

1 ELIZABETH A. STRANGE  
Acting United States Attorney  
2 MONICA EDELSTEIN  
Assistant United States Attorney  
3 Arizona State Bar No. 023098  
Two Renaissance Square  
4 40 N. Central Ave., Suite 1200  
Phoenix, Arizona 85004  
5 Telephone: 602-514-7500  
Email: monica.edelstein@usdoj.gov  
6 Attorneys for Plaintiff

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,  
11 Plaintiff,

12 vs.

13  
14 Yomtov Scott Menaged,  
15 Defendant.  
16

CR-17-00680-PHX-GMS

**UNITED STATES' MOTION  
FOR DETENTION**

(Magistrate Judge)

Detention Hearing:  
May , 2017 at

17  
18 Plaintiff United States of America hereby files this brief in support of the  
19 government's request for pretrial detention of defendant Yomtov Scott Menaged. The  
20 United States' motion is based on the attached memorandum of points and authorities, the  
21 declaration of HSI Special Agent Byron Anderton, attached herein as Exhibit A, and the  
22 files and records in this case. Excludable delay under 18 U.S.C. § 3161(h) may occur as a  
23 result of this motion or an order based thereon.  
24

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26  
27 **I. BACKGROUND AND PROCEDUAL HISTORY**

28 The United States' respectfully requests that the Court order Defendant Yomtov

1 Scott Menaged (“Menaged”) detained pending trial in this case. Menaged is a 40-year-old  
2 U.S. citizen, with strong offshore ties, who owns and operates real estate investment and  
3 furniture store businesses in and around the Phoenix, metropolitan area. In and around 2014,  
4 Menaged appeared on a television show called “Property Wars” that filmed in the area and  
5 focused on individual investors, like Menaged, who purchased foreclosed properties in real  
6 estate Trustee Sales and “flipped” those properties for a profit. Menaged also owns and  
7 operates brick and mortar furniture stores that at various times operated under several names  
8 including: Furniture King, Furniture and Electronic King, and American Furniture.  
9 (Declaration of SA Byron Anderson, Exhibit A, ¶ 3). As part of operating these entities,  
10 Menaged employed various individuals and opened countless bank accounts in the names  
11 of his businesses. (Exhibit A, ¶ 11).

12  
13  
14  
15 On or about May 16, 2017, a grand jury returned an indictment charging Menaged  
16 with two count of Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. § 371, Wire  
17 Fraud in violation of 18 U.S.C. § 1343, and Aggravated Identity Theft in violation of 18  
18 U.S.C. § 1028A. The charges in this case stem from an elaborate scheme orchestrated by  
19 Menaged where he and others who worked for him, opened fraudulent credit card accounts  
20 in the names of supposed retail store customers with Wells Fargo and Synchrony Bank.  
21 (Exhibit A, ¶ 5-9). In fact, the credit applications were for fictitious purchases and made in  
22 the names of recently deceased individuals using these individuals’ accurate personal  
23 identification information including their names, social security numbers, addresses,  
24 telephone numbers, and in some cases, email addresses or other contact information.  
25 (Exhibit A, ¶ 7, 9). The victim Banks wired funds for these fictitious purchases into the  
26  
27  
28

1 merchant bank accounts for the various furniture retail stores and these funds ultimately  
2 made their way to Menaged and his associates. Menaged made some nominal payments  
3 toward the outstanding credit accounts at Wells Fargo Bank using cashiers' checks drawn  
4 on his personal accounts to conceal the fraud, but because there was no living individual  
5 associated with the accounts, the Banks ultimately closed the accounts at a loss. (Exhibit  
6 A, ¶ 16). The loss associated with the two bank fraud schemes exceeds \$2 million.  
7

8 Menaged should be detained because there is a preponderance of evidence that he  
9 poses a substantial risk of flight. Given the serious nature of the charges in this case, as well  
10 as the potential for a custodial sentence, Menaged has a substantial motivation to flee.  
11 Further, Menaged has the means to flee the jurisdiction because he has access to significant  
12 amounts of cash, has previously moved and accessed cash through countless bank accounts  
13 in the names of his businesses, family members and acquaintances, and actively and  
14 frequently travels internationally. There is also clear and convincing evidence that Menaged  
15 is an economic danger to the community. Even after filing for bankruptcy and therefore  
16 coming within the jurisdiction of the U.S. Bankruptcy Court, Menaged did not stop  
17 defrauding Synchrony Bank. In fact, he intentionally began using nominee employees and  
18 acquaintances to continue his bank fraud scheme to make it appear that he was no longer  
19 operating the furniture locations at issue. Given these facts, there are no conditions or  
20 combination of conditions to ensure that Menaged does not flee nor are there any conditions  
21 that will sufficiently protect the public from additional crimes committed by Menaged.  
22  
23  
24  
25  
26  
27  
28

