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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CRIMINAL NO. 10-00384DAE
)	
Plaintiff,)	Honolulu, Hawaii
)	October 22, 2010
vs.)	9:48 a.m.
)	
(01) ROGER CUSICK CHRISTIE,)	[181] MOTION TO REOPEN
)	DETENTION HEARING AND TO
Defendant.)	RELEASE DEFENDANT ON
<hr/>)	BOND

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Official Court Reporter:	Cynthia Fazio, CSR, RMR, CRR
	United States District Court
	P.O. Box 50131
	Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript produced with computer-aided transcription (CAT).

1 FRIDAY, OCTOBER 22, 2010 9:48 A.M.

2 THE CLERK: Criminal 10-384DAE, United States of
3 America versus defendant one, Roger Christie.

4 This case is called for a Motion for Bond to Reopen
5 Detention Hearing and to Release Defendant.

6 Counsel, please state your names for the record.

7 MR. KAWAHARA: Good morning, Your Honor. Michael
8 Kawahara representing the United States of America.

9 MR. WINTER: Good morning, Your Honor. Matthew Winter
10 from the Federal Public Defender Office on behalf of Roger
11 Christie. He's with me at counsel table.

12 THE COURT: All right. Okay. Mr. Winter.

13 MR. WINTER: Oh, thank you, Your Honor.

14 Your Honor, we've asked this Court to -- we've asked
15 to reopen the bail hearing in this case for the reasons set
16 forth in my paperwork, but I'll go through them briefly.

17 We really feel that in this case that bail would be
18 appropriate, and we're asking for the Court to consider either
19 his home in Hilo with very stringent conditions, including
20 electronic monitoring, a restriction on who he talks to, or
21 here on Oahu to Mahoney Hale.

22 Essentially, just to go through some of the
23 background, Mr. Christie -- some of this is in the papers --
24 he's -- his background, he was in the United States Army, he
25 has intelligence training. His ties to that community are

1 very, very strong. He has almost 25 years as a resident in
2 Hilo. He ran for mayor of Hilo twice. He's, as you might be
3 aware from some of the articles and some of the filings in this
4 case, very politically active. And most of that activism is
5 towards trying to get the recognition that marijuana be either
6 acceptable as a religious sacrament or as a medical marijuana
7 use. To do so, he's testified in numerous hearings, before the
8 Hawaii County Council, he's testified in federal court and
9 other proceedings. So he's not someone that's ever hid from
10 his viewpoints. In fact, he's probably the most open advocate
11 of both sacrament marijuana and medical marijuana in this
12 entire state. He's someone that's been in numerous articles,
13 both here in the State of Hawaii and national articles. So
14 he's someone that's never shied away or run from this type of
15 advocacy. And I think his openness in this field is something
16 that has earned him the respect of his peers in the Hilo
17 community.

18 And what we did is we tried to give Your Honor a cross
19 section. I've received so many phone calls and e-mails it's
20 almost too hard to count here. But we did receive two of
21 interest is two city -- or two sitting county council members
22 of Hawaii who state that Mr. Christie is someone of integrity
23 who would follow a court order and is a good man. We've
24 received letters from attorneys that have worked alongside
25 Mr. Christie, knows of Mr. Christie's causes and note how he's

1 acted throughout those proceedings and advocating his cause.

2 Also in his background, he's someone with no criminal
3 convictions other than a 1993 diversion case from the County of
4 Hawaii.

5 And additionally in his background, Your Honor, which
6 I think is an important factor for this Court to consider and
7 something that's changed from the last hearing, is the THC
8 ministry has closed down. And the THC Ministry, I started
9 talking about this when I was speaking of his open advocacy,
10 but that's -- the ministry was actually a building, a space
11 that he rented in downtown Hilo. Right underneath were
12 beautiful restaurants, he had a bay view. I actually visited
13 it because I went there with an investigator. And again, that
14 shows his openness. I think it shows his -- his desire to
15 effect change through a process. And he sees this case as
16 really part of that process.

17 And what I'm trying to argue from all this is, because
18 of that, he's not someone who's going to mess up when he's on
19 bail. He knows that if he messes up on bail, those are just
20 nails into his coffin for not only this issue but his personal
21 case.

