IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellant, v. OTIS MOBLEY, Defendant-Appellee.	CA No.: 12-10245 **EMERGENCY MOTION UNDER CIRCUIT RULE 27-3** District Court No.: 12-CR-235 YGR

GOVERNMENT'S EMERGENCY MOTION FOR A STAY

TABLE OF CONTENTS

Circuit Rule 27-3 Certificate. 1

I. CONTACT INFORMATION. 1

II. STATEMENT OF THE FACTS. 1

A. Offense Conduct. 2

B. Magistrate Court Proceedings. 4

1. Drug History. 5

2. Criminal History. 5

3. Proposed Sureties. 7

4. Magistrate Judge's Order. 7

C. District Court Proceedings. 8

III. NOTICE AND SERVICE. 12

IV. JURISDICTION AND STANDARD OF REVIEW 12

V. DISCUSSION. 13

A. Status of Motion to the District Court 13

B. Standard for Motion to Stay. 14

1. The government is likely to succeed on the merits... . . 14

2. The district court erred in ordering release... 18

3. Both the government and the public will be harmed absent a stay.. 20

VI. CONCLUSION. 20

CERTIFICATE OF COMPLIANCE.. 21

CERTIFICATE OF SERVICE. 22

TABLE OF AUTHORITIES

FEDERAL CASES

Hilton v. Braunskill, 481 U.S. 770 (1987). 14

United States v. Benavidez-Benavidez, 217 F.3d 720 (9th Cir. 2000). 20

United States v. Finley, 301 F.3d 1000 (9th Cir. 2002). 19, 20

United States v. Hare, 873 F.2d 796 (5th Cir. 1989). 15

United States v. Hir, 517 F.3d 1081 (9th Cir. 2008).. 15

United States v. Motamedi, 767 F.2d 1403 (9th Cir. 1985). 13, 15

United States v. Scott, 450 F.3d 863 (9th Cir. 2006). 12

FEDERAL STATUTES AND RULES

18 U.S.C. § 111(b).. 2

18 U.S.C. § 371. 2

18 U.S.C. § 924(c)(1)(A).. . . . . 2, 15

18 U.S.C. § 2114. 2

18 U.S.C. § 3142. . . . . *passim*

18 U.S.C. § 3145. 12

18 U.S.C. § 3731. 12

Fed. R. App. P. 8. 14

Fed. R. Crim. P. 38. 14

9th Cir. R. 27-3. 1

Circuit Rule 27-3 Certificate

I. CONTACT INFORMATION

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II. STATEMENT OF THE FACTS

On May 14, 2012, the district court ordered Defendant Otis Mobley released pretrial. The United States asked the court to stay its order pending appeal. The court granted a 24-hour stay, expiring at 10:00 a.m. on May 15, 2012, to allow the government to determine whether it would file an appeal. *See* Minute Order (attached as Exhibit 2). The government filed its Notice of Appeal at 10:00 a.m. on May 15, 2012, and files this emergency motion to stay the district court's order pending a prompt decision from the Solicitor General on whether to seek appeal of the district court's order. At 11:00 a.m. today, the district court issued a further

stay of the release order. The order now expires at 4 p.m. on May 18, 2012.

Mobley is both a flight risk and a serious danger to the community. Mobley organized an armed robbery of an undercover federal officer that resulted in the officer begging with his attackers as two loaded guns were held to his head. It is only luck and the fast response of law enforcement that make this an assault, rather than a murder, case. The violent nature of Mobley's conduct triggers a statutory presumption in favor of detention. The district court's release conditions – which put Mobley, a 23-year-old drug addicted man, in the custody of his ill-prepared grandmother – are insufficient to mitigate the risk to the community, making a stay pending appeal appropriate.

A. Offense Conduct

Mobley and two co-defendants were charged by indictment with conspiracy to commit robbery of federal money and assault on a federal officer, in violation of 18 U.S.C. § 371; assaulting a federal officer, in violation of 18 U.S.C. § 111(b); robbery of federal money, in violation of 18 U.S.C. § 2114; and using a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A). The government sought Mobley's pretrial detention based on risk of flight and danger to the community. 18 U.S.C. § 3142(f).

Mobley organized the armed robbery of an undercover federal officer. *See* Transcript of Magistrate Court Hearing (attached as Exhibit 5) at 22. Mobley negotiated the supposed sale of a grenade launcher to a confidential government informant and an undercover agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives for $1,000. *Id.* The deal was a ruse to set up the robbery.

At the set time, Mobley and his two accomplices arrived. The accomplices got into the backseat of the agent's car, while the informant sat in the front passenger's seat and Mobley stood directly outside. Within seconds of getting into the car, both accomplices pulled out loaded handguns and held them to the undercover agent's head. They demanded that the agent empty his pockets.

Surveillance cameras set up in the car captured the robbery. The video recordings are filed under seal with this motion for the Court's review. *See* Exh. 6. The recordings show the undercover agent pleading with Mobley's co-defendants, while an extended magazine handgun is pointed directly at him. Exh. 6 at 04:55. Although the limited camera angles do not show it, the agent confirmed that the second accomplice, sitting directly behind him, was also pointing a gun at the agent's head.[1] Mobley organized the attempted robbery,

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[1] This fact was presented to the court through proffer. *See United States v. Mobley*, No. 12-CR-00235, Dkt. 30.

stood immediately outside the car while his accomplices carried it out, and ran from the scene when law enforcement responded. Mobley was found in a nearby field 45 minutes later after being spotted from the air by a police helicopter. Exh. 5 at 22. Upon arrest, Mobley said, "Damn, I should have just stayed in the buses. You guys wouldn't have found me, huh?" *Id.*

Although Mobley was not armed when the police finally found him, there was evidence presented to the district court tying Mobley to the loaded, extended magazine Tec-9 firearm used by co-defendant, Khusar Mobley, during the assault.[2] A video recovered from Khusar Mobley's cellphone shows Mobley, shirtless, with friends, posing with an identical gun in an obviously playful manner.

B. Magistrate Court Proceedings

The government sought pretrial detention for all three defendants. Co-defendants Khusar Mobley and D'Marce Hutcherson were ordered detained pending trial.

The government moved for detention of Mobley because he is a danger to the community and a flight risk. Pretrial Services interviewed Mobley and several

[2] Co-defendant Khusar Mobley is Mobley's younger cousin. As used herein, "Mobley" refers to Otis Mobley. Khusar Mobley will be referenced by his full name.

of his family members, and submitted a recommendation to the court.[3]

1. Drug History

During his Pretrial Services interview, Mobley, who is now age 23, admitted that he uses alcohol on a daily basis, marijuana twice per week (since age 16), and ecstacy once per week (since age 18). He also admitted to using cocaine between 2009 and 2011, with daily usage for eight or nine months in that period, and methamphetamine every few months from age 18 to present.

2. Criminal History

Both the government and Pretrial Services provided information on Mobley's criminal history, which tracks an escalating level of violence and consistent contact with guns.

On September 26, 2005, Mobley was arrested for possessing a loaded firearm at school. Mobley admitted to the crime, and told police that he had previously brought a .22 caliber pistol to school because he was having problems with someone.

On September 7, 2007, Mobley was arrested for car theft. He admitted his guilt and was convicted of a misdemeanor offense.

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[3] The Pretrial Services report will be filed under seal with the Court by Pretrial Services. *See* Exh. 2.

On October 28, 2008, Mobley was pulled over for speeding and gave a false name, birth date, and other identifying information to police. He was convicted of giving false identification to police, a misdemeanor.

On May 19, 2009, Mobley was arrested for murder. Shortly before that date, Khusar Mobley had an altercation with a marijuana dealer. On May 19, Mobley, armed with a 9mm handgun, accompanied Khusar Mobley to buy drugs from the dealer. As Khusar Mobley and Mobley were leaving, the dealer pulled a gun on them. Mobley pulled his own gun from his waistband and shot the man twice, killing him. Mobley confessed to the police, admitting that "he always has a gun on him for protection." No charges were filed.

Between June and August 2010, Mobley was arrested three times – once for possessing a .40 caliber semiautomatic handgun with a laser sight, once for resisting arrest, and once for possessing a loaded semi-automatic handgun with an extended magazine and, again, resisting arrest.

On September 6, 2011, Mobley was arrested for domestic violence for hitting his girlfriend in the face in the presence of their three-year-old child. He was convicted, put on three years of formal probation, and a no harassment order was put in place. Mobley was still serving that probation when he committed the instant offense.

On September 17, 2011, Mobley was found with a stolen .40 caliber semiautomatic handgun in the center console of the car he was driving.

3. Proposed Sureties

Mobley offered his grandmother, mother, and father as sureties to a release bond. Pretrial Services interviewed all three relatives by telephone. Mobley's father lied to Pretrial Services about his own criminal record, claiming to have no criminal history, when in fact, he had a 1990 misdemeanor conviction for providing false identification to a peace officer, for which he was sentenced to five days in jail and two years of probation. *See* Exh. 5 at 8-9, *see also* Pretrial Services Report. The magistrate judge also questioned Mobley's grandmother, Madeliene Mitchell, who volunteered both to post her home as security to a bond and act as Mobley's custodian if released. Mobley's grandmother admitted that she had no knowledge of the extent of Mobley's drug use, believing that he only used marijuana.

4. Magistrate Judge's Order

On April 18, 2012, Magistrate Judge Kadis Westmore ordered Mobley released. She imposed standard conditions of release along with the following additional conditions: (1) Mobley is to remain in the custody of Ms. Mitchell and submit to electronic monitoring; (2) he is to submit to warrantless searches of his

person, residence, and vehicle by Pretrial Services; and (3) he is to participate in drug and alcohol counseling and submit to drug testing at the discretion of Pretrial Services. *See* Magistrate Court's Order (attached as Exhibit 4). The government appealed the release order to the district court.

C. District Court Proceedings

The district court held two hearings on the government's motion. On May 14, 2012, the court issued an oral ruling. *See* May 14, 2012, Transcript (attached as Exhibit 3); *see also* Exh. 2.[4] Although the court noted repeatedly that it considered this a close case, the district court affirmed the magistrate judge's release order.

The court reviewed the statutory factors dictated by 18 U.S.C. § 3142(g). Looking to the nature and circumstances of the offense, the court acknowledged that Mobley is charged with crimes of violence. Exh. 3 at 11. In the May 3, 2012, hearing the court recognized that the charged offenses trigger the statutory presumption in favor of detention, under 18 U.S.C. § 3142(e)(2). The court did not address the presumption in issuing its final order. Nonetheless, the court held

[4] The transcript for the May 3, 2012, hearing has been ordered on an expedited basis. The court reporter is scheduled to produce the transcript on May 16, 2012. The government will file a copy with the Court as soon as it is received.

that the nature and circumstances of the offenses "weighs in favor of detention." Exh. 3 at 11.

With regard to the weight of the evidence, the court found that Mobley was at the scene standing by the vehicle when the armed robbery occurred, and he ran from the scene when police came. Although Mobley cannot be seen on the video when his accomplices actually pull the guns, the video does capture him being introduced to the informant after his accomplices get into the agent's car. Exh. 6 at 04:52. The district court found that the weight of the evidence "would weigh in favor of detention."

The district court then addressed Mobley's history and characteristics. The court reviewed the character letters submitted by Mobley's family and friends and noted, "as a young boy, it seems to me when your parents had control over you, you were down a good path. People were complimentary. They thought you had a bright future." Exh. 3 at 12. Despite his substantial family support, the court found that Mobley, at some point, "consciously and intentionally chose not to go down that [good] path." The court praised Mobley's completion of a seven-week job training program and his work with the Conservation Corps. However, the court noted, "the fact that you turned around, and now find yourself in this situation within a couple of months of being in that program again gives me pause,

again, makes me question your motives, your will power, and your ability to do right." *Id.*

Reviewing his criminal history, the court stated: "I've seen worse, [AUSA] Mann. That's why it's on the bubble." *Id.* at 14.

But in assessing the nature and seriousness of the danger that Mobley presents to the community, the court focused heavily on Mobley's criminal history involving firearms. "The firearms, . . ., which you seem to be comfortable with, in terms of your prior use of firearms, gives me pause yet again. Many people are afraid of guns. You don't seem to be one of those." *Id.* at 14. The court cautioned, "[o]ur community is wrought with young men comfortable with firearms and using them and scaring people and hurting people. And I will not have you be anywhere close to community members where that is potentially a problem." *Id.* at 15.

After finding that every statutory factor – except perhaps Mobley's criminal history – weighed in favor of detention, the court ordered Mobley released to the custody of his grandmother. Before doing so, the district court addressed Ms. Mitchell directly. The court asked what experience Ms. Mitchell has had handling people with drug problems. Ms. Mitchell responded only, "my sister has run group homes and I've worked with her." Exh. 3 at 4. Ms. Mitchell then added

that she does not believe that Mobley is a serious drug user, despite Mobley's admissions regarding his significant drug use. *Id.* at 4-7. Ms. Mitchell's ignorance of Mobley's drug problems raised the court's concerns:

> Marijuana and ec[s]tasy weekly, a pattern of drinking since 16, alcohol and marijuana, elevated to ec[s]tasy at 18, expanded to cocaine at 21. He's now 23. . . . And the grandmother doesn't know that. . . . I wasn't even asking for a guarantee [that Mobley will stop using drugs]. I was asking for whatever it is that she – I was looking for anything. . . . And Ms. Mitchell has given me nothing.

Id. at 7-8.

Regarding Mobley's criminal conduct, Ms. Mitchell said: "But if we look at the record, it's just this last five years that we're concerned about when he got into an element of people that I don't even know." *Id.* at 5. Referring to co-defendant Khusar Mobley, the court clarified: "Isn't one of these other people your other nephew?" Ms. Mitchell responded: "My grandson." She then said of Mobley, "[a]nd, as we know, he's the oldest, and they're going to stick together and he's the leader, even if he goes wrong." *Id.*

When the court asked what resources Ms. Mitchell had available to help her manage Mobley's drug problems, Ms. Mitchell cited to community resources, even though the magistrate judge ordered that Mobley be in home detention 24

hours per day according to the magistrate court's release conditions. *Id.* at 5.

The court stated about Ms. Mitchell, "It's not clear to me that she understands what she is signing up for." *Id.* at 13. The court then ordered Mobley released to Ms. Mitchell's custody.

The court imposed the conditions set forth by the magistrate, with a few changes. It withdrew the condition requiring Mobley to submit to suspicionless searches, noting the condition's violation of this Court's caselaw. *Id.* at 16; *see United States v. Scott*, 450 F.3d 863 (9th Cir. 2006). But the court imposed a book report requirement, mandating that Mobley spend one hour per day reading from a list of books compiled by the court, and writing for 30 minutes per day. The book reports are to be submitted to pretrial services at some unspecified interval. *Id.* at 15-16.

III. NOTICE AND SERVICE

Counsel for Mobley was notified today, May 15, 2012, that the government would file this motion, and has been served by email, as reflected in the attached proof of service.

IV. JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction to hear this appeal under 18 U.S.C. § 3145 and 18 U.S.C. § 3731. The Court reviews the district court's factual findings for clear

error, but will also make an independent examination of those facts. *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985).

V. DISCUSSION

A. Status of Motion to the District Court

The United States moves this Court for a stay of the district court's order releasing Mobley pretrial. The district court's stay of its order expires at 10:00 a.m. today. The terms of the district court's order state that the court imposed the stay "for Government to determine if an Appeal to the USCA will be forthcoming." The court made no indication of whether it would order another stay if the government appeals.

This morning, the Office of the Solicitor General authorized the United States Attorney to move for an emergency stay pending the Solicitor General's action on a request for authorization to appeal. That action is expected to occur promptly. Accordingly, the United States Attorney has filed a notice of appeal of the district court's May 14, 2012, order, and is seeking this stay. The United States Attorney will promptly inform the court of the Solicitor General's decision.

The parties appeared before the district court at 10:00 a.m. today, and the government sought an additional stay from the district court. The district court granted that request, but stayed the order until 4 p.m. on Friday, May 18, 2012.

The government's opening brief in this case is due on May 29, 2012, the government will promptly inform the Court of the Solicitor General's decision about whether to proceed with the appeal as soon as it has been made. Given the gravity of the danger presented by Mobley's release, the government is filing this emergency motion seeking a stay pending appeal.

B. Standard for Motion to Stay

Federal Rule of Appellate Procedure 8 governs the stay of a judgment or order from which a party appeals. Rule 8(c) specifies that motions for stay in criminal cases are to be decided in accordance with Federal Rule of Criminal Procedure 38. Although Rule 38 concerns stays of sentences, and does not discuss stays of pretrial orders, it appears that the same factors ordinarily relevant to Rule 8 motions will apply here, that is:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

1. The government is likely to succeed on the merits.

The Bail Reform Act permits pretrial detention of a defendant without bail

where "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." 18 U.S.C. § 3142(e). Detention is appropriate where a defendant is either a danger to the community or a flight risk; it is not necessary to prove both. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant is a danger to the community must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f). A finding that a defendant is a flight risk need only be supported by a preponderance of the evidence. *Motamedi*, 767 F.2d at 1406.

In cases involving violations of 18 U.S.C. § 924(c) (use of a firearm during and in relation to a crime of violence), the Act establishes a rebuttable presumption that a defendant is both a flight risk and a danger to the community. 18 U.S.C. § 3142(e). Once the presumption is triggered, the defendant has the burden of producing or proffering evidence to rebut the presumption. *United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989). But even if the defendant meets that burden, the presumption remains a factor militating in favor of detention, to be evaluated along with the other factors set forth in the statute. *See United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008); *see also* 18 U.S.C. § 3142(g) (prescribing four factors for consideration: (1) the nature and circumstances of the

offense charged; (2) the weight of the evidence against defendant; (3) the defendant's character, physical and mental condition, family and community ties, past conduct, history relating to drug or alcohol abuse, and criminal history; and (4) the nature and seriousness of the danger to any person or to the community that would be posed by the defendant's release).

Here, as the district court itself found, all of the statutory factors weigh in favor of detention. Mobley's crime was exceedingly dangerous. He orchestrated a bogus arms deal to set up an armed robbery. He sent his younger cousin and another associate into an undercover agent's car, armed with loaded guns, while he stood outside. Within seconds, Mobley's co-defendants held two guns to the agent's head trying to rob him of $1,000. When the robbery was thwarted, Mobley ran, hiding in a field for 45 minutes until he was tracked down. The weight of the evidence is significant. The crime itself is documented on video evidence and there are a number of eye-witnesses, including the undercover agent himself. Government witnesses monitored the phone calls between Mobley and the government informant setting up the deal, proving Mobley's leadership role in the crime.

Mobley's adult criminal history, spanning only five years, includes five gun-related crimes, including a homicide. The fact that Mobley was not charged

with the murder does not mitigate the fact that he confessed to bringing a loaded gun to a drug deal – involving a drug dealer that he knew was hostile – and killing a man. As the district court found, Mobley has proven himself to both "comfortable" with guns, and willing and able to use them. The only mitigating comment uttered by the district court regarding Mobley's criminal history is that the court has "seen worse." That is not the standard set forth by the Bail Reform Act.

All of the above demonstrate the seriousness of the danger to the community posed by Mobley's release. Moreover, his multiple failures to appear at traffic court proceedings, his arrests for giving false information to police and resisting arrest, and his flight from the scene of the charged crime, combined with the seriousness of the penalties that he is facing, demonstrate that he is a flight risk.

The district court's fashioned conditions fall far short of mitigating either risk. Mobley's grandmother – by the court's own findings – is an inadequate custodian. Although she has demonstrated a devotion to her grandson, that is not enough to protect the community. Ms. Mitchell has no experience controlling the behavior of a drug addicted 23-year-old man. She admits to being unaware of – and disbelieving – the extent of Mobley's drug problems and his criminal

behavior, and she offered no explanation of how she will manage her charge. As the court concluded, Ms. Mitchell clearly does not "understand[] what she is signing up for."

