UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**11-CR-187 (EGS)**
v.	:	
XUN WANG,	:	
Defendant	:	

GOVERNMENT'S MOTION FOR REVOCATION OF MAGISTRATE JUDGE'S ORDER SETTING CONDITIONS OF RELEASE OR, IN THE ALTERNATIVE, AMENDMENT OF CONDITIONS OF RELEASE

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this reply in support of its motion to revoke the Magistrate Judge's order setting conditions of release or, in the alternative, to amend the defendant's conditions of release. In support thereof, the government states further as follows:

I. INTRODUCTION

In its opposition, the defense concedes, or does not dispute, most of the facts weighing in favor of her pre-trial detention. Specifically,

- by her own admission, the defendant was the senior most PPG Paints Trading corporate executive responsible for the unlawful export scheme that is the subject matter of the Indictment, see Government's Motion for Revocation of Magistrate Judge's Order Setting Conditions of Release or, in the alternative, Amendment to Conditions of Relief ("Gov't Mot.") at 18-19;

- the Pakistan export sanctions that were violated were United States nuclear non-proliferation controls, see 63 Fed. Reg. 64,322;

- if convicted of her crimes, the defendant faces a lengthy prison sentence whether calculated using the 65 years allowed by statute, or the eight to ten-and-a-half year range recommended by the Federal Sentencing Guidelines, see Gov't Mot. at 21-22;

- the defendant is a Chinese national who was traveling on her Chinese passport at the time of her arrest, see id. at 27;

- the defendant can obtain a replacement passport from the Chinese Consulate located just 25 miles from her property in California for $105, see id.; Memorandum of Defendant Xun Wang in Opposition to the Government's Motion for Revocation of Magistrate Judge's Order Setting Conditions of Release or, in the Alternative, Amendment of Conditions of Release (Def.'s Opp.) at 24;

- the defendant has no contacts in the D.C. area, see Gov't Mot. at 28;

- the defendant is unemployed, see Def.'s Opp.at 9;

- her husband runs a company with operations in both the United States and China, see Def.'s Opp. at 8;

- despite claiming that she established "residence" in the United States in 2008, since that time the defendant has spent as much time outside of the United States as she has in it, see Gov't Mot. at 28-29; Def.'s Opp. at 25-26;

- the defendant has close relatives in China, where she frequently travels and stays for extended periods of time for both business and personal reasons, see Gov't Mot. at 28-29; Def.'s Opp. at 25-26;

- the defendant has extensive contacts in China where she has owned or managed a number of successful companies, including one that she and her husband sold to PPG Industries in 2006 for millions of dollars, see Gov't Mot. at 28-29; Def.'s Opp. at 8-9;

- the defendant is now a wealthy individual with more than sufficient means to finance her flight from the United States and live comfortably in the China, the land of her birth, see Gov't Mot. at 28-29;

- if permitted to flee, the defendant will not be extradited by China to the United States both because there is no United States extradition treaty with China, and because Chinese law expressly prohibits the extradition of Chinese nationals, see id. at 30-31; and

- the defendant's property in California is located just 25 miles away from the safe harbor of the Chinese Consulate in San Francisco where neither this Court nor the United States would have any power to extract her were she to flee inside that inviolate space, see id.

For these reasons, as well as those addressed below, the defendant should be held without bond pending trial in this matter as she is a serious flight risk.

II. THE CASES CITED BY THE DEFENSE IN SUPPORT OF ITS OPPOSITION ARE DISTINGUISHABLE

The defendant's reliance on the United States v. Karni, 298 F. Supp. 2d 129, 130 (D.D.C. 2004) and United States v. Hanson, 613 F. Supp. 2d 85 (D.D.C. 2009), is misplaced. Def.'s Opp. at 16-20. As an initial matter, the government submits that decisions to grant defendants bond in in Karni and Hanson were incorrect.[1] Neither is binding precedent on this Court. Indeed, a decision whether to release or hold a defendant is a multi-factor, fact-intensive predictive judgment specific to the defendant in question for which citation to prior cases is of limited utility.