22 So he's someone I think the Court can -- or the Court
23 can really trust if he's allowed out on bail. I don't just
24 think that from his history. I don't just think that from his
25 residency and ties. I don't just think that for the letters,

1 but his advocacy is all pointed in this direction. And if he
2 violates a court order, he very well knows that that could be
3 used against him at trial. If he uses marijuana, does
4 something inconsistent with the bail conditions, those are all
5 going to be used against him at trial and those are all going
6 to cause his cause to fly off a cliff. Something he's been
7 fighting for for over 20 years. I don't think he's going to
8 risk it. And I think it's proven by the statements that he's
9 put before the Court.

10 As for the case, the case is really for this Federal
11 District Court a smaller style case. It's a marijuana case.
12 Those, sadly, are almost rare because of the meth epidemic in
13 this state. He's facing a five-year minimum case. All 13
14 co-defendants, including co-defendants that are facing much
15 more significant charges because of either manufacturing
16 through grow operations or just because of their prior
17 convictions in state court, that they're facing higher charges,
18 all 13 of them have been released regardless of the extent of
19 their criminal history. Mr. Christie, however, who's facing
20 one of the lower charges of those 13, is still detained, and
21 he's someone without criminal history that may affect this
22 charge.

23 In addition, Your Honor --

24 THE COURT: I presume that these were arguments you
25 made to the Ninth Circuit.

1 MR. WINTER: The Ninth Circuit actually didn't hear
2 oral arguments.

3 THE COURT: No, but you filed papers, didn't you?

4 MR. WINTER: Correct. Correct. So we're asking Your
5 Honor to --

6 THE COURT: And they heard those arguments and they
7 affirmed Judge Kay.

8 MR. WINTER: Correct. But the Bail Reform Act and
9 Ninth Circuit law allows this Court to reopen --

10 THE COURT: I'm not suggesting that, but I'm just
11 saying that these are not arguments that are new.

12 MR. WINTER: Correct. Correct, correct. Yes. Yes.
13 But, Your Honor, some of them are. For instance, the closing
14 of the THC Ministry, that is a very new thing.

15 The fact that Mr. Christie now accepts placement at
16 Mahoney Hale, that's something we actually argued vehemently
17 against in the prior hearings before the lower court -- or
18 before Judge Kay and before the magistrate. Those are things
19 that have significantly changed.

20 The fact that the letters, the support, that's
21 something brand new. The fact that someone is now even willing
22 to put up bail, even collateral on their house, that's
23 something new. And the fact that before Mr. Christie was
24 asking that he still have the ability to counsel people through
25 his THC Ministry, those were arguments that we had prior --

1 brought forth in the prior hearings, we're now saying he'll do
2 none of that. He'll basically just go work on his criminal
3 case, have contact with his lawyer, have contact with his
4 girlfriend, and from there Pretrial Services can set conditions
5 that could limit almost any other contact in this case.

6 I want to move a little bit to the government's
7 argument. The government's argument, both in the other courts
8 and again before Your Honor, is that the Court consider not
9 just the weight of the evidence, but the government, I think,
10 pushes past that argument.

11 Now, the weight of the evidence, as the Court is
12 aware, is something under 3142 that it can consider in this
13 case. But the case of Motamedi said it's supposed to be the
14 least important factor. But the government in all the prior
15 hearings and again in his paper are asking the Court, I think,
16 to really push through that and they're going into what I
17 believe is a presumption of innocence in this case. Because in
18 order to reach some of the conclusions that they're asking this
19 Court and the other courts to reach, and those conclusions are
20 basically: We can't trust this guy because he's a drug dealer.
21 We can't trust this guy because he violated state and federal
22 law. Those arguments that are made as trust based arguments
23 are really based upon his conduct in this case. And I think
24 they go past the weight of the evidence and they go into the
25 presumption of innocence. So I'd ask the Court to consider

1 that when making its ruling.

2 And -- and really, in this case, it's something I
3 pointed out in my paperwork, there is -- there was no prior
4 case against the THC Ministry. There was no paperwork, there
5 was no FBI agents, DEA agents who went to Mr. Christie and
6 said, Please stop this activity. So there is really nothing
7 where -- and the government uses words like, in their
8 paperwork: "Based upon Christie's past performance," that's a
9 quote from their paperwork. Another quote: "Utter lack of
10 confidence in Christie's ability to abide." Those are all
11 assumptions that I think go into the presumption of innocence.
12 We don't have a track record. He's never been --

13 THE COURT: Well, one of the things the Court is
14 permitted to take into consideration is the strength of the
15 evidence against the defendant.

