THOMAS M. OTAKE 7622
ATTORNEY AT LAW
345 QUEEN STREET; SUITE 600
Honolulu, Hawaii 96813
Telephone: (808) 523-3325
Facsimile: (808) 599-1645
E-mail: thomas@otakelaw.com

Attorney for Defendant
ROGER CHRISTIE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 10-00384 LEK
	)	
	)	MOTION FOR REVOCATION
vs.	)	OF MAGISTRATE CHANG'S
	)	ORDER DENYING
ROGER CHRISTIE	)	DEFENDANT CHRISTIE'S
	)	SECOND MOTION TO REOPEN
Defendant.	)	DETENTION HEARING AND
	)	FOR RELEASE ON BOND;
	)	MEMORANDUM IN SUPPORT
	)	OF MOTION; EXHIBITS "A" –
	)	"U"; CERTIFICATE OF
	)	SERVICE

MOTION FOR REVOCATION OF MAGISTRATE CHANG'S ORDER DENYING DEFENDANT CHRISTIE'S SECOND MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE ON BOND

Defendant ROGER CHRISTIE, by and through his attorney,

THOMAS M. OTAKE, hereby moves this Honorable Court to revoke the

Magistrate's Order Denying Defendant Christie's Second Motion to Reopen

Detention Hearing and for Release on Bond. Defendant Christie's Second Motion to Reopen Detention Hearing and for Release on Bond ("the Motion") should have been granted as there exist new circumstances that warrant reopening of the detention hearing. Additionally, the government has failed to prove by clear and convincing evidence that Defendant Christie poses a danger to the community, and Defendant Christie has demonstrated that there is a combination of conditions that can assure the Court of his compliance.

This motion is brought pursuant to 18 U.S.C. § 3145(b), and is based on the attached memorandum in support of motion and any evidence that may be submitted at the hearing on this motion.

DATED: Honolulu, Hawaii, July 24, 2012.

/s/ Thomas M. Otake
THOMAS OTAKE
Attorney for Defendant
ROGER CHRISTIE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Defendant Christie's Second Motion to Reopen Detention Hearing and for Release on Bond ("the Motion) was filed on May 24, 2012. A hearing on the Motion was held before Magistrate Kevin Chang on June 5, 2012. Magistrate Chang recognized that new circumstances related to Reverend Christie's detention did exist. However, he did not view these new circumstances to be sufficiently material to warrant reconsideration of the prior detention order. The Motion was thus denied.

Reverend Christie now files this Motion for Revocation of Magistrate Chang's Order Denying Defendant Christie's Second Motion to Reopen Detention Hearing and for Release on Bond pursuant to 18 U.S.C. § 3145(b).

18 U.S.C. § 3145(b) states as follows:

> If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

18 U.S.C. § 3145(b).

The Ninth Circuit Court of Appeals has made it clear that when a magistrate's detention order is challenged pursuant to 18 U.S.C. § 3145(b), the district court must undertake a "de novo" review and issue its own order without deference to the magistrate's decision. In adopting such a standard, the Ninth Circuit Court in United States v. Koenig, 912 F.2d 1190 (1990), wrote as follows:

> There are ample reasons, then, for concluding that the district court's review of a magistrate's detention order is to be conducted without deference to the magistrate's factual findings.
> It should review the evidence before the magistrate and make its own independent determination whether the magistrate's findings are correct, with no deference. If the performance of that function makes it necessary or desirable for the district judge to hold additional evidentiary hearings, it may do so, and its power to do so is not limited to occasions when evidence is offered that was not presented to the magistrate. The point is that the district courts is to make its own "de novo" determination of facts, whether different from or an adoption of the findings of the magistrate. It also follows, as the Harris opinion agrees, that the ultimate determination of the propriety of detention is also to be decided without deference to the magistrate's ultimate conclusion.

Id. at 1193.

As will be discussed herein, there are new circumstances that warrant reconsideration of the prior detention order in this case. Reverend Christie simply seeks an independent, objective, and fair review of the factors set forth in 18 U.S.C. § 3142(g). These factors, such as the nature and circumstances of the offense charged, and the history and characteristics of the person, weigh heavily in favor of release. Reverend Christie should have been afforded the opportunity for bond at the outset of this case. As mandated by the Ninth Circuit in Koenig, Reverend Christie is herein asking this Court to truly examine the issue of his detention with fresh eyes, with the hope that this Court will develop its own determination of the propriety of his detention.