Even presuming that Ms. Mitchell's oversight and Pretrial Service's electronic monitoring could adequately mitigate the risk of flight, keeping Mobley confined to Ms. Mitchell's home does not provide adequate safeguard to the community. Mobley's involvement in the charged crime far exceeds his presence at the scene. He set up the phoney sale with the government informant over the phone and sent his two armed co-defendants into the car to carry out the robbery while he waited outside. Although electronic monitoring may keep Mobley confined at home, it will do nothing to prevent him from orchestrating other crimes in the way that he proved capable here. Even assuming Ms. Mitchell's best efforts, she simply cannot keep vigil 24 hours a day.

2. The district court erred in ordering release.

By the district court's own findings, each of the statutory factors weighs in favor of detention. Mobley presents both a danger to the community and a flight risk, and the conditions of release are clearly inadequate to protect against those harms. The district court, itself, noted the inadequacy of Ms. Mitchell's experience to address the challenges of acting as Mobley's custodian in light of

his significant drug abuse problems. When asked by the court, "what is it that you can do if you have no training, and if you obviously have no – even understanding of his drug issues," Ms. Mitchell responded only that she believed Mobley's dedication to turn his life around. Exh. 3 at 6. But the district court found Mobley wanting in that respect, stating that Mobley's current crime, committed within months of his completion of a work program, "makes me question your motives, your will power, and your ability to do right." *Id.* at 12.

Applying the law to the facts, release is wholly inappropriate in this case. The district court's factual findings simply do not support her conclusion that the conditions imposed will adequately safeguard the community against the risks posed by Mobley's release. The court found that all of the relevant facts weighed in favor of detention. The court explained its contrary result by stating only that the court had seen worse criminal histories, and with the conclusory statement that "I believe that the conditions of having you on home detention with a 24 x 7 monitor, regular drug testing, and a zero tolerance policy will sufficiently protect the community." The court's decision is a clear abuse of discretion. *Id.* at 15.

Reversal is appropriate where the trial court made an error of law or a clearly erroneous finding of fact, or where the reviewing court has "a definite and firm conviction that the district court committed a clear error of judgment."

United States v. Finley, 301 F.3d 1000, 1007 (9th Cir. 2002) (quoting *United States v. Benavidez-Benavidez*, 217 F.3d 720, 723 (9th Cir. 2000)). Reversal is appropriate here.

3. Both the government and the public will be harmed absent a stay.

The government's role in the pretrial detention context is as an advocate for the safety of the community. The government has made a clear showing, borne out by the district court's findings, that Mobley presents a serious danger to the community and a risk of flight. Pretrial detention will serve the public interest.

VI. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant a stay of the district court's May 14, 2012, release order pending appeal.

Dated: May 15, 2012

Respectfully submitted,

MELINDA HAAG
United States Attorney

BARBARA J. VALLIERE
Assistant United States Attorney
Chief, Appellate Division

/s/ Suzanne Miles
SUZANNE B. MILES
Assistant United States Attorney

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Fed. R. App. P. 27(d)(2), the United States' Emergency Motion for Stay is proportionately spaced and has a typeface of 14 points or more, and contains no more than 20 pages.

Dated: May 15, 2012

/s / Suzanne Miles
SUZANNE B. MILES
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the office of the United States Attorney, Northern District of California, and is a person over 18 years of age and not a party to the within action. The undersigned certifies that, on May 15, 2012, she served copies of the

Government's Emergency Motion and Exhibits 1 to 6
Motion to Seal Exhibit 6

in the case of United States v. Otis Mobley, CA 12-10245, District Court No. 12-CR-00235 YGR to the party or parties listed below with respective methods of service:

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Dated: May 15, 2012

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EXHIBIT 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. OTIS MOBLEY, Defendant.	No. CR 12-00235 YGR UNITED STATES' NOTICE OF APPEAL

Pursuant to 18 U.S.C. § 3731, the United States hereby appeals to the United States Court of Appeals for the Ninth Circuit the order of the district court issued on May 14, 2012, releasing defendant pursuant to the Bail Reform Act, 18 U.S.C. § 3142.

DATED: May 15, 2012

Respectfully submitted,

MELINDA HAAG
United States Attorney

JAMES C. MANN
Assistant United States Attorney

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL MINUTES

Date: May 14, 2012 **JUDGE: Yvonne Gonzalez Rogers**

Case No: CR-12-0235-02-YGR **Time: 10:04am-10:42am**

Case Name: United States v. Otis Mobley [present; in custody]

Attorney for Plaintiff/AUSA: **James Mann**
Suzanne Miles

Attorney for Defendant: Suzanne Morris

Deputy Clerk: Frances Stone **Court Reporter**: Starr Wilson
Interpreter: **Pretrial Services Officer**: Ladreena Walton

PROCEEDINGS

Further Hearing regarding Government's Appeal of the Magistrate Release Order-Held and Submitted.

Court states factors considered as to release of defendant on the record. Court finds release conditions set by Magistrate Judge will reasonably protect the community. The warrantless search will be omitted as pretrial is not allowed to do such. Court grants release of defendant according to conditions in Magistrate's 4/23/12 Order; Court adds condition of list of books that defendant is to read and complete book reports to be submitted to pretrial services. Defendant is to read 1 hour per day and write 30 minutes a day.
The Court orders mandatory remand for any violation of the conditions of release.

Court will issue an Order.

Government requests a stay of this Court's release order in order to appeal to the US Court of Appeals.
Court STAYS the release of defendant until 10:00am on 5/15/12 for Government to determine if an Appeal to USCA will be forthcoming.
Government requests that Pretrial Svcs Report be released to the Government as part of the USCA Appeal. Pretrial Svcs will provide report to USCA.

CASE CONTINUED TO: Tuesday 5/15/12 at 10:00am for Further hearing re: Government Request to Appeal this matter to USCA.

EXCLUDABLE DELAY: Category Begins Ends

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **OTIS MOBLEY,** **Defendant.**	**Case No.: 12-CR-00235 YGR** **ORDER DENYING GOVERNMENT'S APPEAL OF MAGISTRATE JUDGE'S PRETRIAL RELEASE ORDER**

The Government's Appeal of the Magistrate Judge's Pretrial Release Order came on for hearing on May 3, 2012 and again on May 14, 2012. The Court has reviewed the parties' submissions, heard the parties' arguments, and reviewed the Magistrate Judge's Order. After a *de novo* review of the record, the Court agrees with Magistrate Judge Westmore and finds that the conditions of release are sufficient to assure Otis Mobley's appearance at court proceedings and the safety of the community.

For the reasons stated orally on the record at the May 14, 2012 hearing, the Court **DENIES** the Government's motion and Orders Otis Mobley **RELEASED** subject to the conditions of release set forth in the Magistrate Judge's Release Order, Dkt. No. 27, as supplemented at the May 14, 2012 hearing.[1] The Court will provide a Reading List to Pretrial Services. Defendant must read for at least one hour every day, and must write reports on those books for at least thirty minutes every day.

Any violation of the conditions of release will result in mandatory revocation of Defendant's pretrial release for a minimum of thirty days.

Otis Mobley's release is **STAYED** until May 15, 2012 at 10:00 a.m. to permit the Government to determine whether it will appeal this Order.

IT IS SO ORDERED.

Date: May 14, 2012

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

[1] The warrantless search provision is excluded from the conditions of release.

United States District Court
Northern District of California

EXHIBIT 3

IN THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND, CALIFORNIA; DEPT ONE; YVONNE GONZALEZ ROGERS, JUDGE

THE UNITED STATES OF AMERICA,) 4:12-CR-00235-YGR-2

PLAINTIFF,) MONDAY, MAY 14, 2012

V.) FURTHER HEARING ON

OTIS MOBLEY,) GOVERNMENT APPEAL OF

DEFENDANT.) MAGISTRATE'S RELEASE ORDER

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ALSO PRESENT: MADELIENE MITCHELL, GRANDMOTHER

REPORTED BY: STARR A. WILSON, CSR 2462

OAKLAND, CALIFORNIA; MONDAY, MAY 14, 2012; 10:04 A.M., DEPARTMENT ONE; YVONNE GONZALEZ ROGERS, JUDGE

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THE CLERK: All rise. Court is in session. Yvonne Gonzalez Rogers presiding.

Please be seated.

Calling criminal action 12-0235, United States versus Otis Mobley. Counsel, please state your appearances.

MR. MANN: Good morning, your Honor. James Mann for the United States.

MS. MORRIS: Good morning, your Honor. Susan Morris appearing for Otis Mobley, who is present in custody.

THE PROBATION OFFICER: Good morning, your Honor. Madrina Walton for pretrial services.

THE COURT: Good morning.

I don't know that we can hear everybody. Can the court reporter hear everybody? Is this mic on?

MR. MANN: It doesn't seem to be.

THE COURT: It is there.

THE CLERK: There is now. I'm sorry. The mic is on.

THE COURT: All right. We are back on the calendar with respect to the government's motion contesting the release order issued by the magistrate judge with respect to Mr. Otis Mobley.

I've taken the opportunity during the interim to read in its entirety the transcript from the prior hearing. I've also talked, learned more about what we can and cannot do in terms of pretrial services.

Um, is the grandmother in the audience?

MS. MORRIS: She is.

THE COURT: Why don't you call her up, if you would?

Good morning.

MS. MITCHELL: Good morning.

THE COURT: Could you come up closer to the mic?

MS. MITCHELL: Sure.

THE COURT: Right.

Is there a medical reason for your hat?

MS. MITCHELL: Pardon me?

THE COURT: Is there a medical reason for your hat?

MS. MITCHELL: No.

THE COURT: All right. If you wouldn't mind taking it off, please.

MS. MITCHELL: Sure.

THE COURT: I have a few questions for you.

MS. MITCHELL: Uh-huh.

THE COURT: How much experience do you have, if any, managing someone 24 x 7 who has drug issues?

1 **MS. MITCHELL:** Who has drug issues?
2 **THE COURT:** Drug issues, yes.
3 **MS. MITCHELL:** Well, I don't have any experience
4 as far as my children are concerned. But my sister has run
5 group homes and I've worked with her. And, um, she's been
6 pretty successful in that, especially with teens, not with
7 adults, but with teens, so I do have some experience. And
8 I've had nine foster kids. And one of them today has
9 graduated from college and is very successful.
10 **THE COURT:** All right. Congratulations.
11 **MS. MITCHELL:** So I do have some experience and
12 this is my grandson. And I don't believe that he was a
13 heavy drug user. I believe he did smoke marijuana, which
14 most children do today. But this experience of this other
15 drug is just something here lately, I believe, because I've
16 been in contact with him, and we have a large family
17 network. I have, um, eight in my family, and he has cousins
18 from each one of my siblings. And when things go wrong, we
19 get the news some way, so I have only --
20 **THE COURT:** Also, may I ask this question then.
21 If that's the case, what, if anything, have you done with
22 respect to Mr. Otis Mobley here over the last five years
23 because he's been in and out of trouble?
24 **MS. MITCHELL:** Yes.
25 **THE COURT:** And that -- well, I'll leave it open

ended like that. So what have you done with respect to him?

MS. MITCHELL: Well, my son, who works with children in the school system, has gotten his kids into all kind of educational programs. And -- and I've gotten him into all kind of religious programs to help him along. But if we look at the record, it's just this last five years that we're concerned about when he got into an element of people that I don't even know.

THE COURT: Well, isn't one of those people your other nephew?

MS. MITCHELL: Pardon me?

THE COURT: Isn't one of these other people your other nephew?

MS. MITCHELL: My grandson. Two grandsons. And, as we know, he's the oldest, and they're going to stick together and he's the leader, even if he goes wrong.

THE COURT: I am concerned that he -- so you have no idea what his drug issues are other than marijuana. That's what you think?

MS. MITCHELL: That's what I thought, yeah.

THE COURT: No.

And to this day, have you, um, learned anything that suggests that his drug issues are more than just marijuana?

Let me ask you something --

1 **MS. MITCHELL:** In court, yeah.
2 **THE COURT:** If you -- if you knew that he was a
3 repeated user of ectasy and cocaine, would you know how to
4 deal with that?
5 **MS. MITCHELL:** Yes. I can get help, you know.
6 There's all kind of --
7 **THE COURT:** Like what specifically?
8 **MS. MITCHELL:** There's organizations that help you
9 with that. There's an outreach right in Richmond.
10 **THE COURT:** He can't, if he is released, he is
11 released to your custody and remains at home.
12 **MS. MITCHELL:** Exactly.
13 **THE COURT:** So what is it that you can do if you
14 have no training, and if you obviously have no -- even
15 understanding of his drug issues?
16 **MS. MITCHELL:** Well, um, I have an understanding
17 now that he does not want to live this way any longer, and
18 he wants to make a turn, a positive turn for himself, for
19 his family, and for his child. And that's what I'm looking
20 at. And I believe, in what he has told me, that he's, from
21 this day forward, going to do what is right by the law, by
22 his family, and everybody, the community at large.
23 **THE COURT:** Ms. Morris, you wanted to say
24 something?
25 **MS. MORRIS:** Yeah, I did. I wanted to point out

1 two things. Um, in, when pretrial services took
2 Mr. Mobley's drug history, he indicated to pretrial services
3 that he drinks regularly and he smokes marijuana regularly.
4 The use of the other drugs, including ectasy and cocaine, by
5 his statements, they appear to be substances which he uses
6 with far less frequency. Um, I'm not saying that makes it
7 okay. That is not my point at all, but --
8 **THE COURT:** Marijuana and ectasy weekly, a pattern
9 of drinking since 16, alcohol and marijuana, elevated to
10 ectasy at 18, expanded to cocaine at 21. He's now 23.
11 **MS. MORRIS:** He uses ectasy once per week. Okay.
12 So -- and I appreciate --
13 **THE COURT:** And the grandmother doesn't know that.
14 **MS. MORRIS:** She's aware of it now. She wasn't
15 aware of it prior to these proceedings. She hasn't been
16 living in Richmond with him watching him. So my -- my
17 suggestion is now, that she's aware of this issue, if he's
18 released to her custody, there are two things that will be
19 in place that can control for the possible risk of reuse.
20 First, he will be tested by pretrial services for
21 drug use. So if he's using unbeknownst to anyone, it is --
22 it is going to be determined when he is tested; but, two, if
23 he's using -- I think it's very difficult for Ms. Mitchell
24 or for anybody to say I -- I can guarantee that I will be
25 able to --

1 **THE COURT:** I wasn't even asking for a guarantee.
2 I was asking for whatever it is that she -- I was looking
3 for anything.
4 **MS. MORRIS:** This --
5 **THE COURT:** And Ms. Mitchell has given me nothing.
6 **MS. MORRIS:** Well, if I can make a suggestion.
7 What Ms. Mitchell can do if Mr. Mobley is using, is pick up
8 the phone and call pretrial services and let them know that
9 he's violating the conditions of his release. That is her
10 obligation to the Court and her responsibility as his
11 custodian. I mean that's -- that's the best thing that she
12 can do. And she can, if he's -- if he's struggling and
13 she's concerned that there's going to be an issue, but an
14 issue hasn't arisen, then perhaps she can reach out to
15 treatment facilities in the community and see if somebody
16 can come in-house to talk to him. I think when and if that
17 issue arises, it should be dealt with in conjunction with
18 pretrial services. I mean at the end of the day, what her
19 responsibility is, is to report violations of release to
20 pretrial services. And my understanding is that the house
21 that they're going to be living in is relatively small; is
22 that correct?
23 **MS. MITCHELL:** Uh-huh.
24 **MS. MORRIS:** Um, I think -- I understand the
25 Court's concern. I absolutely understand it. But I think

the remedy and the remedy that Ms. Mitchell needs to understand, is not only available, but required of her, is that she call pretrial and report Mr. Mobley. And if she doesn't, then she's looking at charges for being in contempt and she is looking at the loss of a -- she's looking at losing her home, and her children are also looking at a huge loss of a huge amount in their lives. That is what she is supposed to do.

THE COURT: What do you know of the girlfriend?

MS. MITCHELL: I beg your pardon?

THE COURT: What do you know of the mother of his child, the girlfriend?

MS. MITCHELL: Um, I've known her since they got together. And she's present in the court with me today. She brought me here today. She's hard working. I mean she -- she's constantly trying to educate herself and make herself better.

THE COURT: What do you know, if anything, about her drug use?

MS. MITCHELL: Her drug use? I don't know anything about her drug use.

THE COURT: Mr. Mann, do you want to say anything?

MR. MANN: I share your Honor's concerns. Um, one thing just -- your Honor asked about Ms. Contreras, Mr. Mobley's girlfriend, and one of the responses given was that

she's hard working. The pretrial service says she's unemployed. The -- I just don't believe these conditions protect the community like the community needs to be protected. Um, the reliance upon Mr. Mobley's grandmother is just not enough to protect the community in this case.

THE COURT: Submitted?

MR. MANN: Submitted, your Honor.

MS. MORRIS: I just wanted an additional note. It is not -- it is not merely reliance upon Mr. Mobley's grandmother that is going to, um, she's not merely going to be the sole person who is responsible for supervising Mr. Mobley and insuring that he remain in compliance. She's the benefit of having Ms. Mitchell involved that is she will be there and that she can call pretrial and say he's in violation. And she promised Magistrate Westmore that she would do that. She promised the Court that she would do that and there's no reason to believe otherwise. My understanding as to Ms. Contreras and the work history, I don't know that it's terribly relevant, but my understanding is that she's worked consistently and recently became unemployed.

THE COURT: Submitted?

MS. MORRIS: Yeah. (10:18 a.m.)

THE COURT: Mr. Mobley, I was thinking about this case for the last ten days, whatever it is, and I can tell

you, you are right on the bubble.

I'm going to go through these factors, Mr. Mann, but I'm going to release you with zero tolerance, Mr. Mobley. Zero. I will not hesitate one second to put you back into custody. And, in fact, my order will indicate that it will be mandatory. Judge Westmore will have zero ability and zero discretion.

You take one puff of a marijuana cigarette, you violate this order in any way and you will be back in mandatory one month before you will even get to explain why it is that you went off that path with a toke, so much as a toke. I do not trust someone who lies to pretrial services. I saw a video with her, and I think you told me it was her -- no, it wasn't? Well, that's helpful.

Under the law, there are numerous circumstances and factors that must be considered in determining whether to release someone from custody pending trial. Those include the nature and circumstances of the offense charged, whether it is a crime of violence, which this is.

Four counts currently pending against you, carrying a maximum of five years, 25 years, 20 years and life. That weighs in favor of detention.

The weight of the evidence against you, the Court recognizes that this is the least important of these factors for purposes of a constitutional analysis. Statute does not

1 permit the Court to pre-try you and determine your guilt in
2 a sense at this stage. We can't look at those issues.
3 However, you were found at the scene of the crime. You were
4 standing by the vehicle. You did run from the scene. This
5 factor would weigh in favor of detention.
6 Third, the history and characteristics of the
7 person. I've read all the character letters. And as I
8 mentioned last time, as a young boy, it seems to me when
9 your parents had control over you, you were down a good
10 path. People were complimentary. They thought you had a
11 bright future. At some point in your life, you left that
12 path, despite, apparently having much family support, many
13 people do not, despite having been given opportunities many
14 people have not had, you consciously and intentionally
15 choose not to go down that path. That gives me pause. That
16 makes me concerned about how serious you are. It is to your
17 benefit that you completed that seven-week job training
18 program. It is to your benefit that you worked with the
19 Conservation Corps and that, the director of that program
20 had complimentary things to say about you. However, the
21 fact that you turned around, and now you find yourself in
22 this situation within a couple of months of being in that
23 program again gives me pause, again, makes me question your
24 motives, your will power, and your ability to do right.
25 You have a very loving grandmother. It's not

clear to me that she understands what she is signing up for. Taking the custodian of someone, of a young man with drug problems, 24 x 7, is more work than I think you understand. You are going to be tired. You are going to need family supporting you. You appear, from what I read, to be, to have a good Christian background. You are going to need that. Whatever it is spiritually that you do, you are going to need it.

