

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
MEHDI NIKPARVAR-FARD a/k/a “Mehdi Armani”	:	No. 18-101-1
	:	

MEMORANDUM

PRATTER, J.

JULY 11, 2019

Dr. Mehdi Nikparvar-Fard was allegedly at the center of a sham prescription conspiracy that resulted in the distribution of untold quantities of oxycodone and methadone. This Court—and multiple other judges in this District—have already determined that pretrial detention of the doctor is necessary to ensure his continued attendance of court proceedings. Here, the Court affirms Magistrate Judge Rueter’s previous detention decision and further concludes that Dr. Nikparvar-Fard’s continued detention does not violate due process. Despite his proposal of additional conditions of release, his new representations about the status of his Iranian passport, and his wife’s sincere testimony describing the difficulties currently being endured by her family, the fact remains that no combination of conditions will reasonably guarantee Dr. Nikparvar-Fard’s presence in court when and as needed and ordered.

BACKGROUND

Dr. Mehdi Nikparvar-Fard is an Iranian-American physician who holds both American and Iranian passports.¹ In March 2018, the United States Government indicted Dr. Nikparvar-Fard for

¹ In 2014, Dr. Nikparvar-Fard became an American citizen and legally changed his name to Mehdi Armani. For ease of reference, the Court will only refer to him here as Dr. Nikparvar-Fard, which is the primary name used to identify the doctor in both the indictment and his at-issue papers.

conspiracy to distribute a controlled substance. In December 2018, upon his release from federal custody pursuant to an unrelated federal sentence, U.S. Marshals arrested Dr. Nikparvar-Fard for the March 2018 conspiracy charge.² The next day, Magistrate Judge Jacob P. Hart granted the Government's motion for temporary detention, and two-and-a-half weeks later, on January 4, 2019, Magistrate Judge Thomas J. Rueter granted the Government's motion for detention after a detention hearing. This Court has held two subsequent hearings on Dr. Nikparvar-Fard's pretrial detention, on March 21, 2019 and June 21, 2019.

I. The Allegations Against Dr. Nikparvar-Fard in This Case

After initially indicting Dr. Nikparvar-Fard in March 2018, the Government returned a superseding indictment on January 9, 2019. In the superseding indictment, the Government contends that Dr. Nikparvar-Fard used his medical practice, Advanced Urgent Care, to illegally distribute oxycodone and methadone pills via four medical offices. Allegedly, Dr. Nikparvar-Fard proposed a scheme whereby Advanced Urgent Care physicians and physician's assistants pre-signed prescriptions for oxycodone and methadone, which were then distributed by an individual not authorized to prescribe controlled substances. According to the superseding indictment, Advanced Urgent Care provided nearly 3,700 illegal prescriptions and countless more pills-worth of controlled substances. Dr. Nikparvar-Fard is charged with one count of conspiracy to distribute a controlled substance and four counts of maintaining (and aiding and abetting the maintaining of)

² The parties disagree as to when the Government took Dr. Nikparvar-Fard into custody. Dr. Nikparvar-Fard states that he has been in detention since December 19, 2018. See Opp. to Mot. for Pretrial Detention at 3 (Doc. No. 10); Mot. for Review and Recons. of Pretrial Detention Order at 1 (Doc. No. 91); Renewed Mot. for Review and Recons. of Pretrial Detention Order at 1 (Doc. No. 126). The Government states that Dr. Nikparvar-Fard has been in detention since December 20, 2018. See Gov. Resp. to Renewed Mot. for Review and Recons. of Pretrial Detention Order at 10 (Doc. No. 130).

drug involved premises. If convicted, he faces a sentencing guidelines range of 292-365 months in prison and a maximum sentence of 100 years.

II. Magistrate Judge Rueter's Pretrial Detention Order

After Dr. Nikparvar-Fard was first taken into custody in this case—but before the Government charged Dr. Nikparvar-Fard pursuant to the superseding indictment—the Government moved for an order of pretrial detention. Magistrate Judge Rueter held a detention hearing and, in his Pretrial Detention Order, analyzed, among other things, (1) the “probable cause and evidence in this case;” (2) the “maximum penalties” facing Dr. Nikparvar-Fard; (3) Dr. Nikparvar-Fard’s “judicial record;” (4) Dr. Nikparvar-Fard’s “lack of community ties/employment;” and (5) Dr. Nikparvar-Fard’s “finances.” See generally Pretrial Detention Order (Doc. No. 12) (capitalization omitted).³ Based on those considerations, Judge Rueter determined that Dr. Nikparvar-Fard was a flight risk for whom “no condition or combination of conditions” could “reasonably assure [his] presence . . . as required.” Id. at 6.⁴

DISCUSSION

The Court must consider two discrete issues in reviewing Magistrate Judge Rueter's detention order. First, the Court must decide whether any condition or combination of conditions will reasonably assure Dr. Nikparvar-Fard's appearance. Second, even if no conditions can guarantee that Dr. Nikparvar-Fard will appear in this case, the Court must still determine whether

³ Because the Government sought pretrial detention before charging Dr. Nikparvar-Fard under the superseding indictment, Magistrate Judge Rueter's initial detention decision only considered the charges against Dr. Nikparvar-Fard in the first indictment, and did not assess what effect, if any, the additional charges in the superseding indictment could or should have on pretrial detention.

⁴ In a footnote, Magistrate Judge Rueter acknowledged that although he had “concern that [Dr. Nikparvar-Fard] poses a risk to threaten, injure, or intimidate prospective witnesses,” there were conditions sufficient to “assure the safety of the community,” and so the pretrial detention order was “based solely on risk of flight.” Pretrial Detention Order at 7 n.1 (Doc. No. 12).

pretrial detention violates Dr. Nikparvar-Fard's right to due process.⁵ As set forth below, the Court determines that pretrial detention is necessary to ensure Dr. Nikparvar-Fard's continued presence in these proceedings and that such detention comports with due process.

I. Whether Any Combination of Conditions Can Assure the Court that Dr. Nikparvar-Fard Will Appear

18 U.S.C. § 3142 sets the parameters for pretrial detention of federal criminal defendants. Detention is required, among other reasons, if a judicial officer, such as a magistrate judge or district court judge, “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community[.]” § 3142(e)(1).

Generally, the Government has the burden to establish, by a preponderance of evidence, that no such conditions exist. See United States v. Himler, 797 F.2d 156, 161 (3d Cir. 1986). In certain cases, there is a rebuttable presumption that no condition will assure the defendant's appearance. See § 3142(e)(3).⁶ To rebut the presumption, “[t]he defendant must produce some

⁵ Dr. Nikparvar-Fard previously moved for review and reconsideration of Magistrate Judge Rueter's detention order, focusing entirely on 18 U.S.C. § 3142. See generally Mot. for Review and Recons. of Pretrial Detention Order (Doc. No. 91). After the March 21, 2019 hearing, the Court denied that motion for review and reconsideration without prejudice. Doc. No. 117. Dr. Nikparvar-Fard's currently pending motion is styled as a “renewed” version of the previous motion for review and reconsideration. See Renewed Mot. for Review and Recons. of Pretrial Detention Order (Doc. No. 126). Although the currently pending motion argues primarily that the doctor's pretrial detention violates due process, because the motion seemingly seeks to “renew” previous arguments, and because the motion relies heavily on at least one case that found no due process violation but nonetheless granted release pursuant to § 3142, see United States v. Yijia Zhang, Cr. No. 12-498, 2014 WL 5285928, at *6 (E.D. Pa. Oct. 16, 2014), aff'd (Dec. 4, 2014), the Court will address whether detaining Dr. Nikparvar-Fard comports with both § 3142 and due process.

