3d 1233, 1998 WL 47600, at *1 (6th Cir. 1998) (table of decisions) (quoting *United States v. Gotti*, 794 F.2d 773, 777 (2d Cir. 1986)); *see also United States v. Hill*, 95 F.3d 1153, 1996 WL 466686, at *1 (6th Cir. 1996) (table of decisions); *United States v. Cantrell*, 848 F.2d 194, 1988 WL 50643, at *1 (6th Cir. 1988) (table of decisions). Probable cause "is not a high bar: It requires only the kind of fair probability on

which reasonable and prudent people, not legal technicians, act." *Kaley v. United States*, 134 S. Ct. 1090, 1101 (2014) (internal quotation marks and alterations omitted).

"If the Court finds probable cause that the defendant committed a crime while on release, 'a rebuttable presumption arises that no condition or combinations will assure that the person will not pose a danger to the safety of any other person or the community.'" *Hill*, 95 F.3d 1153, 1996 WL 466686, at *1 (quoting 18 U.S.C. § 3148(b)). This presumption of detention reflects a congressional judgment that "'the establishment of probable cause to believe that the defendant has committed a serious crime while on release constitutes compelling evidence that the defendant poses a danger to the community.'" *United States v. Jessup*, 757 F.2d 378, 381-82 (1st Cir. 1985) (Breyer, J.) (quoting Senate Judiciary Committee Report, S. Rep. No. 225, 98th Cong., 1st Sess. 19 (1983), reprinted in 1984 U.S. Code Cong. & Admin. News, p. 36).

"Once the presumption is implicated, 'it is incumbent on the defendant to come forward with some evidence to rebut the presumption.'" *Hill*, 95 F.3d 1153, 1996 WL 466686, at *1 (quoting *United States v. Cook*, 880 F.2d 1158, 1162 (10th Cir. 1989)). As such, the factors in § 3142(g) "do[] not come into play unless and until the judicial officer finds under § 3148(b)(2)(B) that the defendant has overcome the statutory rebuttable presumption and concludes that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions." *Cook*, 880 F.2d at 1162 (internal quotation marks and emphasis omitted). And while this burden "is not heavy," the defendant must introduce at least some evidence contrary to the presumed fact in order to rebut the presumption. *See United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010) (discussing analogous presumption under § 3142(e)(3) for defendants charged with certain specified crimes).

"[E]ven if the defendant comes forward with evidence to rebut the presumption, 'the presumption does not disappear, but remains a factor for consideration in the ultimate release or detention determination.'" *Gentry*, 156 F.3d 1233, 1998 WL 47600, at *1 (quoting *Cook*, 880 F.2d at 1162). In making this ultimate determination, the Court should "look to § 3142 to determine if conditions of release are appropriate." *Hill*, 95 F.3d 1153, 1996 WL 466686, at *1. As such, the Court should consider (1) the nature and circumstances of the offense, (2) the weight of the evidence against the person, (3) the history and characteristics of the person, and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *See* 18 U.S.C. § 3142(g).

III. DISCUSSION

A. There is probable cause to believe the defendant has committed crimes while on release.

The evidence presented at the hearing will establish probable cause that Arnold has committed crimes while on release. The Government anticipates that some of this evidence will be presented by way of hearsay or proffer, which is permissible in a hearing of this nature. *See Stone*, 608 F.3d at 948-49; 18 U.S.C. § 3142(f) ("The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing."); *see also United States v. Colasuonno*, 697 F.3d 164, 177 (2d Cir. 2012) (noting that "the full protections of the Confrontation Clause do not apply to preliminary hearings, bail proceedings, or sentencing" (citations omitted)); *United States v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996) (per curiam) (holding that Confrontation Clause does not apply in bail hearings).

Indeed, proceeding by way of hearsay or proffer is particularly warranted in hearings where the underlying crimes involve domestic violence and witness coercion. "Victims of domestic

violence are more prone than other crime victims to recant or refuse to cooperate after initially providing information to the police." Tom Lininger, *Prosecuting Batterers After* Crawford, 91 VA. L. REV. 747, 768-69 (2005). By some estimates, "[a]pproximately 80 percent of victims decline to assist the government in prosecutions of domestic violence cases." *Id.* at 751. Their reluctance may be based on a number of factors, including "the risk of reprisals by the batterers," the victim's "fear that her family would be unable to make ends meet if the primary breadwinner went to jail," the victim's "continued emotional attachment to batterers," and the victim's "reluctance to break up families." *Id.* at 769-70.

As spelled out in the recorded calls and written statement referenced above, Mrs. Arnold has expressed precisely these concerns. She fears for her safety and that of her children. And Arnold has warned her that she "would lose the house and everything [she has] ever had" if he goes to jail. In addition, she has expressed concern that, even if she comes forward, Arnold would not ultimately be sent to jail. This is an understandable concern in any case, but is particularly acute here, where the victim's husband is the chief law enforcement officer of the fifth-largest county in Tennessee. In light of these considerations, Mrs. Arnold's reluctance to testify—or perhaps even willingness to recant—should not cast doubt on the reliability of the factual allegations set forth in the petition and described in more depth above. These reliable allegations easily meet the probable-cause threshold for two State crimes and a federal crime.

