

THE HONORABLE RICHARD A. JONES
THE HONORABLE BRIAN A. TSUCHIDA

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA

v.

CHANGPENG ZHAO,

Defendant.

CASE NO. CR 23-179 (RAJ)(BAT)

DEFENDANT’S OPPOSITION TO
GOVERNMENT’S MOTION FOR REVIEW OF
MAGISTRATE JUDGE’S RULING ON
DEFENDANT’S PRESENTENCING TRAVEL
RESTRICTIONS

INTRODUCTION

Mr. Changpeng Zhao is the founder and former chief executive officer of Binance Holdings Limited (“Binance” or the “Company”) and in 2017 launched Binance.com, the world’s largest cryptocurrency exchange by volume. Mr. Zhao voluntarily flew into the United States to appear before this Court on November 21, 2023, accepted responsibility, and pleaded guilty to a single count Information charging him with failing to maintain an effective anti-money laundering program. His Company also pleaded guilty to related offenses. Mr. Zhao and Binance also concurrently entered into resolutions with the Commodity Futures Trading Commission (“CFTC”), the Financial Crimes Enforcement Network (“FinCEN”), and the Office of Foreign

1 Assets Control (“OFAC”) (together, the “Civil Agencies”) in three related government
2 investigations.

3 After hearing in open court from both parties—including from Mr. Zhao—Judge Tsuchida
4 fashioned a balanced bail package that permitted Mr. Zhao to return home to the United Arab
5 Emirates (“UAE”) and be with his partner and three young children pending sentencing (“Release
6 Order” or “Order”). Judge Tsuchida’s Order also considered Mr. Zhao’s Motion for Conditional
7 Release Pending Sentence (“Bail Motion,” ECF No. 21), the Pretrial report, and the Pretrial
8 Officer’s live responses.

9 In seeking review of the Release Order, the government repeats exactly the same facts and
10 arguments already considered and rejected by Judge Tsuchida during a lengthy and thorough bail
11 hearing. The government concedes Mr. Zhao is not a danger to the community, ECF No. 34 at 3
12 n.1 (“the government does not believe that Zhao poses a danger to the community”), and agrees
13 bail is appropriate, *id.* at 2 (“[t]he government did not seek Zhao’s detention”). The *only* question
14 is whether Mr. Zhao should be allowed to return to his family in the UAE pending sentencing. As
15 Judge Tsuchida concluded based on a complete record, Mr. Zhao presents no risk of flight, having
16 voluntarily come before the Court to accept responsibility and plead guilty, and the government’s
17 motion should be denied.

18 **BACKGROUND**

19 The Multi-Agency Resolution. On November 14, 2023, the government filed a single
20 count Information charging Mr. Zhao with failing to maintain an effective anti-money laundering
21 program, in violation of 31 U.S.C. §§ 5318(h), 5322(b), 5322(c), and 5322(e). The government
22 also filed a parallel Information against Binance for failing to comply with provisions of the Bank
23 Secrecy Act and U.S. sanctions law.

24 On November 21, 2023, both Mr. Zhao and the Company pleaded guilty pursuant to written
25 plea agreements. ECF No. 32; *United States v. Binance Holdings Limited*, No. 23-cr-178(W.D.
26 Wash. Nov. 21, 2023), ECF No. 24 (Report and Recommendation Concerning Plea of Guilty).

1 At the same time, Mr. Zhao and Binance settled with the Civil Agencies. As part of this
 2 multi-agency resolution with the Department of Justice and the Civil Agencies, the Company and
 3 Mr. Zhao will pay a historic sum of more than \$4.3 billion, with Mr. Zhao paying a personal
 4 penalty of \$150 million to the CFTC.¹ *Binance*, No. 23-cr-178, ECF No. 23, at 13-14. The global
 5 resolution also commits the Company to fulfill significant remediation and compliance
 6 obligations, including the imposition of a monitor that will be in place for several years.² Further,
 7 Mr. Zhao has stepped down as CEO of Binance, the global company into which he has poured his
 8 heart and soul since founding it in 2017. *See Binance*, No. 23-cr-178, ECF No. 23, at 9. Under
 9 his plea agreement, the applicable Sentencing Guidelines range is between 10 and 18 months. *See*
 10 ECF No. 31, at 12-13. As noted to Judge Tsuchida by counsel during the November 21, 2023
 11 hearing, Mr. Zhao intends to request that the Court impose a sentence below the Guidelines range.
 12 Decl. ¶ 6(b).³

