

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA)	CA No.: 12-10245
)	
Plaintiff-Appellant,)	OPPOSITION TO EMERGENCY
)	MOTION BROUGHT UNDER
v.)	CIRCUIT RULE 27-3
)	
OTIS MOBLEY, JR.)	
)	No. CR 12-00235-YGR
Defendant-Appellee.)	
)	
_____)	

**DEFENDANT OTIS MOBLEY'S OPPOSITION
TO GOVERNMENT'S EMERGENCY MOTION FOR A STAY**

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INTRODUCTION

The government has filed an Emergency Motion to Stay the district court's pretrial release order, in an effort to prolong Otis Mobley's detention. This request is made contrary to the independent conclusions of the district court, the magistrate court and the pretrial services office, all of whom agree that notwithstanding the serious nature of the alleged offenses and prior conduct, which may weigh in favor of findings that appellant may present a risk to the safety of the community, the imposition of restrictive pretrial release conditions, which include among other conditions house arrest, around-the clock-monitoring and supervision, will reasonably assure the safety of the community.

The government initially sought detention in the magistrate court and was denied. It reiterated its arguments in favor of detention to the district court and was again denied. It now seeks a third bite at the apple. While the government is entitled to appeal the district court's ruling, this Court should deny the request for a stay, which frustrates the purpose of the Bail Reform Act.

I. PROCEDURAL HISTORY

A. The Indictment

Defendant Otis Mobley, Jr. is accused of the following offenses: 18 U.S.C. §371 (conspiracy to commit robbery of mail, money, or other property of the United States);

18 U.S.C. §§ 2 and 111(b)(aiding and abetting an assault on a federal officer); 18

U.S.C. §§ 2 and 2114 (aiding and abetting a robbery of mail, money, or other

property of the United States); and 18 U.S.C. §§ 2 and 924(c)(1)(A) (4) (aiding and abetting the use of, carrying, possessing and brandishing a firearm). Mr. Mobley is charged with two co-defendants, Khusar Mobley and D'marce Hutcherson, both of whom are detained.

B. Detention Proceedings in the District Court

The government requested detention. Because the indictment alleges a violation of section 924(c)(1)(A), the government invoked the rebuttable presumption under 18 U.S.C. § 3142(e)(3)(B) that no condition or combination of conditions could reasonably assure future appearance or the safety of the community. A detention hearing was set for April 18, 2012.

In preparation for that hearing, the U.S. Pretrial Services office did an investigation and prepared a bail study, to evaluate both risk of flight and danger to the community. Taking into consideration the nature and circumstances of the current offense, Mr. Mobley's prior criminal history and contacts with law enforcement, his ties to the community, and his personal characteristics, Pretrial Services evaluated whether any combination of pretrial release conditions could be imposed that would mitigate against any risk of flight or danger to the community posed by release. Though Pre-trial Services concluded that certain factors in Mr. Mobley's history and the current allegations indicate a risk of flight or danger to the community, Pretrial Services ultimately concluded that the risk factors could be mitigated with the imposition of restrictive release conditions and strict supervision. Accordingly, the Pre-trial Services Office recommended release on

restrictive conditions and under close supervision finding that the conditions would reasonably assure the safety of the community and reappearance. See also Pretrial Services Reports.

On April 18, 2012, the parties appeared before Magistrate Judge Kandys A. Westmore for a detention hearing. Judge Westmore weighed the proffers by defense counsel, proffers by the government (which are reiterated in the pending Motion for a Stay), the weight of the evidence against Mr. Mobley in the pending case, the nature and circumstances of the alleged offenses, Mr. Mobley's personal characteristics, evidenced by the support of family, friends, counselors and teachers. After weighing those factors, Judge Westmore questioned and admonished each of the offered sureties in Mr. Mobley's presence, to ensure that Mr. Mobley, his parents and his grandmother all understood the financial risk to each of them in the event Mr. Mobley violated any term of his release. Judge Westmore further questioned the proposed custodian about her ability and willingness to assume that role, as she would be legally responsible for reporting any violations.

Ultimately, Judge Westmore concluded that narrowly drawn and restrictive release conditions would reasonably assure both Mr. Mobley's appearance in court and the safety of the community. Government's Exhibit 5; Government's Exhibit 4; Transcript of Proceedings Before Magistrate Judge Westmore, Government's Exhibit 5, pp. 58-61.

Accordingly, Judge Westmore issued a written release order addressing those conditions.

On April 24, 2012, the government moved the district judge to revoke the magistrate's release order, arguing that Mr. Mobley is a flight risk and a danger to the community and should be detained pending trial.

The parties appeared for hearing before United States District Judge Yvonne Gonzales Rogers on the government's motion on May 3, 2012 and May 16, 2012.

Judge Gonzales Rogers reviewed the issue of detention *de novo*.

Judge Gonzales Rogers reviewed the transcript of magistrate court proceedings (Government's Exhibit 5), the parties' briefs, prosecution exhibits, defense exhibits (Exhibit A), and the pre-trial service reports. While expressing concern about Mr. Mobley's past choices and current circumstances, Judge Gonzales Rogers ultimately disagreed with the government's contentions that Mr. Mobley is an unmitigable danger to the community. As did Magistrate Judge Westmore and pretrial services office, the district court judge concluded that the conditions of release imposed by the magistrate reasonably assured community safety and appearance.¹ Those conditions are set forth below.

C. Conditions of Release

The district court ordered Mr. Mobley released on the following conditions:

¹ In light of the entire record, including Mr. Mobley's ties to the district, lack of ties elsewhere, lack of resources, lack of means to flee, and strong family support, the district court found that Mr. Mobley is not in fact a flight risk.

Mr. Mobley is ordered released on a \$150,000 bond, secured by property owned by Madeline Mitchell, Mr. Mobley's grandmother and co-signed by Mr. Mobley's parents, Tonnette Lynch and Otis Mobley, Sr. (Government Exhibit 4.)

Mr. Mobley is ordered to remain on house arrest (24 hours a day, seven days a week) at the home of surety Madeline Mitchell in Sebastopol, California. Mr. Mobley will wear an ankle monitor equipped with GPS tracking abilities, so that pre-trial services can monitor his compliance with the restrictions on his movement. Mr. Mobley is not free to leave the home for any purpose other than medical or legal appointments, as approved by pre-trial services. In the event that Mr. Mobley is to leave the residence for medical or legal appointments, Ms. Mitchell as his custodian is required to personally drive Mr. Mobley to those appointments and back. (Government Exhibit 3; Government Exhibit 4; Government Exhibit 5.)

Mr. Mobley may not consume alcohol or controlled substances without a valid prescription while on home detention. He must submit to drug and alcohol testing, which will ensure compliance with this condition. He must undergo drug and alcohol counseling at the direction of pretrial services. (Government Exhibit 3; Government Exhibit 4; Government Exhibit 5.)

Mr. Mobley may not contact or communicate with his co-defendants (directly or indirectly) outside presence of counsel. He is further prohibited from having contacting or communicating with individuals known to him to be involved

in criminal activity. (Government Exhibit 3; Government Exhibit 4; Government Exhibit 5.)

Mr. Mobley is prohibited from committing any other state or federal crime. He shall not possess any firearm or explosive device. He may not harass, threaten, intimidate, injure, tamper with or retaliate against any witness, victim, informant, juror, or officer of the court, or obstructing any criminal investigation.