⁶ § 3142(e)(3) states:

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

credible evidence forming a basis for his contention that he will appear and will not pose a threat to the community.” United States v. Carbone, 793 F.2d 559, 560 (3d Cir. 1986) (per curiam).

“To order pretrial detention once the presumption has been rebutted, the Court must find by a preponderance of evidence that no conditions can reasonably assure the defendant’s appearance at trial or by clear and convincing evidence that no combination of conditions will reasonably assure the safety of the community. The Court reviews the factors [set forth in § 3142(g)] and makes this determination *de novo*.” United States v. Rowland, No. Cr. 18-00579-2, 2019 WL 653217, at *2 (E.D. Pa. Feb. 15, 2019) (citations omitted); see also United States v. Cirillo, No. 99-1514, 1999 WL 1456536, at *2, n.1 (3d Cir. July 13, 1999) (“Once [the defendant] has done so, the burden of persuasion remains on the government.”). Even after the defendant rebuts the presumption, the Court should “continue to give the presumption of flight some weight by keeping in mind that Congress has found that these offenders pose special risks of flight, and that ‘a strong probability arises’ that no form of conditional release will be adequate to secure their appearance.” United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986); see also United States v. Diaz, 777 F.2d 1236, 1238 (7th Cir. 1985) (“[A]lthough the presumption against bail is

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

rebuttable, . . . it continues to weigh in the balance against bail even after the defendant meets his burden of producing some evidence to rebut the presumption.”) (citation omitted); United States v. O’Brien, 895 F.2d 810, 815 (1st Cir. 1990) (“The presumption, however, does not cease to have effect once the defendant has come forward with some evidence. Instead, it continues to operate as one factor to be considered by the court in determining whether the defendant must be detained.”) (citation omitted).

After a judicial officer orders a criminal defendant to be detained pursuant to § 3142, the defendant may still seek review of that decision:

“If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.”

18 U.S.C. § 3145(b). This Court conducts *de novo* review of a magistrate judge’s detention decision. United States v. Delker, 757 F.2d 1390, 1394–95 (3d Cir. 1985).

A. Dr. Nikparvar-Fard Has Rebutted the Presumption in Favor of Detention

The prospective length of Dr. Nikparvar-Fard’s sentence gives rise to a presumption that the doctor is a flight risk. See § 3142(e)(3)(A). To rebut that presumption, Dr. Nikparvar-Fard offered evidence from others of his commitment to his family and to his friends. At the hearings on March 21, 2019 and June 21, 2019, the Court heard testimony offered on behalf of Dr. Nikparvar-Fard’s family—by his wife, Niusha Houshmand—and his friends—offered by several friends of his wife. As a demonstration of their confidence that Dr. Nikparvar-Fard will appear, Dr. Nikparvar-Fard’s wife and children are willing to surrender their Iranian and American

passports, and his wife offers to post a \$240,000 cash bond on behalf of the family.⁷ Ms. Houshmand testified that Dr. Nikparvar-Fard would not flee and leave his family behind. Dr. Nikparvar-Fard's family friends—all members of the Razzaghi family—are likewise posting three of their properties as surety, which they would forfeit if the doctor flees. According to the testimony from those family friends, Dr. Nikparvar-Fard would not abandon his family nor would he jeopardize the status of the properties offered as surety. The Court also heard testimony that Dr. Nikparvar-Fard has surrendered his American and Iranian passports and that his ability to flee internationally without those passports is reportedly limited.

Collectively, the testimony offered on behalf of Dr. Nikparvar-Fard provides “some credible evidence forming a basis for [the doctor’s] contention that he will appear.” Carbone, 793 F.2d at 560. As such, Dr. Nikparvar-Fard has carried his “relatively light burden necessary . . . to rebut the presumption under § 3142(e)[.]” United States v. Mastrangelo, 890 F. Supp. 431, 436 n.3 (E.D. Pa. 1995) (citation omitted).⁸

B. The § 3142(g) Factors

Although Dr. Nikparvar-Fard has rebutted the initial presumption in favor of detention, that does not end the Court’s necessary analysis. The Government must then demonstrate by a preponderance of the evidence, using the factors set forth in § 3142(g), that no form of conditional release will be adequate to secure Dr. Nikparvar-Fard’s appearance. Section 3142(g) identifies

⁷ According to Ms. Houshmand in response to inquiry from the Court, this money was recently made available to Ms. Houshmand from an inheritance reportedly due only to her and to which Dr. Nikparvar-Fard would have had no disclosed legal claim prior to its distribution. June 21, 2019 Hearing Tr. at 44:23–45:4. However, once Ms. Houshmand received the money, she said that it “belong[ed] to all of [her] family, [her]husband and [her]two children.” Id. at 45:4–7.

⁸ In Mastrangelo, although the Court found that the defendant “rebutted this presumption because his friends and family are willing to post their property as surety for his appearance,” the Court nonetheless ultimately denied the request for pretrial release, after considering the § 3142(g) factors. 890 F. Supp. at 437.

four factors that inform a court's analysis of whether conditions exist to ensure a defendant's appearance: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In assessing the Government's evidence, the Court also is expected to continue to weigh the presumption in favor of detention while conducting its analysis.

The Court addresses each § 3142(g) factor in turn.

1. The Nature and Circumstances of the Charges Against Dr. Nikparvar-Fard

The charges against Dr. Nikparvar-Fard are serious. Magistrate Judge Rueter's detention order actually predated the additional charges included in the superseding indictment and the Court's designation of this case as complex. But now, as recounted above, Dr. Nikparvar-Fard faces one count of conspiracy to distribute a controlled substance and four counts of maintaining—and aiding and abetting the maintaining of—drug involved premises. The Government has identified 916 unlawful prescriptions that Dr. Nikparvar-Fard personally wrote between 2014 and 2017, Gov. Resp. to Mot. for Review and Recons. of Pretrial Detention Order at 7 (Doc. No. 97), and the superseding indictment singles out the doctor as responsible for “propos[ing]” the at-issue scheme. Superseding Indictment at ¶ 5 (Doc. No. 14).

Dr. Nikparvar-Fard faces an undeniably significant maximum sentence of 100 years in prison, 5 years of supervised release, a \$3 million fine, and a \$500 special assessment. Gov. Resp. to Mot. for Review and Recons. of Pretrial Detention Order at 7 (Doc. No. 97). For their part, the sentencing guidelines recommend a 292-365 months custodial sentence. *Id.* at 1. The doctor also faces the potential forfeiture of numerous properties—the Government filed four notices of *lis*

pendens—including Dr. Nikparvar-Fard’s personal residence, valued at \$1.75 million. See Doc. No. 20; Gov’t Mot. for Pretrial Detention at 6 (Doc. No. 7).