16 MR. WINTER: The weight of the evidence. But again,
17 Motamedi --

18 THE COURT: And from what I understand, the government
19 has a very strong case.

20 MR. WINTER: Well --

21 THE COURT: You know, I --

22 MR. WINTER: Then I ask the Court to follow Motamedi
23 and put that into the stack of the least important factors and
24 to consider as the more important factors his personal history,
25 his ties to the community, his --

1 THE COURT: Well, he doesn't have the greatest
2 personal history.

3 MR. WINTER: You know, I think that's belied by the
4 people that wrote in. I think that is --

5 THE COURT: Well, he admits that he's been dispensing
6 marijuana.

7 MR. WINTER: Correct. And what he --

8 THE COURT: It may not be against state law, I don't
9 know, in this circumstance, because the law is changing all the
10 time. It certainly is against federal law.

11 MR. WINTER: But it's something he believed under
12 RFRA, the Religious Freedom Restoration Act, that he believed
13 he was doing legitimately and he believed under state law he
14 was doing legitimately. But now, Your Honor, with him being
15 told to stop, not just because of this prosecution but because
16 of the conditions of Pretrial Services, he will stop. And
17 that's a circumstance and that's a consideration that this
18 Court could easily place upon this individual, whether he's at
19 home or at Mahoney Hale, which would ensure compliance.

20 If he has contact and starts talking to people about
21 the THC Ministry, advocating on their behalf or, you know, God
22 forbid distributing more marijuana, he would instantly be
23 hauled in in front of this Court and placed back in custody.
24 He would also at the same time ruin his case, something he's
25 fought for for so many years.

1 Your Honor, I took a poll in my office, just some of
2 the recent cases on bail, and I'm sure as your court -- as
3 you're aware, we have a ten-year minimum mandatory -- or you're
4 not aware of these instant cases, but just the types of cases
5 where bail is permitted and people are trusted. Because the
6 trust for the Bail Reform Act has to be given to these
7 individuals. There's no person facing the Court that isn't
8 facing criminal charges.

9 THE COURT: Look, you know, I've been a federal
10 judge -- I'm in my 23rd year here.

11 MR. WINTER: Correct.

12 THE COURT: So I certainly know what the history is.
13 And I will tell you that it's -- you know, in the appropriate
14 case, this Court grants bail. I mean I -- in the Sukanto Sia
15 case, the government fought Mr. Sia's release vehemently.
16 And -- although I put very stringent conditions on his release,
17 I granted that release because I felt under the circumstances
18 it was appropriate. I also in -- in many cases grant release
19 pending appeal in situations where I think it is warranted,
20 again over the government's objection.

21 It's very difficult these days, to be honest with you,
22 to discern what exactly the standard is in the Ninth Circuit.
23 I mean I recently found a defendant had violated his supervised
24 release and imposed a sentence, he's appealed that sentence,
25 the defendant has, I think, over 20 prior convictions or

1 encounters with the law, two pending state cases, a serious
2 drug history. And so I ordered him detained. And the Ninth
3 Circuit, over a dissent admittedly, ordered him released. So
4 it's beyond me. What it takes in other cases such as this one,
5 the Ninth Circuit affirmed a detention order.

6 So it's -- I think the bottom line is that a federal
7 district court judge in a circumstance like this, if they're
8 doing their job, simply has to apply the law as they understand
9 it and do the very best job they can. I believe in the
10 constitutional presumption of innocence. Mr. Christie as he
11 sits here today is innocent unless and until proven guilty
12 beyond a reasonable doubt by a jury and we'll determine that at
13 some later date.

14 What I am concerned about, however, is the very issues
15 that Judge Kay was concerned about and the very issues Judge
16 Chang was concerned about and the very issues which the Ninth
17 Circuit, that particular panel, because as you know, it depends
18 upon what panel you get.

19 MR. WINTER: That's for sure.

20 THE COURT: Saw as meriting his detention.

21 And I'm finding, quite frankly, a very -- I'm having a
22 very difficult time finding any meaningful distinction.

23 Now, one of the issues you raised, Mr. Winter -- and
24 I'll give Mr. Kawahara an opportunity -- but one of the issues
25 you raised is the fact that the trial isn't -- has been

1 postponed for quite sometime due to counsel's need for
2 preparation. That isn't a significant factor in my view. It
3 may be more important to the Ninth Circuit. Apparently it was
4 in the Leon Grant case, which is the one I mentioned to you,
5 because his appeal got put off for a period of time.

