

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF	)	CR. NO. 10-00384 LEK
AMERICA,	)	
	)	MEMORANDUM IN SUPPORT
vs.	)	OF MOTION
	)	
ROGER CHRISTIE,	)	
	)	
Defendant.	)	

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Reverend Christie is well aware that the issue of his detention pending trial has been the subject of significant litigation in the past. However, 18 U.S.C. § 3142(f)(2)(B) clearly states that the issue of detention may be reopened at any time before trial if circumstances change and warrant doing so. 18 U.S.C. § 3142(f)(2)(B) reads as follows:

The detention hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the detained person as required and the safety of any person and the community.

18 U.S.C. § 3142(f)(2)(B).

Reverend Christie was before the Court last with regards to release on

bond over 18 months ago on October 22, 2010 when the Court denied his Motion to Reopen Detention Hearing and for Release on Bond. There have been significant and material changes in circumstances surrounding Reverend Christie's case in the past 18 months that warrant reconsideration of his detention status.

First, due to a variety of reasons, the trial date in Reverend Christie's case has been continued again until January 23, 2013. Second, Reverend Christie has now been incarcerated pre-trial for over a year and ten months. Third, Reverend Christie's elderly mother in Colorado is receiving hospice services due to illness and does not have long to live. Lastly, Reverend Christie was recently married to co-defendant Sherry-Anne St. Cyr who has been performing well on pre-trial release.

Coupled with the facts that Reverend Christie has no prior criminal record, is not charged with a crime of violence, and has never been provided with even the opportunity for bond, these new circumstances should be enough to warrant release to Mahoney Hale with strict terms and conditions.

## II. BACKGROUND

Although the background of this case has been described to this Court extensively in past filings, certain facts bear repeating. On June 24, 2010, Reverend Christie was charged in a sealed indictment with three counts. The

charges are: (1) conspiracy to manufacture, distribute and possess with the intent to distribute 100 or more marijuana plants; (2) manufacturing marijuana, i.e., 240 marijuana plants; and (3) possession with the intent to distribute 240 marijuana plants.

On July 8, 2010, Reverend Christie and other defendants were arrested in Hilo. On July 9, 2010, Reverend Christie appeared in Federal District Court, Honolulu, for arraignment on the Indictment. At that hearing, Reverend Christie pled not guilty on all charges. Also at that hearing, and due to the government's filing of a motion to detain Reverend Christie, the Magistrate Judge set a detention hearing for July 13, 2010.

Prior to the detention hearing, Reverend Christie consented to an interview by Pretrial Services. On July 13, 2010, Pretrial Services presented the report of that interview to the Magistrate Judge and counsel. That report recommended that Reverend Christie be released to his home in Hilo, Hawaii.<sup>1</sup> The recommendation was based on Reverend Christie's 25-year residence in Hilo, his ties to the community, his good health, his lack of any

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<sup>1</sup> The Original Pretrial Services Report recommended that Mr. Christie be released on an unsecured bond of \$50,000.00, that he abide by home detention and electronic monitoring, and that he not possess illicit drugs or be in the presence of illicit drug users or traffickers. See, Proposed Pretrial Release Conditions at Pretrial Services Report pp. 4-5.

recent criminal convictions, and his agreement to abide by the conditions recommended in the Pretrial Services Report.

On July 13, 2010, the detention hearing was held. At the detention hearing, Reverend Christie's counsel advocated for his release to his home in Hilo. The government advocated for stricter release conditions, including the consideration of the Mahoney Hale Halfway House. Although the government at the time appeared comfortable with release to Mahoney Hale, Reverend Christie rejected the Court's consideration of a halfway house, arguing that a release to a halfway house was not supported by the facts and would be punitive. After hearing from both sides, the Magistrate Judge ruled against Reverend Christie, ordering him detained pending trial.

On July 14, 2010, Reverend Christie filed a motion in the District Court to revoke the Magistrate Judge's order of detention. A hearing before District Court Judge Kay was held on July 16, 2010. District Court Judge Kay ruled against Reverend Christie in a written order, finding that he posed a danger to the community. See, Doc. 121.

Reverend Christie then appealed his detention to the Ninth Circuit Court of Appeals on July 20, 2010. On August 5, 2010, the Court of Appeals upheld the order of detention.

On August 9, 2010, after receiving a motion from the government, Magistrate Judge Kobayashi declared the case complex and continued the trial date from September 8, 2010 to April 26, 2011.

On October 18, 2010, Reverend Christie filed his first Motion to Reopen Detention Hearing and To Release Defendant on Bond. This Motion was also denied by Judge Ezra.