This factor favors detention.

2. The Weight of the Evidence Against Dr. Nikparvar-Fard

The disclosed evidence against Dr. Nikparvar-Fard appears to be strong. According to the Government, there is evidence of numerous prescriptions for oxycodone and methadone, signed by Dr. Nikparvar-Fard, all for patients with no legitimate need for the medication and/or who tested positive for other drugs. In its opposition to Dr. Nikparvar-Fard’s renewed motion for reconsideration of pretrial detention, the Government offers the opinion of a medical expert as to the legitimacy of Dr. Nikparvar-Fard’s pain-management medical practice. The expert opined:

This was a group of drug dealers, disguised as healthcare providers, who had been identified by the drug addicts, abusers and diverters in the community, as the places where they could obtain drugs of abuse on a wholesale basis. There were few patients in which the level of practice was deemed to be anywhere near the minimum standard for prescribing for a medically legitimate purpose in the usual course of professional practice.

Gov. Resp. to Renewed Mot. for Review and Recons. of Pretrial Detention Order at 6 (Doc. No. 130).

Furthermore, Dr. Nikparvar-Fard’s attitude towards his patients and his role as a healthcare provider is evident from his own statements to law enforcement officers upon his arrest. Dr. Nikparvar-Fard allegedly said that “all my patients will come back here because they need me. You understand me. . . . [T]hey need me because I give them oxycodone, they need me. Those [racial slur] people. They come and they pay me. They pay good.” Gov. Resp. to Mot. for Review and Recons. of Pretrial Detention Order at 3 (Doc. No. 97). Such comments alone can prove to undermine Dr. Nikparvar-Fard’s assessment of his possible positions in this case. They certainly invite antipathy for Dr. Nikparvar-Fard’s arguments against advocacy of his guilt. Dr. Nikparvar-

Fard at least acknowledges that he will “need to refute substantial evidence.” Mot. for Review and Recons. of Pretrial Detention Order at 3 (Doc. No. 91).

This, especially in the context of the seriousness of the charges, means that Dr. Nikparvar-Fard has a strong incentive to flee if he is released, weighing in favor of detention.

3. Dr. Nikparvar-Fard’s History and Characteristics

Three separate groups of considerations factor in the Court’s analysis of Dr. Nikparvar-Fard’s history and characteristics: (i) Dr. Nikparvar-Fard’s antipathy to judicial process; (ii) Dr. Nikparvar-Fard’s ability to flee; and (iii) Dr. Nikparvar-Fard’s ties to the community. The first two weigh in favor of pretrial detention (Dr. Nikparvar-Fard’s antipathy to judicial process considerably so), the third does not.

i. Dr. Nikparvar-Fard’s Antipathy to Judicial Process

The analysis of whether Dr. Nikparvar-Fard is likely to flee if released from custody, subject to court-ordered conditions, must begin with a discussion of the doctor’s numerous previous interactions with the courts and law enforcement. Dr. Nikparvar-Fard has been involved with or the subject of several judicial matters, both state and federal and civil and criminal. In each instance, Dr. Nikparvar-Fard’s behavior suggested that he harbors an unabashed disdain for authority and a total lack of respect for courts and law enforcement.

In multiple state and federal civil matters—including ones in this District—Dr. Nikparvar-Fard has failed to appear in court and/or respond to allegations made against him or his medical practice, leading to multiple default judgments. See, generally, e.g., Brown v. Advanced Urgent Care of Sinking Spring LLC, et al., No. 16-111 (E.D. Pa. 2016); Williams v. Advanced Urgent Care, No. 14-6347 (E.D. Pa. 2014). Similarly, in yet another civil matter in this District, the Court was forced to hold Dr. Nikparvar-Fard in civil contempt twice after Dr. Nikparvar-Fard repeatedly

failed to comply with requests for documents. See Hugler v. Advanced Urgent Care of City Line LLC et al., 17-MC-11 (E.D. Pa. 2017) (Doc. Nos. 12, 21) (Orders of Contempt).

Even more troubling, however, was Dr. Nikparvar-Fard's behavior after the Court issued a bench warrant for his arrest following his second contempt charge in Hugler. At some point during the arrest, Dr. Nikparvar-Fard denied that he was the subject of the arrest warrant. Complaint ¶ 8, United States v. Nikparvar-Fard, No. Cr. 17-513 (E.D. Pa. 2017) (Doc. No. 1). Because he had recently legally changed his name to Mehdi Armani, Dr. Nikparvar-Fard (falsely) stated that Mehdi Armani and Mehdi Nikparvar-Fard were two different people. Id. Next, upon his ultimate arrest by U.S. Marshals, Dr. Nikparvar-Fard threatened one of the officers, saying "your face will be with me all the time, OK. We will see each other, don't worry about that. We will see each other." Id. ¶ 11. When the Marshal asked whether Dr. Nikparvar-Fard was making a threat, the doctor responded, "[f]or somebody at my scale [to] come to threaten you, is that what you think? If I wanted to do that, I pay a [racial slur] like this guy five grand to put a [expletive] bullet in your head if I want to do that." Id. Unbeknownst to the arresting Marshals, Dr. Nikparvar-Fard also possessed a concealed firearm at the time he made those threatening statements. Id. at ¶ 13. Dr. Nikparvar-Fard was eventually charged with and convicted of retaliating against a federal official by making threats and making a false statement. See Judgement as to Mehdi Nikparvar-Fard, United States v. Nikparvar-Fard, No. Cr. 17-513 (E.D. Pa. 2017) (Doc. No. 154).⁹

In a similar vein, Dr. Nikparvar-Fard also allegedly threatened a witness to a state court proceeding. According to a recording of Dr. Nikparvar-Fard made by a former employee (and witness in the matter), the doctor said "[t]hey served you a subpoena, that doesn't mean nothing,

⁹ The Government also described these events in its motion for pretrial detention. See Mot. for Pretrial Detention at 1–2 (Doc. No. 7).

you don't have to show up. You just gonna say I walked away from my right and I don't want to do it." Mot. for Pretrial Detention at 3 (Doc. No. 7). Dr. Nikparvar-Fard also apparently told the witness, "when I defend myself, it's not gonna be in your favor. You don't want other people to know your stories. You wanna hide them and you don't wanna expose them to anybody," and then threatened to "hire ah, ah, somebody to put a [expletive] bullet in your [expletive] brain." Id.¹⁰

Taken together, these incidents paint a troubling picture of Dr. Nikparvar-Fard as someone who has (1) no regard for judicial process; (2) no respect for witnesses; and (3) no credibility as to his purported willingness to follow the Court's rules and orders. Dr. Nikparvar-Fard has no good excuse (or even embarrassment or sheepishness) for his past behavior—nor could he. Instead, he attempts to brush it away as "old and distinguishable[.]" Mot. for Review and Recons. of Pretrial Detention Order at 5 (Doc. No. 91). Dr. Nikparvar-Fard also argues that he "should not be further punished" for his prior actions. Id. at 6. But just as courts across the country have held, because Dr. Nikparvar-Fard's actions "bespeak a disrespect, perhaps even a contempt, for the judicial process[,] [t]hey increase the likelihood that the defendant will seek to undermine that process entirely by fleeing." United States v. Zarger, No. Cr. 00-73-1, 2000 WL 1134364, at *1 (E.D.N.Y. Aug. 4, 2000); see also United States v. Faulkner, 744 F. App'x 861, 861 (5th Cir. 2018) (per curiam) (affirming entry of detention order based in part on defendant's "history of attempting to thwart federal court orders"); United States v. Owens, No. Cr. 16-10208, 2016 WL 6780300, at *2

¹⁰ As Dr. Nikparvar-Fard stated in his opposition to the Government's motion for pretrial detention, the doctor was not criminally charged for his actions in this matter. The Court is not convinced, however, by Dr. Nikparvar-Fard's arguments that (1) this altercation is insignificant because it is "old"—the conversation occurred in 2014, and (2) it is "not accurate" to describe the doctor's statements as threatening. Opp. to Mot. for Pretrial Detention at 3 (Doc. No. 10). Instead, this interaction is part of a pattern of behavior by Dr. Nikparvar-Fard.