(Government Exhibit 3; Government Exhibit 4; Government Exhibit 5.)

He must make all court appearances and surrender himself as ordered by the court. *Ibid.* As Mr. Mobley's custodian, Ms. Mitchell is obligated to assure that Mr. Mobley makes all court appearances as required. (Government Exhibit 3; Government Exhibit 4; Government Exhibit 5.)

Pre-trial services will monitor compliance with these conditions and report any violations to the district court. Additionally, Ms. Mitchell, will act as Mr. Mobley's custodian. Ms. Mitchell does not work and is in a position to monitor Mr. Mobley at home. They will reside together in a relatively small space. As Mr. Mobley's custodian, Ms. Mitchell is legally obligated to report any violation, however slight, to pre-trial services and she has promised to do so. Ms. Mitchell has been admonished by the court and understands that she will be criminally liable for failure to report violations failure to do could result in forfeiture of the \$150,000 bond secured by her home. Ms. Mitchell's son and daughter in law, Otis Mobley, Jr.'s parents, have been similarly admonished. Mr. Mobley fully understands the risks and responsibilities that his family members have assumed

and understands the consequences that non-compliance will have for them.

Government Exhibit 3; Government Exhibit 4; Government Exhibit 5.

In a forward-thinking and admirable effort to ensure that Mr. Mobley's time on house arrest is in some way constructive, the district court imposed the additional condition that while under house arrest, Mr. Mobley must read daily from a list of books to be selected by the court. He must write and submit reports to pretrial services regarding the materials. Release Order, pp. 12-13. The court intends to select materials about individuals who come from difficult circumstances and the things they've done with their lives. Government Exhibit 3.

Though not a condition of his release, Mr. Mobley has expressed intent to enroll in online classes while on release to obtain his high school diploma, which he was working toward prior to his arrest.

The district court thoroughly admonished Mr. Mobley that it will employ a zero-tolerance policy and any violation of the terms of release, however slight, will result in remand and incarceration.

ARGUMENT

I. APPLICABLE LEGAL PRINCIPLES

A. Bail Reform Act requires release unless no combination of conditions can reasonably assure the safety of the community or appearance

Release pending trial is governed by the Bail Reform Act of 1984 which, like its predecessor, the Bail Reform Act of 1966, 18 U.S.C. §§ 3146-3152 (1982) (repealed October 12, 1984), 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. 18 U.S.C. § 3142(c)(2) (1984); *see Honeyman*, 470 F.2d at 474-75; *Banks v. United States*, 414 F.2d 1150, 1153 (D.C.Cir.1969). The Fifth and Eighth Amendments' prohibitions of deprivation of liberty without due process and of excessive bail require careful review of pretrial detention orders to ensure that the statutory mandate has been respected. *U.S. v. Motamedi* (9th Cir. 1985) 767 F.2d 1403, 1405.

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 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 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. To 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. *United States v. Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal. 1992)(Walker, J.) (quoting *United States v. Motamedi*, 767 F.2d 1403, 1405-06 (9th Cir. 1985)).

A person facing trial must be released unless it is found that “no condition or combination of conditions ... [can] reasonably assure the appearance of the person

as required and the safety of the community. 18 U.S.C. § 3142. In non-capital cases, pretrial release should rarely be denied. *Motamedi*, 767 F.2d 1403 at 1405; see also *United States v. Salerno*, 481 U.S. 739, 755 (1987)(upholding constitutionality of the bail reform act; “in our society, bail is the norm, and detention prior to trial without trial is the carefully limited exception.”)

The court may order a defendant detained only if the court finds that conditions cannot be fashioned to assure the defendant’s appearance in court or the safety of 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.

B. Applicable standards for reviewing release orders

Title 18 United States Code, section 3145 (a)(1) provides: “[i]f a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court . . . the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release.” 18 U.S.C. § 3145 (a)(1). The motion shall be determined promptly. *Ibid*.

When a district court reviews a motion to revoke or modify a magistrate's release order, the district court acts *de novo* and must determine on its own whether detention is proper. *United States v. Koenig* (9th Cir. 1990) 912 F.2d 1190, 1192.

The applicable standard of review for pretrial detention orders is one of deference to the district court's factual findings, absent a showing that they are clearly erroneous, coupled with our right of independent examination of the facts, the findings, and the record to determine whether an order of pretrial detention may be upheld. *U.S. v. Motamedi* (9th Cir. 1985) 767 F.2d 1403, 1406. Appellate review involves an independent review of the facts, findings, and record to determine if the district court order regarding bail or detention may be upheld. *United States v. Motamedi*, 767 F.2d 1403, 1406. Absent error of law, the Court of Appeals must uphold a district court order either granting or denying bail, as long as an order is supported by the proceedings below. *United States v. Reuben*, 974 F.2d 580, 586 (5th Cir. 1992). Factual findings underlying a district court's pretrial release or detention order, including whether a defendant is a flight risk or a danger to the public, are reviewed under the clearly erroneous standard, "coupled with an independent review of the facts, the findings, and the record to determine whether the order may be upheld." See *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir.1991); *United States v. Donaghe*, 924 F.2d 940, 945 (9th Cir.1991); *Marino v. Vasquez*, 812 F.2d 499, 509 (9th Cir.1987).

C. Applicable standard where the government seeks to stay a pre-trial release order pending appeal

The standard that applies where the government seeks a stay of a pre-trial release order is less clear. Federal Rule of Appellate Procedure 9 applies to appeals of pre-judgment release order. Rule 9, subdivision (3) provides that: the court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

Federal Rule of Appellate Procedure 8 governs the stay of a judgment or order from which a party appeals. Rule 8(c) provides that motions for stay in criminal cases are governed by Federal Rule of Criminal Procedure 38. The government acknowledges that Rule 38 concerns stays of sentences, and does not discuss stays of pretrial orders, but nevertheless contends that the factors relevant to Rule 8 motions are the factors set forth in *Hilton v. Braunskill*, 481 U.S. 770, 776. Specifically, (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.

Mr. Mobley disagrees that the above factors govern a government's request to stay a pretrial release order. Rule 38 governs requests for stays in post-conviction proceedings and applies when a defendant found guilty beyond a reasonable doubt seeks to stay a death sentence, term of imprisonment, restitution order or other disability pending appeal. The standard for evaluating whether a

pretrial release order should mirror the provisions of the bail reform act, because what the government seeks in this case is effectively a new order of detention.

Because it is Mr. Mobley's contention that pre-trial detention orders must take into consideration the factors set forth in 18 U.S.C. §3142, they are addressed below. However, in the event that the court finds that the standard articulated by the government applies, the request should still be denied.

II. The 3142 (g) factors weigh in favor of release pending appeal

In determining whether conditions of release may reasonably assure the appearance of the person as required and the safety of any other person and the community, the court should take into account available information concerning (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, which includes the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 USC § 3142 (g)(1)-(4).