1       **II. MENAGED SHOULD BE DETAINED AS A FLIGHT RISK AND**  
2       **ECONOMIC DANGER TO THE COMMUNITY**

3               **A. Pretrial Detention Is Appropriate Where a Defendant Poses A**  
4               **Substantial Risk of Flight And Is A Danger to the Community**

5               The Bail Reform Act of 1984 permits pretrial detention of a defendant where "no  
6       condition or combination of conditions will reasonably assure the appearance of the person  
7       as required and the safety of any other person and the community." 18 U.S.C. § 3142(e);  
8       David N. Adair, Jr., Federal Judicial Center, *The Bail Reform Act of 1984*, p. vii (3rd Ed.  
9       2006). The Act mandates the release of a person pending trial unless the court "finds that  
10      no condition or combination of conditions will reasonably assure the appearance of the  
11      person as required and the safety of any other person and the community." *United States v.*  
12      *Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting 18 U.S.C. § 3142(e)); see also *United*  
13      *States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). Conversely stated, a district court  
14      should not order pretrial release unless it determines that a condition or combination of  
15      conditions will reasonably assure the appearance of the person as required and the safety of  
16      the community. Detention is appropriate where the government demonstrates either flight  
17      risk or danger to community; it is not necessary to prove both. See *United States v.*  
18      *Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant is a flight risk  
19      need only be supported by a preponderance of the evidence. *Id.* at 1406. The government  
20      must establish that the defendant is a danger to the community by clear and convincing  
21      evidence. *Gebro*, 948 F.2d at 1121.

22               In determining whether release conditions exist that would reasonably assure a  
23      defendant's appearance, Section 3142(g) requires a district court to consider the following  
24      evidence. *Gebro*, 948 F.2d at 1121.

1 factors:

- 2 (1) the nature and circumstances of the offense charged, including whether  
3 the offense is a crime of violence, a violation of section 1591, a Federal  
4 crime of terrorism, or involves a minor victim or a controlled substance,  
5 firearm, explosive, or destructive device;  
6 (2) the weight of the evidence against the person;  
7 (3) the history and characteristics of the person, including—  
8 (A) the person's character, physical and mental condition, family  
9 ties, employment, financial resources, length of residence in the  
10 community, community ties, past conduct, history relating to  
11 drug or alcohol abuse, criminal history, and record concerning  
12 appearance at court proceedings; and  
13 (B) whether, at the time of the current offense or arrest, the person  
14 was on probation, on parole, or on other release pending trial,  
15 sentencing, appeal, or completion of sentence for an offense  
16 under Federal, State, or local law; and  
17 (4) the nature and seriousness of the danger to any person or the community  
18 that would be posed by the person's release.

19 18 U.S.C. § 3142(g). The weight to be afforded to each of these factors rests in the district  
20 court's discretion. *See United States v. Gentry*, 455 F.Supp.2d 1018, 1020 (D. AZ 2006)  
21 (*citing United States v. Hollender*, 162 F.Supp.2d 261, 264 (S.D.N.Y. 2001)). Here,  
22 defendant Menaged poses both a substantial risk of flight and is an economic danger to the  
23 community.  
24

25  
26 **B. Menaged Poses a Risk of Flight**

27 **1. Menaged has strong offshore ties and has the economic means to**  
28 **flee.**

1           Investigators determined that Menaged has used multiple names and social security  
2 numbers including at least six (6) variations of his true name and at least three (3) separate  
3 social security numbers, only one of which is his valid number. (Exhibit A, ¶4). In  
4 addition, Menaged has used multiple dates of birth in a further attempt to conceal his  
5 identity. (*Id.*). There is no other interpretation for this type of behavior other than  
6 Menaged's intent to defraud and conceal his involvement in business and other transactions  
7 he is involved with.  
8