MS. MITCHELL: Yes, ma'am.

THE COURT: I believe, and that's why I'm not letting anyone have any discretion if he gets off that path, that until he understands that the game is over, he will never ultimately get back on that path. So this is the last chance. And he may ultimately do time. I don't know. I don't know what is going to happen in that case. I don't know if the State will, or the government will prove him innocent -- I mean prove him guilty or not. But this is his opportunity to see that whatever happens, one day that path is going to be available.

Unfortunately, he's not yet learned that lesson. Unfortunately, he finds himself here in a jump suit. Zero tolerance. I cannot -- want you to lose everything that you've worked for. And that won't help him. You must pick up that phone.

MS. MITCHELL: I will.

1 **THE COURT:** There is too much at stake, including
2 his future.
3 **MS. MITCHELL:** Absolutely.
4 **THE COURT:** And if he can't see what he's getting,
5 then he needs to go back in and understand what the opposite
6 road looks like.
7 **MS. MITCHELL:** I totally agree.
8 **THE COURT:** At some point once he -- well, let me
9 finish. In terms of the criminal history, I've seen worse,
10 Mr. Mann. That's why it's on the bubble. The failures to
11 appear, while significant, I believe, were primarily for
12 traffic violations, and I take those less seriously.
13 He is not allowed to drive anywhere.
14 **MS. MITCHELL:** Yes ma'am.
15 **THE COURT:** You are the only person who can drive
16 him. If something happens to you, you must get permission
17 from pretrial services to get an alternative driver.
18 **MS. MITCHELL:** I understand.
19 **THE COURT:** In terms of the last factor, the
20 nature and seriousness of the danger to the community, these
21 are serious crimes of which you are charged.
22 The firearms, which I have seen, at least, which
23 you seem to be comfortable with, in terms of your prior use
24 of firearms, gives me pause yet again. Many people are
25 afraid of guns. You don't seem to be one of those.

1 Our community is wrought with young men
2 comfortable with firearms and using them and scaring people
3 and hurting people. And I will not have you be anywhere
4 close to community members where that is potentially a
5 problem.
6 I believe that the conditions of having you on
7 home detention with a 24 x 7 monitor, regular drug testing,
8 and a zero tolerance policy will sufficiently protect the
9 community.
10 But given that you barely crossed over the line to
11 the area of release, my confidence in that arrangement
12 sufficiently protecting the community will change. And I
13 won't put the community at risk.
14 You try to tamper with that ankle bracelet, I will
15 be notified. Alcohol, drugs, I will be notified. And you
16 will lose the ability to be with your grandmother.
17 There's one more thing, Mr. Mobley, that concerns
18 me, and that is what are you going to do all day? I don't
19 want to cause problems so this is what I'm going to do.
20 **MS. MITCHELL:** Well, I have plenty of work for him
21 to do there.
22 **THE COURT:** Well, I'm going to add some for you.
23 **MS. MITCHELL:** Okay.
24 **THE COURT:** And that is, I'm going to provide
25 pretrial services with a list of books, Mr. Mobley, and

you're going to start reading and you're going to start writing. And you're going to turn in those reports to pretrial services. You will read no less than one hour a day. And you will write no less than 30 minutes a day.

Ask your grandmother to pick up a notebook for you. I'm starting a long list of books, all focused on what people who have come from difficult circumstances have done with their lives. And, hopefully, it will end up in a better place than you were when you started with this.

Zero tolerance; do you understand that?

THE DEFENDANT: I do, your Honor.

THE COURT: All right. Good luck.

MR. MANN: Actually, your Honor, a couple, two things: One, um, I understand that -- I'm not positive if your Honor's going to issue a new order of release conditions or if -- if the ones issued by Judge Westmore are going to be supplemented with what your Honor has ordered.

THE COURT: It will be supplemented.

MR. MANN: With respect to the warrantless search condition that was imposed, that condition cannot be enforced by pretrial services and is unlawful so it would have to be stricken.

THE COURT: I understand that.

MR. MANN: Okay. And, second, your Honor, the United States would ask that your Honor stay your -- your

release order to -- on appeal to the Ninth Circuit under rule, under federal rule of appellate procedure 8(A).

THE COURT: I will do that. Let me supplement here. Just one moment.

The record should reflect that the Court considered the following additional -- or not additional. I did not go into as much detail. If you're going to appeal, the record needs to reflect this as well.

In terms of Mr. Mobley's criminal history, the Court notes that at 18 he gave false information, was put on 12 months probation, a nonviolent crime; five months later, while on probation, he had a misdemeanor conviction for a stolen vehicle. Again, five days in jail, and increased 18 months probation, but not a crime of violence against someone in the community. At 20, there was an incident where the Defendant shot someone. This is May of 2009. The DA did not prosecute. On that basis, the Court does not consider the actual shooting, but the Court does understand, and weighs, the relevance of Mr. Mobley's comfort -- comfort with firearms.

At 21, on June -- on or about June, 2010 there was a misdemeanor conviction arising from public intoxication, two days jail; again, not a crime of violence against the community.

September 2011, at 22, I'm saying this is the

first incident where there was, in fact, violence, two days jail, misdemeanor conviction for domestic violence. I have not been provided the police report for that particular incident so it is not clear to me what the nature is of that violence against the mother of his child, but it did only result in two days of county jail and nothing beyond that.

This incident happened three months later.

You should understand, Mr. Mann, that these -- that this criminal history did play a significant part in my decision.

I think everything else, I went into detail, sufficient detail for purposes of an appellate record.

Under Title 18, USC 3142, the Court does find that the combined combination of conditions that is set forth in the order will reasonably protect the community.

In light of those conditions, plus the additional ones that I have imposed myself less the search, the warrantless search.

MR. MANN: Yes, your Honor.

THE COURT: All right. Anything else?

MR. MANN: For the appeal, your Honor, I would ask that your Honor permit disclosure of pretrial services reports to the Ninth Circuit. These are, otherwise, I don't get copies of these, and can't have them submitted as part of the record, and since everybody relies on these, I would

ask that your Honor permit their release to the Ninth Circuit.

MS. MORRIS: I would object to their release in the Ninth Circuit. They're confidential documents. Um, I think the contents of the pretrial service's documents has been fully fleshed out in the court record in the three court appearances that we've made on this matter. And just for the record, your Honor, I would object to staying this order until the appeal can be heard.

MR. MANN: They're confidential documents but they have been disclosed to the Court. I don't see any reason why they couldn't be disclosed to the Ninth Circuit, if necessary, to be lodged under seal for some reason. I think we could do that. But they're only confidential in that they're not disclosed to the public. They're certainly disclosed to the Court, to rely on by the Court. I'm not sure.

THE PROBATION OFFICER: Your Honor, we can submit the reports to the Ninth Circuit.

THE COURT REPORTER: Your name, please?

THE PROBATION OFFICER: Madrina Walton.

THE COURT REPORTER: Thank you.

THE COURT: Do you have the bond in place?

MS. MORRIS: It is in place, your Honor.

THE COURT: What's the Ninth Circuit's turn around

1 these days?
2 **MR. MANN:** I don't know that. This is Suzanne
3 Miles from the U.S. Attorney's Office who is part of our
4 appeal division.
5 **MS. MILES:** Good morning, your Honor. Suzanne
6 Miles.
7 Um, the Ninth Circuit has three judges that are on
8 the motion panel that are impaneled every month waiting for
9 these types of motions. We need to go through an internal
10 departmental process before we do that. We can do that
11 within the next -- within this week to determine whether or
12 not the Department will -- will allow us to take the appeal
13 up to the Ninth Circuit. So, all in all, we'll know whether
14 we're filing an appeal within the next two to three, perhaps
15 four days. Um, and then it will be in front of the motion
16 panel of the Ninth Circuit and the turn around time is up to
17 them.
18 **THE COURT:** I'll give you 24 hours to make that
19 decision.
20 Is there a courtroom available tomorrow?
21 **THE CLERK:** This one is. I know it's at the
22 motion hearing time. It looks like we can do a morning time
23 in here tomorrow.
24 **THE COURT:** Morning. All right.
25 **THE CLERK:** Yeah. I mean it can be the afternoon.

We have it for two o'clock if you want it around that time.

THE COURT: Is that okay?

THE MARSHAL: Yeah.

THE COURT: All right. I'll stay this until 10:00 a.m. tomorrow in which case I would like to know for certain whether or not the U.S. Attorney is going to bring that motion. And in the meantime, I'll try to figure out myself whether it would be an appropriate motion to grant.

MR. MANN: And so we come back here, your Honor, at 10:00 a.m. tomorrow?

THE COURT: 10:00 a.m. tomorrow.

MR. MANN: Thank you, your Honor.

(Whereupon at 10:41 a.m. the proceedings were continued to Tuesday, May 15, 2012 at 10:00 a.m. for further proceedings.)

COURT REPORTER'S CERTIFICATE

I, STARR A. WILSON, CSR NO. 2462, United States District Court, Northern District of California, do hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

/s/ _____

STARR A. WILSON, CSR NO. 2462

EXHIBIT 4

United States District Court
Northern District of California

UNITED STATES OF AMERICA, Plaintiff, v. OTIS MOBLEY, Defendant.	Case No.: CR 12-0235 YGR **RELEASE ORDER**

I. INTRODUCTION

Defendant Otis Mobley was indicted on the following charges: 18 U.S.C. § 371 (Conspiracy to Commit Robbery of Mail, Money, or Other Property of United States and Assault on a Federal Officer); 18 U.S.C. § 111(b) (Assault on a Federal Officer with a Deadly or Dangerous Weapon); 18 U.S.C. § 2114(a) (Robbery of Mail, Money, or other Property of the United States); 18 U.S.C. § 924(c)(1)(A)(ii) (Using, Carrying, Possessing, and Brandishing a Firearm During, in Relation to, and in Furtherance of a Crime of Violence). The government moved for Mr. Mobley's detention pursuant to the Bail Reform Act and asked for a hearing pursuant to 18 U.S.C. § 3142(f).

Pretrial Services prepared a full bail study and recommended that Mr. Mobley be released on a $100,000 bond secured by real property and co-signed by at least two viable sureties, subject to a set of release conditions. The court conducted a bail hearing on April 18, 2012. Mr. Mobley was present and was represented by his attorney, Suzanne Morris. Assistant United States Attorney James Mann appeared for the government.

After considering the parties' proffers, the bail study, eleven letters of support for Mr. Mobley from his family and members of the community, as well as statements from Mr. Mobley's grandmother, mother, and father at the hearing, the court orders that Mr. Mobley be

released into the custody of his grandmother, Madeliene Mitchell, on a $150,000 bond secured by her real property located at 125 Montgomery Road, Sebastopol, California, and cosigned by his parents, Tonette Lynch and Otis Mobley, Sr.[1]

II. ANALYSIS

The Bail Reform Act requires that in a pretrial posture, the government bears the burden of proving that a defendant poses a risk of flight and/or a danger to the community that cannot be mitigated through the imposition of conditions of release. If the government does not meet its burden, the court's duty is to fashion appropriate conditions that permit the defendant to remain out of custody during the preparation of his or her defense, while safeguarding against flight or community danger. Close cases should result in release: "[t]o give effect to the principle that doubts regarding the propriety of release be resolved in favor of the defendant, the court is to rule against detention in close cases..." *U.S. v. Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal. 1992) (Walker, J.) (quoting *U.S. v. Motamedi*, 767 F.2d 1403, 1405-06 (9th Cir. 1985)).

A person facing trial generally shall be released if some "condition, or combination of conditions ... [can] reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(c). In non-capital cases, pretrial release "should rarely be denied." *Motamedi*, 767 F.2d 1403 at 1405; *see also U. S. v. Salerno*, 481 U.S. 739, 755 (1987) (upholding constitutionality of Bail Reform Act; "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception").

The court must order a defendant detained if the court finds that conditions cannot be fashioned to assure the defendant's appearance in court, or the safety of the community or another person. 18 U.S.C. § 3142(e)(1). The government bears the burden of proof on both prongs. The government must show by a preponderance of the evidence that the defendant is a flight risk, and must prove by clear and convincing evidence that defendant poses a non-mitigable danger to the community. *United States v. Aitken*, 898 F.2d 104, 107 (9th Cir. 1990); *Motamedi*, 767 F.2d at 1406-1407.

[1]Mr. Mobley was remanded to the custody of the US Marshals after the April 18 detention hearing pending the installation of a telephone landline at Ms. Mitchell's house to facilitate electronic monitoring. The court received verification from Pretrial Services on Friday, April 20, after 5 p.m., that the telephone landline has been installed in Ms. Mitchell's home.

United States District Court
Northern District of California

Bail hearings generally proceed by proffer, and the rules of evidence do not apply. 18 U.S.C. § 3142(f). At the hearing, the court determines whether any conditions in section 3142(c) will reasonably assure the defendant's appearance and the safety of the community or another person. *Id.* The Bail Reform Act "mandates release of a person facing trial under the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person as required." *Motamedi*, 767 F.2d 1403, 1405.

In evaluating whether pretrial release is appropriate, a court must consider (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the history and characteristics of the person (including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug and alcohol abuse, criminal history, or record concerning appearance at court proceedings), and (4) the nature and seriousness of the danger to any person or the community posed by the person's release. 18 U.S.C. § 3142(g); *Motamedi*, 767 F.2d at 1407.

The Ninth Circuit has held that the weight of the evidence is the least important of the factors. This guards against the possibility of making a "preliminary determination of guilt" that then leads to punishment in the form of a refusal to grant release. *Motamedi*, 767 F.2d at 1408. "The[] factor[] may be considered only in terms of the likelihood that the person will fail to appear or will pose a danger to any person or to the community." *Id.*

A. Rebuttable Presumption of Detention

The charges against Mr. Mobley include a violation of 18 U.S.C. § 924(c) (using, carrying, possessing, and brandishing a firearm during, in relation to, and in furtherance of a crime of violence).[2] This charge gives rise to a rebuttable presumption of detention pursuant to 18 U.S.C. §3142(e)(3)(B). This rebuttable presumption, however, merely shifts the burden of *production* to the defendant; the ultimate burden of *persuasion* remains with the government. *See United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008).

[2] Mr. Mobley was charged with this offense pursuant to 18 U.S.C. § 2 ("Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal").

United States District Court
Northern District of California

Here, the defense proffered evidence that Mr. Mobley was not a danger to the community or a flight risk, including letters and statements by family members and members of the community attesting to Mr. Mobley's character and community ties, as well as documents and letters relating to his recent completion of the RAMP job training program and his employment with the San Francisco Conservation Corps. The defense submitted a letter from the Associate Director of the Conservation Corps stating that Mr. Mobley was placed on an approved leave of absence due to his incarceration, and that he was scheduled to return to work on May 2, 2012 but could contact the Conservation Corps to arrange a later return date if necessary. The defense also produced several viable sureties, including Mr. Mobley's grandmother and parents. Despite being informed of seriousness of the charges against Mr. Mobley and about his criminal history and drug use, these family members indicated that they are willing to stake their financial futures on his complying with the conditions of release.

The government bears the burden of persuasion showing by a preponderance of the evidence that the accused is a flight risk, and by clear and convincing evidence that defendant poses a non-mitigable danger to the community. As discussed more fully below, the court finds that Mr. Mobely has rebutted the presumption of detention, and the government has not met its burden of proof.

B. The nature and circumstances of the offense and weight of the evidence

The affidavit supporting the underlying criminal complaint alleges that on March 28, 2012, ATF agents conducted an undercover operation in Richmond, California, in an attempt to purchase an illegal firearm--a grenade launcher--from Mr. Mobley and another individual. An undercover ATF special agent arranged, through a third party, to meet them to purchase the weapon. Mr. Mobley, his cousin Khusar Mobley,[3] and a third person, Dmarce Hutcherson, were present at the scene. According to the affidavit:

> On March 28, 2012, the ATF UC arrived at the meet location...[and] parked.... The ATF UC was the driver of the vehicle and occupied the driver's seat. The third party remained in the front passenger seat....

[3] Throughout this order the appellation "Mr. Mobley" refers to Otis Mobley, not his cousin Khusar Mobley.

United States District Court
Northern District of California

United States District Court
Northern District of California

...

At approximately 3:09 P.M., HUTCHERSON entered the UC vehicle, which was a four door sedan, and sat in the rear passenger seat behind the driver's seat. K MOBLEY entered the UC vehicle and sat in the rear passenger seat behind the front right passenger seat....

...

O MOBLEY did not enter the UC vehicle, but waited outside of the UC vehicle near the trunk. O MOBLEY was in a position to view and listen to the activities inside the vehicle through the rear window.

Upon entering the UC vehicle, the occupants greeted each other. Approximately forty (40) seconds after entering the UC vehicle, K MOBLEY produced a black pistol with an extended magazine from his person and pointed the pistol over the front passenger seat directly at the UC. K MOBLEY's index finger was clearly placed on the trigger of the firearm.

...

HUTCHERSON was sitting next to K MOBLEY and produced a pistol which he held in his hand. HUTCHERSON appeared to be assisting K MOBLEY in the assault and robbery.

Approximately sixteen (16) seconds after K MOBLEY pointed the pistol at the UC, [another individual who was working with the ATF agent] grabb[ed] the pistol from K MOBLEY....

After K MOBLEY lost his pistol, HUTCHERSON exited the rear passenger door. K MOBLEY followed HUTCHERSON out the rear passenger door behind the driver's seat. As HUTCHERSON exited the UC vehicle he was armed with a pistol and responding ATF Agents discharged their weapons at HUTCHERSON. A silver, semi-automatic pistol was found on the ground next to HUTCHERSON. HUTCHERSON and K MOBLEY were taken into custody. Both firearms were seized....

O MOBLEY, who stayed outside of the UC vehicle, ran into an adjacent field and was arrested approximately forty-five minutes later.

Dkt #1 at 3-6. The court also reviewed the video footage of the incident, which shows Khusar Mobley brandishing a gun and Hutcherson inside the car, but does not show the defendant.

Here, the nature and circumstances of the charged offenses are quite serious, as Mr. Mobley is charged in the indictment with a crime of violence against a federal agent. But Mr. Mobley is not accused of personally brandishing a firearm. Nor does the agent's affidavit suggest

that Mr. Mobley was armed at the time of the incident. Notwithstanding these facts, the charges against him raise a serious concern regarding the danger to the community.

The weight of the evidence against Mr. Mobley, however, is not nearly as great as it is against his codefendants. As noted above, Mr. Mobley was not inside the car when Khusar Mobley pulled a firearm on the agent, and he remained outside the care during the entire incident. Mr. Mobley's actions, as described in the agent's affidavit, do not convincingly show that he knew that Khusar Mobley planned to pull his firearm on the agent. Although the agent writes that Mr. Mobley was in a position to see inside the car during the incident, this would be true of anyone standing outside of the car and does not by itself show that Mr. Mobley conspired to assault the agent.

Thus, although the nature of the charge is serious and involves violence, Mr. Mobley is not accused of personally being violent or carrying a firearm. The nature of the charge factor raises concern regarding Mr. Mobley's danger to the community. The weight of the evidence, however, albeit the least important factor in the pretrial release decision, does not indicate that Mr. Mobley committed acts of violence that make him a danger to the community.

The ultimate question is not whether he presents a danger to the community, but whether such a risk is mitigable through the imposition of conditions of release. The court finds that under the conditions of release set out in this order, as explained in part D of this section, the danger to the community posed by Mr. Mobley can be mitigated.

