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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMMON BUNDY, JON RITZHEIMER, JOSEPH O'SHAUGHNESSY, RYAN PAYNE, RYAN BUNDY, BRIAN CAVALIER, SHAWNA COX, PETER SANTILLI, JASON PATRICK, **DUANE LEO EHMER,** DYLAN ANDERSON, SEAN ANDERSON, DAVID LEE FRY, JEFF WAYNE BANTA, SANDRA LYNN ANDERSON, KENNETH MEDENBACH, BLAINE COOPER, WESLEY KJAR, COREY LEQUIEU, NEIL WAMPLER, JASON CHARLES BLOMGREN. DARRYL WILLIAM THORN, GEOFFREY STANEK, TRAVIS COX, and ERIC LEE FLORES.

UNOPPOSED EMERGENCY
MOTION FOR COURT ORDER
PROHIBITING U.S. MARSHALS
FROM REMOVING RYAN
PAYNE AND LISTED
DEFENDANTS FROM THE
DISTRICT OF OREGON

Case No. 3:16-cr-00051-BR

Defendants.

PAGE 1. UNOPPOSED EMERGENCY MOTION FOR COURT ORDER PROHIBITING U.S. MARSHALS FROM REMOVING RYAN PAYNE AND LISTED DEFENDANTS FROM THE DISTRICT OF OREGON

Defendant Ryan Payne, through Federal Public Defender Lisa Hay, respectfully moves the Court for an Order prohibiting the United States Marshal of the District of Oregon from removing Mr. Payne or allowing his removal from the District of Oregon without his consent, or without further order of the Court after a hearing. An immediate order is requested because a Magistrate Judge in the District of Nevada has issued a Writ of Habeas Corpus Ad Prosequendum that purports to require that Mr. Payne be brought to Nevada on or about Thursday, March 17, 2016, for arraignment and other hearings "until released and discharged" by that court (Attachment A, p. 1). The certification of conferral with the government and the position of other defendants is provided below. This Court's order should issue for the following reasons:

- 1. The Writ is invalid as a matter of law because a writ of habeas corpus ad prosequendum cannot be used by one federal district court to remove a pretrial detainee from another federal district court;
- 2. Execution of the Writ risks violation of Mr. Payne's right to a Speedy Trial under the Sixth Amendment;
- 3. Execution of the Writ would infringe on Mr. Payne's right to the effective assistance of counsel, in violation of the Sixth Amendment;
- 4. Execution of the Writ would violate Mr. Payne's right to a fair trial and due process of law, in violation of the Fifth Amendment, in that he would be required to prepare for trial in this District even while being held 1,000 miles away in another district;
- 5. Execution of the Writ would violate the consent decree in effect in this District that requires the U.S. Marshals to hold pretrial detainees within 85 miles of the courthouse.

For each of these independent reasons, Mr. Payne requests that the Court issue its order forthwith.

POSITION OF OTHER CO-DEFENDANTS: Co-defendants Ammon Bundy and Ryan Bundy are identically situated to Mr. Payne as they were detained by this Court pretrial, they have been arraigned on the indictment in this case, they were indicted in Nevada after their arrest in this

PAGE 2. UNOPPOSED EMERGENCY MOTION FOR COURT ORDER PROHIBITING U.S. MARSHALS FROM REMOVING RYAN PAYNE AND LISTED DEFENDANTS FROM THE DISTRICT OF OREGON

case, and the same writs have been issued for their appearance in Nevada (Attachment A, pp. 1, 7, 11). Counsel for these co-defendants join in this motion. Co-defendants Brian Cavalier and Blaine Cooper are similarly situated in all respects except that no writ for their appearance in Nevada is evident yet on the Nevada docket. Their counsel join in this motion. The remaining co-defendants were either released pretrial and therefore are not in the custody of the U.S. Marshal by order of this Court, or are not named in the Nevada indictment, and therefore this motion is not relevant to them. Should, however, additional co-defendants be added through a superseding indictment in the District of Nevada, and those same co-defendants are held in custody in Oregon, this motion would apply to them and their respective counsel indicate their desire to join the motion as well.

CERTIFICATION OF CONFERRAL: Undersigned counsel certifies that Assistant United States Attorney Ethan Knight was provided a copy of and consulted regarding this motion. He indicated that the government, represented by the District of Oregon for purposes of this Motion, does not object to defendants' motion. The government, however, has no objection to defendants' arraignment in the Nevada case by means of video teleconference. Additionally, if the Court would like to hear directly from the District of Nevada on this issue, the government will facilitate that request.

I. Background Facts Relevant to this Motion.

The Department of Justice filed a criminal complaint against Ryan Payne, Ammon Bundy, Ryan Bundy, Brian Cavalier, and other defendants in this District on January 27, 2016 (Docket No. 14). Mr. Payne and others made their first appearance before the magistrate judge that same day and on January 28, 2016, counsel was appointed (Docket Nos. 5, 6, 7, 15, 16, 21). The government obtained and filed an Indictment against them on February 3, 2016 (Docket No. 58).

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The Indictment, like the Complaint, alleges criminal acts occurring in Oregon in late 2015 through January 26, 2016. The defendants were arraigned on the Indictment on February 24, 2016, and each asserted their statutory and constitutional rights to a speedy trial. The original trial date for the last arraigned co-defendant was set for April 19, 2016 (Docket No. 150).

On February 17, 2016, the Department of Justice obtained and filed an Indictment in the District of Nevada against Ryan Payne, Ammon Bundy, Ryan Bundy, and others for acts alleged to have occurred in Nevada in 2014. *See* Case No. 2:16-cr-00046-GMN-PAL (Docket No. 5.)¹ The defendants, having been detained pretrial in Oregon, have not appeared in court in Nevada.