6 Because, quite frankly, if I don't think a defendant
7 deserves or needs to be detained, it doesn't matter to me
8 whether he's -- his trial is in a week or his trial is in three
9 months. I'm not going to detain somebody who doesn't need to
10 be detained.

11 On the other hand, if somebody needs to be detained,
12 they should be detained and -- and actually the length of time
13 doesn't necessarily work in the defendant's favor because
14 it's -- the more opportunities, more need for financial
15 resources, and the defendant was apparently supporting himself
16 through his activities, the government doesn't think they're
17 legitimate church activities; he says they are. That'll be for
18 the jury to determine. But he doesn't have that basis of
19 support anymore because by your own admission he's closed that
20 down.

21 What he does have, however, is all of his contacts. I
22 don't think he was growing all of the marijuana he was selling
23 or dispensing. And those people aren't all in jail. Some of
24 them maybe, not all of them. And he knows the Big Island like
25 he knows the back of his hand. And no one here is naive enough

1 to think that if you are from the Big Island and you want to
2 obtain marijuana, you can't obtain it. You can certainly
3 obtain it, sadly. There's still plenty of grow operations.

4 The fact that he wants to go to Mahoney Hale, well,
5 that was a factor that I considered in another case. It was a
6 gentleman who was convicted of fraud. And he was going to go
7 to Mahoney Hale and his counsel argued vehemently that that
8 would protect the public and so forth. And I pointed out that
9 Mahoney Hale is not a jail. That people regularly get
10 dismissed from Mahoney Hale because they violate the rules.
11 They can conduct their illegal operations from Mahoney Hale,
12 and have, and they can simply walk away from Mahoney Hale, and
13 have. And -- and so I denied release in that case and the
14 Ninth Circuit affirmed.

15 So, I mean, we're not talking here about a situation
16 where your client is -- is somehow going to be isolated where
17 he wouldn't be in a position to either restart, run or engage
18 in activities having to do with his marijuana concerns.

19 MR. WINTER: My response to that, Your Honor, would
20 be, first, if he was at Mahoney Hale, he would be separated
21 from the Hilo community by, first of all, a great distance.

22 THE COURT: By a telephone call.

23 MR. WINTER: Well, by a telephone call, but this is
24 the same telephone call that any of the 13 co-defendants can
25 make at any time who are all --

1 THE COURT: Well, you know, the co-defendants are very
2 different from Mr. Christie and I'm sure that Mr. Kawahara will
3 address that. Mr. Christie was, according to the government at
4 least, and evidence which they laid out to the Court, the heart
5 of the operation.

6 MR. WINTER: And Mr. Christie agrees to completely
7 cede himself from that operation. He has closed down that
8 operation. Pretrial Service would be notified of any wayward
9 activity from Mahoney Hale. He would be drug tested while at
10 Mahoney Hale. The separation and distance is I think of
11 importance because not only is the distance but it controls who
12 has access to Mr. Christie at Mahoney Hale. And I think it is
13 the least restrictive -- well, the least restrictive I think
14 would be home, but I think it is something that fits within the
15 Bail Reform Act to allow Mr. Christie to work on his case and
16 to stop the -- I think it would go a long way to ensure this
17 Court that there was no possibility that he would ever reoffend
18 or go down this path of the THC Ministry.

19 THE COURT: Well, you know, I find it -- I find it
20 very difficult to reconcile your arguments, Mr. Winter,
21 because -- and I understand your job and I respect it, and I
22 know you're making the very best argument you can for your
23 client. But on the one hand you tell the Court he's been very
24 open, he -- you know, Mr. Christie knows that what he's doing
25 has drawn the attention of law enforcement and he's known that

1 for sometime. And he didn't care. He just kept doing it. And
2 presumably because he believes what he's doing is okay.

3 MR. WINTER: Yes.

4 THE COURT: And I don't think he's changed his views.

5 MR. WINTER: Well --

6 THE COURT: So why -- why would somebody who was under
7 scrutiny of law enforcement, both the County of Hawaii and
8 federal, and who just continued to do what he was doing, be
9 deterred now? Simply because he's got to face trial?