In any event, both cases are readily distinguishable. First, in neither case had the government presented any evidence of the defendant's expressed intent to remain outside the reach of the United States if the defendant became aware that the United States had discovered the defendant's export diversion scheme. See Karni, 298 F. Supp. 2d at 132-33; Hanson, 613 F. Supp.2d at 89-90 (government had proffered "no evidence of [the defendant's] intent to flee"). Here the defendant told a cooperating witness in 2006 that if the United States government discovered the scheme that would not be a problem because, as Chinese citizens, the "U.S. government can't really touch us . . . The most that will ever happen to me is that I will not travel to the U.S. anymore. I don't need to travel to the U.S. I don't care. It's okay." By contrast, in

[1] The government in Karni had filed a motion to reconsider the Court's ruling granting release on conditions. However, the Court never had an opportunity to rule on the government's motion, because, upon his arrival in the District of Columbia, Karni began cooperating with the government and agreed to remain detained as part of his cooperation.

Hanson, the defendant's home in Maryland was searched as part of the government's investigation and the defendant was interrogated by law enforcement two weeks prior to her arrest, but she did not flee. Hanson, 613 F. Supp.2d at 89.

Second, neither the Karni nor Hanson decisions expressly addressed the government's argument, advanced here, that if the defendant were permitted to flee she would be gone for good as there is no extradition treaty with the country where the defendant would likely seek sanctuary. As other courts that have addressed the issue have held, however, when a defendant, like Xun Wang, has strong ties to another country from which she cannot be extradited, even the loss of a large bond amount is a small price to pay to secure her freedom from prosecution. See United States v. Khalid Mahmood, Cr. No. 04-365-01, slip op. at 3 (D.D.C. Oct. 19, 2004)(Exhibit 18[2]); United States v. Epstein, 155 F. Supp.2d 323, 326 (E.D. Pa. 2001) ("[A defendant's] forfeiture of $1 million worth of assets in the United States would not deter him from flight when in Brazil he has significant wealth, a lucrative job, the presence of his family, and insulation from ever being forced to stand trial."); see also United States v. Townshend, 897 F.2d 989, 994 (9th Cir. 1990)(holding defendants without bond and rejecting defendants offer to sign "waivers of extradition" because there was "no waiver of extradition from the country that might provide refuge if in fact they . . . chose to leave the jurisdiction of the United States"). The defense's suggestion that the Court in Hanson rejected such a contention is not accurate. Def.'s Opp. at 24. The absence of an extradition treaty with China is not even mentioned in the Hanson case, much less analyzed by the Court. Hanson, 613 F. Supp.2d at 88-91. Nor should it have been. Unlike

[2]Unless otherwise noted, all references to exhibits herein are to the exhibits attached to the government's motion.

here, Hanson was a United States citizen for 10 years prior to her arrest. Hanson, 613 F. Supp.2d at 89. Articles 3 and 9 of China's Nationality Law does not recognize dual citizenship. See Nationality Law of the People's Republic of China, China Law No. 71, Articles 3 & 9, available at http://www.unhcr.org/refword/docid/3ae6b577c.html ("Any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality."). Accordingly, the extradition barriers raised by Ms. Wang's Chinese citizenship were absent in Hanson.

Third, the defense's chart on p. 19 of its Opposition is also misleading in that fails to disclose that, unlike the defendant here, Hanson "rent[ed] a home in the Washington Metropolitan area"and her husband worked at the Walter Reed Army Medical Center. Hanson, 613 F. Supp.2d at 89-90.

Fourth, the defendant in Karni was charged by complaint, not, as here, by Indictment. Karni, 298 F. Supp.2d at 130.