On February 17, 2016, the prosecutors in Nevada sought and obtained writs of habeas corpus ad prosequendum from a magistrate judge in the district of Nevada, directing the warden of the Multnomah County jail to release Defendants Ryan Payne, Ammon Bundy, and Ryan Bundy for transport to Nevada (Attachment A, pp. 1, 8, 11). The prosecutor's petition to the court states that Ryan Payne was "committed by due process of law in the custody of the Warden, Multnomah County Jail." (Attachment A, p. 3). In the accompanying form AO 257, the box stating "currently in federal custody" is not checked, whereas the box under "currently in state custody" for "writ required" is checked. (Attachment A, pp. 5, 6). In fact, Mr. Payne is in federal custody, not in state custody, and the Warden of the county jail has no authority to move Mr. Payne from the district.

¹ Defendants Brian Cavalier and Blaine Cooper were added as co-defendants in Nevada by superseding indictment on March 2, 2014. See Case No. 2:16-cr-00046-GMN-PAL, Dkt. 27.

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- II. The Writ is Invalid as a Matter of Law Because a Writ of Habeas Corpus Ad Prosequendum Cannot be Used by One Federal District Court to Remove a Pretrial Detainee from Another Federal District Court.
 - A. Applicable Law Regarding Federal Writs of Habeas Corpus Ad Prosequendum.

Federal courts are authorized by 28 U.S.C. § 2241(a) to grant writs of habeas corpus, including a writ necessary to bring a prisoner into court to testify or for trial. 28 U.S.C. § 2241(c)(5). Although the initial statutory authority for habeas corpus, § 14 of the first Judiciary Act, 1 Stat. 81, did not expressly include the writ ad prosequendum, the Supreme Court interpreted the words "habeas corpus" to include the writ "necessary to remove a prisoner in order to prosecute him in the proper jurisdiction wherein the offense was committed." *Carbo v. United States*, 364 U.S. 611, 614 (1961) (citing *Ex parte Bollman*, 1807, 4 Cranch 75, 2 L.Ed. 554 (1807)). In 1948, a court's authority to issue the writ ad prosequendum was made explicit with the enactment of 28 U.S.C. § 2241, which now provides:

- (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
- **(b)** The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
- (c) The writ of habeas corpus shall not extend to a prisoner unless—
 - (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
 - (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
- PAGE 5. UNOPPOSED EMERGENCY MOTION FOR COURT ORDER PROHIBITING U.S. MARSHALS FROM REMOVING RYAN PAYNE AND LISTED DEFENDANTS FROM THE DISTRICT OF OREGON

- (3) He is in custody in violation of the Constitution or laws or treaties of the United States; or
- (4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
- (5) It is necessary to bring him into court to testify or for trial.

28 U.S.C. § 2241 (2008) (emphasis added). *See United States v. Mauro*, 436 U.S. 340, 357-58 (1978) (reviewing this case law and legislative history).

The statute includes a jurisdictional limiting clause authorizing courts to issue the writ only "within their respective jurisdictions." 28 U.S.C. § 2241(a). The Supreme Court has interpreted this language to require that "the court issuing the writ have jurisdiction over the custodian." *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004). Congress added this limiting clause to the habeas statute in 1867 to avoid the "inconvenient [and] potentially embarrassing" possibility of judicial interference in a distant court. *Id.* (citation omitted).

In 1961, the Supreme Court recognized an exception to these jurisdictional limits for writs ad prosequendum to obtain state court prisoners. *Carbo*, 364 U.S. at 614-15 (approving of writ issued by federal court in California to bring for trial a prisoner serving a state sentence in New York). As the Court has since explained, the authority of federal courts to secure the appearance of prisoners in state custody for federal trials had "never been doubted." *Mauro*, 436 U.S. at 358. Indeed,

The issuance of ad prosequendum writs by federal courts has a long history, dating back to the First Judiciary Act. We can therefore assume that Congress was well aware of the use of such writs by the Federal Government to obtain state prisoners.

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Id. at 360. Thus, although a traditional habeas corpus petition must be filed in the district in which the person is held, *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004), no such territorial restriction applies to writs ad prosequendum when issued by a federal court to obtain custody of a state prisoner.

The Supreme Court has never held, however, that these same jurisdictional requirements may be ignored when the sought-after person is in federal custody, as opposed to state custody. In fact, no case located by counsel addressed the use of a writ ad prosequendum to remove a pretrial detainee from one federal court at the request of another. Because federal district courts are coequal entities within the same sovereign system, the concerns identified by Congress when setting territorial limits on writs – the "inconvenient [and] potentially embarrassing" possibility of judicial interference in a distant court – apply strongly here. *Rumsfeld*, 542 U.S. at 442. As argued below, based on this law, the writ is invalid because it was issued by a court without jurisdiction.

B. The Writ Issued By the District of Nevada To Obtain Custody of A Pretrial Detainee in the District of Oregon Is Invalid.

The statute authorizing writs ad prosequendum does not empower one federal district court to disrupt the pretrial proceedings of a second federal district court by removing a defendant from within the second court's jurisdiction. Such an interpretation of the statute, 28 U.S.C. § 2241, would contravene settled principles of sovereignty and due process.

"Normally, the sovereign which first arrests an individual acquires priority of jurisdiction for purposes of trial, sentencing, and incarceration." *Reynolds v. Thomas*, 603 F.3d 1144, 1152 (9th Cir. 2010) (internal quotation marks omitted) (citation omitted), *overruled on other grounds* by *Setser v. United States*, 132 S.Ct. 1463, 1473 (2012). In order to preserve comity among courts,

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"the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose." *Ponzi v. Fessenden*, 258 U.S. 254, 260-61 (1922). Construing the habeas statute to allow one federal court to disrupt proceedings in another federal court would eviscerate this "chief rule" of comity identified by the Supreme Court in *Ponzi*. 258 U.S. at 260.

The fact that courts have interpreted § 2241 to allow federal courts to intervene in state court proceedings should not sway the analysis. The federal habeas statutes specifically allow a federal court to intervene in pending state court proceedings. 28 U.S.C. § 2251 ("A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding."). The statute contains no parallel authority for a federal court to stay another federal court's proceedings. Congress's omission of this comparable authority regarding federal proceedings must be regarded as intentional. *See Andreiu v. Ashcroft*, 253 F.3d 477, 480 (9th Cir. 2001) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citations omitted)).