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A. The nature and circumstances of the offense charged and the weight of the evidence

There is no dispute as to the serious nature and circumstances of the alleged offenses. As to the weight of the evidence, the government contends that Otis Mobley purported to be in possession and control of illegal weapons for sale and agreed to sell an acquaintance of a confidential informant a grenade launcher. Mr. Mobley agreed to meet with the informant and the would-be buyer in a parking lot in Richmond to conduct the transaction. However, when Otis Mobley arrived with co-defendants Khusar Mobley and Dmarce Hutcherson, Otis Mobley was not in possession of had no intention of selling any illegal weapons. Upon meeting the confidential informant (CI 1), the would-be buyer (an undercover ATF agent) and a third individual (CI 2), Khusar Mobley and Dmarce Hutcherson got into the backseat of the undercover agent's car. Both CIs and Otis Mobley remained outside of the car. While inside the car, Khusar Mobley and Dmarce allegedly pointed firearms at the undercover agent and demanded money. See Indictment, Docket 7.

The government has not alleged by proffer or otherwise that Otis Mobley ever personally possessed, brandished, or carried a firearm or that he personally assaulted or attempted to rob the agent. The government has not alleged that Otis Mobley threatened, used force, or displayed aggressive behavior during or after the alleged incident. Rather, it is the government's theory that Otis Mobley orchestrated the alleged assault and attempted robbery using the previous

conversations with the informant as a ruse. As noted above, the allegations and the version of events proffered by the government will be strongly contested by the defense in future proceedings.

After reviewing video of the incident, Magistrate Westmore aptly noted that the video shows Khusar Mobley brandishing firearm and Hutcherson inside the car but does not show Otis Mobley. Release Order, 5. Noting that the nature of the allegations is extremely serious, the magistrate judge noted that Otis Mobley is not alleged to have been armed at the time of the offense and is not alleged to have personally brandished a firearm. Moreover, Otis Mobley was outside of the car at the time of the incident. Accordingly, the magistrate correctly notes that the weight of the evidence “is not nearly as great as it is against the two co-defendants.” Magistrate Judge Westmore noted that Otis Mobley’s actions do not convincingly establish that he knew that Khusar Mobley planned to pull a firearm once inside the vehicle. Release Order, p. 6. Nevertheless, the magistrate concluded that the nature of the allegations raises a concern that Otis Mobley is a danger to the community. Similarly, the district court concluded that the nature and circumstances gave rise to a concern that Mr. Mobley presented a danger to the community. However, the court concluded that the risk is mitigable through the imposition of conditions of release.

The government relies heavily on the violent nature of the offense and Otis Mobley’s subsequent flight in support of its claim that “the nature and the circumstances of the offense clearly demonstrate that defendant is both a danger to

the community and a flight risk. The government overstates the strength of the evidence against Otis Mobley, which should in any event be the least important factor in the court's calculus given the presumption of innocence. *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985). Moreover, the government fails to adequately explain why the extremely restrictive conditions imposed by the court fail to adequately to mitigate against those risks.

B. Mr. Mobley's history and characteristics

Otis Mobley's history and personal characteristics provide evidence to rebut the presumption that no combination of conditions can reasonably assure appearance and the safety of the community. Both the magistrate court and the district court properly considered evidence of Mr. Mobley's character and personal history in combination with the risk factors apparent from his prior contacts with law enforcement, to craft a set of conditions that will reasonably assure the safety of the community and Mr. Mobley's future appearance before the court.

The police reports provided to defense counsel documenting Mr. Mobley's prior law enforcement contacts indicate that marijuana and alcohol appear to accompany, if not underlie, many of Mr. Mobley's prior law enforcement contacts. Certainly, home detention (with adequate assurances of community safety) and treatment is in Mr. Mobley's interest and in the interest of society as a whole.

Otis Mobley, Jr. is 23 years old. He was born in Oakland and raised in Richmond, California and has lived in the Northern District most of his life. He has no known mental health issues. He appears to be good physical health.

The oldest of five children, Mr. Mobley was raised by his parents, Tonnette Lynch and Otis Mobley, Sr.. Lynch and Mobley, Sr., who have been married for 19 years. They reside with all of their children in Richmond, California. Also living in the home is O.D. Mobley, Mr. Mobley, Jr.'s grandfather. Mr. Mobley, has a four-year-old son, Otis Mobley, III. Mr. Mobley is raising Otis Mobley, III, with his girlfriend of five and a half years, Meliza Contreras. Ms. Contreras lives in El Cerrito, California. She agreed to act as a surety.

Prior to the initial detention hearing, undersigned counsel provided pretrial services and the magistrate court with copies of several letters written by family members, in addition to former teachers and a current case manager. Exhibit 2. In addition to comments regarding Mr. Mobley's love and devotion to his young child, several of the letters reference the struggles of Mr. Mobley's late teenage years, and his recent efforts toward pointing his life in the right direction by earning a high school diploma and seeking job training – a reference to his work with the San Francisco Conservation Corps and RAMP program.

The letters establish the strength of Mr. Mobley's ties to the community, his broad support network and his deep connection to his family. The letters from his family characterize him, among other things, as loving, compassionate, respectful, patient, protective and having integrity.

The comments of family members are relevant for a number of reasons. First, the supportive community provides a disincentive to flee. Mr. Mobley's strong ties to the community and support network mitigate against risk of flight, particularly because Mr. Mobley lacks significant ties outside of the district, has no assets, owns no passport, and has never left the country. More importantly, his connection to his family and the characteristics attributed to him provide a basis for concluding that the bond signed by family members to whom he is deeply attached provide strong incentive for Mr. Mobley to comply with the conditions of release just as the characteristics described by case managers and teachers indicate that he has attributes that make it likely that he will comply with the conditions imposed, or risk financial devastation for his entire immediate family.

As previously noted, both of Mr. Mobley's parents have co-signed on a \$150,000 bond. Neither own property and therefore cannot secure a bond with property. However, both parties are reliably employed -- Ms. Lynch full time as a bus driver for AC transit and Mr. Mobley, Sr. full time as a teaching assistant at De Anza High School in El Cerrito. Both have held their respective jobs for approximately 14 years.²

² The government contends that Otis Mobley, Sr., one of the proposed sureties "lied" to pretrial services about his criminal record by failing to disclose a 23-year-old misdemeanor conviction for providing false identification to a police officer. Government counsel confronted defense counsel minutes before the detention hearing with this information. Undersigned counsel spoke briefly with Mr. Mobley and inquired about his conversation with pretrial services. Mr. Mobley did not recall being asked about his criminal history, which the undersigned noted during the detention hearing. Undersigned counsel has since spoken with the pre-trial service officer that prepared the report, who

Additionally, Madeline Mitchell, Mr. Mobley's grandmother, will post real property to secure the \$150,000 bond and has agreed to act as Mr. Mobley's custodian. Mr. Mobley will reside with her (on house arrest) in Sebastopol. Ms. Mitchell raised four children and was a foster parent to nine. She does not drink alcohol or use drugs and she keeps neither in her home. She has no criminal record. She is 67 years old and recently retired after 34 years of employment at United Airlines, where she started as a secretary and rose to the ranks of a management employee. Because she is retired, she is available to supervise Mr. Mobley. As his custodian, Ms. Mitchell will be required to report any violations to the court and has personally assured the court that she will deliver Mr. Mobley to all future court appearances.