C. The History and Characteristics of Defendant and the Nature and Seriousness of the Danger to Any Person or the Community

Mr. Mobley is twenty-three years old. He has lived in this district for most of his life, and has strong family ties to the district. At the time of his arrest he was living in Richmond with his parents, Otis Mobley Sr. and Tonette Lynch, and his four siblings in the house he has spent most of his life in. He has also lived in Sacramento for two to three years and in Texas for three months.

Mr. Mobley has a four-year-old son, Otis Mobley III, who lives with his mother, Meliza Contreras, in Vallejo, California. Mr. Mobley and Ms. Contreras have been in a relationship for

United States District Court
Northern District of California

five and a half years, and she indicated to pretrial services that she is willing to be a surety for him. Mr. Mobley's grandmother, Madeliene Mitchell, who is willing to be a surety and custodian for him, lives in Sebastopol, California. The record contains eleven letters of support addressed to the court and written by family members, a former teacher, and a case manager, attesting to Mr. Mobley's character and desire to create a non-criminal life for himself. His strong family support and ties to this district lessen the risk of flight in this case.

Mr. Mobley does not have a high school diploma or GED. In December 2011, he successfully completed a five-day a week, seven-week job readiness RAMP Academy program with the San Francisco Conservation Corps. From January 2012 until the time of his incarceration in this case, he continued to work part-time with the San Francisco Conservation Corps doing landscaping and carpentry, and also worked two hours a day towards obtaining his GED. Because of his incarceration, the Conservation Corps put him on an approved leave of absence, but Mr. Mobley has submitted a letter to the court from the Conservation Corps showing that he is eligible to return to the program. Mr. Mobley's case manager at the Conservation Corps and his eighth grade teacher wrote letters of support attesting to his character and diligence. Mr. Mobley's efforts to obtain an education and gainful employment weigh in favor of finding that he is not a danger to the community, as they show that he is making an attempt to support himself through legal means rather than through criminal activity.

By his own admission to Pretrial Services, Mr. Mobley uses alcohol and illicit drugs regularly. He drinks daily until he becomes "buzzed" and uses marijuana twice a week, ecstasy once a week, and methamphetamine once every few months. He used cocaine on a daily basis for an 8 or 9 month period in the last two years, but last used it in 2011. He told Pretrial Services that he would like to receive drug treatment. Mr. Mobley's substance abuse problems may make him more likely to be dangerous to the community--although there is no evidence that he has committed any violent crimes due to drug or alcohol abuse--but there are conditions of release that can mitigate any such danger. Specifically, Mr. Mobley must not drink alcohol or use non-prescription drugs, and will be confined to his grandmother's home. His grandmother stated that she does not drink or do drugs and does not have these substances in her home.

United States District Court
Northern District of California

Contrary to the government's proffer at the hearing, according to a federal agent, Mr. Mobley was not on active parole or probation at the time of his arrest, although he was participating in domestic violence classes.

Mr. Mobley has never been convicted of a felony. However, he has been convicted of the following misdemeanors: in September 2011, inflicting corporal injury on his spouse/ cohabitant; in June 2010, public intoxication, and driving with a suspended license; in October 2008 and in April 2007, giving false identification to a peace officer; and in September 2007, taking a vehicle without the owner's consent/ vehicle theft. At the April 18th hearing, it was proffered that the misdemeanor conviction was for domestic battery Mr. Mobley inflicted on his significant other, Ms. Contreras. This offense weighs in favor of finding that he is a danger to Ms. Contreras. While Ms. Contreras has a no-harassment order against Mr. Mobley, the order allows them to interact, and Ms. Contreras is willing to act as a surety for Mr. Mobley. Evidently, Ms. Contreras wants Mr. Mobley to be released and does not believe that he will harm her. Under these circumstances, the risk of danger to Ms. Contreras due to Mr. Mobley's release is slight. None of Mr. Mobley's other misdemeanor convictions are very probative regarding dangerousness.

Mr. Mobley's misdemeanor convictions for giving false identification to a peace officer weigh in favor of finding that he is a flight risk, as giving false identification is a crime involving dishonesty and shows that Mr. Mobley may have tried to evade law enforcement, and by analogy, may attempt to evade legal proceedings in this case. Those convictions occurred 4 and 5 years ago, and without knowing the facts underlying these convictions, the court will not weigh them heavily.

In addition, Mr. Mobley has failed to appear for legal proceedings on multiple occasions, including in May 2008, March 2009, twice in June 2010 (this incident was referred to traffic court), in February 2011 (this incident was also referred to traffic court), and in January 2012. It is not clear from the parties' proffers or from the bail study how many of these failures to appear were related to traffic offenses. The government argues that if Mr. Mobley has failed to appear for minor court proceedings, it is quite likely that he will fail to appear in this case, where the charges and the potential punishment are much greater. Conversely, the defense argues that while

United States District Court
Northern District of California

many people fail to appear in traffic court, in this case the serious consequences of non-appearance will ensure Mr. Mobley's appearance. The court finds that Mr. Mobley's previous failures to appear show that there is some risk of flight. However, as explained in part D of this section, this risk can be mitigated through conditions of release.

Mr. Mobley has also been arrested a number of times without prosecution or a resulting conviction. At the detention hearing, the government argued that the facts underlying some of the arrests show that Mr. Mobley should be detained. Notably, the government argued that Mr. Mobley's May 2009 arrest for murder shows that he is dangerous, even though he was not prosecuted for the crime. The government quoted a police report stating that Mr. Mobley admitted that he shot someone in the head after the person had threatened him. Defense counsel argued that the lack of prosecution showed that Mr. Mobley had acted in self-defense. The government also discussed a police report regarding Mr. Mobley's arrest for carrying a stolen firearm. Defense counsel proffered that the weapon was found in a car where Mr. Mobley was merely one of several passengers. Finally, the government discussed Mr. Mobley's juvenile arrest for having a firearm at school, and defense counsel stated that Mr. Mobley turned himself in to authorities after his friend got in trouble for possessing a firearm that Mr. Mobley found in the bushes near the school.[4]

The court has considered both sides' proffers regarding the facts underlying Mr. Mobley's arrests that did not result in prosecutions or convictions, but ultimately affords them little weight because of their lack of reliability. Although hearsay evidence is generally admissible at a detention hearing, such evidence may not always be reliable or appropriate. *See, e.g.*, *United States v. Accetturo*, 783 F.2d 382, 389 (3d Cir. 1986) ("a judicial officer should be sensitive to the fact that Congress' authorization of hearsay evidence does not represent a determination that such evidence is always appropriate.").

For the same reason, the court affords only slight weight to the statement referenced in the bail study by a federal agent that the Richmond Police Department believes Mr. Mobley is a Deep C. gang member, as Mr. Mobley denies that he is a gang member, there is no corroborating

[4] It is unclear whether the prosecution provided these police reports to Pretrial Services before it prepared its full bail study.

United States District Court
Northern District of California

evidence regarding Mr. Mobley's alleged gang membership, and Mr. Mobley's attorney asserted that Mr. Mobley does not reside in the geographic area associated with the Deep C. gang.

The court has also considered that Mr. Mobley attempted to evade arrest in the instant offense by running from law enforcement and hiding for forty-five minutes until he was apprehended. This indicates that Mr. Mobley may be a risk of flight. This risk, however, can be mitigated by conditions of release.

The court directly addressed Mr. Mobley's grandmother, mother and father in open court to determine their suitability as sureties. His grandmother, Ms. Mitchell, is willing to sign a $150,000 bond secured by her house in Sebastopol, and to act as Mr. Mobley's custodian. She is a United States citizen with no prior arrests or criminal record. She is retired and receives $3,200 a month in retirement and social security benefits. His mother and father, Ms. Lynch and Mr. Mobley, Sr., are willing to co-sign an appearance bond. Both have stable employment; Ms. Lynch has been a Bus Operator for AC Transit for fifteen years, where she earns $4,000 per month, and Mr. Mobley, Sr., has been employed at Contra Costa Unified School District for fifteen years and makes $2,300 a month. Ms. Lynch has no prior arrests or criminal record; Mr. Mobley, Sr., may have been arrested in 1990 for giving false ID to an officer and had a traffic warrant.

The court emphasized the risks to the co-signors, as well as the serious nature of their voluntary agreements to stake their financial future on Mr. Mobley's compliance with the release order. All of the sureties were made aware of the serious charges against Mr. Mobley, and of his criminal history and substance abuse. The court explained to Ms. Mitchell that she could lose $150,000 of equity in her home, and to Mr. Mobley's parents that their wages could be substantially garnished, if Mr. Mobley violates a condition of his release and the government obtains a judgment against them for the full amount of the bond.[5] The court instructed the co-

[5] The court imposes the unsecured bond under the "catch-all" provision in 18 U.S.C. § 3142(c)(1)(B)(xiv), and not under section 3142(c)(1)(B)(xii) (possible condition of bail bond with solvent sureties). For this reason, the court did not require the co-signors to be qualified as sureties under Fed. R. Crim. P. 46(e). For a more detailed analysis of the issue of individuals who lack significant financial assets but who nevertheless may serve as effective co-signors on an unsecured release bond, the court directs the district court's attention to *U.S. v. Powell*, 10-00292 CW (DMR) (Addendum to Release Order) (Docket No. 18, *aff'd,* Docket No. 41).

signers that they were executing a legally enforceable agreement and obligating themselves to pay the entire amount of money to the government if Mr. Mobley is non-compliant.

D. 3142(c) Conditions of Release

The court's inquiry with respect to the question of pretrial release is whether, considering the factors in section 3142(g), any conditions or combination of conditions in section 3142(c) will reasonably assure Mr. Mobley's appearance and the safety of the community.

The nature of the charge and Mr. Mobley's significant criminal record, including multiple failures to appear and giving false identification to a peace officer, as well as his attempt to hide from law enforcement in this case, raise significant concerns about whether he poses a risk of flight. However, his lifelong residency in the bay area, his lack of foreign travel, and the support of his family members and others weighs against finding that he is a risk of flight. Moreover, the risk of flight can be mitigated through the conditions of release. Specifically, Mr. Mobley will be confined to his grandmother's home in Sebastopol. His grandmother does not work and will be at home with him. She stated that she will drive him to his court appearances and, on penalty of being held in contempt of court, will report him to Pretrial Services if she observes him violating a condition of release. Mr. Mobley will also be electronically monitored. Finally, Mr. Mobley is aware that if he fails to appear in this case or violates any other condition of release, his grandmother may lose her house and his parents' wages may be garnished for years to come. Given these facts, the court finds that the government has not shown by a preponderance of the evidence that no condition can reasonably assure Mr. Mobley's appearance.

With respect to Mr. Mobley's danger to any person or to the community, the nature and seriousness of the offense, his substance abuse, and his misdemeanor conviction for inflicting corporal injury on his significant other, despite her current willingness to serve as a surety on his behalf, weigh in favor of finding that he is a danger. However, the weight of the evidence against Mr. Mobley is not as great as against his codefendants, he has never been convicted of a felony, and the rest of his misdemeanor convictions do not involve violence. His family members, case manager and teacher's favorable statements regarding his character, his completion of the RAMP job training program and work for the San Francisco Conservation Corps, as well as the

United States District Court
Northern District of California

Conservation Corps' continued willingness to offer him employment weigh against finding that he is a danger.

Under the conditions of release, Mr. Mobley will be confined to his grandmother's house in Sebastopol, and away from his associates in the bay area. He will be electronically monitored and will have no contact with his codefendants outside of the presence of counsel, and will have no contact with individuals known to him to be involved in illegal activity. He must not drink alcohol or use non-prescription drugs. His grandmother stated that she does not drink or do drugs and that she does not have these substances in her home. Mr. Mobley will be subject to alcohol and drug testing and counseling at the direction of Pretrial Services. Under these circumstances, the court finds that the government has not shown by clear and convincing evidence that Mr. Mobley poses a non-mitigable danger to the community.

III. CONCLUSION

Pretrial release should be denied only in rare circumstances, and any doubt about the propriety of release should be resolved in the defendant's favor. *Motamedi*, 767 F.2d at 1405. The court agrees with Pretrial Services' recommendation that Mr. Mobley should be released on conditions tailored to address the risks he presents.

Accordingly, the court orders Mr. Mobley released into the custody of his grandmother, Madeliene Mitchell, on a $150,000 bond secured by her property at 125 Montgomery Road, Sebastopol, California, and cosigned by his parents, Tonette Lynch and Otis Mobley, Sr. The property must be posted within 14 calendar days of the date of this order. If more time is needed, defendant shall seek a stipulation from the government to extend this time.

The court imposes the following conditions of release:

1. Defendant shall appear at all proceedings as ordered by the court and shall surrender for service of any sentence imposed.
2. Defendant shall not commit any federal, state, or local crime.
3. Defendant shall not harass, threaten, intimidate, injure, tamper with, or retaliate against any witness, victim, informant, juror, or officer of the court, or obstruct any criminal investigation.

United States District Court
Northern District of California

4. Defendant shall not travel outside of the Northern District of California.
5. Defendant shall report in person immediately upon release and thereafter as directed by Pretrial Services in San Francisco, California.
6. Defendant shall surrender all passports and visas to Pretrial Services and shall not apply for any passports or other travel documents.
7. Defendant shall not possess any firearm, destructive device or other dangerous weapon.
8. Defendant shall remain in the custody of custodian Madeliene Mitchell, at 125 Montgomery Road, Sebastopol, California.
9. Defendant shall participate in drug and alcohol counseling, and submit to drug and alcohol testing, at the discretion of Pretrial Services.
10. Defendant shall not use alcohol at all and shall not use or possession of any narcotic or other controlled substance without a legal prescription, including marijuana even with a prescription.
11. Defendant shall submit to a warrantless search of his/her person, place of residence and vehicle at the direction of Pretrial Services.
12. Defendant shall have no contact with any codefendant outside of the presence of counsel, or any individual known to him to be involved in illegal activity.
13. Defendant shall be subject to electronic monitoring. Defendant may leave home for the purpose of court, attorney and Pretrial Services visits, medical appointments for himself, and as preauthorized by Pretrial Services.

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Because the government intends to appeal this order to the assigned district judge, this release order is stayed for 24 hours from the time of its filing.

If Mr. Mobley is released, the parties shall appear before this court for a status hearing approximately 90 days from the date of this order. The parties shall contact the undersigned's courtroom deputy to schedule the status hearing.

IT IS SO ORDERED.

Dated: April 23, 2012

KANDIS A. WESTMORE
United States Magistrate Judge

United States District Court
Northern District of California

EXHIBIT 5

Pages 1 - 83

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Kandis A. Westmore, Magistrate Judge

United States of America,	)	No. CR12-00235 YGR
Plaintiff,	)	
vs.	)	
Otis Mobley.	)	
Defendant.	)	

Oakland, California
Wednesday, April 18, 2012

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND RECORDING

APPEARANCES:

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Wednesday, April 18, 2012 10:47 a.m.

THE CLERK: Calling Criminal Case CR-12-00235 YGR, United States versus Otis Mobley.

MR. MANN: Good morning, again, Your Honor. James Mann for the United States.

THE COURT: Good morning, Mr. Mann.

MR. MANN: Good morning.

MS. MORRIS: Good morning, Your Honor. Suzanne Morris appearing on behalf of Otis Mobley who is present and in custody.

THE COURT: Good morning, Ms. Morris and good morning, Mr. Mobley.

THE DEFENDANT: Good morning.

THE COURT: Okay. Just one second here. Okay.

So we're here today for your detention hearing, Mr. Mobley. This is the same incident in the case that we just went through with Mr. Khusar Mobley.

And so this is a presumption case, which means I'd like to hear from the defense to rebut the presumption that there are no conditions that could be imposed to ensure that Mr. Otis Mobley will appear as court as directed, and that he -- that he's not a danger to the community.

MS. MORRIS: Thank you. Well, Your Honor, I'd like to begin just by noting that I have read the Pretrial Services

report, and I agreed with Pretrial Services' recommendation that conditions can be set that will reasonably assure the safety of the community, and that Mr. Mobley is not a flight risk.

And I'll address both of those issues --

THE COURT: Okay.

MS. MORRIS: -- starting with flight risk.

THE COURT: Okay.

MS. MORRIS: Okay. So in addition to Mr. Mobley's immediate family, which lives in the area, Mr. Mobley has been in a long-term relationship for five and a half years with a woman named Meliza Contreras.

They have a four year-old child together, also named Otis Mobley, III. Otis Mobley is very committed to his son, to his girlfriend, to his family.

And I've provided the Court with letters, as did Mr. Mazer, in support of Mr. Mobley.

THE COURT: I saw those letters, yes.

MS. MORRIS: And what I find remarkable about the letters, and what I think is important to note from the letters, is not only does clearly have a very family supportive community, but when I read the comments that are made about Otis about his members, it is also clear that he is very much a loving and supportive member of that family.

And the reason that I think that's important in this

is because is of the of the recommendations is that Otis be released on bond, which should be signed by Madeliene Mitchell, who's agreed to post property and as well an appearance bond, which would be signed by Otis' parents.

Now, I think there are two thing -- his connections to his family and his personal commitment to his family and love for his family are relevant because number one, it indicates that he's got a significant network here. His support system is here. That -- that indicates that there's a disincentive for him to flee. He doesn't have significant ties outside of the district. He's never been outside the country. He's has no means to flee financially. He has no passport.

But secondarily, because Ms. Mitchell is willing to post -- in my conversations with her, she's indicated that she's willing to post the Sebastopol property and, if necessary, the Richmond property as well. And -- and my understanding, based on a Zillow estimate, that the Sebastopol property is worth 534,000. She --

THE COURT: This is from zillow.com?

MS. MORRIS: Zillow, yeah. So -- and Ms. Mitchell believes she owes 152,000 on that property, leaving equity in the amount of 382,000.

As to the Richmond property, the Zillow estimate suggests it's worth 167,000. There's a $70,000 loan on the

1 property, leaving equity of 97,000, so that -- if my math is
2 correct, the estimated -- and that's an estimate obviously --
3 equity in the property is around $479,000.
4 The reason that -- getting back to why Otis'
5 connection and love for his family is significant here is
6 because his entire immediate family is living in that property
7 in Richmond, and his grandmother's, you know, financial
8 stability is really rooted in those two properties.
9 So if he were to flee, and not only if he were to
10 flee, but if he were to commit another crime or do something
11 that would endanger the safety of the community, there would
12 be great financial ruin for his entire family.
13 **THE COURT:** That's where he lives right now, right?
14 **MS. MORRIS:** Yes.
15 **THE COURT:** Okay.
16 **MS. MORRIS:** So that -- that is why -- and then
17 secondarily, the recommendation -- one of the recommendations
18 from Pretrial Services is that Otis should be sent to live
19 with Madeliene Mitchell in Sebastopol on an ankle monitor.
20 And I wanted to address what came up at the last
21 hearing, which is that an ankle monitor can't prevent somebody
22 from going out and committing crime, and I think that's fair.
23 In and of itself, an ankle monitor can't prevent from that
24 happening.
25 But an ankle monitor puts the person who is being

monitored in a position where they're constantly being watched by the government. And the government, if they stray outside the -- the limits of what they're allowed to do, they can be picked up instantly.

And -- and not only that, all of a sudden that property bond that grandma signed that's securing his release, the house that his entire family lives in, his four siblings and his parents, all of that is in jeopardy.

So I think that provides very significant incentive for him to comply with the conditions of his release, to abide by all laws, and that is -- and that is a condition that I think can reasonably assure the safety of the community.

THE COURT: Let me just ask, does -- I don't see any information -- oh, here it is. Significant other is Meliza Contreras?

MS. MORRIS: Uh-huh. And Ms. Contreras, I understand, has also agreed to act as a surety. She's currently --

THE COURT: She lives outside the district?

MR. MANN: She -- well, she lives in Vallejo.