Fifth, the defense's assertions that the product at issue in Karni, triggered spark gaps, were themselves "nuclear weapons" or "weapons capable of triggering nuclear weapons," is overstated. Def.'s Opp. at 17, 19. Triggered spark gaps are not weapons, nuclear or otherwise. See Karni, 298 F. Supp.2d at 130. Rather, they are high-speed electrical switches that are capable of sending synchronized, high-voltage electronic pulses. While they can serve as a part of a detonating device for a nuclear weapon, they also have civilian applications, such as in a medical device known as a lithotripter that is used to break up kidney stones. Thus, they are classified by the DOC as a "dual-use" commodity. Similarly, the unmanned aerial vehicles at issue in Hanson were also dual-use commodities with both military and civilian applications.

See Hanson, 613 F. Supp.2d at 87.

Sixth, contrary to the defense's suggestion, there is precedent for pre-trial detention in export cases not involving military equipment or nuclear weapons. Def.'s Opp. at 27-28. In United States v. Khalid Mahmood, Cr. No. 04-365 (D.D.C. October 19, 2004)(Exhibit 18), for example, Judge Lamberth detained a defendant pending trial charged with violating IEEPA for transshipping parts for forklifts through the U.A.E. to Iran in violation of the Iranian sanctions.[3] In so doing, Judge Lamberth rejected the same argument advanced by the defense here – that such an offense was not serious enough to warrant detention. See id. slip op. 3, n.1; see also United States v. Townsend, 897 F.2d 989, 994 (9th Cir. 1990) (allowing detention in case involving the illegal export of computers to the Soviet Union). The same result should issue here.

Seventh, the Karni decision made the same mistake that Magistrate Judge Robinson made, and the defense repeats in its opposition – that it is only crimes of violence that can satisfy the requirements of section 3142(g)(1) of the Bail Reform Act. Def.'s Opp. at 20-23; Karni, 298

[3] The defense's attempt to distinguish Mahmood based on that case's procedural history following Judge Lamberth's entry of his October 19, 2004 detention order, fails. Def.'s Opp. at 5. It is correct that on December 16, 2005, the government did not oppose the Mahmood's request that he be placed in home detention pending his sentencing. See United States v. Mahmood, No. 04-cr-00365, Docket # 36. The government relented on Mahmood's continued detention only following his incarceration for more than sixteen months, his plea of guilty and his active cooperation with the government, the latter of which had earned him a government sentence recommendation of time served pursuant to U.S.S.G. § 5K1.1. See id. at Docket # 39. There is nothing inconsistent with the government requesting detention pending trial when a defendant is first arrested and then, following that same defendant's significant incarceration, guilty plea and substantial assistance to the United States, the government not opposing the defendant's request to be released into home detention pending his impending sentencing. Indeed, just over one month later, on January 19, 2006, Mahmood was sentenced to time served by Judge Lamberth. See id. at Docket # 45.

F. Supp.2d at 131. As explained further in section III below, that is a plain misreading of section 3142(g)(1).

III. BY ASSERTING THAT ONLY CRIMES OF VIOLENCE QUALIFY FOR PRE-TRIAL DETENTION, THE DEFENSE MISREADS SECTION 3142(g)(1) OF THE BAIL REFORM ACT

The defense's suggestion that only crimes of violence qualify for pre-trial detention under section 3142(g)(1) of the Bail Reform Act is unavailing. Def.'s Opp. at 20-21. As explained in the Government's Motion, by its express terms, section 3142(g)(1) focuses on "the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device." 18 U.S.C. § 3142(g)(1) (emphasis added); Gov't Mot. at 22-24. By its use of the word "including" in the language quoted above, Congress intended that the question of whether a defendant's conduct falls into one of the categories identified in the section be simply one of the measures – but not the sole measure – of the seriousness of the charged crime.

In United States v. Saani, 557 F. Supp.2d 97, 98-99 (D.D.C. 2008) – a case entirely ignored in the defense's opposition – for example, Chief Judge Lamberth held that section 3142(g)(1) weighed in favor of detention in *a tax perjury case*. In holding that the defendant should be detained, Chief Judge Lamberth reasoned:

> While this is not a crime of violence, nor a terrorism or narcotics offense, it is a crime of deception with direct relevance to Defendant's ability to support himself overseas. Defendant's alleged access to funds in foreign bank accounts, and Defendant's alleged purposeful and illegal concealment of that access, is directly relevant to Defendant's flight risk. Thus, the nature and circumstances of the offense charged, see 18 U.S.C. § 3142(g)(1), weighs in favor of continued detention.