In other contexts, courts also recognize the distinction between a federal court's exercise of authority that affects state courts compared to federal courts. *See, e.g., United States v. Montes-Ruiz,* 745 F.3d 1286, 1291-93 (9th Cir. 2014) (noting a "broader discretion bestowed upon federal

judges to make the concurrent/consecutive determination when the other sentence is a state sentence rather than a federal one").

The writ issued by the magistrate judge in Nevada does not comply with § 2241 because it seeks custody of a federal pretrial detainee who is not held within the District of Nevada. Indeed, the clerk issuing the AO 257 form may have unintentionally misled the magistrate judge by failing to note, in the appropriate box, that Mr. Payne is in federal custody. *See* Attachment A, pp. 5, 6.

Because the writ is invalid, the Court should issue an order that the U.S. Marshals not execute it. *See, e.g., Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 38 (1985) (noting that court-issued writ must derive from statutory source); 28 U.S.C. § 566(c) (requiring Marshals to execute *lawful* writs).

III. Enforcement of a Writ of Habeas Corpus Ad Prosequendum During the Pending Criminal Case Would Violate Mr. Payne's Constitutional Rights.

Even if a writ of habeas corpus ad prosequendum could lawfully be entered against a federal prisoner in a different district, the Court should prohibit enforcement of the writ against Mr. Payne, a pretrial detainee, until the criminal proceedings in this district have been completed. Removing Mr. Payne from Oregon risks violation of his Fifth and Sixth Amendment rights under the Constitution.

The Sixth Amendment provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial." Const. Amend. VI. Mr. Payne's rights to a speedy trial have been triggered in Oregon, where he was arrested, indicted, and arraigned. 18 U.S.C. § 3161(c)(1) ("the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the

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information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."). Because Mr. Payne has not appeared in Nevada, the speedy trial clock has not been triggered in that district. Were he to be transported there, the speedy trial clock would start in that district as well. This would create the untenable situation of placing Mr. Payne on trial in two jurisdictions at once. *Ponzi v. Fessenden*, 258 U.S. 254, 260-61 n. 2 (1922) ("One accused of crime, of course, cannot be in two places at the same time. He is entitled to be present at every stage of the trial of himself in each jurisdiction with full opportunity for defense."). Because the U.S. Attorney elected to begin proceedings in this district and the Court has assumed jurisdiction over Mr. Payne, Mr. Payne's case here must be completed first. *Stamphill v. Johnston*, 136 F.2d 291, 292 (9th Cir. 1943) ("Courts of the United States are bound to proceed to judgment * * * in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.") (citation omitted)).

If Mr. Payne were transported to Nevada in order to start his criminal case there, this Court would have no guarantee that Mr. Payne would be returned to this district in time for trial. Even when a writ is unlawfully executed, a court's possession of a defendant confers jurisdiction. In *Stamphill v. Johnston*, 136 F.2d 291, 292 (9th Cir. 1943), for example, the defendant alleged that he had been unlawfully transported from state to federal court. The Ninth Circuit ruled that because the state surrendered control of his person, the state "gave the federal court jurisdiction to try [him] and to render judgment of imprisonment against him."

The personal presence of a defendant before a District Court gives that court complete jurisdiction over him, regardless of how his presence was secured, whether by premature arrest ... wrongful seizure beyond the territorial jurisdiction

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of the court ... false arrest ... or extradition arising out of an offense other than the one for which he is being tried. ... The court cannot decline to exercise this jurisdiction. 'Courts of the United States are bound to proceed to judgment * * * in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. ... However the defendant was brought before the District Court, once he was there it had and was bound to exercise complete jurisdiction over him.

Stamphill, 136 F.2d at 292 (internal citations omitted).

Removal of Mr. Payne from the District of Oregon would also violate his right to the effective assistance of counsel. U.S. Const. Amend. VI. ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."). The right to effective assistance of counsel includes the right to regularly and consistently consult with one's attorney before trial. *See Powell v. Alabama*, 287 U.S. 45, 59 (1932); *see also Strickland v. Washington*, 466 U.S. 668, 688 (1984) (imposing upon counsel an affirmative "dut[y] to consult with the defendant on important decisions and to keep the defendant informed of important developments"). The United States Supreme Court has recognized the time between arraignment and trial to be "vitally important" and "perhaps the most critical period of the proceedings." *Powell*, 287 U.S. at 57. If Mr. Payne were transported to Nevada, counsel would likely be unable to communicate with him by means other than correspondence. This impediment to effective representation would impair counsel's ability to identify witnesses, uncover evidence, develop a theory of the facts and otherwise prepare for trial. Defendants "must not be stripped of [their] right to have sufficient time to advise with counsel and prepare [their] defense." *Powell*, 287 U.S. at 59.

Finally, by analogy to the anti-shuttling provisions of the Interstate Agreement on Detainers Act (IADA), shuttling Mr. Payne between two districts for the convenience of the prosecution, without regard to Mr. Payne's interests, would provide a basis for dismissal of the

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charges. The IADA, 18 U.S.C.App. § 2, p. 692, applies to the federal government and is designed to ensure that criminal charges by separate sovereigns are disposed of in an orderly and fair manner. *Alabama v. Bozeman*, 533 U.S. 146, 149 (2001) (noting the goal of eliminating uncertainties for prisoners from untried indictments). Article IV of the IADA prohibits shuttling of prisoners back and forth from a prison to the place where charges lie. *Bozeman*, 533 U.S. at 150 ("Article IV also sets forth the 'antishuttling' provision at issue here. To repeat: that provision says that trial must be 'had ... prior to the prisoner's being returned to the original place of imprisonment'; otherwise, the charges 'shall' be dismissed with prejudice."). In other words, once a prisoner has been transported based on a detainer and arraigned on a criminal charge, he must be afforded his speedy trial rights within the charging district or the charges must be dismissed. The IADA provisions do not apply to properly executed writs ad prosequendum as opposed to detainers, *Mauro*, 436 U.S. at 357-58, but the same anti-shuttling principles should guide this Court's review of the writ in this case.