The government contends that Ms. Mitchell is ill-equipped to handle her young grandson and makes much of the fact that she was unaware that he has used drugs other than marijuana. However, she is now aware of his history and has made a promise to the court that she will report any violations of release, including drug use, immediately to pretrial services. There is no basis for concluding that Ms. Mitchell cannot effectively act as a custodian. Moreover, Ms. Mitchell won't be solely responsible for monitoring Mr. Mobley. He will wear an ankle monitor that is tracked by pre-trial services and he will be subject to drug testing.

confirms that she did ask whether Mr. Mobley had a criminal history, to which he replied no. Mr. Mobley has little motive to lie to pretrial services and lie to the court about a 23-year old petty offense, which he suffered in his twenties. A much more likely explanation is that there was some kind of miscommunication or misunderstanding.

In the presence of Mr. Mobley, Ms. Mitchell was admonished that in addition to jeopardizing her financial security and the security of the co-signors (her son and daughter in law), a failure to report a breach of the conditions of release could result in contempt proceedings being brought against Ms. Mitchell. Ms. Mitchell readily accepted these risks, as did Mr. Mobley's parents, demonstrating their belief that he can and will comply with the terms of pre-trial release. The bond incentive, combined with conditions requiring drug and alcohol testing, removal of Mr. Mobley from Richmond, restriction to house arrest in Sebastopol, supervision through GPS monitoring, substance abuse counseling and a search condition will provide Mr. Mobley with incentive and support that will reasonably assure his compliance with the terms of release. At the same time, the conditions provide the court with several monitoring and enforcement mechanisms.

The letters in support of Mr. Mobley, discussing the quality of his participation with the San Francisco Conservation Corps and the RAMP program illustrate that Mr. Mobley is able to comply with rigorous requirements and be responsive to direction and supervision and also indicate that Mr. Mobley has made efforts to obtain his GED and gain employment, with the goal of getting himself on the right track. The RAMP program is a seven-week job readiness training program designed for at-risk youth. Successful graduates may apply for acceptance into the San Francisco Conservation Corps (SFCC), a job-training program, which provides Corps members an opportunity to work while earning

their high school degree. Otis graduated from the RAMP program and was accepted into the SFCC. While working with SFCC, Mr. Mobley arrived at 7:30 am, attended classes for two hours, then worked until 4:30 pm.

In a letter to the court, Jeff Wolcott, Mr. Mobley's case manager at the SFCC, reported that "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 that including [sic] his resume, cover letter and master application; in hopes to begin his career goals and begin a life of dedicated employment." Wolcott described Mr. Mobley as "an extremely polite and kind young man who has a lot of gifts that will help him be successful if he is provided with the right support." He further notes that "Otis is one of the few individuals I work with who readily seeks out my help, continuously looking for ways he can improve himself and his future. Otis has been attending John Muir Charter School and is working hard to obtain his California High School diploma. He has been working with me to gain better conflict resolution skills, increase his parenting skills, as well as developing better ways to appropriately conduct himself as a young adult." See Exhibit A, letter from Jeff Wolcott, MSW.

Samantha Sassi, Associate Director of Academics at the John Muir Charter School writes, "while attending school, Otis consistently demonstrates very good efforts to progress academically, actively participates in class, and is taking significant steps to overcome some of the barriers to his education, which he had previously experienced. *Otis is a conscientious individual, who readily follows the*

directions of his teachers, listens attentively and complies with requests from his supervisors.” Exhibit 3, Letter from Samantha Sassi (emphasis added). These comments indicate that Mr. Mobley’s personal character will lend itself to compliance with the conditions of release, particularly in view of the bond, which will provide incentive to comply and in view of the easily monitored restrictions designed to mitigate risk. Moreover, undersigned counsel has been in contact with the classification sergeant at Glenn Dyer jail and is aware of no in custody incidents, behavioral concerns that have arisen while Mr. Mobley has been in custody.

One concern articulated by the government is Mr. Mobley’s admitted history of drug and alcohol use. The court, pretrial services and the government share a concern that Mr. Mobley’s admitted history of frequent drug and alcohol use increase risk of flight and violation pre-trial release violations. Indeed, a review of incident reports documenting Mr. Mobley’s prior contacts with law enforcement reflect that alcohol and or marijuana factor into to many if not most of his prior contacts with law enforcement, particularly where he is alleged to have behaved combatively or resisted authority. Thus, the condition prohibiting Mr. Mobley from using alcohol or controlled substances without a valid prescription mitigates this risk. The court will not have to rely on Mr. Mobley’s good faith compliance as he is subject to testing by pre-trial services. Moreover, the order that Mr. Mobley to engage in counseling, will provide Mr. Mobley with support to further mitigate risk factors presented by his history of substance use.

Additionally, Mr. Mobley will be will be confined to a drug and alcohol free home in a rural area. On house arrest in Sebastopol, there will be little option but to comply with the condition that he refrain from consuming alcohol or any unprescribed controlled substances. As an additional monitoring mechanism of last resort, Ms. Mitchell will be obligated to notify the court if Mr. Mobley uses substances on her watch.

An additional concern addressed by the court is Mr. Mobley's prior failure to appear, indicating risk of flight. The court noted that it is difficult to ascertain how many failures to appear are for traffic tickets. It is worth noting that there is a significant distinction between release on one's own recognizance and release under the terms contemplated in this case -- under the strict supervision of the court and under the supervision of a custodian who has promised to personally deliver the defendant to court. Mr. Mobley's family faces dire financial consequences if he fails to appear in light of the \$150,000 bond, which certainly did not exist in prior more prone to neglect traffic or misdemeanor matters. Thus, the risk of non-appearance can be mitigated by the conditions of release and supervision.

Mr. Mobley has never been convicted of a felony offense. He has four prior misdemeanor convictions, including a misdemeanor conviction for domestic violence in September 2011 (age 22); public intoxication and driving on a suspended license in June of 2010 (age 20); providing false identification to a

police officer in October 2008 and April 2007 (age 18 and 19); and taking a vehicle without the owner's consent in September 2007 (age 18).

Appellant was on misdemeanor probation at the time of his arrest. To his credit, he was attending anger management classes and acknowledged at the time of his arrest that he needs to work on his anger. The court notes that Mr. Mobley was sentenced to two days in jail for that offense and was placed on probation. Significantly, rather than issue a stay away order commonly issued in domestic violence cases, the court deemed it appropriate to impose a "no harass" order, which prohibits Mr. Mobley from harassing or annoying Ms. Contreras, but does not prevent them from being in contact. Ms. Contreras volunteered to act as a surety indicating that she is not afraid of him and has appeared in court at every appearance along with various members of Mr. Mobley's family and friends.

In arguing that Mr. Mobley must be detained because he is a danger to the community, the government details multiple incidents in which Mr. Mobley was detained in a car where a firearm was found. Although presented in the government's request for a stay as if the firearms were found on Mr. Mobley's person, in each case, there were found inside of cars in which Mr. Mobley was a passenger. During each incident, there were multiple people present in the vehicle and in one case several people had access to the car immediately prior to the detention. When taken, no forensic evidence linked Mr. Mobley to any of the firearms. As to a juvenile incident in which Mr. Mobley's cousin was arrested in possession of a firearm in school, it is to Mr. Mobley's credit that he came forward

to take responsibility for his own actions in that incident. After his cousin was arrested in possession of a firearm, Mr. Mobley came forward to tell the police that he found the gun on school grounds and gave it to his cousin to put in his locker.

