

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	:	
	:	Criminal No. 12-0073
v.	:	
	:	
HOOR NAZ JAFRI	:	
ROSLYN F. DOGAN	:	

MEMORANDUM IN SUPPORT OF DETENTION

Defendant Hoor Naz Jafri (“Jafri”) and Roslyn F. Dogan (“Dogan”) (collectively the “Defendants”) planned and executed a health care fraud conspiracy that resulted in more than \$225 million in fraudulent claims billed to the Medicare program over approximately six years. The evidence of the Defendants’ guilt is strong, and they each face life sentences if convicted. Jafri has foreign ties – as she emigrated from India and was recently naturalized – and both Defendants have the funds necessary to flee. The Defendants have shown a pattern of brazenly disregarding legal and administrative processes. After the entities through which they operated their fraudulent scheme were placed on suspension by Medicare in September 2011, they reconstituted their fraudulent enterprise by purchasing another company (and Medicare provider number). When their involvement in the new facility was discovered by investigators and its provider number was suspended, the Defendants began an attempt to “sell” their beneficiaries to other facilities. Finally, Dogan participated in and encouraged the destruction of possibly incriminating files, and she, personally, even stole evidence from the U.S. Attorney’s Office in order to obstruct the investigation and conceal fraudulent activity.

I. BACKGROUND

A. Indictment and Charges

On April 25, 2012, a federal grand jury sitting in the Middle District of Louisiana returned an eight-count indictment (the “Indictment”) charging Jafri, Dogan, and five co-conspirators with one count of conspiracy to commit health care fraud in violation of Title 18, United States Code, Section 1349, and seven counts of health care fraud in violation of Title 18, United States Code, Sections 1347 and 2. These charges stem from a fraudulent scheme carried out at two community mental health centers (“CMHCs”), Psychcare of Louisiana dba Shifa Community Mental Health Center (“Shifa”), and Serenity Center, LLC (“Serenity”) (collectively the “Companies”), which purported to provide partial hospitalization programs (“PHP”) in the Baton Rouge area. Jafri is named in all eight counts of the indictment. Dogan is named in Counts 1, 6, 7, and 8. The Indictment was unsealed on May 2, 2012. If convicted of the charges in the Indictment, Jafri faces a total statutory maximum sentence of 80 years imprisonment, and Dogan faces a maximum of 40 years. Both defendants face forfeiture of at least \$37.9 million. A preliminary sentencing guidelines analysis shows that the prison sentence for both defendants, based on indicted and relevant conduct, would be life.

In a related action, four defendants pleaded guilty on April 26, 2012 to a bill of information (the “Information”) charging them with one count of conspiracy to commit health care fraud in violation of Title 18, United States Code, Sections 1349. These individuals, June M. Durio, Nancy N. Reed, Teryl C. Vincent, and Todd D. Ulmer were therapists at Shifa or Serenity between 2005 and 2011. These therapists purported to provide group therapy and to document patients’ attendance. They admitted that they were directed to falsify documentation for PHP services that were not provided and for patients who did not attend the facilities. In fact, Shifa and Serenity often billed Medicare for three or four group therapy sessions per day when

only one or two group sessions were provided or when no therapy was provided at all. Furthermore, Shifa and Serenity often billed for more patients than were present at the facility. The therapists admitted that they created group progress notes to reflect that the sessions had occurred and that the beneficiaries for whom Medicare was billed had been in attendance. In addition, the therapists admitted to knowing that many of the patients were not clinically appropriate for PHP services, including, for example, a geriatric patient who was non-responsive, patients who were mentally retarded, and others who continued to actively abuse drugs and were disruptive of the group therapy that was provided. Despite complaining to management that some of these patients were not eligible for PHP services, these therapists continued to provide services to and to create patient records for these individuals, knowing that these records would be used to bill Medicare.

B. The Alleged Scheme

For more than six years, Shifa and Serenity took advantage of vulnerable populations, including the elderly, drug addicts, and chronically mentally ill individuals, by providing them with no services, inadequate services, and clinically inappropriate services. By manipulating these individuals, the Companies submitted claims to Medicare for more than \$225.6 million from 2005-2011, and Medicare paid more than \$37.9 million for these services.