THE COURT: Which is outside the Northern District.

MR. MANN: It is, Your Honor, and there's also a restraining order restraining Mr. Mobley from being with Mr. Contreras because -- Ms. Contreras because of his domestic violence conviction in 2011.

1 **MS. MORRIS:** There -- there -- my understanding is
2 that there's a no harass order in place. That's -- I'm -- I'm
3 just saying she's stepped forward as another person who has
4 been willing to act as a surety. The viable --
5 **THE COURT:** Even though there's a restraining order
6 to protect her?
7 **MS. MORRIS:** Well, it's -- it's a no harass order
8 --
9 **THE COURT:** A no harass.
10 **MS. MORRIS:** -- which means that they can have
11 contact with one other. He just can't do anything that upset
12 or disturb her, and there hasn't been any problems between the
13 two of them since that order has been in place.
14 My understanding is that -- with respect to the
15 incident that gave rise to that restraining order -- Otis
16 appeared in court at arraignment and pled guilty without the
17 assistance of an attorney, so I don't really know about --
18 about that case --
19 **THE COURT:** Okay.
20 **MS. MORRIS:** -- and I don't believe I got any police
21 reports.
22 **MR. MANN:** I don't have any.
23 **MS. MORRIS:** But getting back to the additional
24 sureties, Otis's mother, Tonette Mobley, is and has been
25 gainfully employed. She works as a bus driver for the AC

Transit District. She had been doing that job for, I believe, 15 years. She's present here today.

Otis Mobley, Sr., has been employed a teacher's assistant at De Anza High School for, I believe, about the same amount of time. They don't have any property or assets to post, but they are willing to sign on an appearance bond.

I spoke before the hearing with Mr. Mann who indicated that he was concerned because the Pretrial Services report indicates that Otis Mobley, Sr., has no criminal history. And Mr. Mann indicated to me that, in fact, he has a conviction from 1990, which is a 22 year-old conviction, for apparently providing false identification to a police officer. I know nothing about that offense.

THE COURT: Okay.

MS. MORRIS: He also currently has a traffic warrant, apparently for failing to pay a ticket. He -- I think there was some confusion and some concern on the U.S. Attorney's part that Mr. Mann (sic) may not have been truthful with Pretrial Services in failing to disclose --

MR. MANN: No. Mr. Mann has always been truthful with Pretrial Services.

MS. MORRIS: Oh, I'm sorry.

THE COURT: I was going to say --

MS. MORRIS: Sorry. Mr. Mobley.

THE COURT: Okay.

MS. MORRIS: I think Mr. Mann was concerned that Mr. Mobley may have not been truthful with Pretrial when he was interviewed.

THE COURT: Okay.

MS. MORRIS: I spoke with Mr. Mobley, who indicated to me that he can't have a conversation with Pretrial Services about his criminal history at all, so the representation that his criminal history is completely clear didn't come from him.

THE COURT: Okay.

MS. MORRIS: I don't know who it came from. This just came up before the hearing, but I just wanted to raise that issue --

THE COURT: Okay.

MS. MORRIS: -- for the Court. In any event, it's a 22 year-old conviction and a traffic warrant, so I don't think it's something that should raise a great deal of concern for the Court in this case.

Additional factors that I think weigh in favor of concluding that Mr. Mobley can comply with the conditions of release, can abide by the rules and restrictions that are placed upon him if released to his grandmother is the performance that he has given while participating with the RAMP Program in San Francisco and the San Francisco Conservation Corps.

THE COURT: Yes. Can you tell me a little bit more

about those programs? I was curious about what his involvement was and what that really means in his life.

MS. MORRIS: Yeah. No. I'd be happy to tell you. So the RAMP Program is a program in San Francisco that's designed to, I think, give -- it's a -- it's an intensive job readiness program, and participants apply to join the RAMP Program. It's aimed at at-risk youth who are having trouble finding employment and getting stabilized.

Mr. Mobley never earned his GED, so it has a component, which if you graduate from RAMP, enables -- enables the young adults to work towards their GED while doing -- you know, also working and earning some income.

So he had to do the seven-week RAMP Program, which meant -- on a daily -- five days a week?

THE DEFENDANT: Uh-huh.

MS. MORRIS: Five day -- tell me the hours.

THE DEFENDANT: Five days like 7:30 to 4:30.

MS. MORRIS: So 7:30 to 4L30 intensive job training, and I did speak with his counselor Chase Torres at RAMP to confirm this.

THE COURT: And that program has already been completed by Mr. Mobley?

MS. MORRIS: He completed that program. He graduated. Apparently, he -- one of the letters that I submitted to the Court -- I believe it was the top letter --

is from the case manager at San Francisco Conservation Corps, who indicated that while working with RAMP, Otis received glowing reviews from the staff members at RAMP.

So he describes it as a -- as an "Intensive seven-week job readiness job training program. Otis received glowing recommendations from the RAMP staff where he worked on developing his professional skills and behavior, as well as starting to create his work portfolio, including a resume, cover letter, master application and hopes to achieve his career goals."

THE COURT: Now, when was this?

MS. MORRIS: He graduated from RAMP, I believe, in December of this year.

THE DEFENDANT: Last year.

MS. MORRIS: Last year, excuse me -- 2011. And then immediately -- RAMP has partnered with the San Francisco Conservation Corps. So once he graduated from RAMP, he was able to apply to begin working with the Conservation Corps.

And his schedule at the Conservation Corps is the same. He starts at 7:30 in the morning. He does two hours of school towards his GED, and then the remainder of the day is dedicated to working, and he is working in either carpentry, landscaping or recycling.

THE COURT: Is that something that he's currently a part of or --

MS. MORRIS: He was up until the time of his incarceration, and they've confirmed that if he's released, then they were willing to have him back. He has until May 2nd to return to the program.

Now, if -- if -- if it happens that the Court decides to release Mr. Mobley to Madeliene Mitchell in Petaluma, I think what I'd like to do is contact the program and see if they can defer -- defer terminating him for some time so that he can come back and continue to work -- work towards the GED because I -- I do think that would be obviously a benefit to him and a benefit to the community.

THE COURT: Okay. And I think I see the certificate of completion for the RAMP Academy that was submitted with the letter by Ms. Lynch-Collins. Was that his --

MS. MORRIS: A letter by Jeff Wolcot is the case manager at --

THE DEFENDANT: That letter is from my auntie.

MS. MORRIS: Oh, Ms. Collins's letter the is -- Ms. Collins is an aunt of --

THE COURT: Okay. Well --

MS. MORRIS: -- Mr. Mobley.

MS. MORRIS: -- I'm trying to figure out who -- okay. So this is just a copy of the certificate then?

MS. MORRIS: Yeah.

THE COURT: All right. And there -- I noticed that

there is a letter from Tom Offenbecher, and is that his employer -- current employer?

MS. MORRIS: And that letter -- is that letter --

THE COURT: Oh, no. That's San Francisco Conservation Corps. That's not his employer.

MS. MORRIS: Well, it's a little complicated.

THE COURT: Yeah.

MS. MORRIS: Conservation Corps and RAMP are partners, so once he graduated from RAMP, he was able to apply for the Conservation Corps Program, but they really worked together and are, to some extent, one in the same so --

THE COURT: Okay. Oh, yeah. And I see that -- where they've said that they're placing him on approved leave of absence. Okay .

THE COURT: Correct. Okay. So the employer letter is the one from --

MS. MORRIS: Tom --

THE COURT: -- Suzanne? No. That's you.

MS. MORRIS: Tom -- Tom Offenbecher is the letter confirming that he still has a place there.

THE COURT: Oh, okay. I was thinking that there was a job, aside from the Conservation Corps.

MS. MORRIS: The job is through the Conservation Corps.

THE COURT: Oh, okay.

1 **MS. MORRIS:** Yeah. So he does -- as long as --
2 **THE COURT:** So he works and also takes classes
3 towards obtaining his GED?
4 **MS. MORRIS:** Exactly. Exactly.
5 **THE COURT:** And how much longer does he have in that
6 program?
7 **MS. MORRIS:** Well, my understanding is that it's a
8 one to two year program, and I don't know -- I don't know what
9 determines how long the program lasts. I -- it would probably
10 be helpful to determine how close Otis is to obtaining that
11 GED. That -- that may determine the --
12 **THE COURT:** So --
13 **MS. MORRIS:** -- length of the program. What I'm
14 being told is he can stay as long as two years --
15 **THE COURT:** Okay.
16 **MS. MORRIS:** -- voluntarily.
17 **THE COURT:** And he's already been in that program
18 for how long?
19 **MS. MORRIS:** He's been in the Conservation Corps
20 since January, and he was doing the RAMP Program prior to
21 that, beginning in October.
22 **THE COURT:** Oh, okay. Since January of this year?
23 **MS. MORRIS:** That's correct. And again, I direct
24 the Court's attention to the letter by Jeff Wolcot who is a
25 master in social worker who's Otis's case manager, and he

speaks very highly of the work that Otis has done through the program.

THE COURT: Okay. Okay. Is there anything else you'd like to add regarding risk of flight?

MS. MORRIS: No.

THE COURT: Okay.

MS. MORRIS: I don't think so. As to danger?

THE COURT: I would like to have the Government first respond to the risk of flight issue.

MR. MANN: Yes, Your Honor. With respect to risk of flight, the question isn't is Mr. Mobley going to flee to some other country, come other jurisdiction. The question is, is he going to show up for other court appearances, and with respect to -- and this is a presumption case. It is presumed that he is not.

THE COURT: Right.

MR. MANN: And with respect to the conditions that are offered, with respect to having him reside at his grandmother's house, my concern is that his grandmother said to Pretrial Services that Mr. Mobley does not use drugs other than marijuana.

According to Mr. Mobley's own admissions, he gets buzzed daily on alcohol, has used marijuana twice per week since the age of 16, uses ecstasy once per week, used cocaine until 2011, and during at least one, eight to nine-month

period, used it on a daily basis, and last used methamphetamine in February of 2012.

So releasing him to the custody of his grandmother who -- who doesn't seem to really have a handle on -- on Mr. Mobley's drug use and, arguably, criminal history, I think is a problem.

With respect to -- I -- I -- I believe -- I've checked now on that restraining order. I believe that -- that Ms. Morris is correct. That it is -- I've -- I've not heard it called a no harass order, but there is -- he can contact Ms. Contreras. It's not a prevention from (inaudible). It's not a true restraining order as used here.

But the idea that -- that as late of 2011 he's been don't -- he's been -- he's done something to get a misdemeanor conviction for domestically abusing her, and that's what's resulted in the restraining order is, I think, a problem.

The other problem that comes here is, is, again, Ms. Contreras someone who apparently has been in a relationship with him for five years has also told Pretrial Services that Mr. Mobley doesn't use drugs. I won't repeat the drug use that he has.

And Ms. Contreras has been arrested with Mr. Mobley or detained with Mr. Mobley, and informed the police that when Mr. Mobley uses marijuana he gets crazy, so she's well aware of Mr. Mobley's drug use, I would -- I would argue, so I think

that's a problem.

And, again, the ankle monitor relies on Mr. Mobley's good faith. Yes, it may remind him that he needs to do things, but it relies on him having respect for the law, which evidenced by his criminal history, he does not. It relies upon him complying with the conditions of release. He's on probation when he committed this crime at issue, and he does not comply with the conditions of his release.

And so I think that releasing Mr. Mobley to the community relies so substantially on Mr. Mobley's good faith compliance with all of those conditions. I just don't think that's enough.

And again, Mr. Mobley has had this wonderful, loving, supportive family for his entire life, and yet finds himself where he is and finds himself with the criminal history that he finds himself with.

And with respect to the RAMP Program, Mr. Mobley was a member of the RAMP Program and participating in it when he committed the crime that's at issue. And the letter that is received from the case manager talks about Mr. Mobley's performance since December of 2011.

We're really talking about a three to four-month period that Mr. Mobley has been able to be observed by that case manager. I just don't think that's enough.

I'm prepared to talk about danger, but I understand

Your Honor wants to separate those two issues.

THE COURT: Right. I'd like to talk a little bit more about his history in terms of flight risk. You said that his history shows that he doesn't comply.

And what I see here is -- it looks like there might have been a failure to appear in 2008, related -- but it looks like it's related to something from 2007, so I'm not really clear about that. And false impersonation of another, so he was convicted giving a false ID to a peace officer in 2009.

MR. MANN: Yeah. And 2007, Your Honor.

THE COURT: And 2007?

MR. MANN: Yes.

THE COURT: Okay. There were convictions. Oh, I see. Okay. So that was four and five years ago.

MR. MANN: Correct, Your Honor.

THE COURT: Right. And then we have -- that looks like the same thing in 2009. There's no conviction, but it looks like there's something related to the 2008 offense for -- yeah, so I don't think that's a new thing for giving false information.

MR. MANN: Unless he failed to appear, Your Honor, then that --

THE COURT: Failure to appear. Okay. And then there's another 2010 failure to appear.

MR. MANN: Two --

THE COURT: This is traffic court.

MR. MANN: If you're speaking of the one from Martinez, it appears so and then --

THE COURT: Right.

MR. MANN: -- like there's one from Fairfield, also, on the bottom.

THE COURT: Also traffic -- driving with a suspended license.

MR. MANN: And he was convicted of that, so I'm positive that's a traffic issue anymore.

THE COURT: And then what else do we have? Okay. Then I see in 2011 -- oh, it's another traffic court, failure to appear.

MR. MANN: Two more, yes, Your Honor.

THE COURT: This is really starting to add up here, these failures to appear, and it really makes -- makes it difficult for the Defendant to rebut the presumption that he's a risk of flight. I also see another, looks like, bench warrant for failure to appear in January of this year in Napa.

MR. MANN: That's related to the domestic violence conviction, Your Honor.

THE COURT: Okay.

MR. MANN: He was sentenced after the -- on January 6th, so maybe he failed to appear for an appearance in Napa.

THE COURT: Okay. And then I'm very confused about

the last thing in the Pretrial Services report. It says 3/29 --

MR. MANN: That's this arrest, Your Honor.

THE COURT: -- 12 -- it's really 3/28, right?

MR. MANN: May have been that that's when it appears on the rap sheet, but that's -- that's irrelevant. That's this arrest.

THE COURT: And it says murder. This is not a murder case.

MR. MANN: I think they thought that Mr. Hutcherson was going to die at that point in time. Mr. Hutcherson was shot.

THE COURT: Oh. Oh, because he was shot when --

MR. MANN: That's my only guess.

THE COURT: Because Mr. Hutcherson was shot when he was fleeing?

MR. MANN: Correct.

THE COURT: That's right. Okay.

MR. MANN: I don't know that that's the case, but that would be my guest.

THE DEFENDANT: Right. Right. Okay.

MR. MANN: And then I would just note it talks about the failures to appear with respect to his driver's license here. Mr. Mobley was driving his car in this case when he arrived in the parking lot, so again, driving on a suspended

that has been revoked and suspended for failures to appear.

THE COURT: Okay.

MS. MORRIS: Your Honor, can I --

THE COURT: Looking at -- I just wanted to point out too --

MS. MORRIS: Okay.

THE COURT: -- thinking about this -- the circumstances with respect Otis Mobley are a bit different in this case than the circumstances that we were dealing with with Khusar.

MR. MANN: Yes, Your Honor.

THE COURT: He was just standing outside the vehicle the whole time this was going on, and it's not clear when I read the complaint, you know, sort of what his actual involvement was with the assault.

I know he's charged with aiding and abetting, but the facts are that he was just standing outside the vehicle, and 40 seconds later, after Khusar Mobley got into the car, then Khusar Mobley pulls the gun on the federal agent. So there's a little bit -- this is a little bit attenuated, you know --

MR. MANN: There's -- there's more --

THE COURT: -- connection.

MR. MANN: There's more though, Your Honor.

THE COURT: Okay.

1 **MR. MANN:** The reason everybody is there on that day
2 is Otis Mobley is the one who set up this deal. Otis Mobley
3 is the one who called the confidential informant, who set up -
4 - first it was the deal for two firearms, and then he changed
5 it for a deal for a grenade launcher.
6 Otis Mobley is the one that sent the text with the
7 picture of the grenade launcher and grenades that he was
8 willing to sell. Otis Mobley then drove the two other armed
9 Defendants to the scene. Mr. Mobley came up behind the car,
10 stood there with -- with one of the confidential informants
11 talking to him.
12 As ATF and even came rushing in to save the agent,
13 Mr. Mobley ran into a nearby field. He hid for quite some
14 time. Finally, what happened was a helicopter came,
15 basically, and found him, a CHP helicopter.
16 He was then flushed out, arrested by Richmond PD,
17 and stated to them, "Damn, I should have just stayed in the
18 bushes. You guys wouldn't have found me, huh?" So I guess
19 that too, Your Honor, would ask to Mr. Mobley's flight risk in
20 this case.
21 **THE COURT:** Indeed, it would.
22 Do you have any response to that?
23 **MS. MORRIS:** I do. I do. And I'd like to go back
24 to really the beginning of -- of Mr. Mann's comments --
25 **THE COURT:** Okay.

1 **MS. MORRIS:** -- because I think they all need to be
2 addressed.
3 **THE COURT:** Okay.
4 **MS. MORRIS:** Mr. Mann pointed out fairly that the
5 concern is not that Otis is going to flee the jurisdiction,
6 but that he just might not come to Court. And one of his
7 conditions of release, were he to be released to Madeliene
8 Mitchell, would be that she would be willing to act as a
9 custodian.
10 Madeliene Mitchell could assume, and we can inquire
11 of her whether she's willing to take this responsibility on,
12 but she could ensure and make a guarantee to the Court that
13 she would personally -- personally deliver Mr. Mobley to his
14 court appearances.
15 With respect to Mr. Mann's concerns -- the
16 Government's concerns about Otis using drugs or using alcohol
17 unbeknownst to Ms. Mitchell, I think that an appropriate
18 condition -- I mean, the condition that's opinion suggested by
19 Pretrial is that he not use alcohol excessively and not use
20 controlled substances, period, without a valid prescription.
21 I think it would be fair to impose a condition that he not use
22 alcohol or drugs.
23 **THE COURT:** What about drug and alcohol counseling -
24 -
25 **MS. MORRIS:** And that --

1 **THE COURT:** -- and drug testing?
2 **MS. MORRIS:** And that he attend drug and alcohol
3 counseling, and that he be intermittently tested by Pretrial
4 Services to ensure that he's complying with that condition. I
5 think that would mitigate any risk presented by the possible --
6 possible drug use.
7 Ms. Mitchell delivering him to Court would mitigate
8 against any risk that he would fail to appear just because he
9 decided to not show up.
10 I would also draw a distinction between the failures
11 to appear in these various misdemeanor cases, and the
12 possibility that he might not appear in this case. Without
13 diminishing the seriousness of any criminal offense, because
14 it -- it's all -- it's obviously all important, it is
15 conceivable that a young man who is cited to appear in court
16 may not take it as seriously, though he should, as he -- he
17 would take a release and an order to appear on a secured bond
18 signed by his various family members in a case of this
19 magnitude.
20 This is a very, very, very different scenario than
21 one in which somebody is cited by the police and told to come
22 to court in a week. People fail to appear all the time. They
23 forget their court date. They add themselves to calendar.
24 They have a failure to appear on their record.
25 So not knowing much about really what the history of

those specific failures do appear is, I do think there is a distinction between this case and those, and I think with the supervision and the -- and the very narrow supervision that; Pretrial Services envisions imposing, that -- that danger can be mitigated.

THE COURT: Okay.

MR. MANN: If I can just be heard on that, Your Honor?

THE COURT: Oh, sure, yes.

MR. MANN: Mr. Mobley was also on probation at the time he committed this crime at issue, so he's not complying with terms of his probation in that regard.