The government further argues that Mr. Mobley is an unmitigable danger because of an incident that occurred in 2009, when at age 19, Mr. Mobley was arrested in connection with a homicide investigation. After being interviewed by police, Mr. Mobley admitted to carrying a gun for defensive purposes and to shooting a man that had threatened Mr. Mobley's and the life of his cousin by charging at them with a loaded firearm. No charges were ever filed. Presumably, law enforcement concluded that Mr. Mobley acted in reasonable self-defense.

The prior contacts that did not give rise to a prosecution or conviction should be given little weight. In the absence a conviction establishing that Mr. Mobley committed a criminal offense it amounts to a denial of due process to detain him based solely on uncharged, unproven allegations. That said, the court considered these prior contacts and attributed appropriate weight to them.

The video attached to the government's motion shows Mr. Mobley pick up a firearm and pose for a picture with it before put it back down. There is no aggressive or threatening conduct, no indication that the gun is loaded and no indication that the gun belongs to him. He appears in the image as a young man posturing. It is deeply unfortunate that in the high-risk neighborhood where Mr. Mobley was raised, such images are likely not uncommon among young men.

The image, as did Mr. Mobley's prior contacts with law enforcement were carefully considered by the court.

Ultimately, the court concluded that removing Mr. Mobley from the high risk community of Richmond, sequestering him on home detention, tracking his movement with an ankle monitor, prohibiting any drug use, random drug tests, and the imposition of a substantial bond would adequately address the risk factors present and provide him with incentive to succeed on release.

Given the nature and circumstances of the current allegations and Mr. Mobley's prior contacts with law enforcement charged and uncharged, it is sound for the court and the government to be concerned about the safety of the community. However, the issue is not merely whether Mr. Mobley presents a danger but whether any conditions of release can mitigate that danger. In this case, the restrictive conditions of release have been discussed at length. Mr. Mobley's removal from Richmond, an extremely high-risk community, and house arrest in Sebastopol will mitigate significant risk. Mr. Mobley's personal characteristics as described by family members and teachers, placement on house arrest in Sebastopol, the conditions of electronic monitoring and strict supervision, including drug testing and warrantless searches, and the condition that Mr. Mobley address substance abuse issues and abide by the numerous restrictions imposed by the court, will reasonably assure the safety of the community while Mr. Mobley is on release.

C. If this Court Applies the Factors Relied upon by the Government, it still must deny the Motion for a Stay

The government contends that in determining whether to stay the release order, the relevant factors for consideration are: (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.

As to the first factor, whether the applicant has made a strong showing that it is likely to succeed on the merits, the government has not. In its request for a stay, the government repeats arguments that have twice failed to convince the court. The government relies heavily on inflammatory uncharged prior contacts with law enforcement in an effort to convince this Court that society will be in danger if he is released. However, the government fails to recognize the manner in which the conditions tailored in this case effectively address the concerns raised by the government. The government has failed to establish that Mr. Mobley is a danger or a flight risk and that no conditions of release can reasonably assure community safety and appearance.

As to the second factor, whether the applicant will be irreparably injured absent a stay. The government will suffer no harm if Mr. Mobley is released. In the unlikely event this Court reverses the district court's release order, Mr. Mobley

can be remanded into custody. The restrictive conditions imposed assure that no harm will come to the community because of his release.

As to the third factor, whether issuance of the stay will substantially injure the other parties interested in the proceeding: it will. Mr. Mobley has been detained since March 28, 2012. He was initially ordered released on April 23, 2012. The government sought a stay pending its motion for revocation in the district court. He was again ordered released on May 14, 2012. Again, the government sought a stay so that it could appeal the ruling to this Court. .) If forced to wait until the appeal is resolved, Mr. Mobley can expect to have spent close to three months in custody, pending the government's appeal of carefully thought out, well-founded release orders. Moreover, prolonged incarceration of a person presumed innocent may violate due process. To determine whether prolonged incarceration violates due process, the court must analyze three prongs, which are (1) the duration of custody; (2) the government or court's responsibility for the delay; and (3) the strength of the evidence on which detention is based. *United States v. Gelfuso*, 838 F.2d 358 (9th Cir. 1988); *United States v. Orena*, 986 F.2d 628 (2d Cir. 1993.) Given the district court's conclusion that the conditions of release will reasonably assure the safety of the community and that Mr. Mobley is not a flight risk, if he is detained pending this appeal he will irreparably harmed and his right to due process.

As to the fourth factor, where the public interest lies. Certainly, the public has an interest in safety. However, public safety is not compromised by release for

the reasons set forth above. The conditions of release are such that the safety of the community is reasonably assured.

CONCLUSION

For the foregoing reasons, this Court should deny the government's request for a stay.

Date: May 16, 2012

Respectfully submitted,

/s/

Suzanne M. Morris
Counsel for Otis Mobley

CERTIFICATE OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 899 Ellis Street, San Francisco, California 94109. On the date shown below, the undersigned certifies that she served copies of:

DEFENDANT OTIS MOBLEY'S OPPOSITION TO THE GOVERNMENT'S
EMERGENCY 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 parties listed below:

Via Appellate CM/ECF and email to:

Suzanne Miles
Barbara Valliere
James Mann
United States Attorney's Office
Northern District of California

I declare under penalty of perjury the foregoing is true and correct. Executed May 16, 2012, at San Francisco, California.

/s/

Suzanne M. Morris

EXHIBIT A



John Muir Charter School
Fort Mason Bldg. 102
SF, CA 94123

Dear Sir/Madam:

This letter is to certify that Otis Mobley was enrolled with and regularly attended the John Muir Charter School, beginning in January 2012. While attending school, Otis consistently demonstrates very good efforts to progress academically, actively participates in class, and is taking significant steps to overcome some of the barriers to his education which he had previously experienced. Otis is a conscientious individual, who readily follows the directions of his teachers, listens attentively and complies with requests from his supervisors.

Additionally, Otis has proved himself to be attentive and respectful, with a reserved and kind demeanor. He has formed bonds with several other students, and has benefited from the camaraderie and direction those interactions provided him with. He has not been disruptive, distracting, or disrespectful in class, and is considered by students and instructors to be a genuinely nice individual with a good heart.

It is our hope that these statements may help support Otis during this difficult time, and stand as a testament to his excellent character.

Please feel free to contact us with any questions you may have, or if we may be of any further assistance to Otis.

Sincerely,

A handwritten signature in cursive script, appearing to read "Samanta Sassi".

Samanta Sassi
Associate Director of Academics
John Muir Charter School



4/16/2012

Re: Otis Mobley

Suzanne Morris,

I am currently employed as a Case Manager with the San Francisco Conservation Corps (SFCC) and have had the opportunity to work directly with Otis since he joined the program in December of this year. From the beginning, Otis has been an eager and willing participant, who has put forth a lot of effort to help better his own life and current living situation.

Prior to starting with the SFCC, Otis successfully completed the RAMP academy's intensive 7 week job readiness 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 that including a resume, cover letter, and master application; in hopes to achieve his career goals and begin a life of dedicated employment.

Since Otis started with the SFCC, we have been working together on ways to achieve his education, employment, and career goals while limiting any personal and life barriers that may currently be in his way. Otis is one of the few individuals I work with who readily seeks out my help, continuously looking for ways he can improve himself and his future. Otis has been attending John Muir Charter School and is working hard to obtain his California High School Diploma. He has also been working with me to gain better conflict resolution skills, increase his parenting skills, as well as developing better ways to appropriately conduct himself as a young adult.