1. Domestic Assault

There is probable cause to believe that Arnold has committed domestic assault, in violation of T.C.A. § 39-13-111. "A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim." T.C.A. § 39-13-111(b). A "domestic abuse victim"

includes adults "who are current or former spouses." T.C.A. § 39-13-111(a)(1). "A person commits assault who: (1) Intentionally, knowingly, or recklessly causes bodily injury to another; (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative." T.C.A. § 39-13-101(a). The term "bodily injury," as used in subdivisions (a)(1) and (a)(2), "includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty." T.C.A. § 39-11-106(a)(2). And as the comments of the Tennessee Sentencing Commission make clear, "[s]ubsection (a)(3) extends beyond 'bodily injury' and proscribes physical contact that a 'reasonable person' would consider extremely offensive or provocative." T.C.A. § 39-13-111.

Here, the evidence shows that on September 5, 2016, while Arnold was on release, he pushed his wife to the ground and punched her in the arm, then forcibly dragged her to the bed, where he pinned her down, making it difficult for her to breathe, and told her that he could make her stop breathing if he put his whole weight on top of her. These acts easily satisfy the statutory elements.

2. Witness Coercion

There is also probable cause to believe that Arnold has committed witness coercion, in violation of T.C.A. § 39-16-507. "A person commits an offense who, by means of coercion, influences or attempts to influence a witness or prospective witness in an official proceeding with intent to influence the witness to: (1) Testify falsely; (2) Withhold any truthful testimony, truthful information, document or thing; or (3) Elude legal process summoning the witness to testify or

supply evidence, or to be absent from an official proceeding to which the witness has been legally summoned." *Id.* "Coercion" is defined to mean "any threat, however communicated, to: (A) Commit any offense; (B) Wrongfully accuse any person of any offense; (C) Expose any person to hatred, contempt or ridicule; (D) Harm the credit or business repute of any person; or (E) Take or withhold action as a public servant or cause a public servant to take or withhold action." T.C.A. § 39-11-106(a)(3). "Official proceeding" is defined to mean "any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath." T.C.A. § 39-11-106(a)(25).

Here, Arnold repeatedly directed his wife not to make a statement to TBI or the U.S. Probation Office about the facts of the September 5 assault, and to lie about those events if asked. He also tried to persuade her that she would lose her house, destroy her family, and be publicly embarrassed if she were to testify truthfully. These coercive attempts to influence her testimony likewise establish violations of the statute.

3. Witness Tampering

Finally, there is probable cause to believe that Arnold has violated various provisions of the federal witness-tampering statute, 18 U.S.C. § 1512. For example, subsection (b) provides a penalty of up to 20 years' imprisonment for anyone who "knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—(1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to . . . withhold testimony . . . from an official proceeding; . . . or (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to . . . a violation of conditions of . . .

release pending judicial proceedings." 18 U.S.C. § 1512(b). Separately, subsection (d) provides a penalty of up to 3 years' imprisonment for anyone who "intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from . . . reporting to a law enforcement officer or judge of the United States the commission or possible commission of . . . a violation of conditions of . . . release pending judicial proceedings." 18 U.S.C. § 1512(d)(2).

Here, Arnold used a combination of threats, intimidation, corrupt persuasion, and harassment to induce Mrs. Arnold to lie to, and withhold information from, TBI and the U.S. Probation Office regarding the fact that Arnold had violated the terms of his pretrial release by committing a domestic assault. These actions therefore establish violations of § 1512(b) and (d).

B. Detention is warranted.

The existence of probable cause triggers a presumption of detention, which the defendant has the burden to rebut. *See* 18 U.S.C. § 3148(b). At this point, it is unclear what evidence, if any, Arnold will come forward with, and whether such evidence will be sufficient to rebut the statutory presumption. But even assuming arguendo that he does rebut the presumption, detention is still warranted in this case. As noted above, detention is mandatory if, in addition to probable cause, the Court finds either that "there is no condition or combination of conditions of release that will assure that [Arnold] will not flee or pose a danger to the safety of any other person or the community," 18 U.S.C. § 3148(b)(2)(A), or that Arnold "is unlikely to abide by any condition or combination of conditions of release," 18 U.S.C. § 3148(b)(2)(B). Both of those tests are met here.