Jafri was an owner, director/officer and managing employee of both Companies, and Dogan was an owner, director/officer and managing employee of Serenity. As owners and managers, Jafri and Dogan focused on maximizing the number of Medicare beneficiaries to attend the CMHCs' partial hospitalization program, which comprised the only services for which Shifa and Serenity billed Medicare. Jafri and Dogan were the primary marketers for the Companies, and they recruited patients regardless of their appropriateness for PHP services. Specifically they targeted facilities such as nursing homes, inpatient hospitals, and homeless

shelters, in Baton Rouge and in cities hundreds of miles away, taking the patients that, as one witness described, “no one else wanted.” Dogan would then ensure that the patients were admitted, regardless of eligibility, by transferring any patient who was deemed not eligible by one doctor to another doctor who would certify the patient. Once patients were admitted to the PHP program, Jafri and Dogan insisted that they remain in the program, even when therapists complained that the patients were not appropriate for PHP care.

The CMHC then provided services that did not meet Medicare’s requirements for PHP, and on many days, they provided no services at all. Patient attendance at the CMHCs was erratic, and often patients would refuse to attend. On multiple occasions, Jafri and Dogan specifically instructed therapists to create group therapy notes and other documentation for patients on days on which the patients did not receive any therapy – either because these patients did not attend the program or because the program did not provide any therapy. In addition, they pressured administrators to maximize billing, and they encouraged and condoned the regular falsification of patient documentation.

Under the leadership of the Defendants, the facilities had a practice of routinely billing the most vulnerable of the patients for services that were not provided. Therapists tasked with falsifying documents were specifically directed to create falsified group notes for beneficiaries who lived at apartment complexes owned by Adventure Realty, of which Jafri was a manager and director. Beneficiaries living in these apartment complexes – who were required by the complexes’ “rules” to attend PHP at Shifa or Serenity – were particularly vulnerable because many came from Tennessee or other remote locations and had no family or friends to advocate on their behalf. All or most of these patients suffered from drug addiction and/or chronic mental

illnesses, so they could not advocate for themselves. They relied on the Defendants and others affiliated with the Companies to meet their basic needs.

In sum, Jafri and Dogan directed and facilitated a large-scale scheme to bilk Medicare of hundreds of millions of dollars by taking advantage of the most vulnerable. In return, the Defendants personally received hundreds of thousands or even millions of dollars, as well as lavish company perks such as leased luxury cars and designer watches.

II. FACTS RELEVANT TO REQUEST FOR PRETRIAL DETENTION

The investigation leading to the indictment of Jafri and Dogan has uncovered a great deal of information that makes their detention pending trial appropriate.

A. Dogan and Jafri have continued to find avenues to profit from Medicare and exploit patients.

In September 2011, Medicare suspended the provider numbers for Shifa and Serenity. In or around October 2011, the owners of the Companies entered an agreement with Behavioral Health of Southeast Louisiana, LLC (“Behavioral”) in order to transfer all of their patients to this facility and take advantage of Behavioral’s provider number. In addition to the transfer of patients, the majority of Shifa and Serenity employees also moved to Behavioral. They instituted a new “administrator” (a former owner of Shifa), but otherwise, Jafri, Dogan, and the other owners and managers of Shifa and Serenity ran Behavioral themselves. On March 5, 2012, the provider number for Behavioral was suspended by the Center for Medicare and Medicaid Services (“CMS”) based on credible allegations of fraud.

The Defendants’ course of action in regard to Behavioral is not unlike that which led to the creation of Serenity. Jafri, Dogan, and their co-conspirators incorporated Serenity in 2005 when Shifa was being investigated and was placed on pre-payment review by CMS. In order to continue the fraudulent scheme and to avoid scrutiny (and to avoid losing control of patients

through whom they could bill Medicare), the Defendants and the co-conspirators set up Serenity and transferred their patients and staff to this new facility, which was less than one mile down the road. Serenity continued to bill Medicare for the same patients for the exact services that had been purportedly provided by Shifa. When Shifa was released from pre-payment review, the Defendants, with others, kept both facilities in operation and expanded their patient pool.

Today, Dogan and Jafri continue their questionable “marketing” practices as they work with other healthcare companies. They also purport to control the beneficiaries who live at the apartment building for which Jafri is a manager and directing agent. There is some indication that Jafri and Dogan have attempted to “sell” these beneficiaries, and, more specifically their Medicare information, to other healthcare providers.