Id. at 98-99. Similarly here, underlying the export diversionary scheme the defendant orchestrated was an overseas web of deceit that relied on convoluted transactions requiring contacts, communications, and the movement of money and goods in both China and Pakistan, all of which is directly relevant to the defendant's risk of flight. See Exhibit 6 attached to Gov't Mot. at ¶¶ 23(b), 26a. - 26c, 26e.-26f. Thus, the nature and circumstances of the offense charged weigh in favor of detention.

The defense's assertion that defendant's violation of the Pakistani nuclear non-proliferation sanctions is not a serious offense is also unpersuasive. The fact that the defendant did not export nuclear weapons or weapons systems to Pakistan is beside the point. Again, the violations of the Iranian embargo in Mahmood dealt in purely civilian commodities, i.e., parts for forklifts. See Mahmood, Cr. No. 04-365 (D.D.C. October 19, 2004), slip op 3, n. 1 (Exhibit 18). Nevertheless, Judge Lamberth found the violation was "serious enough to warrant detention." Id.; see also Townsend, 897 F.2d at 994 (allowing detention in case involving export of computers to the Soviet Union). Here, the defendant has violated a critical United States nuclear non-proliferation control by providing Level 1 nuclear coatings to a restricted nuclear facility in violation of the Pakistani sanctions. By statute, each such shipment carries a penalty of up to 20 years incarceration, for a total potential incarceration of 60 years. See 50 U.S.C. § 1705. By the government's calculation – undisputed by the defense – the defendant faces from 97 to 121 months of imprisonment under the Federal Sentencing Guidelines. See Gov't Mot at 22. At sentencing, the defendant's assertion that this case is "just about paint" will be unavailing. See United States v. McKeeve, 131 F.3d 1, 14 (1st Cir. 1997)(holding that an IEEPA violation is an evasion of a national security control under the Federal Sentencing Guidelines, regardless of the

nature of the good itself). It should be unavailing here as well. By any measure, the Indictment articulates a violation of federal law that is "serious enough to warrant detention."[4]

IV. THE DEFENSE DOES NOT DIMINISH THE STRENGTH OF THE GOVERNMENT'S CASE AGAINST THE DEFENDANT BY SUGGESTING THAT THE DEFENDANT'S VIOLATIONS WERE MERELY "TECHNICAL" OR THAT THE DEFENDANT DID NOT ACT ALONE

The defendant's response to the government's evidence in the case is underwhelming. The defendant's suggestion that there were culpable parties other than herself involved in the criminal conduct at issue is not persuasive. Def.'s Opp. at 28-29. Even if true, the defendant stands charged with a diversionary export *conspiracy*. The fact that there may have been other co-conspirators involved in the diversionary export scheme does not defeat the government's conspiracy charge; it proves it.

Similarly, the defendant's repeated assertion that there was a shipment of the Level 1 Coatings sent to the Pakistani reactor "two to three months before Dr. Wang's employment at PPG Paints Trading began" and while the export license was pending, is a red herring, as the defendant well knows. Def.'s Opp. at 13, 29. The government's evidence will show that the first shipment Level 1 Nuclear Coatings was delivered to Pakistan by the defendant's own Chinese distributor company, IDI, which, at the time, was in process of being purchased by PPG

[4] The defense's suggestion that"DoC staff" had communicated to PPG's counsel that "some members" of the Operating Committee, the interagency body authorized to decide whether to grant or deny license applications, were "chagrinned" [sic] at the license denial, is irrelevant. Def.'s Opp. at 1, 22. The license application was in fact denied by the Operating Committee because the exports were deemed "detrimental to the U.S. Nuclear Non-proliferation policy." Exhibit 10.; see also Exhibit 9. The statement is also inaccurate if it means to suggest that there were dissent votes on the Operating Committee. The Operating Committee's decision to deny the license application in this case was unanimous.