And second, the history we have for Mr. Mobley is that related to misdemeanors. If Mr. Mobley is not willing to come to court and appear for misdemeanors, we shouldn't be comfortable that he's going to be willing to appear for court when he's facing the substantial time of imprisonment that he's facing here.

THE COURT: What is this -- I see something in the Pretrial -- and I guess this is taking us into the danger category. I'm not really seeing the significant indication in his history of danger like we saw with Khusar Mobley, but I do see here that there's a note by Pretrial Services that the Richmond Police Department Gang Unit recognizes Mr. Mobley as a Deep-C gang member. What is that about?

1 **MS. MORRIS:** I don't know.
2 **THE COURT:** Okay.
3 **MS. MORRIS:** Mr. Mobley denies having any
4 involvement in Deep-C. I understand that that allegation has
5 been made. I can see on the booking sheet when he was
6 arrested in this underlying incident that he was charged with
7 a gang enhancement.
8 I'm not aware of, nor have I been provided with any
9 substantive evidence that anyone has any personal knowledge of
10 his involvement in this gang.
11 I did receive a number of reports from the
12 Government, which I have reviewed. There's an indication in
13 one of them that my -- if my -- I -- I will recall, to the
14 best of my ability, there is a belief by the Richmond Police
15 Department that he's involved, but I don't know to what extent
16 it's been substantiated.
17 I do think that it's worth noting that the
18 confidential informant in this case who is -- was involved in
19 setting up this -- setting up this --
20 **THE COURT:** Can you a little bit closer to the
21 mic --
22 **MS. MORRIS:** Sorry.
23 **THE COURT:** -- so I can hear you?
24 **MS. MORRIS:** Yeah. I -- I -- I would note that the
25 confidential informant in this case indicated to the

1 inspectors -- and I don't know if it was to ATF -- that he's
2 known Otis Mobley for years. I believe they were -- they went
3 to school together, and he made no mention of the fact that
4 Otis is involved in any kind of gang activity.
5 He made other allegations, which I would -- I would
6 challenge the reliability of, but I do think it's notable that
7 while making allegations about all of the various things that
8 Otis may -- may do, he didn't include an allegation that he's
9 a gang member.
10 **MR. MANN:** Your Honor, in that regard, I don't have
11 much more to add but just --
12 **THE COURT:** Okay.
13 **MR. MANN:** -- Your Honor made a comment about his
14 history not showing the violence. I want to note that he was
15 arrested in May of 2009 for homicide because he actually
16 killed someone. Mr. Mobley was arrested in May -- on May
17 19th, 2009, for killing someone in San Pablo.
18 **THE COURT:** I see that it -- there was no
19 prosecution of that so --
20 **MR. MANN:** There was no prosecution because it was a
21 weed deal gone awry. Both Mr. Mobley and the victim pulled
22 out firearms and Mr. Mobley shot him in the head, but Mr.
23 Mobley in a post-arrest interview admitted that he killed him.
24 So my assumption is there was no prosecution because
25 it was some sort of self-defense claim, I don't know. But I

have Mr. Mobley's -- and I produced it to defense counsel -- post-arrest statements, after he and Mr. Khusar Mobley, who, by the way, were doing this weed deal together, somewhat of a common theme here -- showed up to do this weed deal --

THE COURT: Okay.

MR. MANN: -- from -- from a guy in 2009. Apparently, this was somebody who Mr. Khusar Mobley had dealt marijuana with in the past, and this person had threatened Mr. Khusar Mobley in the past, but nevertheless, Khusar and Otis Mobley decided to go purchase some marijuana from him.

During the marijuana transaction, the victim acted crazy, pulled out a firearm from the back of his pants. Mr. Otis Mobley in his post-arrest confession accurately described it as a .38 type firearm and described where the victim was concealing it.

As Mr. Otis Mobley and Khusar Mobley were leaving the weed deal, the victim again threatened them with a gun, so the Defendant pulled out his own 9 millimeter handgun from his waistband and shot the victim twice. I would note that 9 millimeter casings were recovered from the scene.

Defendant admitted that he always carries a gun for protection at that time and stated that he threw the 9 millimeter into the bay.

Khusar Mobley's post-arrest confession corroborated exactly Otis Mobley's post-arrest confession in that case,

except for Khusar said that Otis Mobley traded the firearm for a .40 caliber firearm after the incident, and Otis Mobley said he threw the 9 millimeter in the bay, but I would note that Mr. Otis Mobley has actually killed someone previously.

And then I would like, if Your Honor would like --

THE COURT: Okay. I just --

MR. MANN: -- to walk through all the prior arrests.

THE COURT: Yeah. I mean, I'm just looking for the dangerous indications here, so --

MR. MANN: That's of --

THE COURT: I understand the -- I appreciate the details on that because I didn't have any information about what that was about, but you know, he wasn't prosecuted and he was released.

MR. MANN: That's correct, Your Honor.

THE COURT: And if there was some determination that it was self-defense, I mean, there are defenses to murder.

MR. MANN: Absolutely.

THE COURT: Okay.

MR. MANN: I'm not saying that Mr. Mobley --

THE COURT: Okay.

MR. MANN: -- necessarily should have convicted of murder.

THE COURT: Okay.

MR. MANN: I'm noting that he carried a loaded

firearm --

THE COURT: That is troubling, yes.

MR. MANN: -- to a marijuana transaction --

THE COURT: That part of it is definitely troubling, yes.

MR. MANN: -- and got into what was almost a gunfight with the victim and shot and killed them and said he always carries a firearm for protection.

THE COURT: Right. That, to me, is the most troubling part of what you just described to me.

MR. MANN: Yeah.

THE COURT: Yeah. Okay.

MS. MORRIS: Could I -- could I just add --

THE COURT: Yes.

MS. MORRIS: -- add something?

THE COURT: Yes.

MS. MORRIS: I appreciate the Court's -- I appreciate the Court's comments that this case was never charged. There are defenses to murder.

It's very troublesome to have to get into the details of what may or may not happened, armed with a redacted police report that's three years old.

THE COURT: Right.

MS. MORRIS: I expect that there was a lot of complicated and careful investigation that went on and that

went into the decision not to charge Mr. Mobley, and I respect law enforcement's decision in that respect.

But what I would note is, and what I think is -- is the -- the Court's concern is with respect to Mr. Mobley's comment that he carries a gun for self-protection, and I think it's important to note that this was a statement that was made three years ago allegedly.

And I think it's important to note that with -- with the multiple arrests that I've seen in his history, he has been detained in cars with several other individuals where there are firearms present, but he's also been detain -- but -- and -- detained and released, never charged. He's also been stopped and personally searched numerous times by the police and never been in possession of a firearm.

So I think it's important to recognize that this is -- and on this particular incident, there is no evidence that I've seen or heard that Mr. Mobley was in possession of a firearm on this date. And I think that's -- I think that's very significant to the Court's, you know, consideration as to whether or not he's a risk for that reason.

MR. MANN: Your Honor, I'd like to add more with respect to the other firearms arrests just to provide Your Honor --

THE COURT: Yes.

MR. MANN: -- with some color.

1 **THE COURT:** Please. Thank you.

2 **MR. MANN:** September 17th, 2011, the Defendant was

3 arrested or detained by the Pinole Police Department. He was

4 driving a car with his girlfriend, another woman and a three -

5 - and his three year-old son.

6 **THE COURT:** Wait. What's the date?

7 **MR. MANN:** September 17th, 2011.

8 **THE COURT:** Okay. That's the one that's labeled

9 carrying stolen loaded firearm?

10 **MR. MANN:** Correct, Your Honor.

11 **THE COURT:** Okay. Go ahead.

12 **MR. MANN:** In that case he was driving again on a

13 suspended license. When asked by the police if he'd ever been

14 arrested before, Defendant lied and stated that he'd only been

15 arrested for lying to a police officer in the past, which Your

16 Honor can see is not true.

17 In the center console of the car, the officer

18 recovered a stolen, loaded .40 caliber semiautomatic handgun.

19 Defendant denied that the gun belonged to him and stated that,

20 "He had not really opinion around guns in his past," which, of

21 course, is not true either.

22 As you can see, he wasn't prosecuted, so I'm merely

23 providing Your Honor with the facts from the police report.

24 **THE COURT:** Right.

25 **MS. MORRIS:** And -- and -- and I would just note

that there were several other people in the car, and I believe -- because I did read through all these reports -- I believe in each of these instances the firearms were tested, checked for DNA, checked for fingerprints presumably, and clearly there was never a match with Mr. Mobley because he was never prosecuted and he was never convicted.

MR. MANN: I don't know about the testing, the DNA and forensic testing is -- is -- happened in some of them, not all of them but --

MS. MORRIS: But I -- I do think there's a problem with relying on cases which --

THE COURT: Oh, absolutely.

MS. MORRIS: -- were never prosecuted and which never resulted in convictions.

THE COURT: I definitely wouldn't give them the same kind of weight that I would give a conviction or --

MR. MANN: And I'm not asking Your Honor to.

THE COURT: Yeah. Yeah. But it's just nice to know --

MR. MANN: I'm just pointing out all of these --

THE COURT: -- the history.

MR. MANN: -- arrests bring some concern. August 21 -- 20 -- August 21st, 2010, the Defendant is arrested by the Richmond Police Department with a firearm in the car.

In this case, again, lots of people in the car. The

Defendant is the rear passenger behind the driver of the car, got stopped for a traffic violation, a loaded semiautomatic handgun with an extended magazine was recovered from underneath the driver's seat, so the seat right in front of Mr. Mobley.

At this -- during this arrest, the Defendant resisted the officers' attempts to arrest him. He stated to one officer, "Man, take these cuffs off and I'll show you what's up." He yelled at another officer, "Fuck you, bitch. You ain't got shit."

Defendant was both drunk and on probation at the time of this arrest. Again, no charges were filed.

June 27th, 2010, the Defendant was arrested and later convicted of public intoxication. During this arrest, he was contacted while drunk and leaving a bar. He yelled about wanting to fight someone in the bar and resisted his friends' efforts to get him to leave.

When the offices attempted to arrest him, he pulled away and resisted their attempts to handcuff him until he was finally taken down, and that's when he stopped resting -- or resisting.

June 5th, 2010, the Defendant was arrested in a car again with a firearm by the Richmond Police Department. Defendant was the passenger in a car that was stopped for a traffic violation.

When the car was being pulled over, the officer saw the Defendant making movements that caused the officer to be concerned the confident was concealing something.

A Glock handgun with a laser sight was recovered from beneath -- a laser sight or a laser of some kind was recovered from beneath the Defendant's seat. That one was not loaded at the time.

I've already provided Your Honor really with the -- with the details --

THE COURT: Right.

MR. MANN: -- about the homicide arrest. I do have some --

THE COURT: We don't have anything, though, where he was charged and convicted regarding any of this type of violence, other than --

MR. MANN: I don't, Your Honor. I mean, I --

THE COURT: -- the instant offense, right?

MR. MANN: No, but his admission -- I mean, there isn't a doubt that he shot the man and killed him in -- in May of 2009. The Defendant admitted it himself. Khusar Mobley admitted it. That's not in doubt.

THE COURT: Okay.

MR. MANN: Then in -- I'd go back to 2005 here again with respect to the firearms. Defendant in that case -- this is a September 2005 case where the Defendant admitted that he

1 possessed a loaded semiautomatic handgun at school. He stated
2 that he found the handgun on campus when he went to go spoke
3 some weed behind the portables.
4 And during that arrest, he previously admitted to
5 bringing a firearm to school when he had a problem with
6 someone in 2004. I believe he identified that firearm as a
7 .22 caliber.
8 So again, yes, none of this resulted in convictions,
9 but Defendant is repeatedly arrested around firearms and in at
10 least in May 2009 shot someone in the head with a firearm --
11 **MS. MORRIS:** If I --
12 **MR. MANN:** -- and -- and that is a tremendous issue
13 with respect to danger, and Defendant has to overcome the
14 presumption. He's presumed to be a danger in this case.
15 **THE COURT:** Do you have anything else to add about
16 that?
17 **MS. MORRIS:** I do. You know, I think that the
18 juvenile arrest is notable for more than just the fact that
19 there was a firearm involved.
20 What actually -- according to the police report,
21 which again, I'm -- I think it's -- I think it's really
22 improper for us to be relying on police reports --
23 **THE COURT:** Right.
24 **MS. MORRIS:** -- and statements by witnesses that
25 can't be cross-examined and aren't here. All we have is an --

1 **THE COURT:** I agree.
2 **MS. MORRIS:** -- ultimate conclusion of --
3 **THE COURT:** Yes.
4 **MS. MORRIS:** -- law enforcement.
5 **THE COURT:** Right. Right.
6 **MR. MANN:** Your Honor, the Government is --
7 **MS. MORRIS:** However --
8 **MR. MANN:** -- ready to proceed by proffer. That's
9 what the statute allows and the Government --
10 **THE COURT:** Okay.
11 **MR. MANN:** -- is proceeding by proffer.
12 **THE COURT:** I -- I understand that. Yeah.
13 **MS. MORRIS:** However, in that -- in that case, the
14 police reports indicates that one student saw another student
15 with a firearm. The student that was identified was not
16 Khusar, but another one of Mr. Mobley's cousins.
17 Mr. Mobley's cousin was tracked down and found in
18 class with a gun tucked into his waistband. He was detained
19 and juvenile proceedings ensued.
20 Mr. Mobley, several days after the fact, went into -
21 - went to the authorities and said, "I want to tell you what
22 happened with the gun. We found that gun, or I found that gun
23 when we were out in the field hidden under this container.
24 And I gave it to my cousin and told him to put it in his
25 locker." And that was his involvement with the firearm.

1 It is not quite the same picture that's painted of -
2 - not -- not to diminish that firearms and schools clearly
3 don't mix and they should never be there, but I -- I have to -
4 - I have to say that there -- there is a really unfortunate
5 reality that we all need to acknowledge in Richmond, in which
6 a lot of young people are walking around with firearms.
7 And a lot of young people are doing it because maybe
8 they're aggressive and they're violent, or maybe they're
9 afraid and they're arming themselves to defend themselves, or
10 maybe they're just so young they're not making good decisions
11 at all.
12 But in this particular case, Otis took complete
13 responsibility for something that he easily could have just
14 avoided, and he was penalized for it. And I think that he
15 should be commended for -- for coming forward and saying, "I
16 was responsible for this, in part," and that's what he did.
17 And that's just further indication that he is -- his
18 -- his character is such that he's not one when really in
19 trouble to wake away. Yes, he's been irresponsible about
20 responding to his misdemeanor citations to appear, but with
21 the proper supervision and with the proper limits placed on
22 his freedom while he's on release and with the promise of his
23 grandmother to be a custodian and to be a role model, and with
24 the added factor of him being removed from Richmond out of an
25 urban environment where these things are liable to come up

time and time again.

He'll be in a safer place. The community will be in a safer place. If he doesn't abide by the conditions of his release, if he fails a drug test, if he goes somewhere he's not supposed to go and the ankle monitor notifies Pretrial, he can be remanded.

THE COURT: So the grandmother lives in -- is it Petaluma or Sebastopol? I heard both.

MS. MORRIS: Petaluma.

THE COURT: Petaluma.

MS. MITCHELL: Sebastopol.

THE DEFENDANT: Sebastopol.

MS. MORRIS: Sorry.

THE COURT: Sebastopol. Okay. And is that in the district of --

MR. MANN: No, Your Honor.

THE COURT: That's outside the district?

MR. MANN: Yes.

MR. ELDER: It's in the district.

THE COURT: It is in the district?

MR. ELDER: It's in Sonoma County.

THE COURT: It's in Sonoma County.

MR. MANN: Sonoma is not in this district, is it?

MS. MORRIS: In the Northern District of California.

MR. MANN: No. I'm sorry. I'm sorry. I'm sorry.

It's not in the -- I apologize. It is in the district, yes.

THE COURT: Okay.

MR. MANN: I apologize. I was thinking of Oakland venue versus San Francisco.

THE COURT: Right. Okay. All right. I take this very seriously, you know, making this decision, and so I'd like to, you know, just take a few minutes.

Maybe we can just take a brief recess. We've all been sitting here for a really long time anyway, so maybe people can get up and stretch while I consider everything that's been presented here and try to come up with a decision that I feel comfortable with.

MR. MANN: Thank you, Your Honor.

THE COURT: Okay.

THE CLERK: Please rise.

(Whereupon there was a recess in the proceedings from 11:37 a.m. until 12:17 p.m.)

THE CLERK: Recalling criminal case CR-12-0023, United States versus Otis Mobley.

THE COURT: Hopefully, we'll be out of here soon.

THE CLERK: Please restate your appearance, counsel.

MS. MORRIS: Suzanne Morris appearing for Otis Mobley, who is present in custody.

THE COURT: Hello again.

MR. MANN: And James Mann for the United States.

THE COURT: Hello again. Okay. I took some time to consider the proffers of the Government and of the defense, and I feel that I really need to hear from the grandmother and the parents of Mr. Mobley.

So if I could please have Madeliene Mitchell come forward and Otis Mobley, Sr. and Tonette Lynch. Please, come forward. Okay. Everybody up? Okay.

So what I'd like for you to do is for each of you one at a time to state in the mic your name and address.

MS. MITCHELL: My name is Madeliene Mitchell. I'm the parental grandmother of Otis Mobley. My address is 125 Montgomery Road, Sebastopol, California, 95472.

THE COURT: Thank you.

MS. MITCHELL: Okay.

MS. LYNCH: Hi. My name is Tonette Elizabeth Lynch, and my home address is 3123 Alta Mira Drive. That's in Richmond, California, 94806.

THE COURT: Thank you.

MR. MOBLEY: Hi. I'm Otis' father, and my name -- Otis Mobley's father. My address is 3123 Alta Mira Drive, Richmond, California.

THE COURT: And you are Otis Mobley, Sr.?

MR. MOBLEY: Senior, yes.

THE COURT: Okay. Okay. So first, I'd like to talk to Ms. Mitchell, if you could step forward.

I understand that you are the paternal grandmother, and that you've indicated you're willing to serve as a surety on your grandson's behalf by posting your real property. You have two properties that you own, one in Richmond and one in Sebastopol?

MS. MITCHELL: Yes, Your Honor.

THE COURT: All right. I believe that the one in Sebastopol has been described as having 300 and some odd thousand dollars in equity; is that correct?

MS. MITCHELL: Yeah.

MR. MOBLEY: Well --

THE COURT: $382,000?

MS. MORRIS: That would be based on the Zillow estimate.

THE COURT: That's just an estimate.

MS. MORRIS: Yeah.

THE COURT: Right. Do you understand what this case is about? Have you heard when the Government spoke what kind of a serious case your grandson is involved in here?

MS. MITCHELL: Yes, I have, Your Honor.

THE COURT: So -- and you heard the kinds of penalties that he's facing if he's convicted in this case?

MS. MITCHELL: Yes.

THE COURT: I'm just wondering if you understand what it means to post your real property to secure your

1 grandson's appearance in this case and compliance with the
2 other -- any other conditions that the Court might impose, as
3 well as, you know, assuring that he's not going to be a danger
4 to the community.
5 So I'm wondering if you fully understand the
6 implications of that because you could actually end up having
7 a forfeiture of your property if -- if he fails to comply. Do
8 you understand that?
9 **MS. MITCHELL:** Yes, Your Honor. I completely
10 understand, and I stand by him with the consequences. I don't
11 believe that he will run or anything. I trust him to that
12 end, so I stand firm that I will put my property up, and I
13 will (Inaudible - - due to simultaneous colloquy.)
14 **THE COURT:** I'm just curious to know sort of why
15 you're willing to do it, if you could just sort of tell me
16 briefly. You know, why is it that you -- after everything
17 you've heard and, you know, his history of -- there are a few
18 failures to appear in his traffic cases, and he had been
19 convicted of, you know, giving false ID to the to a police
20 officer. I don't know if that was three or four years ago,
21 five years ago.
22 But I just wanted to find out from you, based on
23 your relationship with him, why is it that you would want to
24 risk losing your home to ensure that he's going to comply?
25 **MS. MITCHELL:** I don't feel that I'm going to lose

my home. I'm going to commit to making sure he's at every appointment that he needs to be and for every appearance.

