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**Attorney for Defendant Yomtov Scott Menaged**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

United States,	)	Case No. CR-17-0680-001-GMS
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MOTION FOR <i>DE NOVO</i> REVIEW OF</b>
	)	<b>DETENTION HEARING</b>
Yomtov Scott Menaged,	)	
	)	<b>(Oral Argument Requested)</b>
	)	
	)	
Defendant	)	

Defendant Yomtov Scott Menaged, through undersigned counsel, hereby moves for review of the Magistrate Judge's order of June 6, 2017 and June 12, 2016, ordering Scott Menaged's pretrial detention as a flight risk. (Dkt # 40 and 43).<sup>1</sup> This motion is made pursuant to 18 U.S.C. § 3145(b), which provides that the motion "shall be determined promptly." The order of detention should be revoked because in this instance there is not preponderance of the evidence to suggest that Mr. Scott Menaged (hereinafter referred to as Scott because of multiple family members involved in the case) is a flight risk or that no condition or combination of conditions of release could reasonably assure

<sup>1</sup> At his detention hearing on June 6, 2017 the Magistrate Judge ordered orally in court Mr. Menaged's detention as a flight risk. (Dkt. 40). This was followed up by a written order on June 12, 2016. (Dkt. 43). The defendant responds to both Orders in this Motion.

his presence at court hearings and the safety of the community.

## **I. Background**

### **a. Mr. Menaged is a United States citizen with strong ties to Phoenix**

Scott Menaged is the father of two children (Brandon, 14 years old, and Stevie, 2 years old) with deep and sustained ties to Phoenix, Arizona, no criminal history, and no substance abuse or mental health history. The defendant is divorced from his first wife but she reports the defendant shares 50/50 custody of their son Brandon, who is 14 years old and beginning high school in August. [Exhibit 1, Letter from Valerie Crowner]. Ms. Crowner reports the defendant is a reliable and steadfast parent to their teenager and they share co-parenting responsibilities, writing:

Our custody has always been a joint agreement and as Brandon got older the time increased to an even 50/50 which is where it has remained for several years now. There has never been any laps [sic] in our agreement or any time period in which Scott wasn't seeing Brandon on a weekly basis.

(*Id.*).

Scott is also father to an adopted daughter Stevie, who is two years old and who he takes significant parenting responsibilities for. Scott's infirm grandmother, mother, two sisters, brother, in-laws, ex-wife, and children all reside in the Phoenix-area. Scott is described as a family man and growing up, played a father-like role for his younger siblings after his parents divorced. [Exhibit 2, 3, and 4, Letters from Michelle Menaged, Joy Menaged and parents-in-law, Salvatore and Josephine Baratto]. In fact, since his arrest Scott's beloved grandmother suffered a stroke and has been given mere days to live. Scott's son Brandon is starting high school in August. Scott's family is almost entirely in Arizona and given the incredible strength of their bonds to each other, it is unlikely he would ever flee the jurisdiction. His motivation is to be with them, no matter what he faces in this case.

Pre-trial services interviewed the defendant, verified the information he provided, and recommended his release with certain conditions. Scott is amenable to all of these conditions and several more that he will propose later in this motion.

Despite the many strong factors favoring pre-trial release, the Court held the defendant detained as a flight risk citing the defendant's access to family's member's

1 bank accounts and payment of significant sums to Scott's father, Joseph Menaged, the  
2 fact that Scott was found with \$2500 in cash on his person and his passport card upon his  
3 arrest, the large amount of debt owing in Scott's bankruptcy, the identity theft allegations,  
4 and Scott's alleged violation of bankruptcy court orders as providing a strong motive to  
5 flee. (Dkt. 43). The defendant presents the following arguments to refute the  
6 government's arguments and the Magistrate Judge's conclusions.