Industries for $17 million, with the defendant's knowledge and active participation. In her interview during the PPG Industries' internal investigation, the defendant had this to say about that first shipment of paint which she would lead this Court to believe that she had no involvement: "Ms. Wang thought that the decision to use IDI to ship the paint rather than ship it directly had something to do with the export license issue."

The defense's claim that the defendant's criminal violations set out in the Indictment are merely "technical" also falls flat. Def.'s Opp. at 34. The government's case is as straightforward as it is compelling. A federal Grand Jury has found probable cause to believe that a license was sought for the shipments in question, see Exhibit 6 at ¶ 16; that the license was denied by the government, see Exhibit 6 at ¶ 17, Exhibits 9 & 10; that the defendant was informed of that denial and instructed by PPG Industries to stop shipping the Level 1 Nuclear Coatings to the nuclear reactor in Pakistan, see Exhibit 6 at ¶ 18, Exhibits 11; and that, nevertheless, the defendant met with the Chinese coatings company and engineered the circuitous transaction that diverted the Coatings to Chashma II via a third-party distributor in China. See Exhibit 6 at ¶¶ 23-26; Def.'s Mot. at 12-14. The defendant was the senior most PPG Paints Trading corporate executive at that meeting where the conspiracy alleged in the Indictment was born. During that meeting, she proposed the diversionary scheme to the Chinese coatings company and obtained its agreement to proceed in this fashion to evade U.S. export controls. She then instructed everyone on how to conceal the scheme from detection by PPG Industries, and made misrepresentations to PPG Industries to cover up what she had done. Thereafter, her PPG Paints Trading subordinates followed her direction and put the diversionary scheme into motion . Def.'s Mot. at 12-14. It is difficult to image a clearer case of a willful violation of the Pakistani sanctions.

And the government's case will not suffer for proof. Beyond the cooperating witness' testimony, the defendant must contend with her own words. This is how the defendant described the "one meeting" that the defense now suggests to this Court was of little importance:

- In June or July 2006, the defendant visited Company B and "told them PPG could not ship paint to them because of U.S. law" and suggested that "they could use PPG's French competitor, Sigma Kalon, to supply the paint."

- In response, at the meeting Company B was "very upset," refused to accept another seller, and asserted that "PPG had to honor the contract from December 2005 notwithstanding U.S. legal restrictions."

- The defendant claimed that she and other PPG Paints Trading representatives at the meeting were "overwhelmed by the customer [i.e., Company B]."

- The defendant was also "concerned about preserving the relationship with the customer, who had the potential for bringing about more business."

- According to the defendant, PPG "was in even bigger trouble" because Company B was government owned, and, "if PPG did not honor the contract, they would have serious problems."

- Accordingly, "when the customer refused to go to another seller, [the defendant] suggested that if they did not know where the paint was going to end up it was okay to sell the paint."

- At this point during her interview with PPG's counsel, the defendant "referred to the benefits of the 'don't ask, don't tell' policy."

- The defendant stated that she did not "suggest Dalian or [Company A], but she believed that someone would confess to having suggested it."

- Immediately thereafter, the defendant identified another PPG Paints

Trading employee present at the Company B meeting who "suggested that [Company B] could use . . . [Company A] as a distributor to get the paint."

- In response, according to the defendant, Company B "said no to using Sigma Kalon but were okay with using . . . [Company A] as a distributor because PPG would still be the supplier."

- Company B "wanted to know exactly how they could get PPG paint through [Company A] and PPG told them how to do it."

- According to the defendant, only the PPG Paints Trading employees who were at the Company B meeting knew what was going on. For herself, however, the defendant asserted that she "intentionally did not want to know what was going on."

- The defendant "admitted that she was more senior than [another PPG Paints Trading employee at the Company B meeting] and was ultimately responsible for the paint being shipped to Pakistan through [Company A]."

Certainly, the government's evidence is more than sufficient to put the defendant on notice that she will be subject to a trial in this case wherein there is significant probability that she will be convicted. Thus, the strength of the government's proffered evidence weighs in favor of the defendant being a flight risk.