Otis is an extremely polite and kind young man who has a lot of gifts that will help him be successful if he is provided with the right support. I eagerly ask that Otis is given the opportunity to maintain his current level of support at the SFCC and is also given the opportunity to continue to address the barriers and pitfalls that may keep him from being successful in the future. While we all may continue to face bumps in the road ahead, I am confident that Otis is ultimately on a "right" path and that he is working hard to better his own life for both himself and for his family.

Thank you very much for your time and consideration,



Jeff Wolcott, MSW
Case Manager
San Francisco Conservation Corps
102 Fort Mason
San Francisco, CA 94123

April 16, 2012

To Whom It May Concern:

My name is Peter MacEwan, and I am writing to attest to the character of Otis Mobley. As teacher at Sacred Heart Elementary School and currently at Making Waves Education Program I have had the pleasure of working with several children in the Mobley family and maintaining relationships with the entire family for the past 10 years. I taught Otis during his eighth grade school year at Sacred Heart Elementary in my capacity as social studies and technology teacher during the 2002-2003 school year.

Otis stood out as an exceptionally bright student in my class. He had an intense curiosity and genuine interest in the history curriculum surpassing any student in the class. Otis possessed the unique ability at a young age to see beyond the textbook and connect the material with the world around him. As a student in my class Otis impressed upon me his desire to learn and always took his education seriously. Otis sat in the front of the classroom, intent upon learning the curriculum despite several classroom distractions.

As well as an admirable academic interest in the curriculum, Otis also demonstrated a great deal of maturity and self-control. Otis always treated both adults and peers with respect, even when he did not receive like treatment in turn. I can think of one particular instance where Otis managed to keep his composure while being wrongfully accused of participating in classroom gossip. Despite what other students were saying negatively about him, Otis kept his cool and talked through the situation appropriately with the adults in charge.

I have always known Otis to be a respectable, kind, and intelligent person. In my experience with him, he has demonstrated the clear ability to learn from his mistakes. I am also confident in the support Otis' family is able to provide. He comes from a family intent on helping their children get an education and avoid the perils of life in their community. I hope they are given a chance to help their son learn from the mistakes he may have made and continue to live with them in an environment where he will be able to continue his education.

Respectfully,



Peter MacEwan

Special Project Assistant
Making Waves Education Program
3130 - 20th Street (2nd Flr)
San Francisco, CA 94110
(415) 567-8304

April 3, 2012

Honorable Bernard Zimmerman
U. S. Magistrate – Judge

RE: U. S. V OTIS MOBLEY

Dear Judge Zimmerman:

My name is Madeliene L. Mitchell; I am the paternal grandmother of Otis Mobley. I am 67 years of age, widowed since 1992. I retired from United Airlines after 34 years of service. I was initially hired as a secretary. I became a management employee in 1983. I retired as an Engine Maintenance Planner in 2008. My total work experience in the San Francisco Bay Area, including jobs prior to United Airlines, is 48 years. I am a Christian, Mother of four biological children, foster parent of nine children over the years, grandmother to twenty-two and great-grandmother to three children. Three grandsons and two granddaughters are presently attending college and the rest are in high school (two in the Making Waves Program), middle school, elementary and pre-school, all doing very well.

Otis is my first grandchild of 22. Otis matured early in his young life. He was a leader of the Grandchildren and friends in the neighborhood. He excelled academically, athletically and spiritually. He would always have compassion and patience for the slower cousins and friends and made sure they had an equal opportunity to participate in whatever activity they were engaged in at the time (sports, electronic games, studying, etc). He participated in Christian camps in the summer and was told, early on, that he had a spiritual calling on his life. As he became a teenager, he pulled away from the church and became attached to people of which he was unequally yoked. Otis began to get in trouble due to peer pressure and began following rather than leading. He also became a father at the age of 19, which put more achieve higher goals. He was unprepared to do so because he did not complete high school due to Incarceration as teen.

Page 2 US v Otis D. Mobley, Jr.

However, he never lost his integrity. He vowed to me that he would get his GED and pursue higher education. He joined the Job Corps and received High school accreditation. He was actively looking for employment when this present incident occurred. I have not given up hope for his achieving the Will of God in his life. He is very humbled and repentive and ready to do it God's way. I will do whatever I can in supporting him to that end.

Sincerely yours,

Madeliene L. Mitchell

Madeliene L. Mitchell

[REDACTED]

[REDACTED]

[REDACTED]

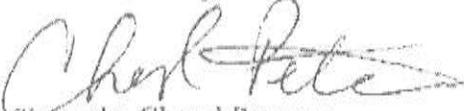
4/12 /12

To: Honorable Bernard Zimmerman
U.S. Magistrate-Judge

From: Cheryl Peterson
882 So. 46th St
Richmond Ca. 94804
Re: Otis Mobley

Dear Judge Benard Zimmerman, my name is Cheryl Peterson, I am 45 years old, married (for 22 years), and I've worked for United Airlines in San Francisco for the past 15 years. I have known Otis all his life, for 23 years. I have been very close to Otis, from time he was born. He was my first nephew, so I informally adopted him as my God son. I would bring him to church with me and look after him whenever his parents needed a babysitter. Otis has always been a leader and a responsible big brother. He helped his mom with his younger siblings and did chores around the house. He was always an outstanding athlete. Otis is a very personable and a respectful young man. Otis is kind and considerate. He has the ability to encourage others to do what is right. Otis now has a son who just turned 4 years old. He is always with his son and loves him dearly. Otis is a great father to his son. I can say all of these things with a sincere heart because it is most definitely true. I know that Otis got in some trouble as a teenager for various reasons; I also know that he worked hard to do what was right after being redeemed. Every time I talk to Otis he tells me of something that he is trying to do positive. I believe that Otis at times gets a little depressed because of his past mistakes, feeling as though he has been labeled a certain way when trying to get a job. However, I always encourage him to never give up and keep trying and let his good outweigh the bad. The most important quality I admire about Otis is that he has a sincere heart. Otis will tell you the truth. He has told me the truth when other youngsters will not say anything. I know he does this because he wants to do what is right and he wants others to do the right the thing. I don't believe incarceration will help Otis or our society. Otis will thrive one day and be a great help to many because his heart says so. He just needs to believe in himself. He also needs others to believe in him, and encourage him. There is no doubt in my mind that with the right resources and support system (for example, counseling, life skills classes and a job), Otis will become an upstanding citizen and a help and a blessing to many. Let's give Otis a chance to thrive with the right resources and strict guidelines and see a success story arise.

Thank You for your careful consideration


Sincerely, Cheryl Peterson

April 16, 2012

The Honorable Judge Zimmerman

U. S. Magistrate – Judge

RE: U. S. v Otis D. Mobley, Jr.

Dear Judge Zimmerman:

I am Tonette Mobley and I am the mother of Otis! I am 47 years of age and a Bay Area Native! I was born and raised in Oakland, California. I was educated in the Alameda County school system. I met and married my husband, Otis Mobley, Sr. of 19 years ago and to this union I have 5 children: Otis D. Jr., Tamanika Z., Akeem S., Kamau L. and Isaiah N. Mobley.