7 **b. Lack of overseas ties**

8 A high school drop-out with no formal training of any kind, Scott has been  
9 involved in various Phoenix businesses ranging from furniture to foreclosures for all of  
10 his adult life. Some of those business ventures are the subject of this indictment. The  
11 government argued in its Motion for Detention, "the defendant had boasted that he has  
12 offshore accounts and access to money that he can repatriate as he wishes" and the "full  
13 scope of Menaged's financial picture is largely unknown to the United States." (Dkt. #31  
14 at pg. 6.) The defendant submits that a robust financial analysis undertaken as part of the  
15 bankruptcy process—and that the United States has full access to—revealed simply no  
16 offshore or secret accounts. The defendant filed for bankruptcy in April of 2016. Since  
17 then, the Chapter 7 Trustee, the United States Trustee, the receiver for DenSco  
18 Investment Corporation, and all of Scott's other creditors have been looking at his  
19 financial affairs and investigating his assets and liabilities looking for any money or  
20 assets that might be available to pay back his creditors. In a comprehensive financial  
21 analysis that took over a year and left no stone unturned, no one has discovered any  
22 overseas assets or transfers overseas. The single international wire transfer brought forth  
23 by the government during the detention hearing was in July, 2016 in the amount of  
24 \$200,000 *from Scott's father*, Joseph Menaged, to Israel Discount Bank. This had nothing  
25 to do with Scott and there was nothing unusual about this as Joseph Menaged has family  
members who still live in Israel and has dual citizenship with that country. The  
Magistrate also pointed out that Joseph had recently traveled to Israel and was there at the  
time of the detention hearing. The government did not point out that Joseph had  
purchased this round-trip ticket to Israel well *before* any of the arrests or searches in this

1 case and was scheduled to return to Phoenix on June 20, 2017. Regardless, any ties to  
2 Israel are with Joseph and are attenuated as to Scott. More importantly, *none* of the  
3 financial investigations have revealed or even suggested that any offshore accounts exist.

4 The government suggested Mr. Menaged himself has claimed he has offshore  
5 accounts. (Dkt. # 31, Agent Boynton Affidavit ¶ 14). In July 2016 Mr. Menaged  
6 indicated in a conversation with a distraught creditor, to whom he was in debt millions of  
7 dollars, that the creditor was not to worry because he had money overseas that he would  
8 use to satisfy the debt. Scott was merely puffing and trying to assuage the creditor's fear  
9 of not being repaid. None of the rigorous and scrutinizing investigations into the  
10 defendant's finances have suggested that this single statement was anything more than  
11 fantastical hot air being employed to stall this creditor.

12 The government argued that Scott Menaged has taken several overseas trips to  
13 further suggest he has offshore ties. The travel manifesto produced by the government  
14 before the June 6<sup>th</sup> detention hearing (and which contradicts some of Agent Byron  
15 Anderton's affidavit) suggests that this is far from the truth. First, the last time the  
16 defendant traveled overseas was in 2015— Scott has not left the United States in two  
17 years. Second, none of the trips are to one single country over and over again, which  
18 could suggest possible business or banking trips. Rather, the trips are to varied locations  
19 including Jamaica, Cancun, and Israel. Scott's trip to Israel in 2012 was a cultural and  
20 heritage tour with his young son. Third, none of the countries Scott has visited are  
21 associated with international banking. Fourth, the bulk of the travel is on cruise ships  
22 including a Disney Fantasy cruise in 2013, a Norwegian Jewel Cruise in 2011, a Mariner  
23 of the Seas cruise in 2009, a Carnival Paradise Cruise in 2009, and a Disney Wonder  
24 cruise in 2007. [Exhibit 5]. Taking frequent themed cruises does not suggest any offshore  
25 banking or international business ties. Agent Anderton's affidavit is incorrect to the  
extent it argues Mr. Menaged traveled to Canada and Australia and the defendant was out  
of the United States for over a year from May 25, 2013 to June 1, 2014. (Dkt. 31, Exhibit  
A ¶10). Agent Anderton is mistaking the way travel is reflected when an American  
passenger embarks on a cruise ship and the ship is recorded leaving certain ports of entry

1 (in this case in Canada and Australia, where Mr. Menaged has never traveled in his life).  
2 The Australia and Canada travel are merely associated with where and when the cruise  
3 ships left certain ports of entry. Upon his arrest, Scott's passport was found in a desk  
4 drawer, not on his person.<sup>2</sup> No packed bags, airline tickets, or anything suggesting  
5 readiness for impending flight was found during the extensive searches of the businesses  
6 and residence.

6 **c. Mr. Menaged's several businesses with numerous transactions**

7 The government argued and the Magistrate Judge concluded that Scott had access  
8 to cash in family members and friend's bank accounts and money was moving between  
9 accounts, suggesting he might have money stashed somewhere and therefore, was a risk  
10 of flight. The Magistrate concluded:

11 [T]he evidence also shows Defendant had access to significant amounts of cash  
12 since 2014. Since 2014, he and his wife cashed out almost \$1.5 million at one  
13 casino alone. He transferred millions of dollars to friends and relatives, one of  
14 whom was his father who had a bank account containing \$2.4 million in July of  
15 2016.