10 MR. WINTER: And he's been told to --

11 THE COURT: Mr. Winter, you were just in here the
12 other day about people who were facing sentencings who take
13 drugs. You know, they're facing sentencings and they just
14 continue to, you know, they violate their supervised release.
15 I mean that isn't -- one would think that somebody who was
16 facing a sentencing, forget the trial part of it, that this
17 would not come up at trial. But facing actual sentencing in
18 front of the judge would -- would want to behave themselves.
19 But we have people who while they're waiting sentencing do all
20 manner of illegal acts and commit additional check kiting and
21 fraud, I've had that not that long ago. Commit drug crimes.
22 Sell drugs. Continue to sell drugs. These were people that
23 are all under supervision.

24 MR. WINTER: But, Your Honor, we also have even more
25 people who are successful as they face sentencing and

1 successful on release. And the presumption of innocence would
2 presume that we put Mr. Christie into that category.

3 THE COURT: Well, the rebuttable presumption here is
4 the other way around actually. There is a presumption of
5 innocence of course at trial, but there's a rebuttable
6 presumption here that cuts against your client.

7 MR. WINTER: But -- but I think the factors that we've
8 outlined, the conditions of Mahoney Hale, the letters in
9 support, the conditions that would be stringent, I think we
10 overcome that presumption from there.

11 THE COURT: All right. Well, let me hear from Mr.
12 Kawahara.

13 MR. KAWAHARA: Your Honor, as pointed out, the charges
14 against defendant are distribution and manufacturing. Has
15 nothing to do with any issue of religious belief.

16 As Mr. Winter was arguing I was thinking about back to
17 the argument he made to Judge Kay, and this passage, this
18 little colloquy came up:

19 "Mr. Winter: We stand by the statement that we made
20 in our motion, Your Honor, which is that the THC Ministry's
21 past practices and its mission have been altered by the current
22 prosecution. Due to this prosecution, Mr. Christie and other
23 involved in the THC Ministry recognize the federal government
24 prohibits any practice that includes the use of marijuana.

25 "The Court: You know, you would think that the light

1 would have come on when the first search of his residence was
2 made and they found marijuana and an unusual amount of cash,
3 unquote.

4 And I would suggest to the Court that nothing since
5 this hearing before Judge Kay back on July 16th and today has
6 substantially occurred that should change that observation
7 which is made by Judge Kay. Because the whole issue here is,
8 what level of trust or confidence can the Court put in
9 defendant being able to comply with any condition that might be
10 set, no matter how strenuous, how onerous. The whole issue is
11 trust.

12 And going back again, as Judge Kay was indicating,
13 March 10, 2010, federal officers with a search warrant searched
14 the defendant's residence and house and essentially shut down
15 the THC Ministry at that time.

16 Several months later, on July 8, 2010, it was
17 discovered that Mr. Christie had reopened the ministry,
18 notwithstanding what had happened before. And whatever
19 Mr. Winter has said about there was no court order, there were
20 no requirements placed on him, no seemingly notice was given to
21 him, Your Honor, if such spoon feeding was necessary, that's
22 not a person that you can trust to be put on bond. That's the
23 kind of person you have to detain because he's not going to
24 listen on his own. And that is the basic problem here. It was
25 the basic problem before Judge Chang, Judge Kay, the Ninth

1 Circuit and now.

2 Nothing had -- defendant has said has really changed
3 that. This whole notion of the option of Mahoney Hale was
4 before the district court, before Judge Kay then, because
5 Pretrial Services had made that recommendation and it's not a
6 question of whether defendant was attempting to limit the
7 argument by saying, I don't like that, that's not the issue.
8 The issue was, it was an alternative to detention that Judge
9 Kay had in front of him, but he rejected because in his own
10 mind he felt the defendant could not be trusted to comply with
11 any bond conditions that could be set. And the same situation
12 applies today.

13 And for that reason we believe that the rulings of
14 this Court earlier were correct and should be reaffirmed by
15 this Court today. Thank you.

16 THE COURT: All right. One last -- I'll give you one
17 last opportunity, Mr. Winter.

18 MR. WINTER: Your Honor, I do feel that Mahoney Hale
19 is appropriate. It was something that we rejected at the --
20 the magistrate court level. We argued that that would be
21 punitive placement for Mr. Christie. I'm not about to change
22 my argument as I'm appealing up through district court and to
23 the Ninth Circuit. That's why we've raised that for the first
24 time here before Your Honor and the other conditions.