IV. Allowing The U.S. Marshals to Remove Mr. Payne From the District Of Oregon Would Violate the Consent Decree Governing the Housing of Pretrial Detainees in this District.

In addition to the constitutional issues described above, removal of Mr. Payne from this district during the pendency of the criminal case would violate the consent decree that governs the housing of pretrial detainees. *See* Modified Consent Decree, *James Crowell v. Michael B. Mukaskey, et al.*, Case No. 3:81-cv-00394-HA, Docket No. 60 (6/17/08) (Attachment B). The *Crowell* Consent Decree requires that the U.S. Marshal for the District of Oregon hold all pretrial detainees facing charges in the District of Oregon "within 85 miles of the courthouse where their hearings or trials are to be held." *Id.* The U.S. Marshal's Service has not moved to modify the

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decree and is therefore bound by it. This Court has authority under the All Writs Act, 28 U.S.C.

1651(a), to enjoin the U.S. Marshals from violating that consent decree. See, e.g., United States v.

City of Detroit, 329 F.3d 515 (6th Cir. 2003) (holding district court has authority under All Writs

Act to order compliance with consent decree).

V. Mr. Payne is Likely to Suffer Irreparable Harm Without an Order from this Court

Directing the United States Marshal to Keep Him in the District of Oregon Until

These Proceedings are Completed.

Mr. Payne is presumed innocent of the charges in both Oregon and Nevada. Coffin v.

United States, 156 U.S. 432, 453 (1895) ("The principle that there is a presumption of innocence in

favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at

the foundation of the administration of our criminal law."). With the presumption of innocence as

a backdrop, and with speedy trial rights having been triggered in Oregon and the right to assistance

of counsel attached, Mr. Payne's interest in preserving constitutional rights related to his case in

the district of Oregon outweighs any interest Nevada may have in immediate possession and

prosecution of him. Mr. Payne was arrested and indicted in Oregon first. This case must be allowed

to proceed without interruption.

WHEREFORE, for the above-stated reasons, Mr. Payne respectfully requests that the

Court issue an Order directing the United States Marshal to keep him and other detained defendants

in the District of Oregon until the completion of this case.

Respectfully submitted on March 16, 2016.

/s/ Lisa Hay

Lisa Hay

Federal Public Defender

PAGE 13. UNOPPOSED EMERGENCY MOTION FOR COURT ORDER PROHIBITING U.S. MARSHALS FROM REMOVING RYAN PAYNE AND LISTED DEFENDANTS FROM THE DISTRICT OF OREGON

UNITED STATES DISTRICT COURT 1 DISTRICT OF NEVADA 2 -000-3 Case No.: 2:16-cr- #6 UNITED STATES OF AMERICA, 4 WRIT OF HABEAS CORPUS Plaintiff, AD PROSEQUENDUM FOR RYAN W. PAYNE 5 VS. (ID#) 79402-065 6 RYAN W. PAYNE, 7 Defendant. 8 THE PRESIDENT OF THE UNITED STATES OF AMERICA TO: WARDEN, 9 MULTNOMAH COUNTY JAIL PORTLAND, OREGON 10 UNITED STATES MARSHAL FOR THE DISTRICT OF NEVADA AND ANY OTHER UNITED STATES MARSHAL 11 GREETINGS: 12 WE COMMAND that you have the body of RYAN W. PAYNE, detained in the 13 custody of the Warden, Multnomah County Jail, before the United States District Court at the 14 Lloyd D. George United States Courthouse in Las Vegas, Nevada, on or about 15 Thursday, 3/17/16 , at the hour of 3:00 p.m., for arraignment and from time GWF, Courtroom 3A 16 to time and day to day thereafter, at such times and places as may be ordered and directed by the 17 Court entitled above, until the said RYAN W. PAYNE is released and discharged by the said 18 Court; and that you shall thereafter return the said RYAN W. PAYNE to the custody of the 19 Warden, Multnomah County Jail, Portland, Oregon, under safe and secure conduct, and have 20 you then and there this writ. 21 DATED: February 17, 2016 22 UNITED STATES MAGISTRATE JUDGE ATTEST: 23 February 17, 2016 LANCE S. WILSON 24 DATE