9           The investigation determined that Menaged possesses a U.S. passport and has  
10 travelled internationally frequently over the last ten years including a trip in December  
11 2015 that took place during the crimes alleged in the Indictment. In addition, Menaged has  
12 access and control over twenty-eight (28) different bank accounts that the investigation is  
13 aware of and has been party to transactions in the amounts of hundreds of millions of  
14 dollars. (Exhibit A, ¶ 11, 13-15). The investigation traced more than \$6 million that  
15 Menaged has moved to friends and family to conceal his ownership and control over the  
16 funds, including wires to family members in Israel and Menaged's father who has strong  
17 ties to Israel. (Exhibit A, ¶ 15). The investigation further determined that Menaged has  
18 access to large amounts of cash and has conducted cash transactions both at local casinos  
19 and at banks. (Exhibit A, ¶ 16, 17). Simply stated, Menaged has access to cash both in  
20 accounts he may have control over and accounts controlled by his family and acquaintances  
21 who have demonstrated that they will act on Menaged's behalf. More importantly, the full  
22 scope of Menaged's financial picture is largely unknown to the United States. Menaged  
23  
24  
25  
26  
27  
28

1 himself boosted that he has offshore accounts and access to money that he can repatriate  
2 as he wishes. (Exhibit A, ¶ 14). In any event, if Menaged flees, he has both the financial  
3 ability and means to successfully escape prosecution rather than face trial and, if convicted,  
4 the certainty of a prison sentence.

## 6 **2. Prison Exposure Provides Menaged a Substantial Motive to Flee**

7 As the Court is aware, Menaged is named in a multiple count Indictment. The Ninth  
8 Circuit permits the district court to consider possible punishment as an incentive for a  
9 defendant to flee in assessing a defendant's risk of flight. *See United States v. Townsend*,  
10 897 F.2d 989, 995 (9th Cir. 1990). Here, the potential punishment that Menaged is exposed  
11 to creates a strong incentive to flee. The maximum sentence for counts 1 and 12, conspiracy  
12 to commit bank fraud, is 5 years each; each of the 11 counts of wire fraud has a maximum  
13 of 30 years because the victims are financial institutions; and each of the 11 counts of  
14 aggravated identity theft, under Title 18 U.S.C. §1028A, results in mandatory 2 year  
15 sentences upon conviction and any sentence imposed related to other charges must run  
16 consecutive to the sentence associated with the ID theft counts. As such, on the ID theft  
17 counts alone, Menaged is potentially facing 22 years' incarceration consecutive to any other  
18 sentence imposed upon conviction.

19 A conservative calculation of the likely Advisory Guideline Range as to the non-ID  
20 theft charges results in a Total Offense Level of 31 with an estimated Guideline Range for  
21 Category I of 108-135 months. An analysis of the applicable Guidelines demonstrates that  
22 the amount associated with the bank frauds is approximately \$2,112,405.97. The Base  
23 Offense Level is 7 pursuant to U.S.S.G. §2B1.1(a)(1); 16 levels will be added due to a loss  
24  
25  
26  
27  
28

1 that is greater than \$1.5 million but less than \$3.5 million pursuant to U.S.S.G.  
2 §2B1.1(b)(1)(I). An additional 2 levels will be added because Menaged's scheme involved  
3 sophisticated means pursuant to U.S.S.G. § 2B1.1(b) (10) (C). An additional 4 levels would  
4 be applied because Menaged was an organizer or leader of a criminal activity that involved  
5 five or more participants or *was otherwise extensive* pursuant to U.S.S.G. § 3B1.1(a).  
6 Lastly, evidence during the investigation indicates that Menaged engaged in obstruction by  
7 utilizing nominee names and individuals after he had filed personal bankruptcy to conceal  
8 his involvement in the later bank fraud schemes and, therefore, could receive a 2 level  
9 increase if the Court finds that he obstructed justice pursuant to U.S.S.G. § 3C1.1.  
10  
11

12 In *United States v. Moore*, a statutory rebuttable presumption was established that  
13 the defendant posed a flight risk because he faced charges for which a maximum sentence  
14 of ten years or more was prescribed under the Controlled Substance Act. 607 F.Supp. 489,  
15 492 (N.D.C.A 1985). Although, in the current case, no such rebuttable presumption is  
16 established based upon the particular offenses charged, the reasons justifying the  
17 presumption are present. In *United States v. Bolero*, 604 F. Supp. 1028, 1033 (S.D. Fla.  
18 1985), where the defendant was charged with money laundering-a financial crime- the judge  
19 noted that "the same factors which create an unusually high risk of flight in narcotics  
20 offenses and which form the basis for the statutory presumption [were] present." *Id.* "Thus,  
21 persons involved in money laundering, just as those involved in narcotics trafficking, have  
22 the resources and foreign contacts to escape to other countries to avoid prosecution." *Id.*  
23 Similarly, in this case, although no rebuttable presumption exists against Menaged's release  
24 pending trial, the same circumstances that underlie such a presumption in narcotics cases  
25  
26  
27  
28



1 are present here - foreign ties and access to cash and other financial resources inside and  
2 outside the Country that are largely unknown to the Government.