II. REOPENING OF DETENTION HEARING

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 two years. Third, Reverend Christie's elderly mother in Colorado is receiving hospice services due to illness. Lastly, Reverend Christie was recently married to co-defendant Sherry-Anne St. Cyr.

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 home to Hilo, or at the very least, to Mahoney Hale with strict terms and conditions.

III. BACKGROUND

Although the background of this case has been described 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.[1] 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 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

[1] 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.

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

Change in circumstances warrant reopening of detention hearing.

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. Releasing Reverend Christie either home to Hilo, or at the very least, to Mahoney Hale would allow Reverend Christie to better participate in the preparations for trial.

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

Additionally, the THC Ministry has effectively been shut-down since Reverend Christie's incarceration. The extended period of time that the THC Ministry has now been out of operation also is a change in circumstance.

The over 24 month closure of the THC Ministry should assure the Court that it is now more likely than ever that Reverend Christie would stay violation free.

Third, Reverend Christie's elderly mother in Colorado is receiving hospice services due to illness and may not have long to live. See, Exhibit A. Releasing Reverend Christie to his home immediately would facilitate regular phone contact between Reverend Christie and his mother. Additionally, upon release home, Reverend Christie would be positioned to request a short visit to Colorado to hopefully see his mother again.

Lastly, Reverend Christie was recently married to co-defendant Sherry-Anne St. Cyr. The stability of marriage will only assist Reverend Christie further when he is released.

Federal law favors release pending trial.

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 (9th 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)(emphasis added); 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.[2] See, 18 U.S.C.

[2] By its terms, the rebuttable presumption set forth in 18 U.S.C. §3142€(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

§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 (9th Cir. 1990).

The nature and circumstances of the charged offense.

The nature and circumstances of the charged offense in this case weighs strongly in favor of release. This case involves the activities and philosophies of a peaceful and legitimate religion run by a passionate and compassionate man. Reverend Christie has been a staunch advocate for religious freedom, and the use of cannabis as a religious sacrament for decades. See, Exhibit B. His beliefs are sincere, and his intent has always been publicly known.

Reverend Christie has been an ordained minister with the Religion of Jesus Church since June, 2000. The Religion of Jesus Church has a history of being a bona fide religion in Hawaii for over 30 years. The County of Hawaii Prosecutor's Office in past cases has stipulated to the fact that the Religion of Jesus Church is a legitimate and bona fide religion. See, Exhibit C. Reverend Christie was also granted a license by the State of Hawaii to

---

accused, the accused's history and characteristics, or the nature and seriousness of the

perform wedding ceremonies with cannabis as the sacrament as a minister of the Cannabis Ministry. See, Exhibit D. Additionally, in 2009, Reverend Christie was made an elder of the Oklevueha Native American Church, another bona-fide religion that believes in cannabis as the sacrament.

Reverend Christie is as sincere in his religious beliefs as one could be, and is a member and reverend of a legitimate, bona fide, religion. Through the years, Reverend Christie has peacefully stood up for his rights under the First Amendment to the United States Constitution which states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances."

Reverend Christie believes that the use of cannabis as part of his religion is supported by the Bible. Specifically, Reverend Christie emphasizes Genesis 1:11 in which the Bible states, "And God said, behold, I have given you every plant yielding seed that is on the face of all the earth, and every tree with seed in its fruit." Reverend Christie's religion also practices the use of holy anointing oil that is made in part with cannabis as directed in Exodus 30:23, and as used in Mark 6:13. See, Exhibit E.

---

danger actually posed by a particular defendant's release.

Reverend Christie believes that cannabis is to his religion as the burning bush was to Moses in the Bible. Just as other churches were granted an exception and allowed to transport, possess, and use wine when alcohol was prohibited, Reverend Christie firmly believes his church has a right to a similar exception in the present day as to cannabis use.

Reverend Christie envisions a day when those who use cannabis for religious purposes are recognized and respected, and hopes that his case will put an end to such trials in the future. Reverend Christie wants his case to be the last marijuana trial like it in Federal Court. Amongst other things, Reverend Christie believes that the long history of marijuana use in the United States of America should have led to it being "grandfathered" in as legal and necessary to the well-being of the country. This prosecution therefore stems from Reverend Christie's peaceful and open advocacy for his religious and constitutional right to use marijuana.