nergency Motion for Court Order Attachment A - Page 1 of 14

(By) DEPUTY CLERK

| 1 | UNITED STATES DISTRICT COURT |
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| 2 | DISTRICT OF NEVADA |
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| 8 | UNITED STATES OF AMERICA,) Case No.: 2:16-cr- |
| 4 | Plaintiff, ORDER FOR ISSUANCE OF WRIT OF HABEAS CORPUS |
| 5 | vs.) AD PROSEQUENDUM FOR) RYAN W. PAYNE |
| 6 | RYAN W. PAYNE,) (ID#) 79402-065 |
| 7 | |
| 8 | Defendant. |
| 9 | Upon reading the petition of the United States Attorney for the District of Nevada, and |
| 10 | good cause appearing therefore, |
| 11 | IT IS HEREBY ORDERED that a Writ of Habeas Corpus Ad Prosequendum issue out |
| 12 | of this Court, directing the production of the body of the said RYAN W. PAYNE before the |
| 13 | United States District Court at Las Vegas, Nevada, on or about |
| 14 | Thursday, 3/17/16, at the hour of 3:00 p.m. for arraignment and any GWF, Courtroom 3A |
| 15 | further proceedings and from time to time and day to day thereafter until excused by the said |
| 16 | Court. |
| 17 | DATED: February 17, 2016 |
| 18 | I DUTED OF A TEG MACGOTD A TE HIDGE |
| 19 | UNITED STATES MAGISTRATE JUDGE |
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| 1 | Case 3:16-cr-00051-BR Document 312-1 Filed 03/16/16 Page 3 of 14 Case 2:16-cr-00046-GMN-PAL Document 16 Filed 02/17/16 Page 2 of 3 | | |
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| | c | | |
| 1 | DANIEL G. BOGDEN | | |
| 2 | United States Attorney District of Nevada | | |
| 3 | STEVEN W. MYHRE NICHOLAS D. DICKINSON Assistant United States Attorneys | | |
| 4 | NADIA J. AHMED ERIN M. CREEGAN | | |
| 5 | Special Assistant United States Attorneys 333 Las Vegas Boulevard South | | |
| 6 | Suite 5000 Las Vegas, Nevada 89101 702-388-6336 | | |
| 7 | UNITED STATES DISTRICT COURT | | |
| 8 | DISTRICT OF NEVADA | | |
| 9 | -oOo- | | |
| 10 | UNITED STATES OF AMERICA, Case No.: 2:16-cr- 46 | | |
| 11 | Plaintiff, PETITION FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM FOR | | |
| 12 |) RYAN W. PAYNE) (ID#) 79402-065 | | |
| 13 | RYAN W. PAYNE, | | |
| 14 | Defendant. | | |
| 15 | <u></u> | | |
| 16 | The petition of the United States Attorney for the District of Nevada respectfully shows | | |
| 17 | that RYAN W. PAYNE, is committed by due process of law in the custody of the Warden, | | |
| 18 | Multnomah County Jail, Portland, Oregon, that it is necessary that the said RYAN W. PAYNE | | |
| 19 | be temporarily released under a Writ of Habeas Corpus Ad Prosequendum so that the said | | |
| 20 | RYAN W. PAYNE may be present before the United States District Court for the District of | | |
| 21 | Nevada, Las Vegas, Nevada, on Thursday, 3/17/16, at the hour of 3:00 p.m. | | |
| 22 . | for arraignment and from time to time and day to day thereafter until excused by the said Court. | | |
| 23 | That the presence of the said RYAN W. PAYNE before the United States District Court | | |
| 24 | on or about Thursday, 3/17/16 GWF, Courtroom 3A, at the hour of 3:00 p.m., for | | |
| | Emergency Motion for Court Order Attachment A - Page 3 of 14 | | |

1 arraignment and from time to time and day to day thereafter until excused by the Court has 2 been ordered by the United States Magistrate or District Judge for the District of Nevada. 3 WHEREFORE, petitioner respectfully prays that a Writ of Habeas Corpus Ad 4 5 Prosequendum issue out of this Court, directed to the Warden, Multnomah County Jail, Portland, Oregon, and to the United States Marshal for the District of Nevada, commanding 6 7 them to produce the said RYAN W. PAYNE before the United States District Court on or 8 Thursday, 3/17/16 , at the hour of 3:00 p.m., for arraignment and from about GWF, Courtroom 3A 9 time to time and day to day thereafter, at such times and places as may be ordered and directed 10 by the Court entitled above, to appear before the Court, and when excused by the said Court, to be returned to the custody of the Warden, Multnomah County Jail, Portland, Oregon. 11 DATED this 17th day of February, 2016. 12 13 Respectfully submitted, 14 DANIEL G. BOGDEN 15 United States Attorney 16 STEVEN W. MYHRE 17 Assistant United States Attorney 18 19 20 21 22 23 24

Case 3:16-cr-00051-BR Document 312-1 Filed 03/16/16 Page 5 of 14 Case 2:16-cr-00046-GMN-PAL Document 22 Filed 02/17/16 Page 1 per 18 U.S.C. 3170

| DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT | | | |
|---|---|---|------------------------------------|
| BY: ☐ INFORMATION ☑ IN | DICTMENT | CASE NO. 2:16-cr- 4-6 | |
| Matter Sealed: Juvenile Indictment Plea Supersedia Indictme Information | nt Charges/Counts A | Defendant: | |
| UNITED STATES DISTRICT COURT | Las Vegas | | |
| Name and Office of Person Furnishing Information on | Divisional Office se Jarmolowich Atty Other U.S. Agenc Jo. (702) 388-6336 | y Interpreter Required Dialect: | * |
| Name of Asst. | e/Nicholas D. Dickinson | — Birth Viale [| Alien if applicable) |
| Name of Complainant Agency, or Person (& Title, if any) Chad Simkins ~ FBI | | Social Security Number | |
| person is awaiting trial in anothe (give name of court) | r Federal or State Court | DEFENDANT | |
| this person/proceeding transfer per (circle one) FRCrP 20, 2 | ed from another district or 40. Show District | Issue: ✓ Warrant Summons Location Status: Arrest Date or Date Transferred to Federal Cust | odv |
| this is a reprosecution of charge previously dismissed which were dismissed on motion of: U.S. Atty Defense this prosecution relates to a pending case involving this same defendant. (Notice of Related Case must still be filed with the Clerk.) prior proceedings or appearance before U.S. Magistrate Judge regarding this defendant were recorded under | SHOW DOCKET NO. | Currently in Federal Custody | RECEIVED SERVED ON OF RECORD |
| Place of offense | County | Appointed on Target Letter | |
| . This report amends AO 257 previously submitted | | | |
| OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS | | | MMENTS |
| Total # of Counts 16 | | | |
| Set Title & Section (Petty = 1 / Misdement | | Description of Offense Charged | Count(s) |
| 4 18 U.S.C. § 371 | | Conspiracy to Commit Offense Against the United States | 1 |
| 4 18 U.S.C. § 372 | | | |
| | 3 U.S.C. § 111(a)(1) and (b) Assault on a Federal Officer | | 4, 5 |
| 4 18 U.S.C. § 115(a)(1)(B) Thre | | Threatening a Federal Law Enforcement Officer | 7, 8 |

Emergency Motion of Court or Relation to a Crime of Violence
Attachment A - Page 5 of 14