Over 18 months have passed since Reverend Christie last sought release from this Court. Due to new counsel for several defendants, including Reverend Christie and his wife, and the trial schedules for all attorneys involved, a stipulation has been filed continuing trial in this case once again until January 23, 2013. With an initial arrest date of July 8, 2010, and a trial date of January 23, 2013, a denial of this motion would lead to Reverend Christie being held without even the opportunity for release for 2 years and 6 months prior to trial.

#### IV. ARGUMENT

When someone is accused of a crime in our society, liberty, not detention, is the norm. See, United States v. Salerno, 481 U.S. 739, 755 (1987); see also, United States v. Motamedi, 767 F.3d 1403, 1405 (9<sup>th</sup> Cir. 1985) (“federal law has traditionally provided that a person arrested for a noncapital offense shall be admitted to bail”). The Bail Report Act (“the

Act”) thus generally “mandates release of a person facing trial under the least restrictive condition or combination of conditions.” *Id.* The Act provides that the accused “shall” be placed on pretrial release, “*unless* the [court] determines that such release . . . will endanger the safety of any other person or the community.” 18 U.S.C. §3142(b)(emphasis added).

In large part, the Supreme Court upheld the constitutionality of the Act precisely because it only “allows a federal court to detain an arrestee pending trial if the Government demonstrates by clear and convincing evidence after an adversary hearing that no release conditions will reasonably assure the safety of any other person and the community.” *Salerno*, 481 U.S. at 741 (quotation marks and ellipsis omitted); *see also*, 18 U.S.C. §3142(f) (requiring that detention based upon the safety of the community be based on “clear and convincing evidence”).

The Act “specifie[s] the considerations relevant to” the decision to detain or release an accused. 18 U.S.C. §3142(e) and (f)(1); *accord*, *Salerno*, 481 U.S. at 750. These factors are: (1) the nature and circumstances of the charged offense; (2) the weight of the Government’s evidence against the accused; (3) the accused’s history and characteristics; and (4) the nature and

seriousness of the danger posed by the accused's release.<sup>2</sup> See, 18 U.S.C. §3142(g); Salerno, 481 U.S. at 742-743. These factors should be assessed with the principle in mind that release on bail should be denied under the Act only in "rare circumstances" and only for "the strongest of reasons." Motamedi, 767 F.2d at 1405, 1407; see also, Salerno, 481 U.S. at 747; United States v. Townsend, 897 F.2d 989, 933-934 (9<sup>th</sup> Cir. 1990).

***The nature and circumstances of the charged offense.***

The nature and circumstances of the charged offense in this case weighs in favor of release. This case involves the activities and philosophies of a peaceful and legitimate religion run by a passionate and compassionate man. This case also involves cannabis. A plant which many doctors believe should be legalized because of its medicinal value. Gonzales v. Raich, 545 U.S. 1, 28 n.37 (2005) ("acknowledg[ing]" the evidence proffered by respondents in this case regarding the effective medicinal uses for marijuana"). Additionally, the voluminous discovery in this case paints a picture of a religious organization who peacefully carried out its religious beliefs in an open and public manner.

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<sup>2</sup> By its terms, the rebuttable presumption set forth in 18 U.S.C. §3142(c)(3) is only relevant as to the first of these factors. This is because the rebuttable presumption that the defendant is a danger and flight risk because he is accused of a serious offense does not have anything to say about the weight of the Government's evidence against the accused,

Lastly, there is unlikely to be disagreement with the statement that methamphetamine, or “ice”, is a much more destructive and dangerous drug than marijuana. Clearly, marijuana does not pose the type of serious danger to individuals or to the community methamphetamine does. Doctors would not be advocating for legalization if it did. However, it is not uncommon in Hawaii Federal Court for defendants charged in multi-pound methamphetamine trafficking cases to be released on unsecured signature bonds to Mahoney Hale or home.

Recently, in Mag. No. 12-0331 BMK, Defendant Falefia Fuamatu, an individual charged in a conspiracy that involved over *100 pounds* of methamphetamine, was released home on an unsecured signature bond. See, Attached Exhibit A. This is just one of many examples of defendants with far more serious charges than those faced by Reverend Christie being released on bond. If an individual accused of conspiring to bring in over 100 pounds of methamphetamine to Hawaii can be released on bond, one would imagine that Reverend Christie, a minister with a peaceful history who is accused of marijuana offenses involving 284 plants should be released as well.

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the accused’s history and characteristics, or the nature and seriousness of the danger actually posed by a particular defendant’s release.