The circumstances of this case obviously revolve around cannabis. It is of importance to note that the use of cannabis was legal in the United States of America until 1937 when congress passed the Marijuana Tax Act. Instead of using the words cannabis hemp, the Marijuana Tax Act utilized the false flag of "marijuana" as a method to build support for the Act.

The Marijuana Tax Act sought to outlaw cannabis and cannabis hemp. Cannibis hemp was the primary source of rope prior to the invention of nylon, and was used on ships such as the U.S.S. Constitution and other Navy vessels. See, Exhibit F. Cannibis Hemp was also viewed by the founding fathers as a necessity to the wealth and protection of the country. See, Exhibit G. Ironically, President Obama recently reaffirmed the importance of hemp to national security when he passed an executive order on March 16, 2012 that included hemp as a strategic food resource related to national defense needs. See , Executive Order March 16, 2012.

The use of the word marijuana instead of cannabis hemp in the Marijuana Tax Act led to confusion amongst members of congress at the time, and assisted towards the passage of the Act. See, Exhibit H. The Marijuana Tax Act of 1937 outlawed something that was a critical part of United States prior to its passage, in part by calling it something else. It is telling that the Marijuana Tax Act was eventually ruled unconstitutional by the United States Supreme Court in 1969. Leary v. United States , 395 U.S. 6 (1969).

Even after the passage of the Marijuana Tax Act, during World War II, the Federal Government encouraged farmers to grow as much cannabis hemp as possible. This effort was geared towards the production of rope to assist

in war-time preparations. The film "Hemp for Victory" produced by the Federal Government not only encouraged the growth of cannabis hemp, but provided information on how to do it as well. See, Exhibit I.

Following Leary, the passage of The Controlled Substances Act in 1971 ("the CSA"), and the fact that Marijuana has been classified as a schedule I drug under the CSA, is the cause of marijuana's illegality today. However, as will be litigated at a later date through the future filing of a motion to dismiss, the government's classification of marijuana as a schedule I drug is arbitrary and capricious, and thus unconstitutional. For purposes of this motion, a brief discussion of this issue is relevant as the truth about marijuana is directly related to the nature and circumstances of the offenses charged, and the appropriateness of release.

The Controlled Substances Act places hazardous drugs in five categories, or schedules, which impose varying restrictions on access to the drugs. See 21 U.S.C. § 812 (1988). The government classifies marijuana as a Schedule I substance. 21 U.S.C. § 812(b); 21 C.F.R. § 1308.11. However, marijuana's classification as a Schedule I drug, as opposed to Schedule II, is unconstitutionally irrational and arbitrary because it meets none of the three necessary criteria of a Schedule I controlled substance. The most restrictive category, Schedule I, is reserved for substances (1) that have the highest

potential for abuse, (2) no currently accepted medical use, *and* (3) lack safe use under medical supervision. *See* 21 U.S.C. § 812(b)(1); *Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 937 (D.C. Cir. 1991).

A study by Kaiser Permanente, "Marijuana Use and Mortality," published in the American Journal of Public Health on April 15, 1997 concludes: "Relatively few adverse clinical effects from the chronic use of marijuana have been documented in humans." In addition, marijuana dependance is relatively rare.

> the [IOM has] called dependance on marijuana "relatively rare" -- affecting just 9 percent of users, as opposed to 15 percent for alcohol users and 32 percent for tobacco smokers -- and "less severe than dependence on other drugs." The IOM panel also found no persuasive evidence that marijuana causes cancer, brain damage, or "amotivational syndrome," or that it causes users to progress to hard drugs.

JULIE HOLLAND, M.D., THE POT BOOK (2010) at p. 455 (citing Joy, Benson, and Watson (1999)). Thus, while risks are attendant in the use of any substance, scientific evidence demonstrates that marijuana is safer than alcohol and tobacco in terms of potential for abuse. Alcohol and tobacco are unscheduled substances under the CSA. It therefore cannot be said that Marijuana has the highest potential for abuse. Additionally, instead of harming individuals, recent studies have shown that marijuana use can

increase brain cell growth. See, Exhibit J. It has also been found that marijuana drivers are safer drivers than non-marijuana users. See, www.4autoinsurancequote.org.