3, 6, 9, 15

18 U.S.C. § 924(c)

| DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT | | |
|--|--|--|
| BY: ☐ INFORMATION ☑ INDICTMENT | CASE NO. 2:16-cr- 46 | |
| Matter Sealed: | USA vs. Defendant: Page 2 of 2 | |
| Name of District Court, and/or Judge/Magistrate Location (City) | Address: | |
| UNITED STATES DISTRICT COURT Las Vegas DISTRICT OF NEVADA Divisional Office | | |
| Name and Office of Person Furnishing Information on THIS FORM Name of Asst. Ellenrose Jarmolowich U.S. Atty Other U.S. Agency Phone No. (702) 388-6336 | Interpreter Required Dialect: | |
| U.S. Attorney (if assigned) Steven W. Myhre/Nicholas D. Dickinson | Birth Male Alien | |
| PROCEEDING | Date | |
| Name of Complainant Agency, or Person (& Title, If any) Chad Simkins ~ FBI | Social Security Number | |
| person is awaiting trial in another Federal or State Court (give name of court) | DEFENDANT | |
| this person/proceeding transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District this is a reprosecution of charges previously dismissed which were dismissed on motion of: U.S. Atty Defense this prosecution relates to a pending case involving this same defendant. (Notice of Related Case must still be filed with the | Issue: | |
| Clerk.) prior proceedings or appearance(s) before U.S. Magistrate Judge regarding this defendant were recorded under MAG. JUDGE CASE NO. | Defense Counsel (if any): CLERK US DISTRICT COURT CLERK US DISTRICT COURT CLERK US DISTRICT COURT DEPUTY Appointed on Target Letter | |
| Place of offense County | | |
| | This report amends AO 257 previously submitted | |
| OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MA | AXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS | |
| Total # of Counts 16 | | |
| Set Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4) | Description of Offense Charged Count(s) | |
| | struction of the Due Administration of Justice 10, 11, 12 | |
| 4 18 U.S.C. § 1951 Inter | rference with Interstate Commerce by Extortion 13, 14 | |
| 4 18 U.S.C. § 1952 Inter | rstate Travel in Aid of Extortion 16 | |
| | Motion for Court Order ent A - Page 6 of 14 | |

1 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA 2 -000-Case No.: 2:16-cr- 44 3 UNITED STATES OF AMERICA, 4 WRIT OF HABEAS CORPUS Plaintiff, AD PROSEQUENDUM FOR 5 AMMON E. BUNDY VS. (ID#) 79404-065 6 AMMON E. BUNDY, 7 Defendant. 8 THE PRESIDENT OF THE UNITED STATES OF AMERICA TO: WARDEN, 9 MULTNOMAH COUNTY JAIL PORTLAND, OREGON 10 UNITED STATES MARSHAL FOR THE DISTRICT OF NEVADA AND ANY OTHER UNITED STATES MARSHAL 11 GREETINGS: 12 WE COMMAND that you have the body of AMMON E. BUNDY, detained in the 13 custody of the Warden, Multnomah County Jail, before the United States District Court at the 14 Lloyd D. George United States Courthouse in Las Vegas, Nevada, on or about 15 Thursday, 3/17/16 , at the hour of 3:00 p.m., for arraignment and from time GWF, Courtroom 3A 16 to time and day to day thereafter, at such times and places as may be ordered and directed by the 17 Court entitled above, until the said AMMON E. BUNDY is released and discharged by the said 18 Court; and that you shall thereafter return the said AMMON E. BUNDY to the custody of the 19 Warden, Multnomah County Jail, Portland, Oregon, under safe and secure conduct, and have 20 you then and there this writ. 21 DATED: February 17, 2016 22 UNITED STATES MAGISTRATE JUDGE ATTEST: 23 February 17, 2016 LANCE S. WILSON 24 DATE

Emergency Motion for Court Order
Attachment A - Page 7 of 14

(By) DEPUTY CLERK

| 1 | UNITED STATES DI | STRICT COURT |
|-----|---|---|
| 2 | DISTRICT OF NEVADA | |
| ا ا | -oOo- | .// |
| 3 | UNITED STATES OF AMERICA,) C | Case No.: 2:16-cr- 446 |
| 4 | Plaintiff, | ORDER FOR ISSUANCE OF VRIT OF HABEAS CORPUS |
| 5 | vs. | AD PROSEQUENDUM FOR AMMON E. BUNDY ID#) 79404-065 |
| 6 | AMMON E. BUNDY, | 10#) 19404-003 |
| 7 | 11 | e e e e e e e e e e e e e e e e e e e |
| 8 | Defendant. | |
| 9 | Upon reading the petition of the United Sta | tes Attorney for the District of Nevada, and |
| 10 | good cause appearing therefore, | |
| 11 | IT IS HEREBY ORDERED that a Writ of | Habeas Corpus Ad Prosequendum issue out |
| 12 | of this Court, directing the production of the body | of the said AMMON E. BUNDY before the |
| 13 | United States District Court at Las | Vegas, Nevada, on or about |
| 14 | Thursday, 3/17/16 GWF, Courtroom 3A, at the ho | our of 3:00 p.m. for arraignment and any |
| 15 | further proceedings and from time to time and day | to day thereafter until excused by the said |
| 16 | Court. | |
| 17 | DATED: February 17, 2016 | |
| 18 | UNITE | ED STATES MAGISTRATE-JUDGE |
| 19 | 9 | |
| 20 | | |
| 21 | | |
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| 23 | | at a |
| 24 | | |