(D. Mass. Nov. 15, 2016) (ordering detainer of defendant who “defaulted on court appearances over a dozen times, indicating that he is a flight risk”). As such, Dr. Nikparvar-Fard’s argument about punishment misses the point. Detention here does not serve a punitive function; it merely ensures that Dr. Nikparvar-Fard does not have the opportunity to ignore court orders and stifle justice, as he has done or attempted to do in the past.¹¹

Dr. Nikparvar-Fard’s history of undisguised antipathy to judicial processes weighs in favor of detention.

ii. Dr. Nikparvar-Fard’s Ability to Flee

Whether Dr. Nikparvar-Fard is a flight risk also turns on his functional ability to flee.¹² Dr. Nikparvar-Fard proposes three conditions of release, which he argues ensure he will not flee: (1) a \$2,000,000 surety agreement, including posting \$240,000 cash and the necessary documentation for three properties, which are owned by “close family friends” of his wife and “have combined equities of approximately \$450,000;” (2) round-the-clock electronic monitoring and daily reporting to Pretrial Services; and (3) the surrender of all passports held by Dr. Nikparvar-Fard, his wife, and their children. Renewed Mot. for Review and Recons. of Pretrial Detention Order at 8–9 (Doc. No. 126). The Court is not convinced that these conditions would in fact ensure Dr. Nikparvar-Fard’s presence, although the Court recognizes that by surrendering his passport, Dr. Nikparvar-Fard has somewhat curtailed his ability to flee.

¹¹ Dr. Nikparvar-Fard argues in his papers that because his co-defendants have been granted pretrial release, he should receive the same treatment. But Dr. Nikparvar-Fard’s long history of disregarding court orders and disrespecting authority sets him aside from his co-defendants by a significant margin.

¹² As with each individual § 3142(g) factor, ability to flee on its own is not dispositive. See Himler, 797 F.2d at 162 (“Mere opportunity for flight is not sufficient grounds for pretrial detention.”).

As an initial matter, 24/7 electronic monitoring does not make Dr. Nikparvar-Fard less likely to abscond. As courts throughout the Third Circuit have recognized, although “electronic monitoring can shorten the time between flight and detection, it provides no assurance against flight at a propitious time or of apprehension once flight is undertaken.” United States v. Escobar-Lopez, No. Cr. 92-00102-11, 1992 WL 164718, at *1 (E.D. Pa. July 1, 1992); see also United States v. Abdullahu, 488 F. Supp. 2d 433, 444 (D.N.J.2007) (“Electronic monitoring and home confinement do not guarantee that defendant will not flee or endanger the community. Electronic monitoring impedes but does not prevent a defendant from fleeing.”) (citations omitted); United States v. Chagra, 850 F. Supp. 354, 360 (W.D. Pa. 1994) (“Electronic monitoring and other means of personal supervision are insufficient . . . because they only notify authorities that the defendant is already fleeing.”) (citation omitted). Electronic monitoring would, at most, reduce Dr. Nikparvar-Fard’s head start if he attempted to run.

Likewise, although Dr. Nikparvar-Fard’s surrender of his Iranian and American passports does to some extent mitigate his ability to flee **internationally**, that alone does not restrict (or even influence) whether Dr. Nikparvar-Fard might flee **without leaving the country**. Further, there remains a possibility that Dr. Nikparvar-Fard could, if he so desired, try to find his way back to Iran (or into other non-extradition countries) even after forfeiting his passports.

To address concerns about whether he could get another Iranian passport, Dr. Nikparvar-Fard elicited testimony from Dr. Saeid B. Amini, Esq., an attorney who, among other things, represents the Interests Section of the Islamic Republic of Iran¹³ in legal matters. Dr. Amini presented the Court with a sealed, certified, stamped letter from Mehdi Atefat, the Director of the

¹³ Since 1981, the Interests Section of the Islamic Republic of Iran has represented Iranian consular interests in the United States. See June 21, 2019 Hearing Tr. at 10:16–20.

Iranian Interests Section in Washington, D.C., in which Mr. Atefat stated that the Interests Section “would not issue any new passport or travel document to [Dr. Nikparvar-Fard] without his old passport, and he will not be permitted to enter Iran without a passport or travel document.” Ex. D-2 to June 21, 2019 Hearing. According to Dr. Amini’s testimony, this letter effectively guarantees that Dr. Nikparvar-Fard will not be able to travel from the United States to Iran. That is because, for Iranian-born individuals, like Dr. Nikparvar-Fard, “if you’re born in Iran, if you want to go back to Iran, you have no choice, it doesn’t matter how many citizenships you have, you have to have [an] Iranian passport.” June 21, 2019 Hearing Tr. at 12:18–22. And here, because the Iranian Interests Section in the United States is on notice of (1) the charges against Dr. Nikparvar-Fard and (2) the fact that Dr. Nikparvar-Fard surrendered his Iranian passport to the United States Government,

if at any time [Dr. Nikparvar-Fard] make[s] a request [of the Interests Section for a new Iranian passport], first of all, [Dr. Nikparvar-Fard] cannot get travel papers. [The Interests Section] only issue[s] travel paper[s] usually to the federal agent so they can deport these people. [Dr. Nikparvar-Fard], he has to actually get a passport and [the Interests Section] won’t issue a passport to [Dr. Nikparvar-Fard] unless his old passport is in his hand.

Id. at 13:3–7.

Merely because Dr. Nikparvar-Fard will not be able to get another Iranian passport from Iran’s Interests Section in the **United States**, however, it does not necessarily follow that Dr. Nikparvar-Fard would not be able to get another Iranian passport from an Iranian Embassy abroad. For example, in response to the Court’s inquiry, Dr. Amini testified that he did not know whether (1) the Iranian Embassy in Mexico is “connected to the same [computer] system” as the Interests Section in the United States, id. at 18:22–23, or (2) whether decisions made by the Iranian Interests Section in the United States are “binding on an [Iranian] Embassy elsewhere in the world.” Id. at 26:7–11. As such, it is conceivable that if Dr. Nikparvar-Fard traveled to Mexico—or some other

foreign country with diplomatic relations with Iran—he could be able to procure a new Iranian passport from an Iranian Embassy in that country.