Contrary to the second criterion for Schedule I placement, Marijuana has many currently accepted medical uses in the United States. Several respected studies have documented cannabis's medicinal benefits, and have been cited by the courts as well as other governmental bodies in the United States, Canada, Britain, and elsewhere. Dr. Ethan Russo, a well-known medical marijuana proponent summed up marijuana's medical value when he said, "Cannibis is the single most versatile herbal remedy on Earth. No other single plant contains as wide a range of medically active herbal constituents." See, Marijuana; Gateway to Health pg. 15.

Ninth Circuit Judge Kozinski authored a detailed discussion of the research indicating that cannabis may have medical uses for certain patients who do not respond to conventional treatment, noting that it is not at all clear that marijuana has no medically accepted use, *see Conant v. Walters*, 309 F.3d 629, 640-43 (9th Cir. 2002) (Kozinski, J., concurring).

Judge Kozinski went on to note that, at the time of that filing, "based on this and similar evidence," nine states have approved marijuana for medical purposes. *Conant*, 309 F.3d at 643. That number now stands at

seventeen (Alaska, Arizona, California, Connecticut, Colorado, Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, RhodeIsland, Vermont, and Washington) plus the District of Columbia. Moreover, as of March 8, 2012, seventeen more states have pending legislation to legalize medical marijuana (Alabama, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, West Virginia, and Wisconsin). *See* http://medicalmarijuana.procon.org/view.resource.php?resourceID=002481 (last updated on March 9, 2012). Additionally, Colorado, Washington, and Oregon, have measures to legalize marijuana on the ballot in the 2012 elections that are a few months away.

In Gonzales v. Oregon, 546 U.S. 243 (2006), the United States Supreme Court upheld a physician's ability to prescribe medication in compliance with state law, even when doing so violated the CSA. Although Gonzales did not involve the use of marijuana, the Court's ruling enhanced a state's power to legalize marijuana for medical or other use.

The public support for medical marijuana is supported by ever increasing scientific research. This extensive body of research establishing marijuana's medicinal properties for a variety of conditions has prompted various respected medical organizations, both in the U.S. and abroad, to

publicly support marijuana's medicinal use. And in recognition of the current and potential medical applications of marijuana, such organizations within the U.S. are now calling for a rescheduling of marijuana from its current Schedule I placement in the CSA.

The AMA, which represents about 250,000 doctors, recently reversed its long-standing policy on marijuana, calling for a review of marijuana's status as a Schedule I substance "with the goal of facilitating the conduct of clinical research and development of cannabinoid-based medicines[.]" AMA Statement (2009). See, Exhibit K.

The third criterion required for placement in Schedule I is that "there is a lack of accepted safety for use of the drug or other substance under medical supervision." 21 U.S.C. § 812(b)(1)(B). Marijuana's safety is acknowledged by those in the medical field today.

In light of current scientific and medical knowledge, marijuana's Schedule I placement, with its attendant harsh criminal penalties, is unconstitutionally arbitrary and irrational. It is also just as irrational to deny bail to a man who is being prosecuted for his peaceful and open use of marijuana for religious purposes.

A brief history of how marijuana initially was erroneously classified as a schedule I substance is relevant to further demonstrate the safety of the

plant at issue in this case. In initially placing marijuana in Schedule I when enacting the CSA in 1970, Congress did not make any specific findings regarding marijuana as medicine or its relative abuse potential. Congress recognized at that time that "[t]he extent to which marihuana should be controlled is a subject upon which opinions diverge widely." H.R. Rep. No. 91-1444, Pub. L. No. 91-513, 1970 U.S.C.C.A.N. 4566, 4629**.**

As an interim solution, Congress tentatively placed marijuana in Schedule I and convened a Commission on Marihuana and Drug Abuse ("Commission") to research the issue, which it viewed as an "aid in determining the appropriate disposition of this question in the future." *See* 21 U.S.C. § 812(c)(10); H.R. Rep. No. 91-1444, Pub. L. No. 91-513, 1970 U.S.C.C.A.N. 4566, 4625-26; *Ingersoll*, 497 F.2d at 657 (quoting House Report); *see also NORML v. Bell*, 488 F.Supp. 123, 141 (D.D.C. 1980)

Approximately one year later, on March 22, 1972, the Commission determined that the harms associated with marijuana were overstated and it recommended its decriminalization for personal use. *See* http:// www.druglibrary.org /schaffer/library/studies/nc/ncmenu.htm. However, Congress did not implement the study's recommendations.

