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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 10-00576-01 SOM
)	
Plaintiff,)	APPEAL TO THE DISTRICT JUDGE
)	OF THE MAGISTRATE JUDGE'S
vs.)	BENCH RULING MODIFYING
)	DEFENDANT'S RELEASE CONDITIONS;
MORDECHAI YOSEF ORIAN, (01))	CERTIFICATE OF SERVICE
)	
Defendant.)	
_____)	

**APPEAL TO THE DISTRICT JUDGE OF THE MAGISTRATE
JUDGE'S BENCH RULING AUTHORIZING DEFENDANT'S RELEASE ON BOND**

The United States of America, by and through its undersigned counsel, files its appeal requesting the District Court to revoke United States Magistrate Judge Barry M. Kurren's Release Order issued on October 27, 2010, in the above-captioned case, and to reinstate United States District Court Judge Susan Oki Mollway's Release Order with its conditions of release, issued on October 8, 2010, because there is no new information that exists that was not known to the defendant at the time of the previous detention hearings, and the information presented by the defendant at the hearing on October 27, 2010, is not new or material to the defendant's release conditions.

A detention hearing may be reopened only when there is *new information* not known at the time of the original hearing that has a *material* bearing on whether there are conditions of release that will reasonably assure the appearance of the defendant as required. See generally 18 U.S.C. § 3142(f)(2)(B) (emphasis added); United States v. Flores, 856 F. Supp. 1400, 1406 (E.D. Cal. 1994). The proper forum for an appeal of Magistrate Judge Kurren's order lies in the United States District Court for the District of Hawaii, and the government is entitled to a *de novo* review. See generally 18 U.S.C. § 3145(a)(1); United States v. Koenig, 912 F.2d 1190, 119-93

(9th Cir. 1990). The District Court thus has authority to formulate an independent determination of what are the appropriate conditions of release in this case.

The government supports its request for reinstatement of the District Court's ruling as follows:

1. The defendant was indicted by a grand jury of the United States on September 1, 2010, in a five-count instrument. Count 1 charges that the defendant conspired to compel the labor of approximately 400 Thai nationals in violation of 18 U.S.C. §§ 371 and 1589. Count 2 charges that the defendant conspired to commit document servitude in violation of 18 U.S.C. § 1592. Counts three, four and five charge the defendant with attempting to and engaging in forced labor in violation of 18 U.S.C. §§ 1589 and 1592. If convicted, the defendant faces a maximum term of imprisonment of 70 years.
2. On September 8, 2010, United States Magistrate Judge Leslie E. Kobayashi found the defendant to be a serious flight risk and permitted defendant Orian to be released on conditions that included a \$1,000,000 bond secured by property, and home detention with GPS monitoring. The government appealed this decision arguing the defendant should be detained pending trial because the defendant is a serious flight risk and danger to

the community. (See the government's first appeal filed with this Court on September 9, 2010, for a list of its reasons the defendant should be considered a flight risk and danger to the community.)

3. On October 8, 2010, United States District Court Judge Susan Oki Mollway heard the appeal and also found the defendant to be a serious flight risk, and after careful review and consideration of the flight risk and community danger factors found in 18 U.S.C. § 3142(g), Judge Mollway amended the defendant's Bail Conditions set by Magistrate Judge Kobayashi to include a bond in the amount of \$250,000 secured by property, and placement at Mahoney Hale, a halfway house on the Island of Oahu and GPS monitoring. The government argues that the defendant's flight risk and community danger factors have not changed - that there is no new information - and that the defendant's placement at Mahoney Hale should be reinstated.
4. On October 21, 2010, the defendant filed a motion to reopen his detention hearing stating that he could not meet the \$250,000 bond amount, and that the wait time for placement at Mahoney Hale, or even being placed at Mahoney Hale, was unduly burdensome. The government argues that this information is not "new information" under § 3142(f)(2)(B) and that it should not

have been considered as a basis for reopening the detention hearing or modifying the conditions of release.

5. However, despite no change in the defendant's circumstances, Magistrate Judge Kurren on October 27, 2010, reopened the detention hearing and modified the defendant's conditions of release to include a \$202,000 bond secured by property, and the Third Party Custodianship of Rabbi Itchel Krasnjansky. The government respectfully disagrees with the decision of Magistrate Judge Kurren, and believes that the reopening of the detention hearing and the modification of the District Court's ruling are unwarranted. The District Court has already considered the options of a third party custodian and home confinement at the defendant's residence on the Big Island of Hawaii, and determined that because of the defendant's risk-of-flight and danger-to-community levels, placement at Mahoney Hale was, instead, the proper recourse. The government agrees and requests that the District Court's order be reinstated.
6. Pretrial Services has also informed the government that the defendant is second on the wait list for placement at Mahoney Hale. The estimated wait time for placement is approximately one month. The government argues that not only is this not an

unreasonable amount of time, but more importantly that the fact that the defendant would be put on a wait list for placement at Mahoney Hale is not new information that has a material bearing on the defendant's conditions of release.

WHEREFORE, The government believes Magistrate Judge Kurren wrongly reopened the detention hearing and wrongly modified the defendant's conditions of release. The matter of the defendant's detention and conditions of release have been thoroughly reviewed and considered by the District Court, and because there is no new material information that has lowered the defendant's flight risk or danger to the community characteristics, the United States requests that the appeal be granted and the October 27, 2010, Order modifying the conditions of the defendant's release be revoked.

DATED: October 28, 2010, at Honolulu, Hawaii.

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District of Hawaii

By s/ Susan Cushman
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Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically by CM/ECF:

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MORDECHAI YOSEF ORIAN

DATED: October 28, 2010, at Honolulu, Hawaii.

s/ Dawn Aihara