***The weight of the evidence.***

Especially here, where the charged offense is a non-violent one, this factor is the least significant. See, *Motamedi*, 767 F.2d at 1408. A court accordingly errs in relying on the government’s “assertions of guilt.” Id. This is because the Act does not condone making any pretrial determination of guilt in order to justify detaining a presumptively innocent accused. See, *Id.* Rather, this factor, as well as the first (nature-and-circumstances-of-the-charged-offense) factor, “may be considered only in terms of the likelihood that the person . . . will pose a danger to any person or to the community.” Id.

***Mr. Christie’s history and characteristics.***

Reverend Christie has been a resident of Hawaii since 1985, and a resident of Hawaii Island since 1986. He is a well-known, active, and engaged citizen on Hawaii Island. Reverend Christie campaigned for public office 3 times in the past, twice for mayor and once for county council. In the year 2000, Reverend Christie was given the Hoomaluhia Award from the Drug Policy Forum. This award honors annually the “peacemaker of the year.”

Reverend Christie has had open, honest, and on-going communication with members of Hawaii Island’s law enforcement agencies related to the

activities and philosophies of his church. In addition to renting an extremely visible and accessible building in downtown Hilo as the headquarters of his church, Reverend Christie also regularly placed ads in the religion page of the Hilo newspaper informing the public about his church. He has never attempted to conceal the activities or philosophies of his church.

Reverend Christie benefits from a strong network of support provided by family and friends. He was recently married to Sherry-Anne St. Cyr. Additionally, Reverend Christie has two brothers, David and Peter, who are supportive and committed to their brother. Reverend Christie's brothers reside on the mainland where they both own and operate their own successful businesses. As demonstrated in past filings, Reverend Christie also has numerous friends who have offered to post monetary bail for him, act as third-party custodians, and provide him with a place to live on Oahu.

Reverend Christie has no prior convictions. He has resided in Hawaii for 27 years. Reverend Christie has been active in the community, and an involved public citizen since moving to Hawaii 27 years ago. His history and characteristics weigh heavily in favor of release on conditions.

***The nature and seriousness of the danger Mr. Christie poses.***

As discussed above, Reverend Christie's history and characteristics demonstrate that he poses a danger to no one. Additionally, the request being

made herein is only for release to Mahoney Hale. Reverend Christie's movements and actions will be closely monitored, and limited. Other than visits to his attorney's office, and potential employment or educational activities, Reverend Christie would be at the halfway house at all times. He would have to check-in and check-out. His room would be subject to searches. He would be faced with random but frequent drug tests. Given his history and characteristics, and the restrictions that would be placed on him at Mahoney Hale, it is truly difficult to imagine how he would pose a danger, much less a serious danger, to anyone. It borders on absurd to argue otherwise.

***The change in circumstances.***

Reverend Christie's detention proceedings should be revisited due to the change in circumstances mentioned above and discussed herein. First, due to a variety of reasons, the trial date in Reverend Christie's case has been continued again until January 23, 2013. This would lead to Reverend Christie being incarcerated for over 2 ½ years pending trial; an excessive amount of time. With new counsel taking over, and a decision to exercise his constitutional right to trial, there is a great amount of preparation ahead for Reverend Christie and his attorney. Release to Mahoney Hale would allow Reverend Christie better access to his attorney and his attorney's office to

prepare for trial in this case.

Second, Reverend Christie has now been incarcerated pre-trial for over a year and ten months. This is relevant as he has obviously not used marijuana throughout this incarceration period. 20 months of clean and sober time will provide him with a solid foundation to remain drug and alcohol free upon release.

Third, Reverend Christie's elderly mother in Colorado is receiving hospice services due to illness and does not have long to live. See, Attached Exhibit B. Release to Mahoney Hale would facilitate regular phone contact between Reverend Christie and his dying mother. Additionally, upon release to Mahoney Hale, Reverend Christie would be positioned to request a short visit to Colorado to hopefully see his mother one last time, or at the very least attend her funeral.

Lastly, Reverend Christie was recently married to co-defendant Sherry-Anne St. Cyr who has been performing well on pre-trial release. The stability of marriage, especially to someone who has demonstrated an ability to comply with her terms and conditions of release, will only assist Reverend Christie further when he is released to Mahoney Hale.

V. CONCLUSION

For the reasons stated above, it hereby requested that this motion be granted, and that Reverend Christie be released on conditions to Mahoney Hale.

DATED: Honolulu, Hawaii, May 24, 2012.

/s/ Thomas M. Otake

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THOMAS M. OTAKE  
Attorney for Defendant  
ROGER CHRISTIE