Following the lack of action on the study's recommendations, after years of delays, the DEA conducted two years of administrative hearings

before Administrative Law Judge ("ALJ") Francis L. Young ("Young") commencing in1986. These court-ordered hearings featured the testimony of patients, physicians, and researchers, as well as voluminous scientific and medical data. At their conclusion, ALJ Young strenuously recommended that marijuana be reclassified, declaring as follows:

> Marijuana, in its natural form, is one of the safest therapeutically active substance known to man. By any measure of rational analysis marijuana can be safely used within a supervised routine of medical care……
> The evidence in this record clearly shows that marijuana has been accepted as capable of relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record.

Francis L. Young, DEA Administrative Law Judge, *Marijuana Rescheduling Petition*, No. 86-22 (DEA Sept. 6, 1988) available at www.ukcia.org/pollaw/lawlibrary/young.php]. The DEA, nevertheless, rejected the ALJ's recommendation and denied the rescheduling petition. *See ACT*, 15 F.3d at 1133-34. Since that time the DEA has routinely denied petitions to reschedule marijuana.

The CSA outlaws marijuana and classifies it as a schedule I substance. However, the 1993 Religious Freedom Restoration Act has provided the

basis for a defense to marijuana use in the past. For example, Rastafarian's religious use of marijuana has been recognized by the Ninth Circuit Court of Appeals. See, Exhibit L. The D.E.A. also allows religions to apply for a religious exemption for marijuana use, although it is unclear if any such application has been granted.

As demonstrated by the above discussion of marijuana and the history of its regulation in the United States, the marijuana-phobic atmosphere that has been fraudulently created by the powers that be throughout history is baseless and unwarranted. Once the truth about marijuana is learned, it becomes clear that Reverend Christie should be released immediately as the nature and circumstances of his alleged offenses involve the use, possession, and distribution of marijuana and nothing else.

Lastly, with regards to the nature and circumstances of this case, there is likely to be agreement with the statement that methamphetamine, or "ice", is a much more destructive and dangerous drug than marijuana. Clearly, marijuana is safer than methamphetamine. It is also well-documented that marijuana eradication efforts have led to an increase in methamphetamine use. See, Exhibit M.

However, even with the immense danger associated with methamphetamine use, it is common 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 N. 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.

At the recent Hawaii Democratic Party Convention held in Honolulu, several resolutions were submitted and passed that pertained to cannabis and Reverend Christie's case. See, Exhibit O. As evidenced in these resolutions, in 2008 53% of Hawaii County voters passed an ordinance making possession of cannabis the lowest law enforcement priority in the County. Hawaii County Police, also promulgated rules as to the handling of religious use of marijuana cases. See , Exhibit P. Also of importance, a resolution passed by Hawaii County's Democratic Party specifically references

Reverend Christie's denial of opportunities for release pending trial, and encourages lawmakers in Hawaii to support one's right to post reasonable bond while awaiting trial.

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 Ho'omaluhia Award from the Drug Policy Forum. This award honors annually the "peacemaker of the year." See, Exhibit Q. Additionally, Reverend Christie was honorably

discharged from the U.S. Army as a conscientious objector on moral grounds. He also filed a lawsuit in 2004 against the Federal Government to help enforce his rights to cannabis use.

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 through the years of its existence. He would communicate openly with members of Hawaii County Police Department's vice squad, and community police officer William Derr. Reverend Christie also had a conversation about the THC Ministry with DEA Special Agent Jesse Forney. He also discussed the activities of his church with then U.S. Attorney Edward Kubo on two separate occasions. He had conversations about his church with former Mayor of Hawaii County Harry Kim, current Mayor Billy Kenoi, and Senator Daniel Inouye. Reverend Christie also was in contact with Deputy Prosecuting Attorney Mitch Roth, and Hawaii County Police Chief Harry Kubojiri. Lastly, he discussed his church with former administrator of the D.E.A., Mr. Asa Hutchinson. Reverend Christie did not shy away from law enforcement. Instead, he made efforts to ensure open communication with the law enforcement community and elected officials on Hawaii Island.

Reverend Christie was also very open with the public about 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 adds in the religion page of the Hilo newspaper informing the public about his church. See, Exhibit R. In open-view for all to see, a large banner was placed on his building that displayed the words "THC Ministry". He has always been very open about the activities and 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. His goal is to return home to his support network and familiar surroundings in Hilo as soon as possible. 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.