V. THE DEFENSE'S ATTEMPT TO UNDERMINE THE DEFENDANT'S CHARACTERISTICS WEIGHING IN FAVOR OF PRE-TRIAL DETENTION FAILS

The defendant places much weight on her alleged decision to stop residing in China in 2008 and move to California. Def.'s Opp. at 2, 9. That purported decision is not borne out by government travel records reflecting the defendant's travel. As demonstrated in the government's motion, since April 2008, the defendant has been outside the U.S. as much as she

has been in it, a point that the defense hardly disputes. Compare Gov't Mot. at 28-29 with Def's Mot. at 25. Further, when her travel in the three years prior to April 2008 is compared with her travel in the three years thereafter, the same travel pattern emerges: the defendant is outside the U.S. as much as she is in it. By the government's calculation based on available travel records, in the 1164 days from April 9, 2008 to present – detailed in the Gov't Mot. at 28-29 – the defendant spent 589 days, or 50.6% of her time in the United States. In the 1164 days prior to April 9, 2008, the defendant spent 553 days, or 47.5 % of her time in the United States.[5]

Thus, the defendant's "residency" in the United States is open to question as it finds no support in her travel records.

Further the defense's assertion that electronic monitoring will prevent her from fleeing is also unpersuasive, especially given the location of the China Consulate in San Francisco just 30 minutes from her house. Def.'s Opp. at 24. As the Ninth Circuit has held, "[w]earing electronic devices offer no assurance against flight occurring before measures can be taken to prevent a detected departure from the jurisdiction." United States v. Townsend, 897 F.2d 989, 994 (9th Cir.

[5] Government travel records indicate that the defendant took the following travel during the period from January 31, 2005, through April 9, 2008:

- 72 days to Shanghai, China, between 11/15/2005 and 01/25/2006;
- 133 days to Shanghai, China, between 02/10/2006 and 06/22/2006;
- 161 days to Shanghai, China (returning via Canada), between 07/01/2006 and 12/08/2006; and
- 245 days to Beijing, China (returning via Canada), between 12/18/2006 and 08/19/2007.

1990); see also United States v. Anderson, 384 F. Supp.2d 32, 41 (D.D.C. 2005) ("The Court also is not confident that any monitoring system could effectively prevent Mr. Anderson from leaving the jurisdiction. . . . Conventional electronic monitoring also would only apprise authorities of whether Mr. Anderson was in or out of his home, and would likewise give him ample lead time if he wished to flee."); United States v. Ali, – F. Supp.2d –, 2011 WL 2552938 * 5 (D.D.C. June 24, 2011) ("Furthermore, electronic monitoring would give Mr Ali ample lead time if he wished to flee the country.").

Further, the defendant's assertion that "Chinese Passport Law" prohibits the issuance of a passport if the applicant "is a defendant in a criminal case or a criminal suspect" is unavailing. Def.'s Opp. at 24. The cited passage, when read in context, is plainly applicable to Chinese nationals who are criminal defendant's or suspects in China, not other countries. See Passport Law of the People's Republic of China, Order of the President of the People's Republic of China No. 50, available at http://www.china-embassy.org/eng/ywzn/lsyw/vpna/faq/ t710009.htm. Article 13 of that Chinese statute states:

> The passport issuing authority shall refuse to issue a passport if the applicant:
> . . .
> (5) is not allowed to leave the country because of an unsettled civil case, as is notified by a people's court;
> (6) is a defendant in a criminal case or a criminal suspect; or
> (7) is a person who the relevant competent department of the State Council believes will undermine national security or cause major losses to the interests of the State.

See id. In offering its unpersuasive reading of the statute, the defense does not explain how a passport issuing authority in Beijing, Nanjing, or at any of the far-flung Chinese consulates

around the globe, would have any idea of whether a given Chinese national was a criminal suspect in the United States or some country other than China.