25 We had these letters, we had some of the other

1 statements, we had people stating that they would put up bail
2 during the pendency of this case through the appellate system.
3 I'm not the type of attorney that's going to change my argument
4 halfway through. That's why we bring this up in front of the
5 Court now so Your Honor could have a de novo review, see it in
6 the first interest -- instant, apply it with the Bail Reform
7 Act and trust that Mr. Christie would do the right thing at
8 Mahoney Hale.

9 THE COURT: If there's -- all right. Thank you,
10 Mr. Winter.

11 If there's any judge that would be inclined to allow a
12 defendant to be released on bond prior to sentencing, it's this
13 one. I am a fervent believer in the presumption of innocence.
14 And I -- as I said, there's quite often the circumstance where
15 the government has opposed and I have granted pretrial release.
16 But in this case I think Judge Kay was right and I don't see a
17 substantial change in circumstances. And -- and I -- the only
18 thing that makes any difference at all, the letters are, you
19 know, from people that like him and believe in him and that's
20 fine. I mean I -- and I certainly pay attention to those. But
21 the bottom line is that Mr. Christie believes that what he's
22 doing is okay. And he said so on many occasions.

23 As Mr. Kawahara has pointed out, he gets raided,
24 basically, by the federal agents, he knows that he's under
25 terrific scrutiny by law enforcement. This is not a new thing.

1 I mean he's complained previously that the Hawaii County police
2 have been -- and county prosecutor have been scrutinizing him.
3 But in any event, putting that aside, he gets what would be the
4 most significant wake-up call anybody can get and that's a
5 knock on your door and a search warrant, and people are
6 searching and they discover and seize marijuana and cash, as
7 Mr. Kawahara pointed out, and I pointed out earlier. And does
8 this make any difference to him? In the short run, apparently
9 not, because he restarted his THC Ministry. And he was right
10 back at it.

11 Now, as I said, by saying these things I'm not
12 presuming he's guilty, but these are the factors that I have to
13 look at. And I have no confidence at all with somebody with --
14 with the kind of fortitude that your client apparently has with
15 respect to his activities. Somebody who gets raided for the
16 very thing that he ultimately got indicted for and -- and in
17 the meantime just kind of goes on as if nothing happened is --
18 is an individual that is not going to be particularly concerned
19 about the, you know -- and Mahoney Hale, Mahoney Hale is really
20 nothing but an apartment building with essentially some people
21 there who are not there to act as jailers. And he can go away
22 at any time. He can conduct his activities at any time. He
23 could operate through surrogates. And he's got a real
24 determination. He really is a -- a true believer in his views.

25 And I'm not saying his views are one way or the other.

1 I mean that'll be up to the jury. That's not me. The
2 government has taken the position and they have wiretap
3 evidence, they have surveillance evidence, they have videos, I
4 believe, of how many people, it was mentioned 70 people or
5 something going in and out of that place in a --

6 MR. KAWAHARA: Yes, that was mentioned, the wiretap,
7 when co-defendant St. Cyr says they see 70 people a day.

8 THE COURT: 70 people a day.

9 MR. KAWAHARA: Primarily distribution.

10 THE COURT: So, I mean, this is not a small thing
11 going on here. This isn't somebody who's got a little church
12 somewhere and he's got, you know, a small little group or
13 parish, as we might refer to it, with a few people and they're
14 having a religious ceremony and they're using THC. This is,
15 like, 70 people a day? A lot of people.

16 Now, I'm not saying that happened. I don't know
17 whether it happened. But the government has presented that and
18 at this stage of the game they've got, you know, some pretty
19 substantial evidence. So, I can assure you that when the day
20 comes, Mr. Christie will get a fair trial. And he will, I will
21 ensure you, be entitled to and get the full presumption of
22 innocence.

23 But I -- I believe, as Judge Kay believed, as the
24 Ninth Circuit affirmed, and certainly as Judge Chang believed,
25 that Mr. Christie does pose a danger to the community. He

1 simply does not in my view at this point find that what he is
2 doing is something he shouldn't be doing. And I think he will
3 return to it if he's given the opportunity. Particularly the
4 length of time that we're talking about.

5 So, your motion is -- the motion -- I don't know
6 whether it's a reconsideration or what it is. But regardless,
7 if it's a new motion or a Motion for Reconsideration, it's
8 denied.

9 Now, I understand you're going to appeal, and if I
10 were you I'd appeal. You never know what the Ninth Circuit is
11 going to -- what the Ninth Circuit is going to do. I certainly
12 wouldn't have expected them to release somebody with over 20
13 encounters with the law, two pending state cases for drugs and
14 who had been violated for drugs. I think it was drugs. Been
15 violated. Is that your case, Grant?