THE COURT: Are you going to personally take him to those appointments?

MS. MITCHELL: I will personally take him.

THE COURT: So are you also willing to be appointed his third party custodian?

MS. MITCHELL: I'm totally willing.

THE COURT: Okay. So do you work?

MS. MITCHELL: No, I'm retired.

THE COURT: Okay. So you would be home --

MS. MITCHELL: I would be home with him.

THE COURT: -- all the time?

MS. MITCHELL: Yes.

THE COURT: So in addition to posting your property, you're willing to be his custodian, which -- just to let you know what the responsibilities of a custodian are -- is you would be promising to help supervise him, meeting with whatever conditions if -- if he was to be released, whatever the that release would be.

If you learned that he was violating any of those terms, you would be obligated as the custodian to call Pretrial Services and report it. You would have to basically turn him in.

MS. MITCHELL: Absolutely.

THE COURT: And you know, sometimes family members don't want to turn in their loved ones. So you'd have to think within yourself if you saw him looking like he was on drugs or hanging out with codefendants or, you know, doing anything, having a firearm or any of the other things that would be a violation of conditions of release that you would immediately call Pretrial Services and report it.

MS. MITCHELL: I have no problem with that. I don't condone wrongdoing. I have taught Otis, my sons and daughters against disobeying the law from the time they were little. And if he would do any of those things, I would have no problem turning him in.

THE COURT: And so you realize that even though -- in spite of your teachings, he still has done -- well, he's accused of doing these things, and his criminal history is still what it is?

MS. MITCHELL: I understand --

THE COURT: Right?

MS. MITCHELL: -- that.

THE COURT: Okay.

MS. MITCHELL: But I also believe in a second chance.

THE COURT: Okay. If you -- if for some reason you -- you know, you did not report him to Pretrial Services when

he violates any of the decisions, it would be considered contempt of court, so breaking the promise to the Court is what that means. And if that happened, you could face civil or criminal action against you --

MS. MITCHELL: I understand.

THE COURT: -- because it's a very serious promise; you understand that?

MS. MITCHELL: I understand that.

THE COURT: Okay. How much time have you spent with your grandson in his life?

MS. MITCHELL: I have spent most of his life with him, with the exception of the time that I moved to Sebastopol in 1994. There was a distance, and I was commuting from the San Francisco International Airport back and forth to Sebastopol, but we still had family gathering, birthday celebrations and other cousin celebrations, so we were at least together once a week or several times a month.

THE COURT: Okay. Did you hear when the Government noted that you believed that your grandson only engaged in the use of marijuana, when in fact he admitted using multiple other drugs?

MS. MITCHELL: I heard that.

THE COURT: Did you hear that?

MS. MITCHELL: And all I know about --

THE COURT: How did you feel about that?

MS. MITCHELL: -- is the marijuana. And if he's done other things, I had no knowledge of it.

THE COURT: Okay.

MS. MITCHELL: But he has talked to me and told -- and assured me that he wants to go on and live the life God has called him to live, so I believe him, and I'm willing to stand by him.

THE COURT: Okay. So the bond -- proposed bond is $100,000, given the estimate of the equity in the property, I think it could be that much or maybe a little more.

I don't know if the Government has anything to say about that, other than the fact that I know you don't want him released, but when we're talking about the amount of the bond -- yeah.

MR. MANN: I think 100, $150,000 is fine.

THE COURT: Yeah.

MR. MANN: 150,000 is half.

THE COURT: 150 might be about half --

MR. MANN: Yeah.

THE COURT: -- since there's an estimate, so I'm thinking about making it $150,000 bond to give you strong incentive to make sure that you're supervising him.

MS. MITCHELL: I understand.

THE COURT: Okay. And is there any other comment that you would like to make on his behalf? And this is a very

close call for me. I don't believe this is the same case as we were looking at with his cousin, Khusar.

I don't believe this -- it's the same incident, but the factors are different in his case, but it's still a serious problem. It's still a serious charge --

MS. MITCHELL: I agree.

THE COURT: -- or charges that we're looking at here. And so when somebody is facing those kind of charges, it can provide them with an incentive to flee because they've never had to face anything like that before.

And if he didn't show up for, you know, a traffic court matter, you know, there's, you know, reason for us to be concerned that he might not show up for something this serious. Although, the defense counsel's distinctions were well noted.

But I just wanted to make sure that you were fully aware and understanding what you're doing here -- what you're going to do.

MS. MITCHELL: Yes, I am, Your Honor. I'm fully aware.

THE COURT: Okay. And do you have anything you want to say just in general about your grandson?

MS. MITCHELL: My grandson, as I know him, is a kind, loving and spiritual person. I know he's veered off the track, and I have all confidence that he will get back on

track because he has a foundation. He had the same teachings I had, my children have had. And people make mistakes, but they can correct them.

I'm -- I'm certain that with the love for his child that -- he was working on getting to the point where he could take care of his child and his girlfriend and get married, and that's what I've been urging him to do throughout all of his life since he -- he had the baby five years ago, so he's convinced me that that is the only goal for him is moving onward --

THE COURT: Okay.

MS. MITCHELL: -- and upward.

THE COURT: Okay. Mr. Mobley, you've heard what your grandmother has to say. Do you love your grandmother?

THE DEFENDANT: Yes, I do.

THE COURT: Would you want to have anything happen to her -- I mean, she could actually lose her home. Do you understand what she's putting on the line for you, that she's trusting you?

THE DEFENDANT: Yes, I do.

THE COURT: So how do you feel about that? I mean, I really want to know.

THE DEFENDANT: I feel loved. I feel loved and I appreciate it. And I feel that I'm going to do my best and try my hardest, and I will do my hardest, not try.

THE COURT: And you wouldn't want to be responsible for your grandmother at this stage of her life --

THE DEFENDANT: No, not at all.

THE COURT: -- possibly losing her house?

THE DEFENDANT: No, not at all. I won't be (inaudible).

THE COURT: Okay. Thank you, Ms. Mitchell.

MS. MITCHELL: Thank you.

THE COURT: Next I'd like to hear from Tonette Lynch. Ms. Lynch, you are Otis Mobley's mother?

MS. LYNCH: Yes, I am.

THE COURT: Okay. And you have indicated that you're willing to serve as a surety as well. You have no property or cash to post, but you're willing to serve as a surety to guarantee his appearance?

MS. LYNCH: Yes.

THE COURT: Okay. And you currently are a bus operator for AC Transit?

MS. LYNCH: Yes, that's correct.

THE COURT: How long have you been employed there?

MS. LYNCH: Fifteen years.

THE COURT: Fifteen years?

MS. LYNCH: Uh-huh.

THE COURT: Okay. so what I wanted to advise you about when you're offering to do this is you've heard that

it's going to be $150,000 bond. That's a lot of money --

MS. LYNCH: Yes, it is.

THE COURT: -- for most people, and for somebody making $4,000 a month, you know, that's a whole lot of money. And so even though you're not posting any property, if your son failed to comply with any of the conditions or failed to appear, the Government could go after you personally and get a judgment against you for the full amount --

MS. LYNCH: Okay.

THE COURT: -- of the bond, and so even though -- you know, some people might say, well, I don't have $150,000. You may not have it today, but you're going to --

MS. LYNCH: (Inaudible - - due to simultaneous colloquy.)

THE COURT: You could face having a judgment against you. And if you had a judgment against you that would stay recorded against you for a very long time, and you could have your wages garnished so every paycheck that you got could be less as a result, substantially reduced. Do you understand that?

MS. LYNCH: I do.

THE COURT: And you still are willing to serve --

MS. LYNCH: I'm willing, yes.

THE COURT: -- as a surety?

MS. LYNCH: Yes, I am.

THE COURT: Could you tell me have you been living with your son continuously?

MS. LYNCH: He's been living with me, yes --

THE COURT: Okay.

MS. LYNCH: -- ever since birth.

THE COURT: At the Richmond location?

MS. LYNCH: At the Richmond location.

THE COURT: Okay. And you've heard everything here today as well?

MS. LYNCH: I did.

THE COURT: I mean, you understand the seriousness of this offense?

MS. LYNCH: Yes.

THE COURT: You understand the possible time he's facing if he's convicted, correct?

MS. LYNCH: Yes.

THE COURT: Yes. But you're still willing to take this risk for him?

MS. LYNCH: Yes, I am.

THE COURT: And I would like it if you could just tell me why you're willing to do that because he's been living with you the -- all this time --

MS. LYNCH: Uh-huh.

THE COURT: -- while he's doing these things, and you -- you've -- you've heard his criminal history now.

1 **MS. LYNCH:** I have, and I just think, like his
2 grandmother said, everyone deserves a second chance. And
3 Otis, being my first born, he's a relevantly good kid, he
4 really is, and -- and he's been to some good schools, so he
5 knows better.
6 And I think that with him having his son, it is
7 really -- it would be really better if he can raise his son,
8 help raise his son, you know, other than having me to have to
9 do it if he's not there. So I just look at it like he can
10 help me, you know, try to better his life by raising his son
11 and just --
12 **THE COURT:** Is that what you're having to do, raise
13 his son?
14 **MS. LYNCH:** Well, if he's -- well, I go -- since
15 he's been gone, I've been helping his mom out, you know, with
16 watching his son and whatnot, yes.
17 **THE COURT:** Okay. But his son -- his son lives with
18 --
19 **MS. LYNCH:** His mom.
20 **THE COURT:** -- the mother in Vallejo, right?
21 **MS. LYNCH:** Uh-huh.
22 **THE COURT:** Yeah. Good. Okay. I think that's all
23 I need from you. Thank you.
24 **MS. LYNCH:** Thank you.
25 **THE COURT:** Then lastly, we'll have Mr. Otis Mobley,

Sr.

MR. MOBLEY: Yes.

THE COURT: You are the father of Otis Mobley?

MR. MOBLEY: Yes, I am.

THE COURT: Okay. You've also indicated that you're willing to serve as a surety on your son's behalf?

MR. MOBLEY: Yes.

THE COURT: You also have no property or cash that you can post?

MR. MOBLEY: No.

THE COURT: So you'd be signing on the $150,000 bond as well, and you've heard all of the things that I've just said --

MR. MOBLEY: Yes.

THE COURT: -- so I don't have to repeat them, but you understand --

MR. MOBLEY: Yes.

THE COURT: -- the substantial risk that you're taking by signing on such a bond?

MR. MOBLEY: I do.

THE COURT: You're a behavioral technician?

MR. MOBLEY: Yes, at --

THE COURT: At West Contra Costa County Unified School District?

MR. MOBLEY: Yes, ma'am.

THE COURT: Where you earn $2,300 per month?

MR. MOBLEY: Yes.

THE COURT: Okay. How long have you been there?

MR. MOBLEY: I've been with the district for 15, going on 16 years.

THE COURT: Okay. So you understand, as well, that you -- you know, you can face getting a judgment against you and having your wages garnished as well if your son fails to comply?

MR. MOBLEY: Yes.

THE COURT: So I'm wondering if you could just make a brief statement as well about why you're willing to take this risk?

MR. MOBLEY: Well, I'm willing to take this risk because I know my son has, you know, strayed and, you know, done things he has, you know, no business doing, but at is same time, he's a good kid, has a good heart and he loves his family.

He loves his son and, you know, he does a good job with his son when he's with them. And that's what I, you know, really would love to see because I, you know, raised him, and I would like to see him raising his son instead of him, you know, being separated so --

THE COURT: How do you feel about the fact that you've raised him and he's got this criminal history that

we're looking at here today?

MR. MOBLEY: Well, I don't feel good about the criminal -- the criminal part of it because that's not the way I was raised and that's not the way I raised him, but I can't speak on the -- or that part of things.

I know that the city we live in -- basically, I heard a couple statements made by the Prosecutor, as far as Richmond Police saying something about this gang activity and stuff.

Well, I've been working with this -- you know, in the school district for all these years, and what I've come to learn is that, you know, they -- they say -- they call different areas different things. If you live in this area or if you, you know, were from that area, they say you're from there.

And these kids, what they're doing nowadays is -- you know, they got North Richmond, Central, Easter Hill, different little sections that all go against each other, you know, and so that's basically what it is. It's not a gang.

And, you know, Otis, you know, he's a good kid. He just need the direction, and he's been doing that this -- these last -- I say it was like five, six months he's been really, you know, taking responsibility for hisself and showing up to the class every day, and, you know, he pass -- he got his certificate.

He went to the Conservation Corps so, you know, he was on the right track. It's just, you know, he got to make the right decisions --

THE COURT: Okay.

MR. MOBLEY: -- in life.

THE COURT: And you're willing to stake your financial future on the fact that he's going to make the right decisions from now on, or at least --

MR. MOBLEY: In this case --

THE COURT: -- in regards to this Court's order?

MR. MOBLEY: In this case, yes, ma'am.

THE COURT: Okay. Thank you very much.

MS. MORRIS: If I could just clarify something?

THE COURT: Uh-huh.

MS. MORRIS: Mr. Mobley, when he was explaining the various -- these neighborhood -- what sound like neighborhood gangs, I just wanted to clarify because we spoke about this earlier, and Otis does not live in the neighborhood where Deep-C, the gang he's been alleged to have been involved with.

THE COURT: Oh, okay.

MS. MORRIS: He's not involved in the gang. He doesn't live in that neighborhood; is that correct?

MR. MOBLEY: That's right, yeah.

THE COURT: All right.

MS. MORRIS: Thank you.

1 **THE COURT:** Okay. I believe I've listened to a lot
2 of information in this case. Without reiterating every single
3 thing that we've talked about today, I believe that, although
4 Mr. Mobley's history is not the greatest and that he has
5 failed to appear a couple of times and the incident involved
6 here is very serious, The weight of the evidence is not the
7 most important thing for me to consider here, but it is a
8 factor.
9 I believe that -- although, there's some risk of
10 flight, I believe that the conditions that are set forth in
11 the Pretrial Services report with some minor edits would
12 mitigate the risk of flight, especially in light of having him
13 be in the custody of his grandmother outside of the Richmond
14 community in Sebastopol, where he would still be within the
15 Northern District, and the that that his grandmother does not
16 work and she could be there with him and has represented that
17 she would be his custodian and make sure that -- personally
18 that she drove him to his appearances. And the fact that he
19 would have electronic monitoring. That would significantly
20 limit his movements.
21 That there are conditions -- these kinds of
22 conditions could address the concerns for him being a flight
23 risk.
24 And as far as him being a danger to the community, I
25 think that Mr. Mobley seems to have some problem with drugs

1 and alcohol, and I believe he's just made some bad choices and
2 -- you know, I heard about the incidents where, you know, he
3 was arrested and not charged, so I did take those factors into
4 consideration, but you know, they are what they are. They're
5 not dispositive, necessarily, as far as my decision goes.
6 But I think that there are conditions, including,
7 you know, the electronic monitoring, including preventing him
8 from possessing any firearms and taking him outside of the
9 Richmond element, as well as having him participate in drug
10 and alcohol counseling, drug testing at the discretion of
11 Pretrial Services, and preventing him from using alcohol or
12 any drugs, and I mean alcohol at all.
13 Usually it says not to alcohol to excess, but I
14 think when we're dealing with people who might have substance
15 abuse problems, they don't need to be using any kind of
16 substance, including alcohol.
17 So I think that these kinds of conditions can
18 address the danger -- any danger that Mr. Mobley presents to
19 the community.
20 So Mr. Mobley, if I release you to your
21 grandmother's custody as custodian, and I allow her to, you
22 know, post her property to secure this bond and have your
23 parents put their financial futures on the line, you know, for
24 this $150,000 bond, I'm taking a big chance on letting you
25 out. Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: It's -- it's a real burden to -- to make this decision in this type of case where, you know, it can go either way, and so I'm taking a chance. Your grandmother is taking a chance. Your parents are taking a chance on you.

I'm going to tell you, if I do this, and you do anything at all to violate the conditions, the next time you see me I will not be receptive to anything you have to say. Do you understand that?

THE DEFENDANT: I surely do, Your Honor.

THE COURT: And also, you know, not only would they be signing on the bond and risking property and future income, you would have to sign the bond as well, and you must abide by the conditions that are set forth in that bond.

And if you don't, your release would be revoked immediately, and you'd be placed back into custody. You would -- you could be found in contempt of court, which carries another set of penalties, and the Government could also come after you for the amount of the bond, and then you could also be charged with a separate crime of bail jumping. Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: So I'm going to take a chance. I really am, and I -- you know, don't make a fool out of me.

THE DEFENDANT: I won't.

1 **THE COURT:** Don't make a fool out of your parents
2 and your grandmother and don't mess up their financial
3 futures. Don't make your grandmother lose her home because
4 you make another stupid decision. Are you promising me that
5 right now?
6 **THE DEFENDANT:** I promise you.
7 **THE COURT:** Okay. So what I -- what I would like to
8 do is -- Ms. Garcia, have you been taking note on the bond?
9 **THE CLERK:** Yes, Your Honor.
10 **THE COURT:** Okay. I would like to release Mr. Otis
11 Mobley on this bond, on a secured bond with the property in
12 Sebastopol securing the bond in the amount of $150,000 and
13 with his mother and father also signing on the bond as
14 personal sureties and with the conditions that I just
15 mentioned.
16 **MR. MANN:** And, Your Honor, with respect to
17 electronic monitoring, there will need to be an idea as to
18 when the Defendant is allowed to come and go from the house on
19 electronic monitoring.
20 **THE COURT:** Yes. So for electronic monitoring, you
21 would only be able to leave your home for court, legal
22 appointments to meet with your attorney, and any medical
23 appointments that you might have.
24 **MS. MORRIS:** Mr. Mobley had a question. His
25 grandmother's property is a ranch, and he wants to know if

he's allowed to leave the confines of the actual home to be outside on the property outside.

THE COURT: But be on the property?

MR. MANN: I don't think it's going to reach -- electronic monitoring is not going to reach that far outside the house. That's -- the problem is the distance from the phone.

MS. MORRIS: It sounds like maybe something --

MR. ELDER: Yeah.

MS. MORRIS: -- he needs to work with Pretrial on.

THE COURT: Yeah.

MR. ELDER: Well, I mean, we have to know if she has a landline phone, first of all.

THE COURT: Oh, do you have a landline, Ms. Mitchell?

MS. MITCHELL: I -- I spoke with the services, and I'm going to see about that today.

THE COURT: So you still need to get one?

MS. MITCHELL: Yeah.

THE COURT: Okay.

MR. ELDER: Yeah. So we would ask that she have one before he's released --

MS. MORRIS: Right.

THE COURT: -- and there -- he's correct. There's a radius so --

THE COURT: Oh, okay.

MR. ELDER: -- it would be under the roof, basically, is what we usually say.

THE COURT: Okay. So it's pretty unlikely that he'd be able to leave the house to wander around any extended area. I'm sure Pretrial Service will help him with understanding the confines of that.

MR. ELDER: And Your Honor?

THE COURT: Uh-huh.

MR. ELDER: If I can recommend that we maybe set a 90-day status hearing to see how he's performing on home confinement?

THE COURT: I think that would be a great idea. So let's first just deal with the bond here and get everybody's signatures, and then I'll review it and sign it and we'll set a date for a status hearing. Okay.

THE CLERK: Do you have a cell phone, Mr. Mobley?

THE DEFENDANT: I do but --

THE CLERK: It was seized?

THE DEFENDANT: What was it?

THE CLERK: Was it seized by the Government?

THE DEFENDANT: Yes.

THE CLERK: Okay. I need your home phone, ma'am.