Following two detention hearings, the defense now suggests in its opposition for the first time that the defendant may have learned of the government's investigation of her following her express statement in 2006 to remain outside the reach of the United States, when PPG, her former employer, entered into a "public settlement" with the government in 2010. See Def.'s Opp. at 23-24. The defendant's oblique suggestion is an insufficient factual proffer on which to order the defendant's release. The actual facts are to the contrary. The defendant was arrested on a sealed indictment and arrest warrant. Prior to her arrest, the government never searched her house, interrogated her, or otherwise communicated with her or any attorney representing her. Thus, there is no basis for this Court to conclude that the defendant knew that she was a target of this investigation prior to her arrest. Given that lack of communication, and the passage of time since the events at issue in the Indictment, the more logical conclusion is that the defendant believed she was not a target of the investigation. Further, prior to the defendant's arrest, no individuals were arrested for the criminal violations that are the subject matter of the Indictment. Thus, even if the defendant was aware of the PPG Industries and PPG Paints Trading plea and settlement agreements – and there is no evidence before this Court that she was -- it is more logical that she would have believed that the government was pursuing corporate entities for their involvement in this matter, not the defendant, the corporate executive responsible for the criminal conduct at issue.

VI. IN THE ALTERNATIVE, THE MAGISTRATE JUDGE'S RELEASE ORDER SHOULD BE AMENDED TO IMPOSE CONDITIONS THAT WILL REASONABLY ASSURE THE DEFENDANT'S REAPPEARANCE IN THIS MATTER

Whatever the determination may be concerning the government's motion for revocation of the Magistrate Judge's order setting release conditions, it should not be said – as the defense suggests -- that the government's motion is not well taken. Indeed, Magistrate Judge Robinson's release order, which imposes on the defendant nearly the most restrictive conditions of release short of pre-trial incarceration, confirms that the defendant poses a risk of flight. If the Court were to deny the government motion seeking revocation of that release it, it requests that certain conditions of the order be amended. First, the defense concedes in its opposition that 24-hour-a-day GPS monitoring would be appropriate. Def.'s Opp. at 32.

Second, the release order permits the defendant to leave home incarceration to attend undefined, and seemingly daily, "children's activities." That will impose an undue burden on Northern District of California who must electronically location monitor the defendant even under the Magistrate Judge's existing release order. The Bail Reform Act does not require such "heroic efforts" by law enforcement. Accordingly, that portion of the order should excised.

Finally, undersigned counsel has repeatedly requested during the detention proceedings that the defense produce in camera to the Court and government sufficient financial information to determine her and her husband's net worth so that an adequate bond amount could be set. Inexplicably, the defense continues to resist that reasonable request and to deny the Court that information. Def.'s Opp. 32-33. The defense's attempts to distinguish United States v. Patriarca, 948 F.2d 789, 795 (1st Cir. 1991), fails. That case stands for the reasonable proposition that

"[p]lainly contemplated by the language [of the Bail Reform Act] is some exploration of the defendant's assets or net worth" because "without such information we fail to see how a judicial officer could arrive at a forfeiture amount which would reasonably assure compliance." Id. at 795. The defense rejects the case as too "old." Def.'s Opp. at 32-33. It then volunteers to increase the defendant's bond amount, again without providing this Court any information about her and her husband's net worth. Patriarca teaches that such "free offers"of bond amounts from wealthy individuals who pose a flight risk are suspect. Id. at 795. Especially given the defendant's obvious, admitted wealth, it cannot be said that the volunteered property in California is sufficient to reasonably assure her reappearance in this matter. Accordingly, the government requests that the defendant's net worth be determined now, and, if the Court denies the government's request that the Magistrate Judge's release order be revoked, set a forfeiture bond amount consistent with the requirements of the Bail Reform Act.

VII. CONCLUSION

WHEREFORE, the United States respectfully prays this Court revoke the Magistrate Judge's order setting conditions of release or, in the alternative, amend the defendant's conditions of release. Further, the government respectfully requests that the defendant remain held without bond until such time as this Court resolves the government's motion for revocation and/or review of the Magistrate Judge's release order.

Respectfully submitted,

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