16 (Dkt. 41 pg. 5).

17 The Magistrate Judge ignored the defendant's complicated financial picture that, over the  
18 past decade included heading and managing half a dozen companies dealing in real  
19 estate, automobiles, financing, and furniture, and ignored the rapid decline of all of the  
20 businesses that resulted in the filing for bankruptcy in 2016. Most important to the  
21 defendant's present financial ability is the financial analysis conducted as part of the  
22 bankruptcy process that has not turned up any money. The receiver for DenSco  
23 Investment Corporation, arguably the largest creditor in Scott's bankruptcy case,  
24 undertook a year-long multi-faceted financial analysis of all of the defendant's personal  
25 and business endeavors and has not found a dime of money "parked" anywhere, despite  
its significant analysis of Scott's and his companies' finances. Plain and simple, Scott is

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<sup>2</sup> The defendant submits he always carries his passport card as a second form of identification in his wallet and his passport itself stays in the desk for safekeeping except when he travels overseas which he has not done so since 2015.

1 broke. Second, the government is not setting forth the entire financial and business  
2 picture, creating a distorted view. For instance, Agent Boynton's affidavit states that \$5.3  
3 million was transferred by Scott to a Bank of America account controlled by a "close  
4 friend" and the funds were used to pay Scott's personal and business expenses. (Dkt #31,  
5 Affidavit ¶15). The defendant believes that this "close friend" is in fact KEG  
6 Inspections, LLC, an entity owned by Kelly Griffin. KEG was the business hired to  
7 rehabilitate the hundreds of houses Scott was purchasing (with funding from DenSco) as  
8 part of his foreclosure "flipping" business. Scott believes his finances show that Mr.  
9 Griffin routinely paid for materials, building supplies, fixtures, and other items needed to  
10 restore the houses they were flipping. Scott disputes that personal expenses were paid  
11 out of this account. Further, Scott contends that Mr. Griffin's expenditures out of this  
12 account were done in the regular course of business.

13 Agent Boynton also points out that Scott transferred \$1.034 million to his father  
14 Joseph Menaged and made frequent wire transfers to his father's account. (*Id.*) In its  
15 detention motion, the government argued that the defendant was transferring money to  
16 his father, Joseph Menaged, who was in turn making wire transfers to family members in  
17 Israel to support their spurious conclusion that Scott Menaged was parking money in  
18 family member's bank accounts so he could access it later. A more thorough explanation  
19 of the financial arrangement between Scott and his father is necessary because the  
20 government's conclusion completely distorts the truth. Short Term Finance, LLC, an  
21 entity that was wholly owned by Joseph, was a hard money lender and routinely lent  
22 money to Scott and his entities. Between 2010 and 2016, Short Term Finance, LLC and  
23 Joseph lent tens of millions of dollars to Scott and his entities. And during that same  
24 time, Scott and his entities repaid millions of dollars in principal and interest to Short  
25 Term Finance and to Joseph. Those transactions were memorialized by, among other  
things, a promissory note in the amount of \$5.5 million payable to Joseph by Arizona  
Home Foreclosures, LLC, an entity wholly owned by Scott. [Exhibit 6]. Over the years,  
Arizona Home Foreclosures made regular payments towards the principal and interest on  
this loan (ranging from roughly \$30-\$50K/month) and by 2016 had repaid millions of

1 dollars to Joseph. The last payment recorded from Scott to Joseph is in 2016, well before  
2 the present. The lending history between Scott and Joseph illustrate why Joseph is listed  
3 as a creditor in Scott's bankruptcy case

4 Scott Menaged's finances are complicated. He has been involved in at least six  
5 businesses over the course of his adult life with many different personal and business  
6 accounts associated with him. However, as part of the bankruptcy process, these  
7 accounts are being unwound and analyzed; almost all of them are closed and Scott  
8 Menaged does not have access to them. As someone with a traditional name (Yomtov)  
9 and an Americanized name (Scott) several iterations of his name have come up in credit  
10 reports, financial documents, bank records etc. The defendant submits this is not unusual  
11 and does not indicate duplicity on his behalf. Sadly, Scott has burned many bridges over  
12 the course of several years. He submits he is broke and does not have access to family  
13 members' or friend's accounts because they are insolvent themselves or are now all  
14 targets of a criminal investigation related to this conduct.