13 The Bail Motion. Before the November 21, 2023 hearing, Mr. Zhao submitted the Bail
 14 Motion seeking the Court's approval of the proposed bail package and order for his release to the
 15 UAE. The Bail Motion shows that Mr. Zhao presents no flight risk because, among other reasons:
 16 (i) he and his Company have taken full responsibility for their past actions through their pleas and
 17 the global resolution, and he would not have traveled to the United States to self-surrender and
 18 plead guilty unless he also intended to appear for sentencing, Bail Motion, at 4; (ii) he has no
 19 criminal history and is a prominent public figure around the world, *id.* at 6-7; and (iii) neither his

20 ¹ *See* Press Release, *Binance and Its CEO, Changpeng Zhao, Agree to Pay \$2.85 Billion for*
 21 *Willfully Evading U.S. Law, Illegally Operating a Digital Asset Derivatives Exchange, and Other*
 22 *Violations* (Nov. 21, 2023), available at <https://www.cftc.gov/PressRoom/PressReleases/8825-23>.

23 ² *See* Press Release, *U.S. Treasury Announces Largest Settlements in History with World's Largest*
 24 *Virtual Currency Exchange Binance for Violations of U.S. Anti-Money Laundering and Sanctions*
 25 *Laws* (Nov. 21, 2023), available at <https://home.treasury.gov/news/press-releases/jy1925>
 (“FinCEN’s historic \$3.4 billion settlement is the largest penalty in U.S. Treasury and FinCEN
 history” and “imposes a five-year monitorship [that] requires significant compliance
 undertakings,” “[f]ailure to live up to [which] could expose Binance to substantial additional
 penalties, including a \$150 million suspended penalty”).

26 ³ All citations to “Decl.” are to the Declaration of Savannah Burgoyne in Support of Defendant’s
 Opposition to Government’s Motion for Review the Magistrate Judge’s Ruling on Defendant’s
 Presentencing Travel Restrictions, filed contemporaneously herein.

1 residence and citizenship in the UAE, nor the wealth that his business success has generated, make
2 him a flight risk, *id.* at 7. The government submitted no response to this motion.

3 During the November 21, 2023 hearing, Mr. Zhao's own words made clear that he had
4 taken responsibility for his actions, accepted the consequences, and sought to turn the page:

5 Your Honor, I just want to say one thing. I want to close the issue. So I
6 want to take responsibility and close this chapter in my life. So, it is a very
7 simple mindset for me. I've not caused problems before, I've never been a
8 criminal, I've not been into a courthouse before. So all this is new to
9 me. To be very frank, before I came, I was a little bit scared. In most
10 countries, when you go to the country, you know, you don't know what's
11 going to happen. So I was very impressed in this court hearing having Your
12 Honor explain every little detail to me, all of that is very reassuring
13 actually. So before I come here, I did not know that.

14 So and also with the issue on UAE – I was given, I was offered a citizenship,
15 I took it as an honor. I do not want to leverage that to say 'hey, protect
16 me.' I don't want to use that. I don't want to use favors in that way. So I
17 want to address issues myself.

18 So I have full intention to come back here and close this issue, otherwise I
19 wouldn't be here today. So the issue was there, we got to an agreement,
20 and I will close the issue now. Thank you. I will return.

21 Decl. ¶ 6(e).

22 At the hearing, the government did not seek detention: it agreed that Mr. Zhao poses no
23 danger to the community and he is not a flight risk if he remains in the United States. Decl. ¶ 6(f)
24 (Judge Tsuchida noting that there was "no disagreement among the parties, the defense and the
25 prosecution, that release is appropriate in the case").⁴ Indeed, the government sought no travel
26 restrictions on Mr. Zhao within the forty-eight contiguous United States. Decl. ¶ 6(a). The only
question was whether Mr. Zhao should be allowed to return to his family in the UAE pending
sentencing. *Id.*

⁴ The government's suggestion that "[a]fter Zhao pled guilty, Pretrial Services recommended that Zhao be detained pending sentencing" is misleading. ECF No. 34, at 2. Pretrial Services never recommended detention. The Pretrial Report checked detention only because that is ordinarily the only option for a person who resides outside the country. Pretrial never suggested or advocated for detention, and it also noted that the government did not seek detention.

