

PHILLIP A. TALBERT
United States Attorney
JOSEPH D. BARTON
ARELIS M. CLEMENTE
HENRY Z. CARBAJAL III
Assistant United States Attorneys
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIA BEI ZHU, aka Jesse Zhu, Qiang He, and
David He, and ZHAOYAN WANG,

Defendants.

CASE NO. 1:23-CR-00219-NODJ-BAM

GOVERNMENT'S OPPOSITION TO
DEFENDANT ZHU'S MOTION FOR REVIEW OF
HIS DETENTION ORDER

The defendant, Jia Bei Zhu aka Jesse Zhu, is a Chinese national who is facing a multi-year prison sentence for conspiring with his romantic and business partner, Zhaoyan Wang, to sell millions of dollars' worth of subpar COVID-19 test kits from labs they operated in Fresno and Reedley, California. Zhu was ordered detained pending trial because, among other reasons, he has a track record of using different identities simultaneously, he lied to federal agents about his identity, he lied to pretrial services about his relationship with Wang and their access to significant financial resources, and Wang fled to China after learning about the federal criminal investigation.

Zhu is moving to challenge his detention order for a third time. His motion should be denied because he has not addressed any of the concerns the Court identified the last time it detained him. Indeed, his motion appears to be a cut-and-paste job from his prior, inadequate motions. His motion should also be denied because it is dependent on collateral that is controlled by Wang, who is a fugitive

and cannot be trusted.

I. Relevant background information

Zhu was arrested in October 2023 on a complaint charging him with distributing adulterated and misbranded COVID-19 test kits. Zhu was also charged with making false statements to federal agents. The false statements charge stemmed from Zhu lying to federal agents about his identity during an FDA regulatory inspection of the Reedley lab in May 2023. Zhu was captured on body camera denying that he was, in fact, Zhu. Instead, Zhu maintained he was, and had always been, Qiang He aka David He.

Zhu was indicted on these charges the following month. A superseding indictment was then issued against Zhu and Wang in August 2024 charging them with conspiracy to commit wire fraud and substantive wire fraud for making false representations to their customers to sell the subpar test kits.

II. Zhu's pretrial detention and Wang's fleeing from prosecution

Since Zhu's arrest, two federal magistrate judges, the Honorable Stanley A. Boone and Erica P. Grosjean, have held detailed detention and bail review hearings, respectively, and ordered Zhu detained pending trial on the grounds that he poses a serious flight risk and that he may obstruct justice. Zhu has been detained for approximately 14 months.

Judges Boone and Grosjean provided several reasons for detaining Zhu. Their reasons included:

- Zhu initially moving to the United States to flee a civil judgment in Canada;
- Zhu's simultaneous use of two identities: Zhu and He;
- Zhu's lack of ties to the community because his family members live abroad and he has lived in various cities and states in recent years;
- Zhu's lying to pretrial services when he was initially interviewed by them, including lies about his relationship with Wang, the fact they recently had a child together, and their access to significant financial resources;
- Wang's flying to China with their child on one-way tickets just a few days after a federal search warrant was executed at the Reedley lab.

Importantly, Wang has not been arrested on the superseding indictment. She has been made aware of the charges against her and has decided to remain in China where it is difficult for the government to extradite her. She is considered a fugitive.

1 **III. This Court's denial of Zhu's prior motion to review his detention order**

2 Zhu moved this Court in July 2024 to review his detention order. In denying the motion, the
3 Court stated that it had reviewed Judges Boone and Grosjean's reasons for detaining Zhu and that it
4 shared their concerns he would flee or obstruct justice. The Court explained that it was especially
5 troubled by Zhu's apparent, simultaneous use of two identities. The Court also explained that it was not
6 persuaded the two properties Zhu offered as collateral adequately incentivized him to comply with his
7 conditions of release. *See United States v. Noriega-Sarabia*, 116 F.3d 417, 420 (9th Cir. 1997) ("case
8 law makes clear that sureties must reveal their property resources so that the government can be assured
9 of their financial ability and so that the court can be satisfied that they have an incentive and purpose to
10 secure the defendant's presence at trial"); *see also United States v. Townsend*, 897 F.2d 989, 996 (9th
11 Cir. 1990) ("The purpose of bail is not served unless losing the sum would be a deeply-felt hurt to the
12 defendant and his family; the hurt must be so severe that the defendant will return for trial rather than
13 flee."). Finally, the Court explained that it was not persuaded the two individuals Zhu offered as third-
14 party custodians could adequately monitor him.