15 **d. Full compliance with bankruptcy court orders**

16 The defendant has no prior criminal record, has never been on probation or parole,  
17 has no failures to appear on his record and is currently complying with the bankruptcy  
18 process. Scott filed pro se for bankruptcy protection in 2016. After his Chapter 7 trustee,  
19 Jill Ford, actively became involved in his case, he hired counsel. With the assistance of  
20 his counsel, Scott produced almost 5000 pages of documents including bank statements,  
21 tax returns, loan agreements, copies of canceled checks, reconciliation reports, and other  
22 documents related to all of Scott's real properties, vehicles, and other personal property.  
23 He permitted the Chapter 7 Trustee to personally inspect all of his real properties,  
24 inventory his personal property, and take immediate possession of all non-exempt real  
25 and personal property. Scott appeared for his §341 meeting of creditors, sat for two  
depositions, and has otherwise appeared at all bankruptcy court hearings and complied  
with all bankruptcy court orders. A scrutiny of the bankruptcy docket shows no motions  
to compel, motions for sanctions or any other court action that would suggest that Scott  
has not been fully compliant with the bankruptcy process. [Exhibit 7]. Scott has not



1 disobeyed a single bankruptcy court order. This behavior provides real time support—  
 2 rather than mere conjecture, which the government is offering— that Scott will fully  
 3 comply with this Court’s orders concerning his criminal case.

4 Despite hundreds of creditors pursuing claims alleged to total in excess of  
 5 \$100,000,000, Scott did not flee the jurisdiction but stayed to face the music in  
 6 bankruptcy court. In addition, Scott was well aware Wells Fargo was investigating fraud  
 7 vis-à-vis his furniture stores’ accounts and was called in at least two times to discuss the  
 8 possible fraud, and he did not flee the jurisdiction. As his bankruptcy case unfolded, Scott  
 9 was well aware of the potential trouble he was in with DenSco and the Office of the  
 10 United States Trustee and, still, he did not flee the jurisdiction.

11 **e. Proposed additional pre-trial release conditions**

12 Pretrial services recommended Scott Menaged’s release with the following  
 13 conditions:

- 14 ■ No travel outside of AZ without permission
- 15 ■ Surrender all travel docs
- 16 ■ Do not obtain passport while case pending

17 Scott is amenable to those conditions and any following additional terms that the Court  
 18 sees fit including:

- 19 ■ Posting a \$250,000 securance bond, to be secured by real property
- 20 ■ Electronic home monitoring
- 21 ■ Curfew
- 22 ■ Regular checking-in with pre-trial services
- 23 ■ Computer monitoring
- 24 ■ A restriction on transfer of all property whatsoever, wherever located, in the  
 25 possession or under the control of Yomtov Scott Menaged
- Restriction in entering into any financial arrangement over \$500

The government has not explained why it believes GPS monitoring is inadequate to guard against the risk of flight. To a large extent their argument is out of step with the realities of current 21<sup>st</sup> century technology. Technology exists to find a wolf in the



1 farthest most wilds or a manatee in the furthest depths of the sea; anyone can “find their  
2 friends” and track them through Google earth to the most specific latitude and longitude  
3 at their location. The government has not explained— beyond mere fantastical  
4 conjecture— why electronic home monitoring is not adequate to monitor Scott’s  
5 whereabouts or how, if there was a breach, why it would not be immediately apparent  
6 due to the precise, around-the-clock information provided by the technology itself. The  
7 Magistrate Judge suggested that the bracelet could easily be removed. (Dkt. 43, pg. 7).  
8 However the defendant submits that given the strength of his ties to his entire family in  
9 Arizona including his beloved children, his utter insolvency, his active and real time  
10 compliance with the bankruptcy proceedings despite the debt he faces, and his desire to  
11 face these charges, whatever the punishment may be, outweigh any remote possibility of  
12 this taking place. Scott will readily surrender all travel documents including his passport,  
13 passport card and birth certificate and without these, he cannot travel internationally.  
14 With recent technological advances such as GPS home monitoring, the Bail Reform  
15 Statute’s mandate and the constitution’s Eighth Amendment guarantee against Excessive  
16 Bail, can now, more than ever, be more fully realized.