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[REDACTED]

1 The Release Order. Based on all the relevant facts, including Mr. Zhao’s voluntary self-
2 surrender, his intent to resolve this case, and the sizable bail package he proposed, Judge Tsuchida
3 found that Mr. Zhao presents no risk of flight, even while residing in the UAE. Decl. ¶ 6(f). Judge
4 Tsuchida found that Mr. Zhao’s actions in coming to the United States voluntarily to resolve this
5 matter “speak louder than the worries in the sense that you had no obligation to come to the country
6 and you did. And as you said your intent is you would like to resolve this case, not run.” *Id.*

7 Judge Tsuchida also found it significant that Mr. Zhao would be prepared to return to the
8 United States two weeks before sentencing, before knowing what sentence the government will
9 recommend to the Court. *Id.* The government states in its motion that Mr. Zhao may “face up to
10 18 months in prison.” ECF No. 34, at 5. Mr. Zhao strongly believes that a lesser sentence is
11 appropriate, and he looks forward to presenting relevant information to the Court at the appropriate
12 time. But the upper bound noted by the government is set forth in his plea agreement, and he
13 nonetheless came here voluntarily to enter his plea and take responsibility. *See* ECF No. 32. As
14 Judge Tsuchida noted, even defendants facing much lengthier sentences return for sentencing.
15 Decl. ¶ 6(f). And as demonstrated by the acceptance of responsibility by Mr. Zhao and his
16 Company, including pleading guilty and agreeing to pay collectively billions of dollars to multiple
17 U.S. government agencies, his intent is to resolve this case and it would be illogical to take all of
18 these material steps without the intent to appear for sentencing.

19 Judge Tsuchida agreed and ordered Mr. Zhao released and permitted to return home to the
20 UAE based on a material and thoughtful set of bail conditions. *See* Decl. ¶ 6(f). Under the Order,
21 the bail conditions require that Mr. Zhao post a \$175 million personal recognizance bond, secured
22 by two guarantors with cash pledges of \$100,000 and \$250,000, respectively, and a third guarantor
23 with real property located in Los Angeles, California valued at more than \$5 million. ECF No. 33
24 (Appearance Bond). (The third guarantor was present at the bail hearing and completed the
25 paperwork obligating them to forfeit the real property should Mr. Zhao fail to comply with his
26 conditions of release.) Moreover, Mr. Zhao has already wired an additional \$15 million to the

1 United States that is held in the trust account of his Seattle-based attorney. *See* ECF No. 34, at 5
2 (“\$15 million in security custodied with [Mr.] Zhao’s counsel”).

3 Judge Tsuchida gave the government until November 27, 2023 at 5:00 p.m. to seek review
4 of the Release Order and directed that his Order shall go into effect at that time if this Court either
5 denies or declines to act on a request for review. Decl. ¶ 6(g). Notably, Mr. Zhao had no objection
6 to staying in the United States to allow the government to seek review of the bail ruling. This
7 motion followed. ECF No. 34.

8 ARGUMENT

9 As Judge Tsuchida found, all the facts and circumstances amply demonstrate that
10 Mr. Zhao poses no risk of flight and should be permitted to reside at home with his family in the
11 UAE pending sentencing. The government’s motion should be denied.

12 **A. Legal Standard**

13 Under 18 U.S.C. § 3143(a)(1), the Court must release a defendant awaiting sentencing if it
14 finds by clear and convincing evidence that the defendant is neither a flight risk nor a danger to
15 the community. When determining whether a defendant poses a flight or safety risk, courts may
16 consider the nature and circumstances of the offense charged, the weight of the evidence against
17 defendant,⁶ defendant’s history and characteristics, and the risk of danger that defendant would
18 pose to the community if released. 18 U.S.C. § 3142(g).

19 Under 18 U.S.C. § 3145(a)(1), “the Government may file . . . a motion for revocation . . .
20 or amendment of the conditions” of a release order. In deciding such a motion, a district court
21 reviews the release order *de novo*, using the “same standard and factors” as the magistrate. *See,*
22 *e.g., United States v. Brugnoli-Baskin*, 2022 WL 16636429, at *2 (W.D. Wash. Nov. 6, 2022). As
23 the government itself notes, ECF No. 34, at 3, “the district court is not required to start over in
24 every case and proceed as if the magistrate’s decision and findings did not exist,” *United States v.*
25 *Koenig*, 912 F.2d 1190, 1192 (9th Cir. 1990). Instead, the Court “should review the evidence

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⁶ This factor is not relevant because Mr. Zhao has agreed to plead guilty to the charged offense.

1 before the magistrate and make its own independent determination whether the magistrate's
2 findings are correct." *Id.* at 1193.