B. Dogan stole documents from the U.S. Attorney’s Office and was party to their destruction.

In October 2011, a civil hearing was conducted based on a Complaint and Application for a Temporary Restraining Order to restrain the Companies’ bank accounts, pursuant to 18 U.S.C. Section 1345. As part of the discovery process, Dogan and other co-conspirators requested access to and then visited the U.S. Attorney’s Office to review and copy documents that had been seized as part of a search by law enforcement that had been conducted on August 16, 2011. Subsequent to the visit, Dogan and co-conspirators bragged that, while pretending to copy files, they actually stole incriminating documents from the files and later destroyed them. Dogan referred to herself as a “smooth criminal.” Dogan also celebrated the fact that, in the search, the investigators missed a lot of important information, such as employee time cards, which presumably revealed that employees were not always present at the times that they purported to provide group therapy. Another co-conspirator bragged to Dogan and others that he had a

“bonfire” with fabricated notes that law enforcement officers had failed to seize during the search.

C. Jafri engages in frequent overseas travel.

Jafri immigrated to the United States from India, and she was naturalized in 2007. Since then, she has engaged in at least two trips to India, one trip to Germany, one trip to Dubai, and one trip to Canada.

III. ARGUMENT

There is a serious risk that if Jafri and Dogan are released, they will flee. They directed and operated a long running fraud on the Medicare program, and they and their co-conspirators have submitted claims to Medicare in excess of \$225 million. If convicted, Jafri and Dogan face life imprisonment. Adding to the risk of flight, Jafri has significant ties to India, and both defendants have the resources they would need to flee.

Jafri and Dogan also pose a significant threat to the community should they be released prior to trial. They continue to exploit vulnerable beneficiaries who are all but captive in housing and treatment programs run by or chosen by the defendants. CMS’ administrative suspension of the provider numbers for the specific facilities involved in this case has not deterred Jafri and Dogan from continuing to hatch plans to receive Medicare payments and profit off vulnerable patients. The amount of tax dollars already lost to the Defendants’ schemes is astounding, and failure to detain them likely would result in additional losses.

Dogan poses an additional threat to the community in that she has shown a propensity to obstruct justice by stealing and destroying incriminating evidence and encouraging others to steal, destroy, and hide evidence. The investigation into the large-scale fraud perpetrated in this scheme will continue, and this obstructive behavior poses a threat to the pursuit of justice.

These dangers to the community should be eliminated; Jafri and Dogan should be detained.

A. Bail Reform Act

Under the Bail Reform Act, Title 18, United States Code, Section 3141, *et seq.*, federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. *See* 18 U.S.C. § 3142(e) (“no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community”). A finding of risk of flight must be supported by a preponderance of the evidence. *United States v. Trosper*, 809 F.2d 1107, 1109 (5th Cir. 1987); *see also United States v. Stewart*, No. 01-4537, 2001 WL 1020779 (4th Cir. Sept. 6, 2001) (unpublished) (citing *United States v. Hazime*, 762 F.2d 34, 37 (6th Cir. 1985)). Though admittedly less common, there is precedent in the Fifth Circuit to detain non-violent criminals based on the factors found in Section 3142. *See United States v. Clark*, 68 F.3d 467, 1995 WL 581606 (5th Cir. 1995).

The Bail Reform Act lists four factors for courts to consider in the detention analysis: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. 18 U.S.C. § 3142(g). All four factors are considered in turn below and indicate that detention is warranted for both Jafri and Dogan.

B. All Four Factors Support Detention.

1. The Nature and Circumstances of the Crimes Charged Support Detention.

The charges alleged in the Indictment subject the Defendants to significant criminal exposure. Given their role in the fraudulent scheme, and the high dollar amount of the intended

loss, Jafri and Dogan face significant prison sentences if convicted. *See, e.g., United States v. Duran*, No. 1:10-cr-20767, Docket Entry No. 339 (S.D. Fl. Sept. 20, 2011) (sentencing defendant involved in \$200 million health care fraud scheme to 50 years' imprisonment); *United States v. Mateos*, 623 F.3d 1350 (11th Cir. 2010) (affirming 30-year sentence for physician involved in \$11 million health care fraud scheme). Indeed, a preliminary Sentencing Guidelines calculation places the defendants in a position to receive life sentences. This fact alone suggests a serious risk that Jafri and Dogan will flee. *See United States v. Stanford*, 341 Fed. Appx. 979, 982 (5th Cir. 2009) (affirming district court's detention order where "the district court properly took into account the daunting sentence – 375 years of imprisonment – [defendant] faces if found guilty on all twenty-one counts in determining that he presents a risk of flight").