The Court is aware of two cases considering whether a defendant’s potential ability to obtain a passport from a foreign Embassy supports a determination that the defendant is a flight risk. In United States v. Hassanshahi, 989 F. Supp. 2d 110 (D.D.C. 2013), the court refused to detain a defendant as a flight risk because, among other reasons, the defendant had surrendered his Iranian passport and “would first have to cross into Canada or Mexico to reach an Iranian embassy and obtain a new passport.” Id. at 116. Hassanshahi is distinguishable, however, because such an international trip was nearly impossible as a practical matter in that case. The court stated that the defendant had “a [medical] condition which has apparently prevented his transfer to this District” and so “it [wa]s likely not in [the defendant’s] medical interest to flee from Los Angeles to Iran either—particularly where, as here, such travel would require the intermediate step of reaching an Iranian embassy outside of the United States in order to obtain a new passport.” Id.

But, in contrast, in a case decided in this District, United States v. Amirnazmi, No. Cr. 08-429-01, 2008 WL 4925015 (E.D. Pa. Nov. 18, 2008), the Court affirmed the detention of an Iranian-American defendant in part because anyone “that has dual passports, [and] dual citizenship with passports even though they are now retained by the federal government, is always suspect of having an available avenue to flee.” Id. at *2. The defendant in Amirnazmi, like Dr. Nikparvar-Fard, also had a record of “lack of respect for the law and the American legal system.” Id.; see also supra at pp. 10–12.

Other factors affecting Dr. Nikparvar-Fard’s ability to flee similarly fall short of reasonably assuring his presence at future proceedings in this case, although there are also some reasons to believe the doctor may have pause before fleeing. Most notably, Dr. Nikparvar-Fard’s wife and

children live locally and have already surrendered—or are prepared to surrender—their American and Iranian passports. Assuming Dr. Nikparvar-Fard does not intend to abandon his family, and assuming that they would not seek alternative avenues to depart the United States, international flight may be less likely.

Presumably, however, if Dr. Nikparvar-Fard can obtain an Iranian passport at a foreign embassy, his family could follow suit. See supra at pp. 14–15. Further still, if Dr. Nikparvar-Fard wanted to flee the Eastern District of Pennsylvania without leaving the United States, he could hypothetically bring his family with him. And Dr. Nikparvar-Fard could also attempt to flee and leave his family behind altogether. Though the Court does not have evidence before it upon which to consider these contingencies likely, it also cannot discount their possibility. Additionally, Dr. Nikparvar-Fard has family in Iran and Australia, although the Court recognizes that he has not been to Iran in about 20 years. March 21, 2019 Hearing Tr. at 14:23–15:2, 19:8–18.

Finally, the evidence suggests that Dr. Nikparvar-Fard’s proposed financial conditions on bail will not assure his presence. Under the prospective bail conditions, Dr. Nikparvar-Fard (or, more accurately, his wife) would post \$240,000 cash and close family friends would post properties worth \$450,000. But third-parties posting their properties does not affect Dr. Nikparvar-Fard’s ability to flee (although it may affect his incentive to flee).¹⁴ Regarding the \$240,000, Dr. Nikparvar-Fard’s wife testified during the June 21, 2019 hearing that a recent inheritance is the source for the bail money. June 21, 2019 Hearing Tr. at 37:23–41:23.¹⁵ In other words, although Dr. Nikparvar-Fard and his wife would forfeit the \$240,000 if he fled (and, in so doing, the doctor

¹⁴ The Court discusses below the extent to which posting the properties may affect the doctor’s incentives to flee. See infra at pp. 20–22.

¹⁵ Ms. Houshmand testified that she inherited the \$240,000 as a result of her mother’s passing. June 21, 2019 Hearing Tr. at 37:23–38:3.

would lose whatever domestic relations claim he would have to the inheritance money), it is money that, until recently, his family did not have.

The Government has also established, by referencing court filings in other matters, that Dr. Nikparvar-Fard likely has access to considerable resources beyond the \$240,000 to be posted in this case. For example, according to the Government's motion for pretrial detention, the Presentence Report in Dr. Nikparvar-Fard's 2017 criminal case stated that the doctor had "\$9,259,666 of total assets and \$4,684,565 of net worth." Mot. for Pretrial Detention at 6 (Doc. No. 7). Dr. Nikparvar-Fard also testified, during a deposition in bankruptcy proceedings, that he has previously done business overseas, meaning that he has had—and may still have—assets abroad. *Id.* at 7. Additionally, the memorandum denying pretrial release/bail in Dr. Nikparvar-Fard's previous criminal case states that Dr. Nikparvar-Fard (1) owes more than \$2.7 million in unpaid taxes to the IRS; (2) has previously represented that he has a "two million dollar income;" and (3) owns, along with his wife, five properties in Georgetown County, South Carolina valued collectively at \$3.45 million. United States v. Nikparvar-Fard, No. Cr. 17-513, 2017 WL 6450604, at *3 (E.D. Pa. Dec. 18, 2017). Finally, a recent bankruptcy court opinion also confirms that Dr. Nikparvar-Fard has, since 2009, formed at least 15 companies and drawn substantial salaries from them at times. See In re Incare, LLC, No. 14-0248, 2018 WL 2121799, at *2, *12 (Bankr. E.D. Pa. May 7, 2018). Together, this all suggests that Dr. Nikparvar-Fard's assets are likely dispersed or diversified by design and would allow him to flee while taking considerable funds with him, even after posting a \$240,000 cash bond upon his release.

Dr. Nikparvar-Fard's ability to flee may only tilt slightly in favor of detention, but it certainly does not support Dr. Nikparvar-Fard's argument in favor of release.

iii. Dr. Nikparvar-Fard's Ties to the Community

Dr. Nikparvar-Fard's wife and family live in the Philadelphia area. Mot. for Review and Recons. of Pretrial Detention Order at 4 (Doc. No. 91). His children both attend local schools and were born in the United States. Id.; see also June 21, 2019 Hearing Tr. at 33:2–12. Both Dr. Nikparvar-Fard and his wife have lived in the United States since 2001—although the doctor immigrated first, in 2000. Id. Dr. Nikparvar-Fard and his wife became United States citizens in 2014. Id. Additionally, although there is little evidence of Dr. Nikparvar-Fard's personal participation in the community (aside from his medical practice, which is directly implicated in the charges against him), the testimony of his friends, all members of the Razzaghi family, supports that Dr. Nikparvar-Fard's family has strong local connections. Dr. Nikparvar-Fard's local ties weigh somewhat against detention.

4. The Nature and Seriousness of the Danger to Any Person or the Community That Would Be Posed by Dr. Nikparvar-Fard's Release

In the parties' renewed briefing on pretrial detention, neither Dr. Nikparvar-Fard nor the Government focuses much attention on whether the doctor's release poses a danger to the community. Dr. Nikparvar-Fard simply emphasizes that Judge Rueter held that the court "could impose conditions that would assure the safety of the community." Pretrial Detention Order at 7 n.1 (Doc. No. 12). The doctor ignores the preceding sentence from the detention order, in which Judge Rueter expressed the court's "concern that [Dr. Nikparvar-Fard] poses a risk to threaten, injure, or intimidate prospective witnesses." Id. Indeed, as described above—and as set forth in the Government's initial motion for pretrial detention—Dr. Nikparvar-Fard has in the past threatened law enforcement officers and, seemingly, a witness to court proceedings. See supra at pp. 11–12. The Court today shares Judge Rueter's concern that releasing Dr. Nikparvar-Fard could pose a risk to witnesses in this case. The Court is also concerned that Dr. Nikparvar-Fard

would ignore any court-imposed restrictions on his ability to communicate with witnesses or otherwise tamper with evidence, given his record of disobedience.