THE COURT: She doesn't have a phone yet.

THE CLERK: Do -- okay. Cell phone -- cell phone

number?

MS. MITCHELL: It's (707)853-0577.

THE CLERK: Thank you. And Ms. Lynch, I need your home phone or cell phone, please?

MS. LYNCH: My cell, 510 --

THE CLERK: Cell phone?

MS. LYNCH: Yes, ma'am. 860.

THE CLERK: 860.

MS. LYNCH: 7091.

THE CLERK: 7091?

MS. LYNCH: Uh-huh. And we do --

THE CLERK: What's the area code? I'm sorry.

MS. LYNCH: It's 510.

THE CLERK: Okay.

MS. LYNCH: We have a home -- we have a home phone also but --

THE CLERK: Okay. Give me your phone, please.

MS. LYNCH: (Inaudible).

MR. MOBLEY: It's 510.

THE CLERK: 510.

MR. MOBLEY: 275.

THE CLERK: 275.

MR. MOBLEY: 3935.

THE CLERK: 3935?

MR. MOBLEY: Yes.

THE CLERK: And your zip code, please?

MR. MOBLEY: 510.

THE CLERK: No.

MS. MITCHELL: Zip code.

MR. MOBLEY: Oh, 94806. I'm sorry.

MS. LYNCH: 94806.

THE CLERK: I'm sorry. 94806? And I need your zip code, please.

MS. MITCHELL: 95472.

THE CLERK: 95472. Okay. I will need the grandmother's signature here, please, and today's date.

MS. MITCHELL: Okay.

THE CLERK: Just under your signature. And today is the 18th, if you can try to squeeze that in in right here.

And I need your signature right here.

MS. LYNCH: Mine?

THE CLERK: Uh-huh. Sorry. Okay. That line where it says mother.

THE COURT: Are there any other conditions that you thought of or that you think I might have not --

MR. MANN: The Government thinks he --

THE COURT: -- included?

MR. MANN: -- should be detained so -- I mean --

THE COURT: Right, I understand that.

MR. MANN: The -- the two things that -- that will

1 come up with respect to this bond is one, Pretrial Services is
2 going to need verification of the telephone -- landline being
3 installed before he can be --
4 **THE COURT:** Right.
5 **MR. MANN:** -- released. Two, the Court would have
6 to decide whether he could be released prior to the posting of
7 the property and the verification of the information provided,
8 or whether he would have to wait until it was posted to be
9 released.
10 **THE COURT:** Okay. I'm thinking because we have both
11 the property owner signing on the bond, and we have the two
12 additional sureties with their personal guarantees. He could
13 still be released pending the receipt of the documents
14 regarding the property.
15 **MR. MANN:** So the only thing keeping him in now
16 would then be the -- the telephone?
17 **THE COURT:** Exactly.
18 **MR. MANN:** Okay. And then, of course, the
19 Government will ask that Your Honor stay your order through
20 5:00 o'clock tomorrow so I can appeal to the District Court.
21 **THE COURT:** Okay.
22 **MR. MANN:** Thank you.
23 **THE COURT:** So in response to the Government's
24 request that I stay my order until 5:00 o'clock tomorrow, it's
25 a little bit premature to stay an order that I'm not going to

sign until we verified the installation of a landline, so that he can be subject to the electronic monitoring, but -- and I know you've requested that I stay it until 5:00 o'clock tomorrow.

I'm willing to do that, but like I said, it's kind of odd because I have -- I won't -- I may not have even signed the release order by then, but I'm agreeing that my order would be stayed, should I say, 24 hours from the time I actually sign the board because, you know, we end up --

MR. MANN: Just --

THE CLERK: -- in that type of situation where I haven't signed the release order yet.

MR. MANN: Right. And if it was an issue with respect to -- to whether or not property was going to appraise for a value, then I'd say we should wait, but I don't have any reason to believe that -- that -- that -- and I apologize. I've forgotten her name. But Mr. Mobley's grandmother is going to have any problem getting a landline installed. I don't -- if --

THE COURT: Right.

MR. MANN: Let's say that takes two days --

THE COURT: Right.

MR. MANN: -- and we don't start the appeal then until next day. All we're doing is prolonging -- if -- if -- assuming Judge Gonzalez Rogers agrees with Your Honor, then

1 we're just prolonging Mr. Mobley's --
2 **THE COURT:** Right.
3 **MR. MANN:** -- stay in detention, so I -- I guess my
4 thought would be just to get the appeal process started, but
5 I'm --
6 **THE COURT:** You wouldn't be able to file any appeal
7 until after my order is signed though because --
8 **MR. MANN:** That is correct.
9 **THE COURT:** Because it would -- right.
10 **MR. MANN:** That is correct. I guess that's correct,
11 Your Honor, so maybe that's -- that's yours --
12 **THE COURT:** So it's a little awkward procedural
13 posture that we're in but --
14 **MR. MANN:** I guess -- I guess -- and Your Honor's
15 suggestion is probably the best, and that is that we figure
16 out a date by which Mr. Mobley's grandmother could have a
17 landline installed, have Mr. Mobley put back on Your Honor's
18 calendar for that morning.
19 And then Your Honor could issue the order, and we
20 could stay it 24 hours, and the Government can file its appeal
21 at that point. That's fine with the Government.
22 **THE COURT:** Okay. That works for me. Does defense
23 counsel have any objections to that?
24 **MS. MORRIS:** No. I --
25 **THE COURT:** Do you have any objections?

1 **MS. MORRIS:** I don't --
2 **THE COURT:** Okay.
3 **MS. MORRIS:** -- have any objections to that. I was
4 just talking with Ms. Mitchell to try to determine how long it
5 may take to get that landline.
6 **THE COURT:** Okay.
7 **MS. MORRIS:** She thinks it may just be a matter of
8 making a phone call. Do you already have the hard wiring in
9 the house?
10 **MS. MITCHELL:** Uh-huh.
11 **MS. MORRIS:** So I could make it --
12 **THE COURT:** So it might only take a day?
13 **MS. MORRIS:** I would -- I would --
14 **THE COURT:** Or it could take two.
15 **MS. MORRIS:** I could make the suggestion we will be
16 appearing before Judge Westmore tomorrow.
17 **MR. MANN:** What court are you supposed to have?
18 **MS. MORRIS:** Excuse me. I'm sorry. We're appearing
19 before Judge Gonzalez Rogers tomorrow for our initial
20 appearance.
21 **THE COURT:** Oh, okay.
22 **THE CLERK:** At 2:00 o'clock, ma'am.
23 **MS. MORRIS:** Right. So perhaps we could -- I don't
24 know what Your Honor's calendar is like, but perhaps we could
25 at least attempt to address the issue tomorrow?

1 **MR. MANN:** At the nine -- at Your Honor's 9:30
2 calendar? I mean --
3 **THE COURT:** They're on for 2:00 o'clock in front of
4 Gonzalez Rogers -- Judge --
5 **MR. MANN:** Right.
6 **THE COURT:** Yeah.
7 **MR. MANN:** So I don't know -- I'm not sure I
8 understand what the suggestion is because I think --
9 **MS. MORRIS:** But --
10 **MR. MANN:** -- we need to come back before Your
11 Honor.
12 **MS. MORRIS:** Right. And the question was I'm not
13 familiar with what -- what Your Honor's calendar is, but would
14 Your Honor be available tomorrow afternoon, since we will be
15 here to go in front of --
16 **THE COURT:** Well, you know, I think the way I've
17 dealt with this issue in another case is I just set it up so
18 that the parties would notify Pretrial Services when a
19 landline was installed.
20 And then when I heard from Pretrial Services, then I
21 would just sign the order, and so that prevented us from
22 having to schedule another hearing and all that.
23 **MS. MORRIS:** That makes sense.
24 **THE COURT:** And -- and in that case, the Government
25 was appealing as well, so it was also an awkward position, so

the Court was not really able to stay my order until after it was signed.

So I think doing it that way in this case makes sense, as well as -- maybe instead of schedule another hearing, I'll just wait to hear from Pretrial Services that the phone line has been installed and --

MR. MANN: Yes, as long as --

THE COURT: -- that he's able to be put on electronic monitoring, and then I'll sign the order --

MR. MANN: That would be fine, and then I --

THE COURT: -- and then it would be stayed.

MR. MANN: I assume, then, I'll get notification from Pretrial Services or -- or maybe Your Honor's clerk, so that I know when the 24 -- I don't --

MR. MANN: Right. The --

MR. MANN: -- fail to miss it?

THE COURT: Right. Then I would stay my order for 24 hours from that -- from the time I signed the order to allow the Government an opportunity to file its appeal.

And just so you know what all this means -- it just sounds like a bunch of mumbo jumbo to you, I'm sure, but the Government has a right to appeal my order of release to the District Judge who's on duty, I believe, and --

MR. MANN: No.

THE COURT: -- or to the --

1 **MR. MANN:** We have a district judge in this case and
2 so --
3 **THE COURT:** It would be -- oh, yes, so it's already
4 assigned --
5 **MR. MANN:** Yeah.
6 **THE COURT:** -- to Gonzalez Rogers, so she would hear
7 their appeal. So I have to stay -- I pretty much have to stay
8 my order anyway to give them time because if I -- if I
9 declined to stay my order, the judge would still stay it
10 anyway so that she could have time to review it.
11 And if she disagrees with me, she can reverse my
12 order and then he'd be detained. He would stay in custody.
13 If she agree -- if she agrees with me, she would affirm my
14 decision, and we would proceed as we just discussed.
15 **MS. LYNCH:** Does she get to speak to you before she
16 gets to make a decision or is she (inaudible). 10025
17 **THE COURT:** It's a de novo review, so she would --
18 I'll probably draft a release order that she can review, so
19 she can know what my reasons were, but she can take --
20 consider them or not.
21 **MR. MANN:** Your Honor, just to clarify -- obviously,
22 I don't expect it to happen, but if it were that the -- Your
23 Honor's release order did not issue and then stay until
24 Friday, the 24 hours would be Saturday. Your -- Your Honor's
25 order would then stay until the Monday at that -- that time

period?

THE COURT: Yes.

MR. MANN: Thank you.

THE COURT: So do I need to say things specifically? Did we get all that clear on the record? Okay.

MR. MANN: I think so.

THE COURT: And there's already -- the next hearing date is already scheduled before Judge Gonzalez Rogers for tomorrow, so there's nothing else to schedule at this point.

I just would like to see the bond --

THE CLERK: Oh, yes, Your Honor.

THE COURT: -- and make sure it has everything.

So now is this -- does this form clearly indicate the address of the property that's -- this is secured by?

THE CLERK: (Inaudible).

THE COURT: Okay. Okay. Let's just go ahead and finalize this.

Mr. Mobley, do you promise to appear at all proceedings, as ordered by the Court, and surrender for service of any sentence imposed?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: You shall not commit any federal, state or local crime while you're on release.

You shall not harass, threaten, intimidate, injure, tamper with, or retaliate against any witness, victim,

informant, juror or officer of the court, or obstruct any criminal investigation while you're on release.

You shall not travel outside the Northern District of California, and there are a number of counties that comprise the Northern District of California, and there's a map on the back of your copy of this just in case you're not clear.

So you want to make sure -- well, you're not allowed to go anywhere anyway except for, you know, to work or --

MR. MANN: Not -- not to work.

THE COURT: Oh, yeah, he doesn't have a job. To medical appointments or your legal appointments, and that -- none of those things require him to go outside of the district, right? Okay.

You shall report in person immediately upon release and thereafter, as directed by Pretrial Services, in Oakland, California.

And you don't have a passport, right?

THE DEFENDANT: No.

THE COURT: Okay. You also shall not apply for any passports or other travel documents while you're on release.

MR. ELDER: Your Honor?

THE COURT: Uh-huh.

MR. ELDER: He's actually going to be reporting to the San Francisco office, based on where he's going to be

1 living.

2 **THE COURT:** Oh, okay. So I'll change this.

3 **MR. ELDER:** And I can provide them with that

4 address.

5 **THE COURT:** The information for who to contact over

6 there?

7 **MR. ELDER:** Yes.

8 **THE COURT:** Okay. So you shall report in person

9 immediately upon release and thereafter, as directed to

10 Pretrial Services, in San Francisco, California, and Pretrial

11 Services has agreed to give you the information for how to do

12 that.

13 You shall not possess any firearm, destructive

14 device or other dangerous weapon.

15 You shall remain in the custody of your custodian,

16 who is your grandmother, Madeliene Mitchell, at 125 Montgomery

17 Road, Sebastopol -- Sebastopol, California, who agrees to

18 supervise you and report any violation of a release condition

19 to Pretrial Services. A custodian who fails to do so may be

20 prosecuted for contempt.

21 You shall participate in drug and alcohol

22 counseling, and submit to drug alcohol testing as directed by

23 Pretrial Services.

24 You shall not use alcohol at all, and shall not use

25 or possess any narcotic or any controlled substance without a

legal prescription, which includes, if you -- you cannot possess marijuana, even if you have a prescription.

What about -- what about him seeking employment? We didn't talk about that.

MR. ELDER: I think, Your Honor, at this time our recommendation would be the home confinement --

THE CLERK: Okay.

MR. ELDER: -- except for court and --

THE COURT: And maybe we can address that at the --

MR. ELDER: That's --

THE COURT: In 90 days.

MR. ELDER: Yeah. That's why I recommended a status hearing --

THE COURT: Okay.

MR. ELDER: -- 90 days out.

THE COURT: Okay. And then I also would like to add that you shall submit to a warrantless search of your person, place of residence and vehicle at the direction of Pretrial Services. So Ms. Mitchell, that would include your home.

MS. MITCHELL: Absolutely.

THE COURT: You don't -- you don't have any firearms in your home, do you?

MS. MITCHELL: No. I don't have any alcohol. I don't drink, and I don't partake in any drugs.

THE COURT: Okay. You shall have no contact with

any codefendant outside the presence of counsel. And so I just want to clarify what contact means, especially for, you know, young people. Contact means texting, email, Facebook, Myspace, whatever other social networking things that are out there. We mean no contact at all.

And I also would like to add that you're to have no contact with any individuals engaging in illegal activity.

MS. MORRIS: Your Honor, could I just ask that the order be phrased "known to him to be engaging in" --

THE COURT: Okay.

MS. MORRIS: -- "illegal activity"?

MR. MANN: With respect to contact, Your Honor, both of his codefendants are currently in custody, so I would just add that that would include the accepting of jail calls from his two codefendants who are in custody.

THE COURT: That's correct. No -- that would be contact as well. No contact from jail or anywhere else.

Also, you shall not change your residence without prior approval of Pretrial Services.

You shall be subject to electronic monitoring, and you may only leave the home for the purposes of going to court, going to meet with your attorney, going to meet with Pretrial Services or medical appointments for yourself, as preauthorized by Pretrial Services.

MS. MORRIS: And Your Honor, if I could add made --

included in medical, but to engage in substance abuse counseling, as directed by Pretrial Services.

THE COURT: Right. That was -- oh, you mean to -- well --

MS. MORRIS: As another reason.

THE COURT: Yeah, but it was for visits to Pretrial Services, and the previous condition was that he would participate in the counseling and testing directed by Pretrial Services, so I think it's covered.

MR. ELDER: Your Honor, we'll actually probably be testing him at our office and at home and --

THE COURT: Okay.

MR. ELDER: -- probably we wouldn't do a referral for a drug program, and maybe after 90 days, we could reassess that at the status hearing because that would require him to leave the home to participate in some type of group counseling or individual counseling.

I think our recommendation would be maybe after 90 days, after a status hearing, but he would still be submitting to drug testing.

THE COURT: So just -- so for now, it would just be that he would submit to drug testing as directed by Pretrial Services, but not the counseling until --

MR. ELDER: I mean, we can keep it as directed as to Pretrial, but I just -- just FYI, we're not going to be

referring him out to --

THE COURT: Okay. And since --

MR. ELDER: -- a drug program.

THE COURT: Yeah, okay. And since this is at the direction of Pretrial Services, I'll just --

MR. ELDER: Okay.

THE COURT: -- leave it at that.

So Ms. Mitchell and Mr. Mobley and Ms. -- what's your last name?

MR. MANN: Lynch.

THE COURT: Lynch.

MS. LYNCH: Yes.

THE COURT: You've heard all the conditions that I've listed here --

MS. MITCHELL: Yes.

THE COURT: -- for release?

MR. MOBLEY: Your Honor, could --

THE COURT: And you agree to those conditions?

MR. MOBLEY: -- you go over the contact part again? I didn't -- I didn't quite understand all of it.

THE COURT: Okay. When I say that he can't contact -- have contact with any codefendant --

MR. MOBLEY: Yeah.

THE COURT: -- outside the presence of counsel, meaning if he ends up needing to have any contact with any of

his codefendants, who are currently in jail -- I mean, they're not on release -- it would have to be in -- with his attorney present, so usually that would just mean in court or something. There would be really no reason for him to contact them --

MR. MOBLEY: Okay.

THE COURT: -- otherwise, and contact means all those things that I've described, phone, email, text --

MR. MOBLEY: Got you.

THE COURT: -- whatever. And I also added that he was not to have contact with any individuals known to him to be involved in illegal activity.

And I just added that because, you know, it just seems to be a problem that he's -- he's choosing to hang around with the wrong people, so I want him to be responsible for that. Okay. And so I'm not going -- and so -- oh, I -- you all, can you tell me yes, that you agree to these conditions?

MS. LYNCH: Yes, I do.

THE COURT: Okay.

MR. MOBLEY: Yes, I agree.

MS. MITCHELL: Yes, I do.

THE COURT: So all three sureties have indicated that they agree to the conditions of release.

And as I mentioned earlier, I'm not going to sign

this right now --

MS. MITCHELL: Okay.

THE COURT: -- because we're waiting to find out if you get your landline so that he can do the electronic monitoring.

MS. MITCHELL: Okay.

THE COURT: So after I am informed by Pretrial Services that that has taken place, then I will sign the order.

MS. MITCHELL: Okay.

THE COURT: Okay. And then as to the documentation, how's that going to work? Are we going to get the documentation necessary to --

MS. MORRIS: My suggestion --

THE COURT: -- secure the bond?

MS. MORRIS: My suggestion would be that because the Government intends to appeal the order, maybe one -- I don't want to put them through the rigmarole of having to get all the documentation until we know that, you know, we're going to go forward with release so --

THE COURT: Okay.

MS. MORRIS: -- once -- once that issue is settled, then we can begin the process of getting the documentation together and getting it filed.

MR. MANN: I think that we should just have it be

that the property needs to be posted within 14 calendar days of the final release order, be it an order from Your Honor, an order from Judge Gonzalez Rogers.

THE COURT: So property to be posted within 14 calendar days?

MR. MANN: Sure. I mean, if -- if -- if something comes up and they -- I don't want to -- I'm sure Ms. Morris will contact me, and if they need another week, it's not --

THE COURT: Okay. So I'll just say the Defendant will contact the Government if --

MR. MANN: Sure.

THE COURT: -- there's a delay.

MR. MANN: Sure. Usually, I think we just submit a stipulation to Your Honor extending that if we need to.

THE COURT: Okay. For a stipulation. Okay.

And we've got all the signatures here. Ms. Garcia.

THE CLERK: Yes, Your Honor?

THE COURT: Anything further?

MR. MANN: That's it, Your Honor. Thank you.

THE COURT: Okay. Great. Thank you all.

MS. MORRIS: Thank you.

MR. MOBLEY: Thank you, Your Honor.

MS. MITCHELL: Thank you.

MS. LYNCH: Thank you.

THE COURT: The Defendant is remanded to the custody

of the Marshals.

(Proceedings adjourned at 1:15 p.m.)

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U. S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

Mary Wegner 5/3/12

Signature of Transcriber Date

EXHIBIT 6 (Filed Under Seal)