3 **B. Judge Tsuchida Correctly Found That Mr. Zhao Is Not a Flight Risk**

4 Here, Judge Tsuchida was correct and his ruling fully supported by the record. As
5 previously argued, Mr. Zhao is not a flight risk: (1) his actions reflect his intent to accept full
6 responsibility for his conduct and submit to the judgment of the Court; (2) he is a public figure,
7 has no criminal history, and has pleaded guilty to a non-violent, non-fraud offense; (3) his
8 citizenship in the UAE does not equate to a risk of flight; and (4) the applicable Guidelines range
9 does not incentivize flight. *See* Bail Motion at 4-9.⁷ Judge Tsuchida agreed. Decl. ¶ 6(f). And
10 the careful and robust bail conditions ordered by Judge Tsuchida provide ample assurance that
11 Mr. Zhao will return as required.

12 *First*, Mr. Zhao chose of his own free will to travel from his home in the UAE to voluntarily
13 appear before this Court and accept responsibility for his actions. Mr. Zhao also instructed his
14 Company to plead guilty. At the same time, Mr. Zhao and the Company entered into a global
15 resolution with other U.S. government agencies requiring them to pay massive fines and undertake
16 substantial compliance commitments. There would be no criminal or civil resolution in this matter
17 but for Mr. Zhao's decision to so resolve and his voluntary choice to travel to Seattle to plead
18 guilty.

19 *Second*, Mr. Zhao's status in the public eye, lack of any prior criminal record, and relevant
20 offense do not support the government's suggestion that will abscond. The opposite is true.
21 Binance.com is the largest cryptocurrency platform by volume of trades in the world and Mr. Zhao
22 is its recognizable founder. That global spotlight makes evasion of the U.S. justice system
23 impossible. He has pleaded guilty to a crime which—though serious, as Mr. Zhao has
24 acknowledged—has nothing to do with violence or fraud; there are no victims and there will be no
25 restitution.

26 ⁷ Mr. Zhao discusses each reason at length in his original Bail Motion and incorporates that discussion herein by reference.

1 *Third*, the fact that Mr. Zhao’s home and his family are in the UAE does not make him a
2 flight risk and preventing him from returning to them would be punitive. His family has recently
3 grown, as he and his partner welcomed their third child a few months ago. Allowing Mr. Zhao to
4 remain in the UAE will, in turn, allow him to take care of his family and prepare them for his
5 return to the U.S. for sentencing.

6 *Fourth*, Mr. Zhao’s stipulated Guidelines range provides no incentive to flee. Again, the
7 opposite is true: Mr. Zhao’s Guidelines range may be either 10 to 16 months’ or 12 to 18 months’
8 imprisonment. In addition, Mr. Zhao’s Guidelines, as agreed to by both parties, fall within Zone
9 C; thus, he may be eligible to serve half of any term of imprisonment in a non-jail setting, such as
10 home detention or community confinement. Counsel will argue at sentencing that precedent in
11 similar offenses and recently enacted Guideline amendments support a below-Guidelines sentence,
12 including the possibility of no jail time. To flee would be to risk additional charges, a likely much
13 greater potential Guidelines range, and a host of other grave consequences to Mr. Zhao and
14 Binance. To return, however, would be to potentially serve a brief or possibly no prison term and
15 then return to his family with this matter behind him.

16 *Fifth*, the bail conditions Judge Tsuchida entered are substantial. Mr. Zhao has transferred
17 a large sum to the United States already and agreed to post a personal recognizance bond of \$175
18 million. His return will also be secured by two guarantors with cash pledges of \$100,000 and
19 \$250,000, respectively, and a third guarantor who has pledged real property in the United States
20 valued at more than \$5 million. He has further committed to coming to the United States two
21 weeks before sentencing. Each condition provides assurance, both individually and in
22 combination, that Mr. Zhao is not a flight risk and will abide by the conditions of his release.

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

C. The Government Provides No Basis to Disturb Judge Tsuchida’s Release Order

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Against the weight of all this information and Judge Tsuchida consideration of it, the government provides no meritorious—or additional—basis to insist that Mr. Zhao remain in the United States away from his family for months between his plea and sentencing.

First, the government’s suggestion that, because Mr. Zhao is a wealthy individual living abroad, he might breach the trust of his family and friends who guaranteed his bail (and his sworn statements to this Court) by refusing to appear for sentencing should be rejected out of hand. It is well-established that foreign citizenship does not equate to flight risk and cannot be held against a defendant in assessing such a risk. *See* Bail Mot. at 7 (citing *United States v. Cortes*, No. 23-cr-00025-tl-5, 2023 WL 3018923, at *3 (W.D. Wash. Apr. 20, 2023) (“But relying on [defendant’s Mexican citizenship] alone would justify detention merely on the basis of citizenship, which this Court cannot condone. The Ninth Circuit has held that the fact that a defendant may be from a different country ‘does not tip the balance either for or against detention’ or point conclusively to a determination that a defendant poses a serious risk of flight.”) (quoting *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985)). Moreover, as explained before Judge Tsuchida, Mr. Zhao took his UAE citizenship “as an honor” and has no intention to leverage that or his relationship with the UAE government for “favours.” Decl. ¶ 6(e). Mr. Zhao is grateful that the UAE provides a welcoming home for his family and a supportive environment for his business and the industry of which it is a key part. *Id.* ¶¶ 6(a), (b). That does not make him a flight risk when he is there, as evidenced by his decision to come here from the UAE to plead guilty in the first place.