First, if released, Arnold will continue to pose a serious danger to the safety of his wife. She has described prior incidents of Arnold's violent outbursts, including throwing things and punching walls, as well as a long history of "mental and emotional abuse" and "[m]anipulation"

directed towards her. She has also said that "he tends to get angry easily." Moreover, "multiple studies have shown that past domestic violence is the best predictor of future abuse." Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1024 (2014). Indeed, "[i]ntimate partner abuse rarely consists only of a single, isolated event; instead, the abusive partner more commonly engages in an ongoing process of violence and control. . . . As violence escalates, the likelihood that the perpetrator will use a weapon against the survivor also increases, which dramatically increases the risk of lethality." *Id.* And while "[j]udges may assume that the danger is over if the parties have separated," victims of domestic violence in fact "face the greatest risk of acute violence and lethality during the actual separation from an abusive partner and the ensuing years. Rather than ensuring safety, leaving or attempting to leave often escalates and intensifies the violence." *Id.* at 1025. In light of Arnold's characteristics specifically, and the reality of domestic violence generally, it is impossible to conclude that there is any combination of conditions that would assure that Arnold would not pose a continuing danger to his wife if released.

Arnold's acts of witness coercion and tampering also provide an adequate basis for revocation, even in the absence of the domestic violence. "Obstruction of justice has been a traditional ground for pretrial detention by the courts, even prior to detention for dangerousness which was instituted by the Bail Reform Act of 1984. *United States v. LaFontaine*, 210 F.3d 125, 134 (2d Cir. 2000). "Although witness tampering that is accomplished by means of violence may seem more egregious, the harm to the integrity of the trial is the same no matter which form the tampering takes." *Id.* at 135. As such, even an attempt to influence testimony *without* the threat of violence may "constitute the type of danger to the community that would support detention." *Id.*

(affirming order of pretrial detention for white collar defendant with no criminal record who attempted to tamper with a witness while on release); *see also United States v. Poulsen*, 521 F. Supp. 2d 699 (S.D. Ohio 2007) (same).

Second, Arnold is unlikely to abide by any condition or combination of conditions of release. The conduct at issue here is not a single, isolated event, but rather a pattern of illegal behavior that demonstrates a willingness to violate the law and cover it up. To be sure, the key incident—the domestic assault—occurred on Labor Day. At that point, however, Arnold could have accepted responsibility for his conduct and taken steps to ensure it did not happen again. Instead, he embarked on a lengthy campaign of obstruction, including lying to Pretrial Services and repeatedly demanding that his wife hide the truth to protect him.

This conduct is consistent with the allegations that make up the underlying criminal charges in this case. Those charges stem from a long-term fraud that involved numerous lies and misrepresentations, as well as an attempt to destroy documents. For example, as alleged in the indictment, when Arnold was interviewed by WSMV and WKRN on April 7, 2015, he stated that he had not gotten any money from JailCigs, despite the fact that—as demonstrated by bank records—he had received 19 checks from the company totaling $66,790, including one in the amount of $3,900 that he had deposited into his account the day before the interviews. (DE# 1, Indictment, at PageID #: 16-18.) He also feigned shock about the fact that co-defendant Joe Russell was an owner of JailCigs, despite the fact that he had received numerous checks drawn on an account with the name "Joe L. Russell II DBA JailCigs." (*Id.*) And when Arnold's involvement with JailCigs began to draw public scrutiny, Arnold's uncle met with a witness and asked her to "destroy [her] commission tabulation sheets," and accept new, fabricated copies that would

"show[] where the commission from Rutherford County went and didn't go to Robert or any of us." (*Id.* at PageID #: 19-20.)

In sum, Arnold has demonstrated a willingness to brazenly dissemble when confronted with questions about his conduct, and this pattern should undercut any confidence in his ability to abide by the conditions of pretrial release. *See, e.g.*, *United States v. Sehgal*, 480 F. App'x 16, 20-21 (2d Cir. 2012) (noting that a "record of continuing criminal conduct and pervasive deceit cast doubt on the likelihood that [the defendant] would abide by the conditions of her release"). Consider, for example, that if the Court attempts to assure Mrs. Arnold's safety by imposing the additional conditions that Arnold refrain from drinking alcohol and be precluded from possessing a firearm at home, any violations of those conditions could likely only be discovered if either Arnold or his wife chooses to report them. As he has repeatedly demonstrated, he cannot be trusted to self-report, and he is willing to take steps to prevent his wife from reporting him either. The steps he has taken have had their intended effect, as Mrs. Arnold has repeatedly expressed fear about saying anything that would put him in jail. Accordingly, the Court should conclude that it is unlikely that Arnold will abide by any conditions of supervised release, and should therefore order that he be detained pretrial.

IV. CONCLUSION

Committing domestic violence and then coercing the victim to lie about the facts are serious offenses that cannot be taken lightly. When someone commits these crimes while under federal indictment for numerous felonies related to fraud and public corruption, the appropriate consequence should be clear: the defendant's bond should be revoke and he should be detained pending trial. The Government therefore respectfully submits that, at the conclusion of the September 27 hearing, the Court should find that there is probable cause to believe that Arnold committed a crime while on release, and that either (1) there is no combination of conditions that will assure that Arnold will not pose a danger to the safety of another person or the community, or (2) it is unlikely that Arnold will abide by the conditions of release. It follows from those findings that the Court "shall enter an order of revocation and detention" pursuant to 18 U.S.C. § 3148(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record for the defendants.

s/ Cecil VanDevender
CECIL VANDEVENDER