| 1 | Case 3:16-cr-00051-BR Document 312-1 Filed 03/16/16 Page 9 of 14 Case 2:16-cr-00046-GMN-PAL Document 14 Filed 02/17/16 Page 2 of 3 | |
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| 2 | DANKEL G DOCUENT | |
| 1 | DANIEL G. BOGDEN United States Attorney | |
| 2 | District of Nevada STEVEN W. MYHRE NICHOLAS D. DICKINSON | |
| 3 | Assistant United States Attorneys NADIA J. AHMED | |
| 4 | ERIN M. CREEGAN Special Assistant United States Attorneys | |
| 5 | 333 Las Vegas Boulevard South Suite 5000 | |
| 6 | Las Vegas, Nevada 89101 702-388-6336 | |
| 7 | UNITED STATES DISTRICT COURT | |
| 8 | DISTRICT OF NEVADA | |
| 9 | -oOo- | |
| 10 | UNITED STATES OF AMERICA,) Case No.: 2:16-cr- | |
| 11 | Plaintiff, PETITION FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM FOR | |
| 12 |) AMMON E. BUNDY) (ID#) 79404-065 | |
| 13 | AMMON E. BUNDY, | |
| 14 | Defendant. | |
| 15 | | |
| 16 | The petition of the United States Attorney for the District of Nevada respectfully shows | |
| 17 | that AMMON E. BUNDY, is committed by due process of law in the custody of the Warden, | |
| 18 | Multnomah County Jail, Portland, Oregon, that it is necessary that the said AMMON E. | |
| 19 | BUNDY be temporarily released under a Writ of Habeas Corpus Ad Prosequendum so that the | |
| 20 | said AMMON E. BUNDY may be present before the United States District Court for the | |
| 21 | District of Nevada, Las Vegas, Nevada, on Thursday, 3/17/16, at the hour of | |
| 22 | 3:00 p.m., for arraignment and from time to time and day to day thereafter until excused by the | |
| 23 | said Court. | |
| 24 | That the presence of the said AMMON E. BUNDY before the United States District | |
| | Court on or about Thursday, 3/17/16, at the hour of 3:00 p.m., for, at the hour of 3:00 p.m., for | |
| | Emergency Motion for Court Order Attachment A - Page 9 of 14 | |

1 2 3 arraignment and from time to time and day to day thereafter until excused by the Court has been ordered by the United States Magistrate or District Judge for the District of Nevada. 4 WHEREFORE, petitioner respectfully prays that a Writ of Habeas Corpus Ad 5 Prosequendum issue out of this Court, directed to the Warden, Multnomah County Jail, 6 7 Portland, Oregon, and to the United States Marshal for the District of Nevada, commanding 8 them to produce the said AMMON E. BUNDY before the United States District Court on or Thursday, 3/17/16 , at the hour of 3:00 p.m., for arraignment and from 9 GWF, Courtroom 3A time to time and day to day thereafter, at such times and places as may be ordered and directed 10 by the Court entitled above, to appear before the Court, and when excused by the said Court, to 11 be returned to the custody of the Warden, Multnomah County Jail, Portland, Oregon. 12 DATED this 17th day of February, 2016. 13 14 Respectfully submitted, 15 DANIEL G. BOGDEN United States Attorney 16 17 STEVEN W. MYHRE 18 Assistant United States Attorney 19 20 21 22 23 24

UNITED STATES DISTRICT COURT 1 DISTRICT OF NEVADA 2 -000-Case No.: 2:16-cr- 46 3 UNITED STATES OF AMERICA, 4 WRIT OF HABEAS CORPUS Plaintiff, AD PROSEQUENDUM FOR RYAN C. BUNDY 5 VS. (ID#) 79400-065 6 RYAN C. BUNDY, 7 Defendant. 8 THE PRESIDENT OF THE UNITED STATES OF AMERICA TO: WARDEN, 9 MULTNOMAH COUNTY JAIL PORTLAND, OREGON 10 UNITED STATES MARSHAL FOR THE DISTRICT OF NEVADA AND ANY OTHER UNITED STATES MARSHAL 11 GREETINGS: 12 WE COMMAND that you have the body of RYAN C. BUNDY, detained in the custody 13 of the Warden, Multnomah County Jail, before the United States District Court at the Lloyd D. 14 Courthouse Nevada, about George United States in Las Vegas, 15 Thursday, 3/17/16 , at the hour of 3:00 p.m., for arraignment and from time GWF, Courtroom 3A 16 to time and day to day thereafter, at such times and places as may be ordered and directed by the 17 Court entitled above, until the said RYAN C. BUNDY is released and discharged by the said 18 Court; and that you shall thereafter return the said RYAN C. BUNDY to the custody of the 19 Warden, Clark Multnomah County Jail, Portland, Oregon, under safe and secure conduct, and 20 have you then and there this writ. 21 DATED: February 17, 2016 22 UNITED STATES MAGISTRATE JUDGE ATTEST: 23 February 17, 2016 LANCE S. WILSON 24 DATE

Emergency Motion for Court Order
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| 1 | UNITED STATES DISTRICT COURT |
|----|---|
| 2 | DISTRICT OF NEVADA |
| 3 | UNITED STATES OF AMERICA, Case No.: 2:16-cr- |
| 4 |) ORDER FOR ISSUANCE OF |
| 5 |) WRIT OF HABEAS CORPUS) AD PROSEQUENDUM FOR vs.) RYAN C. BUNDY |
| 6 | RYAN C. BUNDY, (ID#) 79400-065 |
| 7 | } |
| 8 | Defendant. |
| 9 | Upon reading the petition of the United States Attorney for the District of Nevada, and |
| 10 | good cause appearing therefore, |
| 11 | IT IS HEREBY ORDERED that a Writ of Habeas Corpus Ad Prosequendum issue out |
| 12 | of this Court, directing the production of the body of the said RYAN C. BUNDY before the |
| 13 | United States District Court at Las Vegas, Nevada, on or about |
| 14 | Thursday, 3/17/16 GWF, Courtroom 3A , at the hour of 3:00 p.m. for arraignment and any |
| 15 | further proceedings and from time to time and day to day thereafter until excused by the said |
| 16 | Court. |
| 17 | DATED: February 17, 2016 |
| 18 | UNITED STATES MAGISTRATE JUDGE |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | 1.57 (MA) |