16 MR. WINTER: No, I think that was Mr. Silvert's, the
17 one that's going en banc and then we just --

18 THE COURT: It may go en banc. We don't know.

19 MR. WINTER: Yeah, that's correct. But we did just
20 get an order last week to file an appeal on the bail pending
21 appeal issue. Is that the one you're talking about? The one
22 where the issue is --

23 THE COURT: No, I think they issued an order releasing
24 him on bond.

25 MR. WINTER: Maybe they did. Maybe they did.

1 THE COURT: Yeah. So I don't know whether you call
2 it, if I was reversed or my order was set aside, I don't know.

3 MR. WINTER: Yeah, and I'm not sure.

4 THE COURT: But there was a strong -- there was a
5 dissent by Judge -- it wasn't a strong dissent, it was just a
6 dissent by Judge Kleinfeld I remember he dissented. But I just
7 can't figure that one out. I'm not criticizing the Ninth
8 Circuit, maybe they know something I don't know, but I can't
9 figure it out.

10 MR. WINTER: Your Honor, I understand the Court's
11 ruling. While you were making the ruling Mr. Christie wanted
12 me to bring up one additional point. In fact, he actually
13 wanted to address the Court. I advised him not to do that. He
14 wanted me to just bring up one point. I'm hoping I can just
15 take 15, 20 seconds of the Court's indulgence.

16 THE COURT: All right.

17 (Counsel and client conferring.)

18 MR. WINTER: He wanted me to point out two facts, one
19 of which that were in the papers I wrote, which were that one
20 of the search warrants -- I think all of the search warrants
21 that were used had the statement that the THC Ministry was
22 arguably a legitimate ministry, how it was set up.
23 Mr. Christie upon seeing that, I think it only affirmed his
24 belief on March 10th after the raid that he was running a
25 legitimate ministry.

1 THE COURT: He was a -- there was two, wasn't there?
2 Was there two raids?

3 MR. KAWAHARA: Yes. First search was on March 10,
4 2010. The second one was on July 8, 2010. At the second time,
5 that's when the indictment was unsealed and Mr. Christie was
6 also arrested.

7 THE COURT: Right.

8 MR. WINTER: The second --

9 THE COURT: I don't know about you, Mr. Winter, but if
10 I had the, you know, federal authorities knocking on my door
11 and doing a raid on activities that I had allegedly been doing,
12 whatever I was doing I would be very concerned about. But
13 apparently Mr. Christie wasn't.

14 And his argument that somehow he thought what he was
15 doing was correct, I'm not so sure that's even a defense in
16 this case. Is -- is distribution of drugs a specific intent
17 crime?

18 MR. KAWAHARA: No, Your Honor. And I would point out
19 that we've cited, there are two Ninth Circuit cases on point
20 indicating that the religious freedom -- or religious
21 restoration act does not apply to distribution, manufacture or
22 importation type offenses.

23 THE COURT: So I mean, anyway, we'll get to that
24 later. I'm sure we'll have plenty of motions.

25 But go see the Ninth Circuit. Because I -- you know,

1 the bottom line here is that I believe that what I'm doing is
2 right. I think what Judge Kay did was right. I thought what
3 Judge Chang did was right. I thought what the Ninth Circuit
4 did previously was right. And I may get -- it may be set
5 aside. If it is, I'll certainly abide by that. I have the
6 greatest respect for the Ninth Circuit and its judges. I'm
7 privileged to sit on the Ninth Circuit. I'm sitting on the
8 Ninth Circuit -- I just sat on the Ninth Circuit. I'm sitting
9 on the Ninth Circuit again by designation very shortly. So I
10 don't criticize the panel that set aside the Grant ruling. I
11 just don't understand it. Okay?

12 All right. Court stands in recess.

13 (The proceedings concluded at 10:22 a.m., October 22,
14 2010.)

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COURT REPORTER'S CERTIFICATE

I, CYNTHIA FAZIO, Official Court Reporter, United States District Court, District of Hawaii, Honolulu, Hawaii, do hereby certify that the foregoing pages numbered one through 25 is a true, complete and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED at Honolulu, Hawaii, November 2, 2010.

/s/ Cynthia Fazio
CYNTHIA FAZIO, CSR, RMR, CRR