## 15 **II. Standard of Review**

16 The District Court reviews a Magistrate Judge’s order of detention *de novo*.  
17 *United States v. Koenig*, 912 F.2d 1119, 1191-92 (9th Cir. 1990). “It should review  
18 the evidence before the magistrate and make its own independent determination  
19 whether the magistrate’s findings are correct, with no deference.” *Id.* at 1193. “If  
20 the performance of that function makes it necessary or desirable for the district  
21 judge to hold additional evidentiary hearings, it may do so, and its power to do so  
22 is not limited to occasions when evidence is offered that was not presented to the  
23 magistrate.” *Id.* “[T]he ultimate determination of the propriety of detention is also  
24 to be decided without deference to the magistrate’s ultimate conclusion.” *Id.*

## 24 **III. Law and Argument**

25 The Supreme Court has recognized that criminal defendants have a substantive  
due process right and fundamental liberty interest in remaining free from detention before

1 trial. *United States v. Salerno*, 481 U.S. 738, 749-50 (1987). Specifically, the Court has  
2 noted that “[i]n our society liberty is the norm, and detention prior to trial or without trial  
3 is the carefully limited exception.” *Id.* at 755. These rights are encapsulated in the Bail  
4 Reform Act of 1984, which unequivocally states that “[t]he judicial officer shall order  
5 release” except in instances where the court finds by a preponderance of evidence that  
6 any individual poses a “serious risk” of flight or finds by clear and convincing evidence  
7 that certain individuals pose a danger to the community. 18 U.S.C. § 3142(b), (f); *United*  
8 *States v. Motamedi*, 767 F.2d 1403, 1406-1408 (9th Cir. 1985). Only in “rare cases  
9 should release be denied,” and “[d]oubts regarding the propriety of release should be  
10 resolved in favor of the defendant.” *Id.* at 1405 (citations omitted).

11 Before an accused may be detained as a serious flight risk or danger to the  
12 community, a detention hearing must be held pursuant to 18 U.S.C. § 3142(f). A  
13 detention hearing in a case involving a serious risk that the accused will flee (or will  
14 obstruct justice or intimidate or threaten witnesses or jurors) may be held upon the  
15 motion of the government or upon the judicial officer’s own motion. 18 U.S.C. §  
16 3142(f)(2).

17 In this case, it appears that the government sought detention on both grounds.  
18 Factors to be considered when determining flight risk or danger are listed in 18 U.S.C. §  
19 3142(g) and include: the nature and circumstances of the offense; the weight of the  
20 evidence; the history and characteristics of the person (including the person’s character,  
21 physical and mental condition, family ties, employment, financial resources, length of  
22 residence in the community, community ties, past conduct, history relating to drug or  
23 alcohol abuse, record concerning appearance at court proceedings, whether on release or  
24 under a criminal justice sentence at the time of the current offense or arrest); and the  
25 nature and seriousness of the danger posed to any person or the community by the  
person’s release. 18 U.S.C. § 3142(g). The Ninth Circuit has held that the weight of the  
evidence is the least important of the various factors that courts are to consider when  
assessing the propriety of release. *Motamedi*, 767 F.2d at 1408 (citing *United States v.*  
*Honeyman*, 470 F.2d 473, 474 (9th Cir. 1972)).

1 The issue at this stage of the proceedings the issue is not whether Scott faces  
2 crushing debt, is charged with a substantial fraud scheme, nor whether Scott's actions  
3 should result in widespread disapprobation by the public, nor even what is an appropriate  
4 punishment if he is convicted. The legal issue before the court is whether the government  
5 has sustained its significant burden of demonstrating that no condition or combination of  
6 conditions that can be set that will reasonably assure Scott's appearance. 18 U.S.C. §  
3142 (e). It has not.

7 **a. Detention on the ground of flight is not supported by a preponderance of the**  
8 **evidence as there are conditions of release that could reasonably assure Mr.**  
9 **Menaged's appearance as required**

10 As stated above more extensively, Scott Menaged has strong and sustained ties to  
11 Arizona. He has no criminal history, no history of violation court orders nor any history  
12 of failure to appear. He has no violence in his past or history of substance abuse.  
13 The government's accusations that Scott has strong overseas ties are grossly overstated  
14 and are not supported by actual evidence. In this case, there is a single overseas wire  
15 transfer of \$200,000 that went from Joseph Menaged, *Scott's father*, to a family member  
16 in Israel. The defendant did not wire any money overseas. No wire transfers originated  
17 from overseas nor were any overseas wires ever made into Scott's personal or business  
18 accounts. A robust financial investigation has not turned up *any* offshore accounts. The  
19 defendant's own statement suggesting he has an offshore account is clearly a desperate  
20 attempt to assuage a creditor's fear of never being repaid millions of dollars. Joseph  
21 Menaged lent Scott money on which he was making payments in the regular course of  
22 business; Scott was not parking money with his dad. Scott's travel appears to be  
23 primarily on themed cruises, he has not left the United States in over two years, and he  
24 will happily surrender his passport. Scott was found with cash on his person when he was  
25 arrested because every morning he made cash deposits from his furniture store to the  
bank. The Bail Reform Act does not require that the risk of flight be zero, but that  
conditions imposed "reasonably assure" the defendant's appearance.