Although countless letters of support have been sent on Reverend Christie's behalf, a few have been attached to this motion to provide the Court with a sample of the love, admiration, and support from the community that exists towards Reverend Christie. See, Exhibit S. Hawaii County Council Members have also expressed support for Reverend Christie and his

requests for release. See, Exhibit T. Lastly, as evidenced in the attached photographs, community members from his hometown of Hilo have assembled to peacefully protest Reverend Christie's incarceration and advocate for his release on more than one occasion. See, Exhibit U.

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 minimal conditions like all the other co-defendants in his case.

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

As discussed above, Reverend Christie's history and characteristics demonstrate that he is clearly a peaceful, and kind-hearted man. Although he wants to go home, and encourages the Court to consider this option, even release to Mahoney Hale would be a step in the right direction.

Reverend Christie should be given the opportunity to return home to Hilo. Everything about his history suggests that he would comply with the terms of his release, and be open and honest with his pre-trial services officer.

Releasing Reverend Christie home is appropriate under the circumstances and should be granted immediately. Release to Mahoney Hale

would lead to stricter terms than necessary to ensure compliance. However, at the very least, the Court should release Reverend Christie 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 easy to see that he is a peaceful man who possesses the right characteristics for release with conditions.

The prior detention orders have all been based on the illegitimate worry that Mr. Christie would continue illegal activity, i.e., marijuana possession, distribution, and use if released. This is based in part on the fact that after the March 12, 2010, raid by the DEA, Mr. Christie did not shut down the THC Ministry and allegedly resumed his possession and use of marijuana. However, as has been explained in prior filings, the March 12, 2010 raid by the DEA was not a clear cease and desist order in which Reverend Christie was told to shut down the THC Ministry. To the contrary,

Attachement A to the Search Warrant associated with the raid read in pertinent part as follows:

> I recognize that the THC Ministry and its affiliated Hawaii Cannabis College (collectively referred to as the "Ministry"), is arguably a functioning entity with employees, and that a seizure of the Ministry's computers may have the unintended effect of limiting the Ministry's ability to provide certain arguably legitimate services to its customers. In response to these concerns, the agents who execute the search anticipate taking an incremental approach to minimize the inconvenience to the Ministry's customers and to minimize the need to seize equipment and data. It is anticipated that, barring unexpected circumstances, this incremental approach will proceed as follows:

See Attachment A to the Search Warrant at 3.

Reverend Christie was allowed to remain free following the March 12, 2010 raid. The language in the search warrant itself implied that the Ministry would continue to operate and provide "arguably legitimate services to its customers." The language quoted from the search warrant above clearly demonstrates this was not the cease and desist message that the Government portrays it as. Nevertheless, Reverend Christie was not under a court order at the time, nor was he subject to any of the conditions as proposed herein. Reverend Christie will state to this Court at the hearing on this motion that he will unequivocally abide by any and all conditions imposed by the Court should release be granted, including an absolute prohibition from possessing, using, and distributing marijuana.

Pre-Trial Services' Recommendation.

The Pre-Trial Services Office ("Pre-Trial") has consistently recommended release of Reverend Christie on conditions. The initial recommendation of Pre-Trial was that he be released home to Hilo; an option that Reverend Christie obviously prefers above all else. As discussed above, the Government opposed this recommendation at the initial detention hearing and recommended release to Mahoney Hale instead. At the June 5, 2012 hearing related to the Motion, Pre-Trial once again recommended release, this time to Mahoney Hale.

Pre-Trial has extensive experience and training related to evaluating appropriateness for release pending trial. The fact that Pre-Trial in this case has consistently recommended release should be respected by this Court.

V. CONCLUSION

For the reasons stated above, it is hereby requested that this motion be granted, and that Reverend Christie be released on conditions home to Hilo, or at the very least, to Mahoney Hale. Reverend Christie believes that his denial of bail thus far has been cruel and unusual under the circumstances. The denial of his bail when others with similar or more serious cases have been granted bail leads Reverend Christie to question whether he is a

political prisoner. He simply seeks a fair, and impartial de novo review of the issue.

DATED: Honolulu, Hawaii, July 24, 2012.

/s/ Thomas M. Otake
THOMAS M. OTAKE
Attorney for Defendant
ROGER CHRISTIE