15 The Court instructed Zhu to address each of these concerns in any renewed motion that he may
16 file. The Court further instructed Zhu to elaborate on the argument he raised that his time served in
17 custody to date exceeds his sentencing guidelines range if he were to be convicted of the charged
18 offenses because, if true, that would be a relevant factor for the Court to consider.

19 **IV. Zhu's failure to address the Court's concerns this time around**

20 Zhu has ignored the Court's instructions in his instant motion. Zhu repeats his same argument
21 about his use of two identities that was previously rejected by Judges Boone and Grosjean. Zhu asserts
22 that he changed his name from Zhu to He in China and denies that he has ever used both identities at the
23 same time. His assertion, however, is contradicted by the evidence. Zhu obtained a Chinese passport in
24 the He identity in 2011 and then obtained a Canadian passport and driver's license in the Zhu identity a
25 few years later in 2013 and 2014, respectively. The government has also interviewed approximately 30
26 witnesses, including nearly all of Zhu and Wang's former employees and their customers, who
27 interacted with Zhu up until the time he was arrested in late 2023. The employees only knew him as
28

1 Zhu while several of the customers only knew him as He.¹ This shows that Zhu indeed used two
 2 identities at the same time and that he continues to lie to the Court about this issue.

3 Moreover, Zhu again offers the same two properties as collateral and the same two individuals as
 4 third-party custodians as he did before without any explanation as to why the Court should believe the
 5 collateral and custodians will ensure his compliance with conditions. Zhu also does not address the
 6 conflict of interest that is created by the fact the two properties are controlled by his fugitive co-
 7 defendant, Wang. This shows that Zhu has no viable collateral or custodians who can vouch for him.

8 Finally, Zhu's argument that his time served in custody exceeds his sentencing guidelines range
 9 is moot because it omits the wire fraud charges that were added with the superseding indictment. The
 10 government calculates Zhu's sentencing guidelines range as being at least 41-51 months assuming he
 11 timely accepts responsibility for his misconduct. The government's calculations are as follows:

- 12 • Applicable guideline: U.S.S.G. § 2B1.1
- 13 • Base offense level: 7
- 14 • Likely enhancements:
 - 15 ○ +16 (loss over \$1,500,000)
 - 16 ○ +2 (10 or more victims or mass marketing)
 - 17 ○ +2 (obstruction of justice)
- 18 • Potential reductions:
 - 19 ○ -2 (zero-point offender)
 - 20 ○ -3 (acceptance)
- 21 • Total offense level: 22
- 22 • Range of imprisonment: 41 to 51 months.

23 The obstruction of justice enhancement stems from Zhu's lying to agents, and now the Court, about his
 24 identity, and his lying to pretrial services about his relationship with Wang and their access to significant
 25 financial resources. *See United States v. Kesoyan*, Case No. 2:15-CR-236-GEB, 2018 WL 1212527, at
 26 *11 (E.D. Cal., Mar. 8, 2018) ("Defendant's manifested dishonesty in the record, combined with her
 27

28 ¹ The government will provide the Court with memoranda of these interviews upon request.

access to hidden assets and her ties outside the United States evince that she cannot be trusted when she represents to the Court that she will not flee, if released.”); *see also United States v. Magana-Guerrero*, 80 F.3d 398, 401 (9th Cir. 1996) (“providing materially false information to a pretrial services officer, whose job it is to conduct investigations for the court, constitutes obstruction of justice for purposes of section 3C1.1, without a specific showing that the falsehood actually obstructed justice”).² Therefore, Zhu’s sentencing guidelines range exceeds his time served in custody by over two years. His argument to the contrary is without merit.

V. Wang’s continued support of Zhu’s release while also fleeing from prosecution herself is highly suspect

As discussed above, one of the reasons that Judges Boone and Grosjean detained Zhu was that Wang fled to China before she could be charged and arrested in this case. The fact that Wang continues to pledge her properties as collateral for Zhu’s release, but refuses to return to the United States to face the charges against her, is a strong indication of what Zhu will do if he is released. He will almost certainly run and hide with her in China. The Court should not let that happen.

VI. Conclusion

For these reasons, the Court should deny Zhu’s motion with prejudice.

Dated: January 2, 2025

PHILLIP A. TALBERT
United States Attorney

By: /s/ Joseph Barton
Joseph Barton
Arelis Clemente
Henry Carbajal III
Assistant United States Attorneys

² Application of the obstruction of justice enhancement would likely cause the false statements charge to group with the wire fraud charges and there would not be any further enhancements for the false statements charge. *See* U.S.S.G. § 3D1.2(c) and (d).