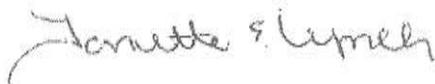
When I gave birth to Otis, I was so delighted. Otis was a beautiful and very happy and healthy baby of whom I am still very proud. Otis was very alert and attentive, never crying, always laughing and smiling. Otis was the first grandchild on his father's side so he received an abundance of love and attention. Otis was fortunate to be surrounded by such a large and well rounded group of relatives. He was exposed to travel, education, spiritual things and family gatherings on a regular basis.

Due to my husband's academic and athletic endeavors in middle and high school, he had contacts that were instrumental in helping us to enroll our children in some of the best schools in the Bay Area, public and private. Otis teachers always spoke very highly of him as being an asset in his classrooms. Their words always included bright, inspiring, polite and intelligent. In addition, his father always kept him busy in after school programs and activities. His father coached many of the teams on which he played. Otis always excelled in everything attempted to do. My son is such a good-hearted, wonderful person. He is always positive and will warm your heart if you are feeling low. He has the smile and skills to take you to another level.

Page 2 U. S. v Otis D. Mobley

My favorite memory of Otis is recent, when he received his certificate of completion of the Conservation Corps. He stood up very boldly, even though he was shaking in his boots, and gave a commendable speech thanking the Directors, staff and everyone involved in this innovative program for his success in the completion! He told me after the speech, that he was feeling shy when he started and as the talk progressed he felt better and better and wanted to say more. He felt very good about himself. I felt real good about him too, because this is the Otis I know, respect, trust and love dearly!

Sincerely yours,



Tonette Mobley

████████████████████

████████████████████

████████████████

April 17, 2012

The Honorable Judge Zimmerman

U. S. Magistrate – Judge

RE: U. S. v Otis David Mobley, Jr.

Dear Judge Zimmerman:

I, Otis Mobley David Mobley, Sr, am writing this letter of character on behalf of my eldest son

Otis David Mobley, Jr. I was born and raised in San Francisco, attending S. F. Unified School Districts and Sacred Heart elementary schools. In 1973, my mother purchased a home in Richmond, California where I attended Richmond Schools and DVC College. I have worked in various jobs dealing with children and youth. I am presently employed by the West Contra Costa Unified School District as a Behavioral Technician and Instructional Assistance.

I will start by saying, I am disappointed to say that money or the lack there of is a driving force in the decisions of the majority of people in this world. It pains my heart to see

that the choices so many talented youths make, thinking they are taking a short cut to success, or

worst than that, they are trying to please or be accepted by their peers. Most would probably

say, why that's a silly or stupid thing to do! Which, it is, but I've worked with children, the majority

of my adult life and for the past 15 yrs. I've been working with at risk youth. I've learned, that,

the youth are being led, not only by peer pressure, but, by video games, gangs, the neighborhood they are from and the internet! We have come to an age where, parents teaching good morals are being outweighed by social media, gang violence. And, children are trying to be a part of something they see going on daily in the neighborhood or at school.

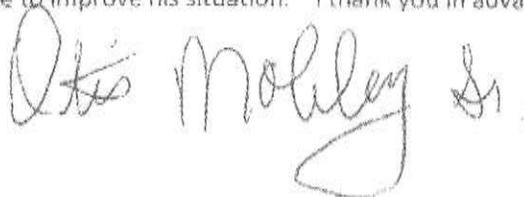
Otis, Jr. is my first born son and is a bright young man who is definitely a family oriented individual. He has had a wonderful childhood. He is the eldest grandchild of my mom and pop! As a child, Otis excelled at everything he endeavored. The teachers always spoke about how he caught on and learned to adapt to whatever the situation. Otis was introduced to Karate, Soccer, Baseball, Basketball, and Football. His paternal Grandfather introduced him to culture. Granddad practiced extensively, molding the grandkids into great performers. He taught to eat well rounded meals and exercise as they prepared for a performance would be very beneficial. They performed at The University of Santa Clara, at school talent shows, churches and family major gatherings. Otis elementary school years were spent at Castro Elementary in El Cerrito, California. His Junior High years were spent at Sacred Heart Grammar in San Francisco, California. There he was introduced to organized Basketball. His team won the Championship two years in a row. Summers were spent at St. Ignatius summer school also in San Francisco. Plans to go to St. Ignatius were disrupted by a bad grade. Hercules High was the next best thing because I didn't want him going to school in Richmond, California, if you are familiar with this city, you know the propensity for violence there is beyond belief. In the fifteen years

Page 2 U. S. V Otis D. Mobley

I've worked in Richmond schools I've seen at least 10 youth killed. I pray someday, people will see that it takes a village to raise a child. Otis' Hercules High school team did well. They came in second place. Otis liked Hercules High and was doing well, but, he got jumped by at least 5 people who were called up to the school by another student who was jealous of Otis' relationship with a young lady the other student liked. Instead of pursuing the people that jumped Otis, I decided to send him to school in S.F. To avoid any and all confrontations. This was the best thing to do at the time! Otis went to South San Francisco High, where he did fairly well academically, but, there was a problem with Otis living in Richmond and going to school in S.F. So, back to Richmond schools we go. I put him in El Cerrito High, which is one of the top schools in the area! There, it seemed he was comfortable. However, at El Cerrito someone robbed him at gun point on one occasion and one day on his way to his Aunt Maya's house. He and two cousins were jumped by grown men for no reason, just because! This is just a couple of things that happened that negatively affected Otis. I'm sure there are others! Otis has a son, Otis the third, who is his pride and joy!

In the last four years, Otis has been raising his son with his girlfriend Meliza Contreras. They love each other, but I think they have a little ways to grow to maturity! Otis, for the last eight months, has been training with the California Conservation Corps for a position with them. Otis is a people person. He is loved by all who comes in contact with him. I am asking that the court grant Otis the chance to continue to improve his situation. I thank you in advance for your consideration!

Thank you kindly,



Otis D. Mobley, Sr.

The Honorable Judge Zimmerman

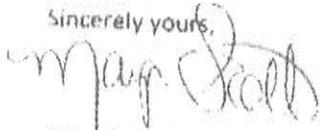
U. S. Magistrate – Judge

Re: US v Otis Mobley

I am a 42 year old woman who works as a Juvenile Supervision Officer at Tarrant County Juvenile Services in Fort Worth, Texas. My husband and I moved our five boys to Texas five years ago in order to offer them a better experience and an attempt to provide a better future with new opportunities. I am Otis' paternal aunt. My siblings and I raised our children pretty close together until we moved to Texas. We try and provide our children with the best opportunities in all areas of life. We always tell them to put God first and treat others the way you want to be treated. I have spent many weekends with Otis and my brothers other children going to birthday parties, sporting events, church, family gatherings, museums, parks and vacations. Otis is like a son to me he has lived with me twice, once as a child and the other as an adult when he was trying to get closer to Lord Jesus. He and I would go to bible study together. Otis often calls me for advice or prayer. Otis has a great love for his family, especially his 4 year old son who reminds me much of him. Recently Otis was working and going to school and was very proud of himself. Otis is the eldest of all my nieces and nephews and all of them always wanted to be like or impress him. Otis always encourages his cousins and siblings to do great things and make our family proud.