This factor weighs in favor of detention.

C. The § 3142 Factors Require Pretrial Detention

The Government has carried its burden to establish by a preponderance of evidence that no set of conditions can assure Dr. Nikparvar-Fard's presence at trial. The Government has shown that the doctor has strong incentives to flee—given the seriousness of the charges and apparent weight of the evidence—even when compared to the aspects of Dr. Nikparvar-Fard's life that might cause him to hesitate before running. Moreover, given the added charges—and increased sentence—he now faces, Dr. Nikparvar-Fard has even more reason to flee than he did when Judge Rueter initially ordered pretrial detention. Most consequential, however, is Dr. Nikparvar-Fard's record of blatantly ignoring court orders and disrespecting the Rule of Law. Dr. Nikparvar-Fard has offered nothing to suggest that he has renounced his antipathy for authority or that he has developed a newfound likelihood to obey the Court's orders.

The Court does not doubt for a minute that Ms. Houshmand honestly believes her husband to be a dedicated father and partner, nor does the Court trivialize the real and significant trauma currently being endured by Dr. Nikparvar-Fard's family—and the families of innumerable other criminal defendants. See June 21, 2019 Hearing Tr. at 46:9–48:11. But the picture of Dr. Nikparvar-Fard painted by Ms. Houshmand is irreconcilable with the doctor's record of flouting courts and law enforcement.

The sureties proposed by Dr. Nikparvar-Fard also do not provide adequate assurance that the doctor will not flee. On the one hand, the Third Circuit Court of Appeals has recognized—in the context of a defendant's danger to the community—that community members offering to post

their homes as surety for a defendant suggests public confidence in the defendant's character: "posting a property bond normally goes to the question of defendant's appearance at trial, [but] where the surety takes the form of residential property posted by community members the act of placing this surety is a strong indication that the private sureties are also vouching for defendant's character." Carbone, 793 F.2d at 561. In Carbone, the court used the surety posted by Mr. Carbone's neighbors to rebut the presumption that Mr. Carbone posed a risk to the community. Id. Mr. Carbone was a first-time offender. Id.

On the other hand, even after Carbone, courts in this District have given little, if any, weight to the posting of sureties by third-parties on behalf of criminal defendants when countervailing factors suggest the defendant is otherwise a flight risk. See United States v. Ortiz, No. Cr. 11-251-08, 2013 WL 247226, at *7 (E.D. Pa. Jan. 23, 2013) ("The posting of the Hernandez-Rosado property and the other properties not owned by defendant or his wife does not overcome the evidence that defendant is a flight risk."); United States v. Marks, 947 F. Supp. 858, 866 (E.D. Pa. 1996) (denying presentencing release and stating that "the extended Marks family is prepared to post as bail for Michael Marks two houses and one hundred thousand dollars in cash with the appropriate forfeiture agreements. This is, clearly, an impressive sum, and the family's profound concern for Michael Marks has not escaped our attention either today or at the September bail hearing. We remain unconvinced, however, that Michael Marks will reciprocate that concern."); United States v. Ackerman, No. Cr. 85-00214-01, 1985 WL 2690, at *8, (E.D. Pa. Sept. 13, 1985) (Scirica, J.) (holding that defendant, a doctor charged with drug crimes, was a flight risk even though "his family and friends [we]re now prepared to deposit or pledge with the clerk of court, cash, securities or property in an amount total[ing] \$725,000[,] [and] [t]he defendant's family

[wa]s also prepared and willing to bear the expense of hiring armed guards on a 24-hour basis to stay in the presence and immediate area of the defendant to secure his person”).

This case is closer to those requiring detention than it is to Carbone. The members of the Razzaghi family who testified on behalf of Dr. Nikparvar-Fard—and who are offering their properties as surety to guarantee the doctor’s presence—acknowledged that they had limited knowledge of the facts of this case and interacted with Dr. Nikparvar-Fard’s **family** more than with the doctor himself. See March 21, 2019 Hearing Tr. at 38:17–39:2 (stating that Khadijeh Razzaghi has “spent more time with” Ms. Houshmand than Dr. Nikparvar-Fard because that doctor is “busy”); id. at 46:13–21 (stating that Hanieh Razzaghi is “aware of the charges, but truthfully [doesn’t] know the facts of the case” and “was just made aware of the actual formal charges a couple of days ago”). The sureties therefore do not substantively alleviate the flight risks identified in the Court’s analysis of the § 3142(g) factors nor do they appear to be based on a full understanding of Dr. Nikparvar-Fard’s past behavior. To the extent that the sureties posted by Dr. Nikparvar-Fard’s friends represent their confidence in the doctor (as opposed to trust in his family), the record does not encourage the Court to join in that trust.

Dr. Nikparvar-Fard’s situation is also distinguishable from that of the defendant in United States v. Yijia Zhang, No. Cr. 12-498, 2014 WL 5285928 (E.D. Pa. Oct. 16, 2014), on which Dr. Nikparvar-Fard relies significantly in his renewed motion. In Yijia Zhang, the Court granted the pretrial release of the defendant, Mr. Zhang, contingent on Mr. Zhang posting a \$500,000 cash bond, surrendering his passports and visas, and accepting various travel restrictions and GPS monitoring. Id. at *6. The Court determined that although Mr. Zhang’s two-year detention did not violate due process, there were sufficient available conditions to ensure Mr. Zhang’s presence. Id. Like Dr. Nikparvar-Fard, Mr. Zhang had immigrated to the United States and had ties

overseas.¹⁶ Significantly, however, Mr. Zhang had neither Dr. Nikparvar-Fard's criminal record nor his documented proclivity for disregarding court orders. See id. at *3 ("Zhang has no prior criminal record, and therefore no record of appearance or failure to appear."). Further, Mr. Zhang's statutory maximum sentence was five years, id., providing substantially less motivation to flee than Dr. Nikparvar-Fard's sentencing guidelines range (let alone maximum sentence). In other words, the characteristics centrally driving the need for Dr. Nikparvar-Fard's continued detention were absent in Yijia Zhang, making the case inapposite.

After considering the evidence, relevant case law, and (rebutted) presumption in favor of detention, Dr. Nikparvar-Fard faces serious charges and strong evidence and has an established history of ignoring court orders and lying to law enforcement. All of these things permit only one conclusion to the at-issue motion: no combination of conditions on pretrial release will reasonably assure Dr. Nikparvar-Fard's presence.