In short, Scott Menaged is not a flight risk. A constellation of pretrial release

conditions can reasonably assure his appearance at his criminal proceedings.

**b. Detention on grounds of danger, even economic danger, is not permissible as a matter of law for the charged offenses**

The government argued in its detention motion and at the detention hearing itself that the defendant should also be detained as an economic danger to the community. (Dkt.# 31 at pg. 3). Seeking detention in a case involving danger to the community may only be held upon the motion of the government (and not upon the judicial officer's own motion) and only when certain prerequisites are met – such as where the charge involves a crime of violence, sex trafficking, or terrorism; or where the charge involves an offense which carries a maximum sentence of life imprisonment or death; or where the charge involves a drug trafficking offense and the maximum term of imprisonment is at least 10 years; or where the person already has two convictions for offenses such as those already described; or where the charge involves a minor victim, or possession of a firearm or other dangerous weapon, or failure to register. 18 U.S.C. § 3142(f)(1)(A)-(E). Absent the specific circumstances set forth in § 3142(f)(1)(A)-(E), therefore, detention on grounds of danger to the community is not permitted. As a threshold matter, it is impermissible under 18 U.S.C. § 3142 to detain Mr. Menaged as a danger to the community, because the charges in his cases are not qualifying offenses under 18 U.S.C. § 3142(f)(1)(A)-(E).

Furthermore, the threat of economic or pecuniary harm alone may not support an accused's pretrial detention as a danger to the community, absent the presence of specific charges or circumstances outlined in 18 U.S.C. § 3142(f)(1)(A)-(E), although it may inform the conditions of release. *See, e.g., United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986) (holding that detention on grounds of danger to the community due to the likelihood the defendant would if released commit another offense involving false identification was not permitted, because it did not involve any of the offenses specified in 18 U.S.C. § 3142(f)(1)), but any danger he may present could be considered in setting conditions of release).

Notably, the *Reynolds* decision cited in the government's motion also does not support pretrial detention under § 3142 on grounds of economic danger to the

community, because *Reynolds* involved detention *pending appeal after conviction at trial* under a *different* statute (18 U.S.C. § 3143) where the presumption is detention and where every defendant seeking release pending appeal must show by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of the community. *Reynolds*, 956 F.2d at 192-193; 18 U.S.C. § 3143. This is unlike the pretrial detention statute, where, as noted, only those defendants meeting the prerequisites of § 3142(f)(1)(A)-(E) may be detained on grounds of danger.

Finally, the government argues that Scott Menaged's detention case can be analogized to a controlled substances rebuttable presumption case, citing *United States v. Moore*, 607 F. Supp. 489, 492 (N.D.C.A. 1985) and *United States v. Bolero*, 604 F. Supp. 1028, 1033 (S.D. Fla. 1985). (Dkt 31 pg. 7). Congress has laid out a complete and comprehensive statutory framework for federal pre-trial release and detention. 18 U.S.C. § 3142. Quite simply, the government cannot substitute its own judgment for Congress's in how the charges in the indictment— conspiracy, wire fraud, and aggravated identity theft — are analyzed under the Bail Reform Act. The only presumption in this case is that the judicial officer shall order release except in limited circumstances. 18 U.S.C. § 3142(b), (f).

#### **IV. Conclusion**

Under the factors set forth in §3142 (g) Scott Menaged submits the government cannot sustain its burden of proving he is a flight risk nor that a combination of conditions cannot reasonably assure his appearance. He is a United States citizen with strong ties to the Phoenix-area who is currently complying with the bankruptcy process. He has no criminal history, no history of violating court orders or failing to appear, no substance abuse or mental health history. The government strongly overstates his overseas ties. A rigorous financial analysis has revealed the defendant is broke and he does not have access to large amounts of cash. Finally, he is willing to submit to extensive conditions that can reasonably assure his appearance.

Excludable delay under 18 U.S.C. § 3161(h) is not expected to result from this motion or from an order based thereon.

RESPECTFULLY SUBMITTED

Dated this 20th day of June, 2017

By: /s/ Molly Brizgys

Molly P. Brizgys  
Attorney for Defendant

I hereby certify that on June 20, 2017, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/Molly Brizgys

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