Second, the government’s argument that the lack of an extradition treaty between the United States and the UAE justifies preventing Mr. Zhao from returning to his family is at odds with the position it has taken in many other bail cases in which a foreign defendant was permitted to travel to countries from which they could not be extradited. ECF No. 34, at 4; *see* Bail Mot., at 8 (collecting cases). It further takes no account of the fact that Mr. Zhao voluntarily chose to leave the UAE and come to the United States to plead guilty.

1 *Third*, the government’s argument about the supposed inadequacy of Mr. Zhao’s bail
 2 package boils down to the point that he is “a multi-billionaire . . . whose assets are primarily held
 3 overseas.” ECF No. 34, at 5. The government simply brushes aside the significant commitment
 4 by Mr. Zhao of \$15 million he has already transferred to his counsel in the United States and the
 5 more than \$5 million in additional assets pledged by his family and friends. *See* ECF No. 34, at 5
 6 (“\$15 million in security custodied with [Mr.] Zhao’s counsel and three guarantors promising just
 7 over \$5 million in assets”). It also fails to recognize the historic penalties of more than \$4.3 billion
 8 that Mr. Zhao and his Company have already committed to pay to the United States, including
 9 substantial sums to be paid to before his sentencing.⁸ *Binance*, No. 23-cr-178, ECF No. 23, at 13-
 10 14.

11 The two cases the government cites—both out of circuit—do not support its position. In
 12 *United States v. Harry*, the defendant pleaded not guilty to an “international Medicare fraud,
 13 kickback and money laundering scheme,” and the court denied the defendant’s associate’s property
 14 to secure defendant’s release where the associate “lack[ed] sufficient credibility to be a suretor.”
 15 No. CR 19-246-MCA-AME, 2021 WL 3076905, at *3 (D.N.J. July 21, 2021). Here, Mr. Zhao
 16 came to the United States and has pleaded guilty, and the government does not challenge the
 17 credibility of Mr. Zhao’s guarantors—one of whom signed the relevant paperwork before the
 18 Court. And *United States v. Batista* supports the Release Order, because there the court approved
 19 a guarantor to secure the defendant’s bond after finding him “financially responsible.” 163 F.
 20 Supp. 2d 222, 226 (S.D.N.Y. 2001). Thus, contrary to the government’s assertion, ECF No. 34,
 21 at 5-6, pledges of substantial value and property by Mr. Zhao’s family and friends—on top of an
 22 already significant bail package from Mr. Zhao and his Company—provide ample assurance of
 23 his return.

24 As Judge Tsuchida recognized, “everybody who appears in this Court has always presented
 25 a risk of flight,” but the fact that Mr. Zhao voluntarily flew from the UAE to the United States

26 ⁸ *See also* ECF No. 31, at 3 (Mr. Zhao’s plea agreement stipulates that the government would
 “credit” Mr. Zhao’s 50 million fine “so long as [Mr. Zhao] pays the amount . . . to the CFTC by
 the date of [Mr. Zhao’s] sentencing”).

1 when he “had no obligation” to do so, in addition to all of the other factors discussed above, sets
2 him apart. Decl. ¶ 6(f). As Judge Tsuchida observed: Mr. Zhao’s “actions . . . speak louder than
3 the worries.” *Id.* The government fails to acknowledge Judge Tsuchida’s careful consideration of
4 both parties’ arguments and his assessment of Mr. Zhao in his courtroom. The government has
5 presented no new information or argument that was not already carefully considered, and there is
6 no basis to disturb Judge Tsuchida’s order.

7 **CONCLUSION**

8 For these reasons, Mr. Zhao respectfully requests that the Court deny the government’s
9 motion and allow him to return to the UAE pending sentencing.
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1 I certify that this memorandum contains 4,228 words, in compliance with the Local
2 Criminal Rules.

3 Dated: November 23, 2023
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CERTIFICATE OF SERVICE

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I, Mark Bartlett, certify that on November 23, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will notify such filing to all participants in this case.

/s/Mark Bartlett
Mark Bartlett
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