II. Whether Detaining Dr. Nikparvar-Fard Violates Due Process

In addition to arguing that he should not be detained under § 3142, Dr. Nikparvar-Fard also argues that his continued detention violates the constitutional guarantee of due process. The Third Circuit Court of Appeals described the standard for assessing whether detention violates due process in United States v. Accetturo, 783 F.2d 382 (3d Cir. 1986):

Because due process is a flexible concept, arbitrary lines should not be drawn regarding precisely when defendants adjudged to be flight risks or dangers to the community should be released pending trial. Instead, we believe that due process judgments should be made on the facts of individual cases, and should reflect the factors relevant in the initial detention decision, such as the seriousness of the charges, the strength of the government's proof that defendant poses a risk of flight or a danger to the community, and the strength of the government's case on the merits. Moreover, these judgments should reflect such additional factors as the length of the detention that has in fact occurred, the complexity of the case, and

¹⁶ Mr. Zhang had fewer ties to the United States and Eastern District of Pennsylvania than does Dr. Nikparvar-Fard. Yijia Zhang, 2014 WL 5285928, at *6.

whether the strategy of one side or the other has added needlessly to that complexity.

Id. at 388.

Several of the Accetturo factors overlap with the § 3142(g) factors discussed above. The Court will first assess individually the additional Accetturo factors not yet analyzed, before then collectively determining whether all of the factors, as well as any other relevant facts, require Dr. Nikparvar-Fard's pretrial release.

A. Accetturo Factors Not Yet Discussed: The Length of Detention, Complexity of the Case, and Whether the Strategy of One Side or the Other Has Added Needlessly to the Case's Complexity

Dr. Nikparvar-Fard has already been detained for more than six months (since December, 2018) and trial is now set for April 2020. Depending on the duration of the trial, Dr. Nikparvar-Fard will, by then, have been detained for at least 16 months.

The parties do not now seriously dispute the complexity of the case. Both the Government and Dr. Nikparvar-Fard recognize that the charges implicate a voluminous collection of medical records.¹⁷ Instead, Dr. Nikparvar-Fard in effect argues that the complexity of the case requires pretrial release. According to Dr. Nikparvar-Fard, his detention "directly inhibits [him] from fully participating in his own defense." Renewed Mot. for Review and Recons. of Pretrial Detention Order at 7 (Doc. No. 126). At the June 21, 2019 Hearing, Dr. Nikparvar-Fard's counsel elaborated that the defense team needed Dr. Nikparvar-Fard's assistance in reviewing discovery, and that the doctor would not be able to provide that review effectively while incarcerated. See June 21, 2019

¹⁷ Although Dr. Nikparvar-Fard opposed the Government's motion to designate the case as "complex," during the June 21, 2019 hearing, Dr. Nikparvar-Fard's counsel said of the discovery turned over by the Government thus far, "[y]ou should see the complexity of it. It's going to take a week no matter what [to review all of it]. There's 30,000 patient files. It's amazing." June 21, 2019 Hearing Tr. at 65:12-14.

Hearing Tr. at 54:17–55:18, 56:22–57:7.¹⁸ During the same hearing, upon its initiative, the Court telephonically conferred with the appropriate personnel at the Federal Detention Center, where Dr. Nikparvar-Fard is being detained, to confirm that the doctor would be able to access, that same day, discovery materials that counsel had brought to the FDC for his review. See June 21, 2019 Hearing Tr. at 57:25–60:7.

Finally, Dr. Nikparvar-Fard states incorrectly—and in a purely conclusory fashion—that “[i]t is also clear that the delay of this trial is entirely the result of the [G]overnment’s strategy[.]” Renewed Mot. for Review and Recons. of Pretrial Detention Order at 7 (Doc. No. 126). As the Government correctly points out, any delay resulted from complexity, as the Government’s case implicates 13 defendants, thousands of medical records, and spans numerous years. See Gov. Resp. to Renewed Mot. for Review and Recons. of Pretrial Detention Order at 11–13 (Doc. No. 130). The record reflects that the Government has been diligent in turning over discovery to the defendants and has conferred amicably (though, the Court acknowledges, occasionally with some mutually strained tolerance and tension) with defense counsel to address case and discovery issues. Id.

¹⁸ Dr. Nikparvar-Fard also argues:

“To defend this case, Dr. Nikparvar-Fard will need to review and analyze the 30,000 patient charts that the Government seized to show that he properly prescribed narcotics and discharged patients when appropriate. He also will show that many patients never received narcotics, because they were unwarranted. Dr. Nikparvar-Fard cannot reasonably review and discuss this volume of materials with his counsel while incarcerated. Even with three lawyers, as the Government argued, Dr. Nikparvar-Fard is still prejudiced because his counsel are not medical doctors. Dr. Nikparvar-Fard is the only one who can explain why his patients received certain treatment and obtaining those explanations is significantly cumbersome, as materials take weeks to get to Dr. Nikparvar-Fard and then counsel is limited as to when and how long they can speak with him.”

Reply in Further Support of Renewed Mot. for Review and Recons. of Pretrial Detention Order at 2 (Doc. No. 136).

B. The Accetturo Factors and the Facts of This Case Do Not Require Release

Considering the Accetturo factors and the other unique circumstances of this case, Dr. Nikparvar-Fard's continued detention does not violate due process. As set forth more fully above, the seriousness of the at-issue charges, the weight of the evidence, and Dr. Nikparvar-Fard's history of ignoring court orders and making threats all favor detention, contributing to a real and substantial risk of flight and to the community. And none of the other factors identified by the court in Accetturo, including the length of detention and the complexity of the case, require Dr. Nikparvar-Fard's release.

First, the length of Dr. Nikparvar-Fard's detention does not, in and of itself, warrant his release.¹⁹ In Accetturo, the defendants had been detained for "more than three months" at the time they challenged their pretrial detention. 783 F.2d at 392 (Sloviter, J., dissenting in relevant part). Despite recognizing that "at some point due process **may** require a release from pretrial detention," the court nonetheless held that the defendants' "demand for stronger due process protections for detainees awaiting distant trials is . . . better met farther down the procedural road." Id. at 388 (majority op.). Indeed, Courts have found pretrial detention periods as long as **thirty to thirty-three months**, United States v. El-Hage, 213 F.3d 74, 79 (2d Cir. 2000), **thirty-two months**, United States v. Melendez-Carrion, 820 F.2d 56, 60–61 (2d Cir. 1987); nearly **twenty-six months**, holding United States v. Briggs, 697 F.3d 98, 101–03 (2d Cir. 2012), as amended (Oct. 9, 2012), and **twenty-four months**, Yijia Zhang, 2014 WL 5285928, at *5,²⁰ to be

¹⁹ "The length of a detention period will rarely by itself offend due process." United States v. Brooks, No. Cr 17-250, 2018 WL 5919137, at *7 (W.D. Pa. Nov. 13, 2018) (citation and quotation omitted); see also United States v. Orena, 986 F.2d 628, 631 (2d Cir. 1993) (stating same).