| | Case 3:16-cr-00051-BR Document 312-1 Filed 03/16/16 Page 13 of 14 Case 2:16-cr-00046-GMN-PAL Document 12 Filed 02/17/16 Page 2 of 3 | | |
|-----|---|---|--|
| | | · · · | |
| 1 | DANIEL G. BOGDEN | | |
| 2 | United States Attorney District of Nevada | 9 9 | |
| 3 | STEVEN W. MYHRE NICHOLAS D. DICKINSON | | |
| 4 | Assistant United States Attorneys NADIA J. AHMED | 4 | |
| 5 | ERIN M. CREEGAN Special Assistant United States Attorneys 333 Las Vegas Boulevard South | | |
| 6 | Suite 5000 Las Vegas, Nevada 89101 | 8 | |
| 7 | 702-388-6336 | | |
| 8 | UNITED STATES D | | |
| 8 | DISTRICT OF | | |
| 9 | -000 |)- | |
| 10 | UNITED STATES OF AMERICA, | Case No.: 2:16-cr- | |
| 11 | Plaintiff, | PETITION FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM FOR | |
| 12 | vs. } | RYAN C. BUNDY (ID#) 79400-065 | |
| 13 | RYAN C. BUNDY, | e e | |
| 14 | Defendant. | y . | |
| 15 | | æ e | |
| 16 | The petition of the United States Attorney | for the District of Nevada respectfully shows | |
| 17 | that RYAN C. BUNDY, is committed by due p | process of law in the custody of the Warden, | |
| 18 | Multnomah County Jail, Portland, Oregon, that it is necessary that the said RYAN C. BUNDY | | |
| 19 | be temporarily released under a Writ of Habeas Corpus Ad Prosequendum so that the said | | |
| 20 | RYAN C. BUNDY may be present before the United States District Court for the District of | | |
| 21 | Nevada, Las Vegas, Nevada, on Thursday, 3/17/16_ GWF, Courtroom 3A, at the hour of 3:00 p.m., | | |
| 22 | for arraignment and from time to time and day to day thereafter until excused by the said Court. | | |
| .23 | That the presence of the said RYAN C. BUNDY before the United States District Court | | |
| 24 | on or about Thursday, 3/17/16, GWF, Courtroom 3A | at the hour of 3:00 p.m., for arraignment and | |
| | Emergency Motion | n for Court Order | |

Attachment A - Page 13 of 14

from time to time and day to day thereafter until excused by the Court has been ordered by the 1 United States Magistrate or District Judge for the District of Nevada. 2 WHEREFORE, petitioner respectfully prays that a Writ of Habeas Corpus Ad 3 Prosequendum issue out of this Court, directed to the Warden, Multnomah County Jail, 4 5 Portland, Oregon, and to the United States Marshal for the District of Nevada, commanding them to produce the said RYAN C. BUNDY before the United States District Court on or about 6 Thursday, 3/17/16 7 , at the hour of 3:00 p.m., for arraignment and from time GWF, Courtroom 3A to time and day to day thereafter, at such times and places as may be ordered and directed by the 8 9 Court entitled above, to appear before the Court, and when excused by the said Court, to be 10 returned to the custody of the Warden, Multnomah County Jail, Portland, Oregon. 11 DATED this 17th day of February, 2016. 12 13 Respectfully submitted, 14 15 DANIEL G. BOGDEN United States Attorney 16 17 Assistant United States Attorney 18 19 20 21 22 23 24

FILEPOBJUN 1715:16USDC-ORP

UNITED STATES DISTRICT COURT DISTRICT OF OREGON

JAMES M. CROWELL, et al.,

Civil No. 81-394-HA

Plaintiffs,

MODIFIED CONSENT DECREE

v.

MICHAEL B. MUKASEY, in his capacity as United States Attorney General, DENNIS C. MERRILL, in his capacity as the United States Marshal for the District of Oregon,

Defendants.

Based upon the agreement of the parties, IT IS HEREBY ORDERED that:

- 1. The consent decree entered on November 4, 1981 shall remain in full force and effect as modified and superseded herein;
- 2. As to all class members being held in federal custody by the United States Marshal for the District of Oregon, prior to entry of judgment in a pending case, the United States Marshal shall:
- a. Hold all such prisoners within 85 miles of the courthouse where their hearings or trials are to be held;

- b. If all prisoners cannot be housed as set forth in (a), the United States Marshal shall advise the Federal Public Defender for the District of Oregon and consult with him to reach agreement on the selection of prisoners to be housed more than 85 miles from the specified courthouse, with a goal of housing as many inmates as close as practicable to their scheduled court proceedings, causing minimal impact on client access and case preparation, to the extent such actions are consistent with the United States Marshal's security obligations in any individual case.
- c. In the event the Federal Public Defender and the United States

 Marshal are unable to resolve issues with respect to the housing location of any individual prisoner, they will submit the dispute to the judge with jurisdiction over this Consent Decree.
- 3. As to all class members, the Federal Public Defender will notify the United States Marshals Service when a prisoner presents special circumstances that require that he be maintained locally where his hearings or trials are held (or his attorney is located). The Federal Public Defender will provide date parameters. At the conclusion of the date parameters, the United States Marshals Service may relocate the prisoner.
- 4. The United States Marshals Service shall facilitate the availability of confidential communications between attorneys and clients in all facilities in which it maintains contracts for housing prisoners, including contact visits and confidential telephone communication as part of reasonable access to counsel.

PAGE 2 - MODIFIED CONSENT DECREE

5. The United States Marshals Service will provide the Federal Public Defender with a weekly list of prisoners and assigned detention facilities.

6. The United States Marshal and the Federal Public Defender agree to discuss prisoner location issues or disputes and every effort will be made to resolve them. In addition, the parties will meet at least quarterly to ensure a spirit of cooperation between the parties and to evaluate policies and procedures in place to comply with the terms of this Decree.

7. In negotiation and communication with the United States Marshals Service, the Federal Public Defender, in his administrative capacity, shall be responsible not only to clients of the Federal Public Defender Office but to all clients represented under the Criminal Justice Act.

Dated this __17 day of June, 2008.

Ancer L. Haggerty

Chief, United States District Judge

PAGE 3 - MODIFIED CONSENT DECREE