3 **3. Regarding all counts, the evidence of Menaged's guilt is substantial.**

4 The evidence of the bank fraud scheme is based largely on certified and verifiable  
5 documentation obtained from the victim Banks. The flow of the funds to Menaged's bank  
6 accounts and his ultimate control of the funds is also established by certified bank records.  
7 (Exhibit A, ¶ 8-9). As such, the paper trail in this case leads directly to Menaged. All of  
8 the fraudulent credit applications were submitted electronically either from Menaged's  
9 email account or through Synchrony Bank's online portal known as Business Center,  
10 establishing that the scheme was executed by wire fraud. Furthermore, the investigation  
11 has confirmed that in almost every instance that a credit application was submitted, the  
12 individual was deceased prior to the date of the application and therefore, could never have  
13 entered one of the furniture stores and made a purchase. (Exhibit A, ¶ 7, 9). Finally, the  
14 investigation has verified that all of the individuals listed on the fraudulent applications are  
15 in fact real individuals and that their stolen personal identification information used to  
16 submit the applications was 100% accurate. (Exhibit A, ¶ 8-9).

17 **C. Menaged is an Economic Danger to the Community.**

18 In addition to being a flight risk, Menaged should be detained pending trial to protect  
19 the public because there is clear and convincing evidence that he is an economic danger to  
20 the community. Danger to the community also encompasses economic danger. *United*  
21 *States v. Reynolds*, 956 F.2d 192, 192-93 (9th Cir. 1992) (defendant convicted of mail fraud  
22 under 18 U.S.C. § 1341 posed an economic or pecuniary danger to the community).

1 Menaged began the bank fraud scheme involving Wells Fargo Bank in or around  
2 2015. He subsequently filed for bankruptcy in April 2016. (Exhibit A, ¶ 12). Despite being  
3 subject to the jurisdiction of the Bankruptcy Court, Menaged continued to perpetuate the  
4 same scheme involving Synchrony Bank but this time utilized nominees and employees to  
5 establish the merchant bank account relationships with the Banks. The evidence also  
6 establishes that Menaged had access to real and accurate bulk personal identification  
7 information. (Exhibit A, ¶ 7, 9). The entirety of the fraud, including the submission of the  
8 false applications and the money transfers, could have been executed from any computer  
9 terminal with an internet connection or even a smart phone. In addition, Menaged openly  
10 stated to associates that he would not disclose funds he held offshore to the Bankruptcy  
11 Court and that he had the means to access funds that he had not disclosed to the Court.  
12 (Exhibit A, ¶ 14). The evidence clearly establishes that Menaged will simply change his  
13 methods but continue to perpetuate economic frauds regardless of any order or conditions  
14 imposed by this or any other Court. He has proven his unwillingness to be truthful and  
15 comply in the very recent past and there is no evidence that any conditions or combination  
16 of conditions would deter him even now. Menaged should be detained until the economic  
17 danger he poses to the community is ameliorated and the only way to ensure that is the case  
18 is to entirely prevent his access to the community.

### 24 **III. CONCLUSION**

25 By a preponderance of the evidence, Menaged poses a flight risk. He appears to  
26 have access to substantial cash, bank accounts, and unknown assets outside of the United  
27 States. He is exposed to substantial prison time on charges for which the evidence of guilt  
28

1 is considerable. Menaged, therefore, has the motivation and means to flee the jurisdiction.  
2 Additionally, there is clear and convincing evidence that Menaged has been, and will  
3 continue to be, an economic danger to the community if allowed to remain outside of  
4 custody. Lastly, although the United States is not proposing that Menaged provide real  
5 property as collateral for a surety, any real property that he has access to is encumbered, or  
6 is subject to forfeiture, or seizure. Menaged should be detained pending trial.  
7

8  
9 Respectfully submitted this 25<sup>th</sup> day of May 2017.

10  
11 ELIZABETH A. STRANGE  
12 Acting United States Attorney

13 s/ \_\_\_\_\_  
14 MONICA EDELSTEIN  
15 Assistant U.S. Attorney  
16  
17

18  
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on this 25<sup>th</sup> day of May 2017, I electronically transmitted the  
21 attached document to the Clerk's Office using the CM/ECF System for filing a copy to the  
22 CM/ECF registrants listed under this case number:  
23

24 s/  
25 U.S. Attorney's Office  
26  
27  
28