In addition to having incentive to flee, Dogan and Jafri both have the means to do so. Jafri has ties to India and is an experienced international traveler. Both Jafri and Dogan collected considerable sums of money from the fraud scheme, and, though the full financial benefit they received from this enterprise has been hard to trace – due in part to their ownership of other corporate entities to which proceeds were transferred – we know that they each procured hundreds of thousands of dollars, with Jafri receiving \$2 million or more, and have the funds necessary to flee.

2. The Defendants' History and Characteristics Indicate a Strong Propensity to Deceive Authorities and Obstruct Justice.

Dogan, Jafri, and their co-conspirators have acted on multiple occasions to shield their schemes from investigation. At least twice, with Serenity and then Behavioral, they displaced patients and staff to new facilities in order to continue billing Medicare despite investigations into their fraudulent practices. In addition, Dogan has shown a propensity to evade and obstruct

justice even more directly – by stealing and destroying documents that she deemed to be incriminating.

The circumvention of CMS’ investigation and suspension, as well as the track record of stealing and destroying evidence, weigh heavily in favor of the Defendants’ detention. Jafri and Dogan simply cannot be trusted to comply with any conditions of release.

3. The Defendants’ Release Poses a Danger to the Community.

The Bail Reform Act directs the Court to consider “the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.” 18 U.S.C. § 3142(g)(4). “The ‘danger to ... the community’ [language in the Bail Reform Act] permits consideration of the defendant’s propensity to commit crime generally, even where only pecuniary and not physical harm might result to the community at large.” *United States v. Parr*, 399 F.Supp. 883, 888 (W.D.Tex.1975); *see also United States v. Madoff*, 586 F.Supp.2d 240, 254 (S.D.N.Y 2009) (conducting an exhaustive review of case law and determining that “there is jurisprudence to support the consideration of economic harm in the context of detention to protect the safety of the community.”)

The Defendants have engaged in a pattern of fraudulent activity that is staggering in its breadth and scope and has resulted in significant economic loss. And despite the best efforts of those who administer the Medicare program, the Defendants have continued to cause significant losses to the Medicare program. There is every reason to believe based on the Defendants’ past activity that if they are released they will find a way to continue to defraud the American taxpayer.

In addition, the Defendants have continuously exploited vulnerable individuals and created an environment in which these individuals are under the Defendants’ almost absolute control. This pattern will undoubtedly continue unless the Defendants are detained and no

longer able to bill Medicare for services beneficiaries are not receiving, “sell” beneficiaries to other facilities, and otherwise abuse these individuals.

The Defendants’ incarceration pending trial is the safest way to ensure that the community is protected from further harm that may be wrought by them.

4. The Evidence of Guilt is Strong.

Finally, the strength of the evidence also weighs in favor of pre-trial detention. Four cooperating witnesses have already pleaded guilty, admitting that they participated in the scheme and implicating Jafri and Dogan for their role in directing it. These witnesses and others have stated that Dogan and Jafri were intent on billing for as many patients as possible, regardless of need or services provided. The Defendants brought the beneficiaries to the facilities, they pressured employees to meet a patient “census,” they observed employees who falsified records that were part of the billing process, they personally instructed employees to falsify patient records, and Dogan took extreme and alarming steps to conceal the fraudulent scheme.

In addition to the evidence already collected, the government is continuing its investigation into the allegations contained in the indictment. This continuing investigation is likely to develop even more evidence of the Defendants’ roles.

IV. CONCLUSION

Jafri and Dogan engaged in an extensive and deplorable but lucrative fraud scheme. The evidence against them is strong, and they face life sentences if convicted. The Defendants have shown that they will flout authorities so that they might continue to make as much money as possible, and Dogan has taken shocking steps to steal and destroy incriminating evidence.

Based on the foregoing, and pursuant to 18 U.S.C. § 3142(f)(2), the government respectfully requests that the Court order that Dogan and Jafri be detained pending trial because

no other condition or combination of conditions will reasonably ensure their appearance as required at future court proceedings and because they are a danger to the community.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 2, 2012, the undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ David M. Maria
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