I am confident that if you train up a child in the way he should go, and when he is old he will not depart from it. Otis has been instructed from a child, godly principles and strong morals and ethics and I believe that what he has been taught will not be in vain. I believe that Otis is a trustworthy young man and will overcome all obstacles and become the victorious man God has called him to be.

Sincerely yours,



Maya T. Scott



Hello my name Julia Shands, I am the aunt of Otis Mobley, I have known Otis for all of his twenty-three years and from day one he has had a contagious personality as well as the absolute ability to make you smile.

My relationship with Otis is close in the regard that he and my son Khusar Mobley are cousins, however they have always been close like brothers, so Otis frequents my house as does my son frequent Otis' home. Every time Otis comes to my home I can be sure to have three things happen, first Otis will come to my room or where ever I am in my house and hug me and say "hi Auntie", second he will ask how I am doing and look in the refrigerator to see what I have to eat, lastly he NEVER leaves my home without again hugging me and saying "I love you Auntie".

The last time Otis was at my house he was talking to my son about joining the school and that that he was involved in in San Francisco, they were making arrangements to get Khusar a job and his High School diploma, I really appreciated Otis for sharing his successes with my son to encourage him in getting through tough times as well, it was obvious that this was Otis' focus. Otis was proud of the direction in which his life was going and he was excited and willing to share the information with my son so that they could both be successful together.

There have been several occasions when Otis has come to my house with his son, or I have visited his parents home and Otis is there taking care of "baby O". Otis' compassion and love for his handsome little son is so sweet it is clear that "baby O" loves his Daddy a lot. Like children do "baby O" asks his father question after question after question and Otis just patiently answers them all with a smile. Otis takes his son to the park to run and ride his bike and to the movies to see the latest Disney film, bottom line he makes it his focus to have a hands on relationship with his son. "baby O" and his father have that same half smile and bright eyed personality.

In closing, I would just like to point out that we all have gone through trying times in our lives, some more difficult than others. I know in my heart that Otis does not sit and conjure up havoc to reap, Otis' upbringing can prove that he has a host of accomplished people in his family on both sides his father and mother have always provided him with anything he needs to encourage him when times are hard, so these accusations are totally a blow to us all, certainly his behavior and demeanor do not support them in any way, shape, form or fashion.

I would like to thank you for your time and consideration of my words, please allow Otis the opportunity to continue being the father to his son that "baby O" deserves, Otis is trying and in these times that is all any of us can do. Otis has really make some positive strides toward growth and maturity over the last several months, I would hate to see his efforts go to waste.

Respectfully,



Julia Shands

To whom this letter may find some sincerity in their hearts to know all Youngman are not as bad as they appear to be in some of the choices they choose to take.

Hello my name is Shanelle M. Lynch, known to my nieces and nephew as "Auntie Nell." I'm the eldest of four, I'm a working woman have been on my job 33 years, with some college education background in the special education field. I'm the auntie that always has something to say, wanting the best for my (our) children.

Otis Mobley is my oldest nephew, the oldest child born to my baby sister Tonette and her husband Otis Mobley also. My Nephew known to me as "O" has a beautiful heart; Otis is a family orient young man Otis is a joy to be around. I'm always looking for him at family gatherings. Otis always answer with "yes" when called upon. He will do what's asked of him, from taking garbage out to getting you some water! Our other sister Name Leia Collins know as "Auntie Leia and I took Otis on his first airplane trip oh what a joy, Otis was sitting by the window he looked out and said "I'm in heaven." How I can remember that like it was yesterday. Another trip we also took him was to the snow, Otis stood on top of the mountain we were on and said the same thing only this time he opened his arms looked up to the sky and said "I'm in Heaven".

Otis has a son, His name is also Otis, so as you can see the name goes on and on because of the heart Otis has. Otis is truly loved and he loves. He's a beautiful big brother to his siblings. I enjoy listening to him talk to them, He talks very positive to them giving them the right insight that they need to hear what a joy. I hope and pray I have been of some help.

With Warm, Sincere

Shanelle M Lynch Better known as "Auntie Nell"

Shanelle M Lynch

April 4, 2012

Alameda County Federal Court

RE: U.S vs. Otis Mobley

Dear whomever it may concern,

I am Isaiah Mobley, youngest brother of Otis Mobley. I am fifteen years of age and have known Otis ever since I was born. My brother Otis is a very encouraging and useful person at times. He is uplifting and confident. I see him every weekend and sometimes weekday. If you didn't know I am participating in sports and different activities and before any race, game, or tournament Otis would give a little speech or words of encouragement before I went to play, saying things like "try hard!" and "do good!" And out of my four brothers and sister he is the only one to mention anything to me about doing well. Knowing that this may come to an end because of a mistake is devastating. Just knowing that he cares for me and loves me makes me want to do better not only in sports but in life.

In his adult life he was constantly willing to help people out with problems financially and internally. He was always proactive, asking questions, and laughing. He has a four year old son who loves and adores him and has a family who wants nothing but the best for him and will do anything for him. His favorite saying is "family first" and that is what he shows in his actions and attitude towards the family.

Sincerely,

Isaiah Mobley

April 4, 2012

Alameda County Federal Court

RE: Otis Mobley

Dear Sirs/Madams:

Please accept this as a letter of characterization for Otis Mobley, who is scheduled to be arraigned on Friday, April 6, 2012 in Alameda County Federal Court.

Otis Mobley is the son of my youngest sister, Tonette Mobley. I have known Otis since birth and played an active role in his upbringing. Otis is the oldest of five children, who all look up to him and love him dearly. He was raised in a loving and supportive household by his parents, Tonette and Otis Mobley Sr. During his childhood, Otis was very active with the Baptist church and various athletic programs in school. He has always had a fun loving positive personality that his peers respected and has always been able to maintain a healthy social life.

As an adult, Otis is exceptionally kind, good natured and always willing to help others. He continues to lead an active social life with many close friends. In his spare time, Otis still enjoys playing basketball – one of the various sports he excelled in during his school years. His siblings all admire him as their older brother. He is a wonderful father to his 4 year-old son, also named Otis. Otis is a very hard working individual whose family is his main priority.

Sincerely,

Lela Lynch-Collins

Certificate of Completion

This certifies that

OTIS MOBLEY JR.

Has successfully completed the seven - week life skills preparatory program:

Ramp SF Academy
with the
San Francisco Conservation Corps



December 16, 2011




James Beary, Ramp SF Academy Trainer



April 10, 2012

Otis Mobley
1601 Ocean Avenue #238
San Francisco, CA 94112

Dear Otis:

Because your violation of the attendance policy which caused your separation was due to incarceration, we have reinstated your employment and are placing you on a continuation of your approved Leave of Absence (LOA).

Your covered LOA runs through May 1, 2012, with you scheduled to return to work on May 2, 2012. If you are able to return before May 2, please contact Chase Torres or your supervisor as soon as you are able to do so.

It is further acknowledged that this will be leave without pay.

Please note you will be required to bring certification upon your return. In addition, if you cannot return May 2, please contact Chase, your supervisor or me no later than May 1.

Thank you.

Sincerely,

Tom Offenbecher, SPHR
Associate Director of Human Resources and Communications
San Francisco Conservation Corps

San Francisco Conservation Corps 1415th Street San Francisco, CA 94103
Tel: 415.928.7322 Fax: 415.928.7330 www.sfcc.org

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