²⁰ As discussed above, the Court in Yijia Zhang ultimately released the defendant, but **not** on due process grounds; the Court instead reversed the magistrate judge's determination that there

constitutional. But see United States v. Renzulli, No. Cr. 87-258-7, 1987 WL 17562, at *2 (E.D. Pa. Sept. 28, 1987) (additional detention of “at least five additional months,” after three months of detention, violated due process, even though defendant was risk to community and flight risk).²¹

Complexity, in cases such as this, is often a factor that explains—if not excuses—the need for protracted pretrial detention. Several decisions by the Second Circuit Court of Appeals are illustrative. In El-Hage, for example, the court affirmed that the defendant’s “very long” detention was “not wholly unprecedented, especially for a complex case involving an extensive conspiracy.” 213 F.3d at 79; see also id. at 80 (“Everyone involved agrees that the underlying case is of exceptional complexity and that discovery and trial preparation are of necessity extremely time-consuming for both sides.”). Likewise, in Briggs, the court affirmed the defendant’s detention because (1) the seriousness of the charges provided a strong incentive to flee, (2) the defendant had told a “previously-credible confidential source” that he intended to flee, and (3) the delay resulted from the case’s complexity rather than intentional foot-dragging. 697 F.3d at 101–03.

were no conditions of release that would ensure the defendant’s presence. 2014 WL 5285928, at *6.

²¹ The cases cited by Dr. Nikparvar-Fard suggesting that months-long detentions necessarily violate due process are off-point. As noted above, in Yijia Zhang the Court held that pretrial detention **did not** violate due process. 2014 WL 5285928, at *5. In United States v. Zannino, 798 F.2d 544 (1st Cir. 1986), although the court “assume[d] that in many, perhaps most, cases, sixteen months would be found to exceed the due process limitations on the duration of pretrial confinement[,]” it nonetheless held that pretrial detention **did not** violate due process because the delay was the defendant’s own fault. Id. at 548. This supports that proposition that the length of detention, on its own, is not dispositive. Further, in United States v. Theron, 782 F.2d 1510 (10th Cir. 1986), the court **did not** order the defendant’s release because detention violated due process, instead the court ordered the defendant’s release under 18 U.S.C. § 3161(h)(7). See id. at 1515 (holding that “subsection (h)(7) [does] not require dismissal of the indictment but will require that the defendant be tried or released”). Finally, although the court in United States v. Gonzales Claudio, 806 F.2d 334 (2d Cir. 1986), held that the defendants’ 14 month pretrial detention violated due process, it did so only because trial had been delayed in part by the Government’s “inexplicable” conduct, such that the Government bore “a responsibility for a portion of the delay significant enough to add considerable weight to the defendants’ claim that the duration of detention has exceeded constitutional limits.” Id. at 342–43. No similar circumstance exists here.

Finally, in United States v. Hill, 462 F. App'x 125 (2d Cir. 2012), the court recognized that the “inherent complexities of this large multi-defendant case . . . the strength of the evidence indicating risk of flight[,] and danger to the community, weigh strongly in favor of continued detention through trial.” Id. at 127. Here too, any delay of trial resulted from the case’s complexity, not from any action taken by the Government.

Second, the Court is also unpersuaded by Dr. Nikparvar-Fard’s argument that the complexity of his case actually requires release to allow him to participate in his defense. As a threshold issue, Dr. Nikparvar-Fard cites to no case supporting his argument that due process requires he be released to assist his counsel in reviewing discovery. And the only relevant cases that the Court was able to identify directly reject Dr. Nikparvar-Fard’s argument. In United States v. Petters, No. Cr. 08-364, 2009 WL 205188 (D.Minn. Jan. 28, 2009), involving “perhaps the largest fraud scheme ever perpetrated in Minnesota, and one of the largest in this country’s history,” id. at *1, the court stated that seminal cases implicating the due process rights of pretrial detainees—including the Third Circuit Court of Appeals’ decision in Accetturo—do not “even remotely hint[.]” that “due process might require a defendant to be released if pre-trial detention impairs his ability to prepare for trial.” Id. at *2. See also United States v. Stanford, 394 F. App'x 72, 75–76 (5th Cir. 2010) (per curiam) (holding that pretrial detention “has not crossed the due process boundary of impermissible punishment” and rejecting “Stanford’s argument that his pretrial detention is impermissibly punitive because of the reasonable limitations placed on his ability to participate in his defense to be unpersuasive”).²²

²² Courts have also rejected similar arguments made by defendants under the Sixth Amendment. In United States v. Stanford, 722 F. Supp. 2d 803 (S.D. Tex. 2010), aff’d, 394 F. App'x 72 (5th Cir. 2010), the district court applied Petters to the defendant’s argument that his pretrial detention violated the Sixth Amendment right to assistance of counsel: “accepting such an argument would mean that the more complicated the crime, the more likely a defendant should

Although the Court echoes the Second Circuit Court of Appeals' warning in Briggs that “[d]ue process does not slumber because cases are complex,” 697 F.3d at 103, upon considering all of the relevant factors and facts, Dr. Nikparvar-Fard’s detention, like the defendant in Briggs, “does not, at this time, violate due process.” Id. at 104.

CONCLUSION

For the foregoing reasons, Dr. Nikparvar-Fard’s Renewed Motion for Review and Reconsideration of the Pretrial Detention Order is denied. The Pretrial Detention Order is affirmed. An appropriate Order follows.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

be released prior to trial. This is clearly an absurd result.” Id. at 811 (quoting Petters, 2009 WL 205188, at *2). The court also described, at length, how defendants could adequately review voluminous digital records on the computers available at federal detention facilities. Id. Likewise, in United States v. Mukhtar, No. Cr. 12-00004, 2013 WL 12204792 (D. Nev. Feb. 13, 2013), the court rejected the defendant’s Sixth Amendment argument challenging his pretrial detention. Id. at *7. In so doing the court recognized “that detention limits [the] Defendant’s ability to communicate with his counsel or review electronic discovery or other documentary or physical evidence as frequently or for as long as he might do if he were out of custody.” Id. But because the defendant was “represented by competent counsel and ha[d] access to support staff and assistance to prepare his defense in this case[,] [the] Defendant [did] not demonstrate[] that his pretrial detention so substantially impair[ed] his ability to communicate with his counsel and examine discovery, that he and his lawyers c[ould] not adequately prepare his defense.” Id.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
MEHDI NIKPARVAR-FARD	:	No. 18-101-1
a/k/a “Mehdi Armani”	:	

AND NOW, this 11th day of July, 2019, upon consideration of the Pretrial Detention Order (Doc. No. 12), Defendant’s Renewed Motion for Review and Reconsideration of the Pretrial Detention Order (Doc. No. 126), the Government’s Response thereto (Doc. No. 130), Defendant’s Reply in Further Support of the Renewed Motion for Review and Reconsideration of the Pretrial Detention Order (Doc. No. 136), the June 21, 2019 Hearing thereon, as well as the Government’s Motion for Pretrial Detention (Doc. No. 7), Defendant’s Response thereto (Doc. No. 10), Defendant’s Motion for Review and Reconsideration of the Pretrial Detention Order (Doc. No. 91), the Government’s Response thereto (Doc. No. 97), Defendant’s Reply in Further Support of the Motion for Review and Reconsideration of the Pretrial Detention Order (Doc. No. 109), and the March 21, 2019 Hearing thereon, it is **ORDERED** that the Defendant’s Renewed Motion for Review and Reconsideration of the Pretrial Detention Order (Doc. No. 126) is **DENIED WITHOUT PREJUDICE** as set forth in the Court’s accompanying Memorandum.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE