

P R O C E E D I N G S

(Court called to order.)

DEPUTY CLERK: This Honorable Court now resumes in session. The Honorable Judge Erin Aslan presiding.

THE COURT: Thank you, you may be seated. Please call the case.

MR. TODD: Yes, Your Honor. Good morning.

This is United States v. Rodney Burton, Case Number 23-MJ-3185. We're here this morning for a detention hearing. I'm Assistant United States Attorney Spencer Todd, joined by my colleague, Paul Budlow, for the government.

THE COURT: Good morning.

For the defense?

MR. GRIFFITH: Good morning, Your Honor. Marlon Griffith on behalf of Mr. Burton, who is before the Court.

THE COURT: Good morning, Burton.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: And --

MR. GRIFFITH: And if I can make one representation, to be clear, because this matter is sealed, I've not been able to enter my appearance. But now that the Court has issued an order on sealing this matter, I will enter my appearance after this hearing.

THE COURT: Very well. Thank you very much.

MR. GRIFFITH: Thank you.

1 **THE COURT:** And from pretrial?

2 **PROBATION OFFICER:** Good morning, Your Honor. Nikki
3 Martin, Supervisory U.S. Probation Officer.

4 **THE COURT:** Good morning. Welcome to you all.

5 Okay. So we are here today for a detention hearing. I
6 gather there's no agreement been reached, and we should proceed
7 with the hearing as scheduled.

8 **MR. TODD:** That's correct, Your Honor.

9 **THE COURT:** Okay. I guess -- have both parties had
10 an opportunity to review the pretrial services report?

11 **MR. TODD:** The government has, Your Honor.

12 **MR. GRIFFITH:** Yes, Your Honor.

13 **THE COURT:** Okay. Are there any objections or
14 additions to that report?

15 **MR. GRIFFITH:** I to object the recommendation, but I
16 believe that the -- well, as far as I can tell, the factual
17 information -- this includes the addendum, correct?

18 **THE COURT:** Correct.

19 **MR. GRIFFITH:** Yes, with the addendum added, no
20 objection.

21 **THE COURT:** Okay.

22 **MR. TODD:** And the government unsurprisingly agrees
23 with the recommendation and does not object to any of the
24 facts.

25 **THE COURT:** Okay. Thank you very much.

1 So, Mr. Burton, I'm sure your attorney has counseled you,
2 but I just want to make you aware, today we're here for your
3 detention hearing. This is the day that we're going to decide
4 if you're going to be detained pending trial in this criminal
5 matter, or if you'll be released.

6 And so I expect that various aspects of your case will be
7 discussed, including some of the evidence. But today is not
8 your trial. Today is just the day we're deciding about your
9 status pending trial.

10 Do you understand that?

11 **THE DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** So, Mr. Todd, Mr. Budlow, it's your
13 motion. I will hear from you.

14 Also, I read your motion in advance of today's proceeding,
15 and so I think we need to be clear about the basis, which
16 statutory subsection are you seeking detention under?

17 So if you could clarify that for me and then present your
18 arguments, I'll hear you.

19 **MR. TODD:** Certainly, Your Honor. If I may just take
20 the podium.

21 **THE COURT:** Yes.

22 **MR. TODD:** So I think the government would maintain
23 that both -- both bases for detention are satisfied here, but I
24 think in principle, the government would focus on risk of
25 flight.

1 **THE COURT:** So let's look at that just for a moment,
2 because I want to make sure our analysis is clear.

3 Which -- under -- and this -- Mr. Burton, your lawyer will
4 explain this to you. There's two bases on which you can -- the
5 government can move for detention. Under 18 United States Code
6 3142(f)(1), there's certain categories of offenses that allow
7 the government to ask for detention, crime of violence,
8 controlled substances, et cetera, et cetera.

9 Under 3142(f)(2), the government can seek -- can move for
10 detention in a case because it involves a serious risk of
11 flight or witness tampering, something of that nature. And so
12 I'm just asking the government to let me know, because I want
13 to know if I have to do one analysis or two analyses.

14 And so, government, if you would be so kind.

15 **MR. TODD:** Of course, Your Honor.

16 So I think the government would not abandon the argument
17 that dangerousness is a basis here, but again, I think
18 principally, the analysis would focus on risk of flight.

19 **THE COURT:** So I understand that danger can be a
20 factor when I consider it, but I'm not clear on what -- I mean,
21 Mr. Burton is charged with violations of 18 United States Code
22 371 and 1960. I believe 1960 -- actually, I believe they both
23 carry a five-year cap; is that correct?

24 **MR. TODD:** That's correct.

25 If I can just momentarily --

1 **THE COURT:** Please.

2 **MR. TODD:** Thank you, Your Honor.

3 Thank you, Your Honor. So just to clarify, we are moving
4 under F2.

5 **THE COURT:** Okay.

6 **MR. TODD:** And again -- and apologies for any
7 confusion there.

8 **THE COURT:** Okay. Thank you very much.

9 So just for clarification, because this is -- you know,
10 most of us are lawyers, but not all of us are lawyers.

11 So Mr. Burton, basically the government has just
12 clarified, and your attorney can explain this to you in more
13 detail, they are moving to detain you because of a risk of --
14 because they believe you present a risk of flight. And then
15 we'll go through the analysis of what the evidence is, and
16 we'll go through the different factors. One of those factors,
17 as you know, includes danger, but that's not the basis upon
18 which they are seeking detention.

19 Please proceed.

20 **MR. TODD:** Thank you, Your Honor. And apologies if
21 that did not come through on our memorandum.

22 Since Your Honor has had an opportunity to review the
23 memorandum, I would just turn directly to the relevant
24 statutory factors to make a factual proffer as to each as well.

25 **THE COURT:** Thank you.

1 **MR. TODD:** So turning first to Section 3142(g)(1),
2 the nature and circumstances of the offense, here the offense
3 is quite serious. Mr. Burton is accused of acting as an
4 unlicensed money transmitter in connection with an almost
5 2 billion-dollar cryptocurrency Ponzi scheme. The scheme in
6 which he was involved, known as HyperFund, was billed as a
7 legitimate cryptocurrency investment opportunity. And I think
8 since it goes to the crime charged, just to briefly explain the
9 way money flowed in this scheme.

10 Essentially, investors converted fiat currency, dollars,
11 into cryptocurrency, such as Tether, which is a cryptocurrency
12 that's just, you know, recognized within the community. And
13 they would then convert that cryptocurrency to something known
14 as hyper units.

15 And those are a sort of internal token that don't have
16 value outside the HyperFund platform.

17 And investors would be paid returns, promised guaranteed
18 returns in these hyper units, which they could then convert
19 back to cryptocurrency and then ultimately U.S. dollars.

20 As I said, in fact, HyperFund was a Ponzi scheme. And
21 when it fell apart, HyperFund blocked investors' ability to
22 withdraw those hyper units and convert them into dollars. At
23 that point, the hyper units are effectively worthless.

24 With respect to Mr. Burton's role, he's accused of
25 receiving millions in fiat currency from investors, and in

1 return for those funds, plus a 3 percent fee for himself, he
2 would transfer hyper units to investors. And he continued
3 doing this even after the scheme fell apart and those hyper
4 units were effectively worthless.

5 So, in other words, he is taking fiat currency from
6 investors for himself and giving them something that has no
7 value.

8 This was not a brief lapse in judgment. Mr. Burton did
9 this over the course of several years. During that time, he
10 received over 500 transfers totaling over \$7.5 million from
11 victims who wanted to invest in HyperFund. Five million of
12 those dollars came after HyperFund started blocking investors'
13 withdrawals.

14 As described in the complaint, which was Exhibit A to the
15 government's submission, Mr. Burton also counseled conspirators
16 to lie to banks so that these transfers would evade regulatory
17 scrutiny, including by falsifying memo lines on the
18 transactions and saying falsely that they were consulting
19 services.

20 He also counseled conspirators on how to structure
21 transactions to avoid federal scrutiny.

22 And Mr. Burton has no intention of stopping this.

23 When asked in a recorded phone call on December 22nd
24 why -- you know, why continue in the crypto game, he stated,
25 quoting from that phone call, "I want to keep on trying on a

1 win, you know? And if I die, I want to die trying that -- you
2 know, die on my feet, not on my knees."

3 So clearly, there was an intent to continue participating
4 in crypto and get-rich-quick schemes notwithstanding the
5 massive loss to investors in connection with HyperFund.

6 Turning to Section 3142(g)(2), the weight of the evidence,
7 the weight of the evidence against Mr. Burton is extremely
8 strong. The government has reviewed hundreds of transactions,
9 going past several years. It's interviewed victim investors
10 from whom the government has statements. The government has
11 reviewed messages among Burton and others in which, as I say,
12 he counseled them on how to evade regulatory scrutiny from
13 banks. And we have a series of incriminating statements that
14 Mr. Burton himself made on a recorded December 22nd call in
15 which -- and I'll turn to this more, because I think it's more
16 pertinent to risk of flight, he announced his intention to move
17 to Dubai saying, quote, "It's where it's legal to do crypto."
18 And saying, quote, "The mother F'ing feds out here, man, doing
19 investigations."

20 We think those comments reflect a clear understanding by
21 Mr. Burton that there were federal investigators looking into
22 his conduct, and that he knew that his cryptocurrency
23 activities in the United States were illegal, and he wanted to
24 go somewhere where he could keep engaging in them.

25 Your Honor, I would like to turn to Section 3142(g)(3),

1 history and characteristics, and we think this is really
2 critical in this case.

3 Mr. Burton's conduct and history reflects that he poses an
4 extreme risk of flight. And I want to start by focusing on the
5 circumstances of his arrest.

6 So Mr. Burton was arrested at the Miami airport with a
7 one-way ticket to Dubai on United Air Emirates. That is a
8 country that does not have an extradition treaty with the
9 United States.

10 All the evidence demonstrates that this was not indication
11 for a short-term trip, it was a permanent move.

12 First we have Mr. Burton's statements. In a recorded
13 call, as I said, he stated, quote, "I'll be gone to Dubai on
14 January 2nd, and I'll actually be moving to Dubai."

15 He also stated in that same call that he was going to be a
16 CEO of a company called Out of Dubai, and he said, again, he's
17 going to Dubai where crypto is legal and because the feds are
18 after him.

19 Investigators are also aware of an unexpired and renewable
20 United Arab Emirates residence permit from a search of
21 Mr. Burton's phone. And the government is also aware that
22 Mr. Burton has at least one bank account that he controls in
23 Dubai and has made financial transfers to that account from his
24 U.S. bank account.

25 And this is also tied up with Mr. Burton's assets.

1 Mr. Burton has, the government understands, substantial assets
2 that would enable him to make this move.

3 He has boasted of earning millions of dollars in
4 cryptocurrency. And a word about that asset, because I think
5 it's very different from other assets in critical respects, it
6 is frequently used in criminal transactions precisely because
7 it is easy to hide transactions conducted using crypto; it is
8 anonymous, and it can be done instantaneously across borders.

9 In other words, the government cannot effectively restrain
10 those assets, and they can be used instantly to conduct all
11 manner of transactions, and the government simply would not
12 have visibility or ability to prevent those transactions.

13 And, finally, Mr. Burton has a yacht, a 64-foot yacht that
14 he rents out for, I understand, \$20,000 a month. Obviously,
15 that is a mobile vessel that could easily be -- that he could
16 use -- easily, excuse me, use to abscond from pretrial
17 supervision.

18 We also understand that he is attempting to hide this
19 yacht, and that the yacht is not, in fact, registered under his
20 name despite the fact that he owns it.

21 I would point Your Honor to a factually opposite Fourth
22 Circuit case, *United States of America v. Stewart*, it's
23 19 Federal Appendix 46, in which the defendant was detained as
24 a flight risk and the Fourth Circuit affirmed. There, the
25 Court emphasized certain factors, including that the defendant

1 had millions through a Ponzi scheme, most of which was
2 unaccounted for; that the funds had been transferred to
3 offshore accounts; and that the defendant had attempted to
4 evade regulatory oversight. We have all of that here. Plus we
5 have a very demonstrated attempt by the defendant to
6 permanently move out of the United States, which was only
7 interrupted by his arrest.

8 Your Honor, this case also has an interesting quirk, in
9 that at the time of his arrest, Mr. Burton was carrying in his
10 bag a collection of documents -- a collection of documents that
11 reflect his involvement in the Sovereign Citizens movement.
12 I'm not sure if Your Honor is familiar, but it's been, I think,
13 accurately described by one court in this district, Sovereign
14 Citizens believe that, quote, "They are not subject to
15 government authority and employ various tactics in an attempt
16 to, among other things, avoid paying taxes, extinguish debts,
17 and derail criminal proceedings."

18 That case is *Zahir v. McKeeferey*, 2019 West Law 1980352.

19 Mr. Burton had a 27-page packet that was attached as
20 Exhibit 2 to the government's submission containing a slew of
21 supposedly legal documents, among them a purported active
22 expatriation, in which Mr. Burton attempted to announce his
23 citizenship in the United States, which was characterized as a
24 corporate entity. It's essentially a packet of conspiracy
25 theories.

1 But it also contained a fee schedule with purported
2 mandatory fees owed for time spent in court which claimed
3 \$75,000 an hour when appearing under duress.

4 And these documents were clearly important to Mr. Burton,
5 given that he was carrying them in his bag when he was fleeing
6 to Dubai. And he stated at the time of his arrest, in
7 substance, that he could not be detained when he was arrested
8 because he was an America national.

9 The point is this: Mr. Burton has engaged in maneuvers
10 that he understands would allow him to evade governmental
11 authority. I think as reflected by the court fee schedule, he
12 does not accept the authority of the United States government
13 or this Court. And my understanding is also at his initial
14 appearance when asked if he was a U.S. citizen, Mr. Burton
15 responded equivocally saying, in substance, "I believe so."

16 Your Honor, there's a case, again, from within this
17 circuit, *United States v. Smith* that we believe is on point,
18 where the defendant was charged with running a Ponzi scheme,
19 albeit one merely in the hundreds of thousands of dollars
20 versus the billions at issue here. The Court found a serious
21 risk of flight and ordered detention, emphasizing that the
22 defendant does not accept the authority of the Court over him.

23 And that cite is 2010 West Law 1490363.

24 Once again, all of that is true here and more.

25 The remaining history and characteristics also militating

1 favor of detention, Mr. Burton has a prior criminal history
2 including a series of relatively minor drug related arrests.
3 Most significantly, in 2007, he was convicted of conspiracy to
4 distribute 500 grams or more of cocaine in violation of
5 21 U.S.C. Section 846. He received a significant sentence in
6 that case but clearly did not deter future illegal conduct.
7 And he also appears to have lied, or at the very least, made
8 inconsistent statements to probation officers in the Southern
9 District of Florida in this case.

10 He told pretrial services in the Southern District of
11 Florida that he last used cocaine, quote, "ten years ago." But
12 he told pretrial services in this district that he last used
13 cocaine on New Year's Eve, presumably referring to New Year's
14 Eve 2023. Given that he was arrested on January 3rd and
15 interviewed by Florida officials on January 4th, it is not
16 credible that he forgot his use of cocaine from just a few days
17 prior.

18 Again, this episode is important for two reasons, not the
19 use of cocaine, but rather it calls into question his candor
20 with the Court and pretrial services.

21 And also, Mr. Burton proposes, as a custodian, his aunt,
22 who lives in this district. But she denied any knowledge that
23 Mr. Burton had a history of using illicit substances in her
24 statement to pretrial services.

25 So given that, there's good reason to believe that at a

1 minimum, Mr. Burton's aunt is unaware of Mr. Burton's behavior
2 which suggests that she might not be a suitable custodian.

3 Finally, his ties to the district are extremely weak. He
4 does not live in the district. Instead, he has a 71-year-old
5 aunt with whom he communicates occasionally. And this is a
6 correction from our submission. I believe in the submission we
7 said a cousin; in fact, it's referring to Mr. Burton's son.

8 The government -- there's no indication that they are
9 especially close. It seems like they communicate on some
10 occasions.

11 But he lived in the Southern District of Florida. He
12 lived in Miami. It did not stop him from purchasing a one-way
13 ticket to Dubai with a professed intention to move there and
14 live there permanently.

15 So even if there were more extensive ties to the district,
16 which there are not, there's no reason to think that that would
17 be sufficient to keep him here.

18 Just to address certain alternatives, you know, we
19 understand that it would be, you know, the typical practice for
20 Mr. Burton's passport to be outside his control. Nevertheless,
21 he has the means to flee. He has a yacht, most particularly,
22 which could easily be directed here, and from which he could
23 use to abscond from the country and make it to his intended
24 destination where he would be beyond the reach of U.S.
25 authorities. He has significant assets into crypto -- in

1 cryptocurrency into which the U.S. has very little visibility.
2 That is an asset that exists outside regulated financial
3 industries and would allow for instantaneous transactions to
4 occur. And he has a clear motive and intent to flee, as
5 expressed in his statements.

6 And we don't believe that, you know, electronic monitoring
7 or location monitoring would be adequate here.

8 Ultimately, that is a question that comes down to trust in
9 the defendant. There is no reason to have that trust here. He
10 is charged with participation in -- you know, money
11 transmitting in connection with a 2 billion-dollar fraud. As
12 part of the scheme, he instructed people on how to evade
13 banking regulations; he instructed people about how to hide
14 their assets from the federal government; he denies the
15 authority of the United States government, including the Court;
16 he has made inconsistent statements to pretrial services; and
17 he knew of an investigation into him, he was moving to Dubai
18 and he was not coming back.

19 One last case, Your Honor, *United States v. Wall*,
20 2020 West Law 6545874 from this court in 2020, there,
21 Judge Gallagher found dispositive, quote, "the defendant's
22 predisposition to," quote, "flee the country for an extended
23 period."

24 And given that predisposition, the Court found, quote,
25 "neither electronic monitoring nor the posting of property or

1 monetary bond can guarantee a defendant's appearance."

2 The same is true in this case, Your Honor. Thank you.

3 **THE COURT:** Thank you.

4 Mr. Griffith?

5 **MR. GRIFFITH:** Good morning once again, Your Honor.

6 **THE COURT:** Good morning.

7 **MR. GRIFFITH:** The Court aptly asked at the beginning
8 of this hearing what provision in the statutes the government
9 is moving under for detention. And the provision was risk of
10 flight.

11 The government did spend most of its time speaking about
12 the -- the underlying, I guess, allegations in this case, but I
13 would ask the Court, direct the Court to -- to the case that
14 Mr. Burton is not charged with being part of a Ponzi scheme.
15 He's charged with unlicensed -- make sure I have the --
16 prohibition of unlicensed money transmitting business. That's
17 what he's charged with.

18 The allegations that makes up this charge that's in the
19 complaint states at best that he was a promoter of this
20 HyperFund. To find any -- any explanation or elaboration as to
21 exactly what a promoter is, seems to me as you read like the
22 actual complaint, not what the government has now proffered to
23 this Court, what's actually in the complaint itself.

24 He for -- if -- if credited, for a 3 percent fee, placed
25 peoples' money, investors' money into a HyperFund that,

1 according to the complaint, he was not an owner of, he was not
2 part of; at best, he was a promoter, whatever a promoter is.

3 There's no allegation, even in the government's proffer
4 here, that he was a director in this HyperFund, that he had
5 any -- that he gained any benefits directly from the HyperFund,
6 only from the 3 percent fee that he charged.

7 What the government has also neglected to share with this
8 Court is that the monies that were -- that apparently were
9 invested were actually invested. They have not said that this
10 money was not invested in whatever -- whatever HyperFund that
11 they are referring to.

12 Now, the government has also made a statement that -- a
13 grand conjecture that somehow Mr. Burton is leaving the country
14 because he was aware of, I guess, this investigation. But they
15 have not offered any bases as to why he would be aware of this
16 investigation, particularly given the fact that this case,
17 until this morning, was under seal. And he -- and the
18 complaint itself was under seal.

19 The government has offered -- he's taken statements from
20 Mr. -- apparently from Mr. Burton, we have not heard those
21 statements, I'll rely on what the government has said to this
22 point, but there's no evidence that he had any -- any idea that
23 there was a pending case in the District of -- in the District
24 of Maryland to leave the country.

25 Also, I would say, and I -- that it's -- I believe it's --

1 it doesn't make any sense that the government is saying that he
2 was part of a Ponzi scheme where now, at this point, this fund
3 is basically dried up, and no money can be disbursed from it,
4 but yet claims that Mr. Burton owns millions and millions of
5 dollars in crypto. Right?

6 As far as I'm aware, is that crypto is still -- is legal.
7 They might be referring to a specific fund here, but crypto is
8 still legal. It's perplexing as to how Mr. Burton could be --
9 could be owner of liquid -- or crypto funds that can be
10 liquidated, I guess, into being used as cash if this particular
11 Ponzi scheme that's funded they are attributing to him, I
12 guess, that's dried up.

13 Now, one of the biggest points that the government has
14 made is that Mr. Burton had a one-way ticket to Dubai. I think
15 the government has represented and acknowledged in their own
16 writings to this court that Mr. Burton had -- at some point had
17 multiple business interests in Dubai, which, on its face, is a
18 legitimate reason to be traveling to Dubai. It has nothing to
19 do with any criminal -- any criminal intent or fleeing from the
20 United States.

21 And, in fact, counsel has confirmed through e-mail that
22 his, I guess, counsel in Dubai had purchased a ticket for him
23 and was expecting him -- because there is a pending matter,
24 which he referenced to 22300412056 that was initiated on
25 December 15th, 2023, that involves Mr. Burton, is a lawsuit

1 that involves Mr. Burton. And he was on his way to Dubai in
2 January to deal with this, particularly when the court date
3 was -- he was supposed to be meeting with his counsel on
4 January 8th, 2024, and it was a court date set -- or I'm sorry,
5 a meeting with the investigator set for January 30th, 2024, at
6 9:30.

7 And these are -- and these -- was in this case the reason
8 for Mr. Burton's trip to Dubai.

9 But more importantly, and you know, I -- sometimes I make
10 the mistake of assuming the right hand knows what the left hand
11 is doing when it comes to the Department of Justice and the
12 United States Attorney's Office. I'm only hesitating because
13 I'm wondering if I should approach the bench on this -- this
14 representation or that, but I will keep it in the public
15 domain, is that actually Mr. Burton was contacted by law
16 enforcement in August of 2023 regarding HyperFund or the use of
17 Bitcoin.

18 Mr. Burton did contact me. This matter was -- this matter
19 was in New York, Eastern District of New York. He did contact
20 me, even though I do -- I'm a member of the bar in the Eastern
21 District of New York, I actually referred him to another
22 attorney that's actually in Brooklyn, in New York. I contacted
23 that attorney over the weekend to ascertain what happened with
24 that matter. And I have an e-mail to that effect.

25 And the attorney's name is Justine Harris, who works at

1 the Sher Tremonte law firm in New York. And she indicated to
2 me that she was retained by Mr. Burton on or about August 22nd,
3 2023. And that she engaged with a -- in communications with
4 the Eastern District of New York AUSA Kaitlin Farrell,
5 F-A-R-R-E-L-L.

6 And in their communication -- because the typical question
7 we defense counsel ask prosecutors when our clients are
8 contacted, is he a subject, a target, or a witness?

9 And she was told that Mr. Burton was a witness, not a
10 subject, not a target.

11 He, seems to me, took the steps that any person would take
12 to -- to either cooperate with the United States attorney --
13 you hire counsel. Counsel would reach out. You pay for your
14 counsel. And my understanding with my conversation with --
15 with Attorney Harris, for the last couple of months, they had
16 not -- she had not heard anything from the AUSA.

17 So, quite frankly, again, Mr. Burton, from what the record
18 reflects, had no -- had no idea that he was a subject of a --
19 as far as the defendant. And definitely didn't have any idea
20 about anything that's going on here in the District of
21 Maryland.

22 So for the government not to attach a certain intent on
23 his behavior, I think, is well beyond what's -- what should be
24 considered in -- in the code.

25 Also, what the government has failed to -- the government

1 acknowledged that they have Mr. Burton's passport. But what
2 the government has not disclosed to this Court, that I believe
3 my understanding of Mr. Burton's passport, he has left the
4 country on numerous occasions just during -- just in 2023, even
5 after he was contacted by law enforcement in August of 2023.
6 He -- he would travel not only to Dubai, but I believe he
7 traveled to Malaysia and a couple of other countries, which
8 would be confirmed in his passport, because obviously we know
9 it gets stamped. So he left the country on numerous occasions,
10 even after being initially contacted by law enforcement.

11 Again that's -- that's clearly no indicia of anyone who is
12 trying to evade responsibility or trying to evade his day --
13 his day in court.

14 But the government, whatever -- I mean, I assume you have
15 them get back up here and they can dispute it if I'm incorrect,
16 I don't think they will, but that is what's in -- what's in the
17 passport.

18 Now, again, for the risk of flight, one thing the Court
19 looks at is the community ties. Now, what the government did
20 not state, but it's in the pretrial services report, is that
21 Mr. Burton has three properties in the state of Maryland. I
22 believe it's three. Three properties, that's correct.

23 One being in Mitchellville, one being in the National
24 Harbor, and the other one at this point escapes my mind but is
25 in the pretrial report. Three properties.

1 Now, the government -- I personally spoke to Mr. Burton's
2 son this morning to confirm -- actually, Mr. Burton's son
3 resides in one -- one of Mr. Burton's properties now, and I
4 just spoke to him to confirm that if Mr. Burton was released
5 and was going to be released to the property in National
6 Harbor, would you agree to move to that property and stay with
7 him? The representation was "of course."

8 But even beyond -- and again, as you can tell from the
9 pretrial report, to say that Mr. Burton doesn't have any ties
10 to the community, he was born in District of Columbia.
11 Whatever they want to make up about whether he thinks he's a
12 Sovereign or not, that's -- that's irrelevant. He has a United
13 States passport. They clearly took his United States passport.
14 He actually has ties to the community.

15 Now -- and now we speak also of his aunt. Now, the
16 government wants to make a big deal, I guess, that she didn't
17 know that he ingested or may have ingested cocaine, so that
18 means she somehow doesn't know what's going on with Mr. Burton.
19 Due respectfully, she said very clearly, "He's down in Florida,
20 I'm here, we speak every two months" -- I mean, "we speak twice
21 a month." I believe that's what she represented in the
22 pretrial report.

23 But most important, she said, yes. She confirmed many
24 aspects of Mr. Burton by pretrial, which means it wasn't some
25 person that's just a random, oh, "Just call my aunt, and she's

1 going to -- she can confirm certain things." And she most
2 importantly, "If need be, yes, he can stay here with me and my
3 brother."

4 That's ties to the community.

5 And so I think that the government's focus on ingestion of
6 cocaine or not, again, that's also something that can be dealt
7 with -- do on a release because he will be subject to testing.
8 Right? That's -- if that's the issue, it would be addressed at
9 that point.

10 Also, Your Honor, the government refers to Mr. Burton's
11 prior criminal history. The Court doesn't have to take that
12 into consideration. But nothing in his prior criminal history
13 suggests that he's a risk of flight. In fact, his prior -- his
14 prior criminal history suggests to the Court that he does abide
15 by -- by the rules and regulations because -- and not -- some
16 of us who have experience know that this doesn't happen all
17 that often in federal court cases, he was asked to be
18 terminated early on probation, which means, by definition, he
19 not only -- he not only complied with all of his -- all of his
20 requirements, he complied to the level that probation agreed to
21 and presumably the U.S. Attorney's office agreed to and the
22 judge agreed to to terminate him early on probation.

23 So that's actually a shining example as to why the Court
24 can trust that he will return to court for whatever future
25 proceedings we may have here.

1 And not -- not to be lost on this Court, that case that
2 the government is talking about occurred 16 years ago; 17,
3 really, literally almost 17 in another month, because I believe
4 his arrest was in October -- February of 2027 -- 2007. Right?

5 So the government is trying to -- to use a case that
6 occurred 16 years ago, and a case in which he was taken off of
7 probation early over ten years ago, suggested he's somehow a
8 danger or risk of flight. I think, again, that completely
9 counters.

10 Now, obviously, as the statute has said, the Court must
11 determine whether there's any combination of conditions that
12 can reasonably assure that he returns to court and a danger to
13 the community, and that the community is safe.

14 Pretrial obviously has the tools, whether it's home
15 monitoring, whether it's ankle bracelet. I mean, I can go
16 through the whole litany of different tools that pretrial had
17 that the Court has used to ensure that defendants come back to
18 court when they have pending matters. And I think that what
19 should not -- now -- and this reference to having -- you know,
20 I really will say, Your Honor, I almost feel like the
21 government is saying that this -- that he should be penalized,
22 I guess, for having trappings of wealth, I guess. And that
23 somehow because he has a yacht, without even knowing the type
24 of yacht he has, how far it can go, that does matter. And
25 trust me, the yacht that he apparently owned cannot get him all

1 the way to Dubai. I mean, it's just not -- that's not reality.

2 But the reality of it, if he's on -- if the Court issues
3 conditions where he's not allowed to, say, travel to -- he's
4 not allowed to travel to Florida, or he has a certain curfew or
5 whatever, that would address that issue. And that would
6 address that issue.

7 If the Court wants to issue some type of a bond, the Court
8 can issue a bond. That can address the issue.

9 What should not be lost is the government has decided, for
10 whatever their reason, regardless of what they have come out
11 and said to this Court about Ponzi schemes and all of this,
12 that's not what they charged him with. That's not what they
13 allege as a basis of the -- of this. They said he was a
14 promoter, and he took a 3 percent fee, and they basically said
15 to try to evade the banks. So "I'll take a 3 percent fee."

16 Not invest in crypto to evade banks, or invest in crypto
17 to evade the IRS, it's the 3 percent fee that's at issue that
18 they presume that he charged.

19 I mean, that's a white-collar offense, right? And the
20 government's attempt to treat Mr. -- Mr. Burton as if he is a
21 violent offender and this is a violent -- this is a violent
22 crime.

23 **THE COURT:** Well, we're not -- if I may, we're not
24 examining -- we're not under the danger of the community prong
25 here. We're under a --

1 **MR. GRIFFITH:** Absolutely. Yes, absolutely. But --
2 and that's what I thought, too. But the government wants to go
3 into that part of trying to suggest that he's somehow
4 dangerous, is what they've said.

5 **THE COURT:** Well --

6 **MR. GRIFFITH:** And we do -- and the Court has said,
7 that's one of the factors, not the main one. And I appreciate
8 that. I just want to address it.

9 **THE COURT:** Thank you.

10 **MR. GRIFFITH:** Obviously everything is not, as the
11 Court has aptly recognized, it does not turn on that, but I
12 would be remiss as his counsel if I didn't address that as
13 well.

14 **THE COURT:** Understood.

15 **MR. GRIFFITH:** May I have the Court's indulgence just
16 to check with my client, please?

17 **THE COURT:** Yes, you may.

18 **MR. GRIFFITH:** Thank you.

19 Your Honor, I believe that's it for us.

20 Oh, I do want to say one more thing about this crypto
21 issue, and what the government has seen not to -- to
22 acknowledge, but apparently they have access to my client's
23 phone.

24 Mr. Burton also has tremendous amount of resources in this
25 HyperFund that he -- that he does not have access to. So if

1 this -- if this fund is -- as the government is alleging, is a
2 Ponzi scheme, he is as much a victim and actually has -- and my
3 understanding, the government can either dispute this or
4 confirm this, that his -- the money he has in this HyperFund
5 far outweighs the money that the government has alleged that he
6 was -- that he took a 3 percent fee to invest in this fund.

7 **THE COURT:** Thank you.

8 Mr. Todd, did you want to respond?

9 **MR. TODD:** Just a few points, Your Honor. And I'll
10 keep this brief.

11 So first I just want to make a couple of points with
12 respect to what Mr. -- Mr. Burton is charged with.

13 Defense counsel is correct, he's not charged as a director
14 of a Ponzi scheme. I would note that he was charged by
15 complaint on attempt -- that he was going to attempt to flee
16 the country. And I -- I really think it's important to
17 emphasize what the conduct is here, because it's not just a
18 matter of a 3 percent fee.

19 At a certain point, it's clear that the HyperFund is going
20 bust. And defense counsel is right, Mr. Burton has assets, has
21 hyper units tied up in there. So he says to other investors,
22 hey, you give me a thousand dollars in cash, and I'll give you
23 a thousand dollars in hyper units. Essentially, he is getting
24 dollars and offloading, dumping these assets that he knows are
25 worthless or becoming worthless.

1 Your Honor, I also want to focus briefly on the
2 investigation and what Mr. Burton may have known. I think
3 defense counsel might have contradicted himself there first
4 saying that there was no reason for Mr. Burton to have known
5 about this investigation, but then saying that he was contacted
6 in August about it as a witness. So plainly he knew.

7 And just -- an additional factual representation, I
8 understand that the agent went to Florida in September of 2023
9 to attempt to interview Mr. Burton in connection with another
10 crypto Ponzi scheme. On December 21st, there was a limited
11 unsealing of the indictment in that case. On December 22nd,
12 there was the recorded phone call on which Mr. Burton states
13 that he was going to Dubai. On December 24th, he buys a
14 one-way ticket. This is not a matter of a trip to Dubai, this
15 is a matter of moving to Dubai.

16 So whether he knew of this investigation or another
17 investigation, plainly knew that, quote, "The mother F'ing feds
18 were after" -- were looking into his conduct and wanted to
19 evade that.

20 With respect to community ties, he may have properties in
21 this district. He does not live in them. He lived in Miami.
22 And, again, that was clearly not enough to keep him in this
23 district -- in that district.

24 And with respect to his prior criminal history, I
25 appreciate that his supervised release was terminated early,

1 but I would say that that is neither here nor there at that
2 point. Since that time, Mr. Burton has amassed what he has
3 boasted as millions of dollars in an asset that is untraceable,
4 that the government has very little visibility into. He's
5 acquired a yacht, which whether the yacht could get him
6 directly to Dubai or not, you know, clearly could get him
7 outside the country to jurisdictions where it would be very
8 difficult to get Mr. Burton and where he could then make it to
9 his final intended destination where there is no extradition
10 treaty.

11 And defense counsel is correct, crypto is legal, but the
12 point is that it's an asset which cannot be restrained, in
13 which Mr. Burton can use instantaneously.

14 As to the suggestion that some sort of location monitoring
15 could be appropriate, I mean, pretrial services knows best what
16 its assets are, and it did -- in this district, it did
17 recommend detention. And I would say these location monitoring
18 options, they are certainly not foolproof. And as I say, it
19 comes down to a level of trust.

20 Given what was charged here, a crime that -- you know,
21 understanding that the specific charge is transmitting, it was
22 in connection with a Ponzi scheme, given that he told his
23 co-conspirators how to evade regulatory and governmental
24 scrutiny, given that he has, you know, a series of documents in
25 which he -- which he thinks puts him outside the law's scope,

1 there's no reason to think that he's going to regard that as
2 legitimate governmental authority with which he should abide.

3 And I think that's everything from me, Your Honor. Thank
4 you.

5 **THE COURT:** Thank you.

6 Mr. Griffith, did you want to respond? You don't need to,
7 but --

8 **MR. GRIFFITH:** No, Your Honor.

9 **THE COURT:** -- it looked like you wanted to.

10 **MR. GRIFFITH:** No, thank you.

11 **THE COURT:** Okay. Ms. Martin, do you have anything
12 to add?

13 **PROBATION OFFICER:** No, nothing further, Your Honor.

14 **THE COURT:** Okay. So just confirming what's in your
15 supplement to the report, that your position is that
16 detention -- there's no condition or a combination of
17 conditions that would guarantee Mr. Burton's appearance; is
18 that correct?

19 **PROBATION OFFICER:** Yes, Your Honor, that's correct.

20 **THE COURT:** Okay. Thank you very much. I appreciate
21 everyone's time and effort in making the arguments here today.

22 So just to set out the framework, we're under (f)(2), I'm
23 examining whether or not there's any condition or a combination
24 of conditions that would reasonably assure Mr. Burton's
25 appearance here in court, and the standard is preponderance of

1 the evidence. And so there's a series of factors set out in
2 the Bail Reform Act. My decision here today is guided by the
3 statute, and so I'll go through each of those factors.

4 The first factor to be considered under 3142(g) is the
5 nature and circumstances of the offense here. So I understand
6 and appreciate the argument that Mr. Burton is not alleged to
7 have been a director of the scheme. He was alleged to be a
8 participant in the scheme, a promoter, so to speak, as
9 Mr. Griffith represented here.

10 The nature of the scheme entails resources, it entails
11 assets, it entails cryptocurrency and the exchange of dollars
12 for that cryptocurrency. So I understand that cryptocurrency
13 is legal. I also respect and understand the difficulty in
14 restraining that type of currency as an asset.

15 I think the fact of the matter is that this factor weighs
16 in favor of detention because Mr. Burton is alleged to have
17 access to currency as a nature -- as part of the nature and the
18 circumstances of the offense.

19 The second factor is the weight of the evidence against
20 the person.

21 At this point, Mr. Burton is charged on the complaint, not
22 indictment, although I understand that's due to, I guess, as
23 the government represents, some of the facts that came to light
24 that prompted them to take action. The weight of the evidence
25 they represent includes witness interviews, transactions and

1 reported calls.

2 Financial transactions are -- you know, that's a
3 documentary electronic evidence that isn't subject to
4 credibility. It's subject to -- it's there. Same with the
5 recorded phone calls. Whether or not they mean precisely what
6 the government says, that's a question for a different day.
7 But they do have recorded evidence.

8 The long and the short of it is that in addition to the
9 witness statements, they appear to have corroborating evidence
10 that's from different sources, and that makes the weight of the
11 evidence appear, at this juncture, to be strong.

12 In terms of the history and characteristics of Mr. Burton,
13 you know, a little bit of a mixed bag here. I -- I recognize
14 that -- you know, I'm not really -- just for your edification,
15 Mr. Burton, I don't know what those papers were that you were
16 carrying. I don't really put a whole lot of stock into that,
17 and that's not really guiding my decision.

18 I think that the biggest issue here is that you were in
19 possession of a one-way ticket to a foreign country that does
20 not have an extradition treaty. I mean, that's -- that's a
21 pretty big factor weighing in favor of detention, suggesting
22 that there aren't a condition or a combination of conditions
23 that would secure your appearance here.

24 By your own statements to pretrial services, you have
25 significant assets at your disposal, \$20,000 a month in

1 income -- \$20,000 a month in additional income from the rental
2 of this yacht. Those are substantial assets.

3 So even if the scheme, or I'm not even sure what it's
4 called, the HU -- the -- whatever -- even if your assets were
5 tied up in that, that are alleged to have been involved in this
6 scheme, are not available, by your own admission, you have
7 substantial assets available to you.

8 You also have this yacht. And I concur that it may not
9 get you to Dubai, but it certainly can get you out of the
10 United States. Those are things that are very hard to look at
11 and say that there's a condition or combination of conditions
12 that would, you know, reasonably assure your appearance here.

13 I do see that, you know, the criminal history, also, I
14 don't put much stock into that. It's so old. It's just so
15 old. And as your counsel aptly noted, you -- you know, you
16 apparently did quite well on that. I mean, it was terminated
17 early. But that's from 2007. It's basically not something
18 that I would put much weight into.

19 In terms of, you know, the government has your passport,
20 my concern is really about the possession of the passport, the
21 access to a mode of transportation that would be outside of,
22 you know, control, and, you know, the assets that you reported.
23 In addition, you also reported owning multiple vehicles that
24 are significantly -- they appear to me to be expensive, a
25 Lamborghini, a Porsche, and a whole set of other things. So

1 there's -- there's just too many assets in play here that you
2 could -- may draw upon.

3 And, you know, to the last one, the nature and
4 seriousness, the danger to any person and our community, I
5 don't find that to be a factor here.

6 But taking all these factors into combination, I do find
7 that you need to be -- and I order that you be detained. I
8 don't think that there's a condition or a combination of
9 conditions that would reasonably assure -- again, what under a
10 preponderance of the evidence standard, 51 percent.

11 So under that standard and those inquiry and the evidence,
12 the information and representations that have been represented
13 to me today, I'm going to order that you be detained pending
14 trial.

15 So if you'll just bear with me, I will fill out some of
16 the paperwork.

17 Would you be so kind as to (indiscernible)?

18 **DEPUTY CLERK:** Yes.

19 **THE COURT:** Thank you so much.

20 Oh, I'm also advised by Ms. Davis that there's been a date
21 set for a preliminary hearing on February 12th, 2024.

22 Thank you, Ms. Davis.

23 **DEPUTY CLERK:** You're welcome, Your Honor. It's
24 printing. The printer kind of takes a little bit.

25 **THE COURT:** That's no problem. Thank you.

1 Thank you so very much.

2 Ms. Davis, here you are.

3 **DEPUTY CLERK:** Thank you.

4 **THE COURT:** Is there anything else?

5 Is there anything else from any of the other parties?

6 **MR. TODD:** Not from the government's perspective,
7 thank you.

8 **MR. GRIFFITH:** No, Your Honor.

9 **THE COURT:** Okay. Thank you very much.

10 **DEPUTY CLERK:** All rise. This Honorable Court now
11 stands in recess.

12 (The foregoing proceedings concluded at 12:35 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Paula J. Leeper, do hereby certify that the foregoing is a correct transcript of the audio-recorded proceedings in the above-entitled matter audio recorded via FTR Gold on January 29, 2024, to the best of my ability and that said transcript has been compared with the audio recording.

Dated this 29th day of October, 2024.

/s/ Paula J. Leeper

Paula J. Leeper, RPR, CRR
Federal Official Reporter