

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 10-00384 LEK-01
)	
Plaintiff,)	
)	
vs.)	
)	
ROGER CUSICK CHRISTIE,	(01))	
SHERRYANNE L. ST. CYR,	(02))	
SUSANNE LENORE FRIEND,	(03))	
TIMOTHY M. MANN,	(04))	
RICHARD BRUCE TURPEN,	(05))	
WESLEY MARK SUDBURY,	(06))	
DONALD JAMES GIBSON,	(07))	
ROLAND GREGORY IGNACIO,	(08))	
PERRY EMILIO POLICICCHIO,	(09))	Hearing Date: 8/7/12 at
JOHN DEBAPTIST BOUEY, III,	(10))	2:00 p.m. before the Hon.
MICHAEL B. SHAPIRO,	(11))	Leslie E. Kobayashi, U.S.
also known as "Dewey",)	District Judge
AARON GEORGE ZEEMAN,	(12))	
VICTORIA C. FIORE,	(13))	
JESSICA R. WALSH, also	(14))	
known as "Jessica Hackman,)	
)	
Defendants.)	
)	

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

EXHIBITS "1", "2", "3" AND "4"

FLORENCE T. NAKAKUNI #2286
United States Attorney

MICHAEL K. KAWAHARA #1460
Assistant U.S. Attorney
Room 6100, Federal Building
300 Ala Moana Blvd.
Honolulu, HI 96850
Mike.Kawahara@usdoj.gov

Attorneys for Plaintiff
United States of America

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**MEMORANDUM IN OPPOSITION TO DEFENDANT CHRISTIE'S
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The United States of America, by and through its undersigned counsel, hereby opposes defendant Roger Cusick Christie's "Motion for Revocation of Magistrate Chang's Order Denying Defendant Christie's Second Motion to Reopen Detention Hearing and for Release on Bond", filed July 24, 2012 (hereinafter "instant revocation motion").

I. OVERVIEW OF THE CASE:

To assist the Court's comprehension of this case, this overview will be subdivided into five parts, as follows:

A. The underlying DEA investigation of Christie and his co-defendants and the charges currently pending against them;

B. Christie's conscious decision to re-open the THC Ministry's marijuana manufacture/trafficking operations after law enforcement officers searched the Ministry's premises on March 10, 2010 and seized all contraband therefrom at that time;

C. Relevant evidence demonstrating the scope and extent of Christie's manufacture/trafficking operations through the Ministry;

D. This Court's (and the Ninth Circuit's) prior rulings on pretrial detention; and

E. The ensuing trial continuances and other relevant events in this case's procedural history to date.

A. The underlying investigation and criminal charges asserted:

The instant case primarily involves the illegal manufacture and trafficking of marijuana which Christie undertook through his "THC Ministry" on the island of Hawaii in conjunction with his girlfriend (now spouse), Sherryanne L. St. Cyr.¹ During the underlying investigation of the instant case, DEA utilized Court-authorized wiretaps of three of Christie's telephones during the period April - July 2009. These three telephones were:

-Target Telephone 1 (TT1): the THC Ministry's landline;²

-Target Telephone 2 (TT2): Christie's residence landline; and

-Target Telephone 3 (TT3): Christie's cell phone.

On March 10, 2010, DEA effected warranted searches of Christie's apartment residence and his THC Ministry's business premises (both of which were located in Hilo, HI); in addition, ten (10) different residences of Christie's marijuana suppliers were also searched on this same date. As will be described later herein, marijuana and suspected cash proceeds were seized from

¹ It is our understanding that Christie and St. Cyr became married in January 2012, and that she thereafter assumed Christie's name. However, to avoid confusion in this memorandum, she will continue to be referred-to as "St. Cyr".

² As will be discussed later herein, Christie operated his marijuana manufacture/trafficking operations on the Island of Hawaii through the THC Ministry located in downtown Hilo. That Ministry was also sometimes known as the "Hawaii Cannabis Ministry".

Christie's apartment residence and business premises on March 10, 2010. Christie and St. Cyr were present at the residence at the time of these searches on March 10, 2010, but neither were arrested at that time.³

A secret Indictment was thereafter returned by a Federal Grand Jury on June 24, 2010. The arrests of the fourteen (14) defendants named in the Indictment (including Christie and St. Cyr) occurred on July 8, 2010.

As will be also discussed herein, sometime after the March 10, 2010 warranted searches, Christie elected to recommence his marijuana trafficking activities at his THC Ministry. This Court consequently also issued warrants authorizing new searches of Christie's residence and his THC Ministry, which also occurred on July 8, 2010 concurrent with his arrest. Marijuana and cash proceeds were again recovered from both premises.

In the Indictment returned June 24, 2010, the following fourteen (14) defendants were charged with various marijuana manufacture and trafficking offenses:

-Leaders of the THC Ministry/Hawaii Cannabis Ministry (hereinafter "Ministry"):

(01) **ROGER CUSICK CHRISTIE;**

(02) **SHERRYANNE L. ST. CYR;**

³ At all relevant times herein, both Christie and St. Cyr resided at Christie's condominium apartment (#312, 360 Kauila St., Hilo, HI).

-Growers at Christie's intended "Ministry farm", 2009:

(03) **SUSANNE LENORE FRIEND** (hereinafter "Friend");

(04) **TIMOTHY M. MANN** (hereinafter "Mann");⁴

-Other persons who supplied the Ministry with processed marijuana and/or grew marijuana plants for Christie in 2009:

(05) **RICHARD BRUCE TURPEN** (hereinafter "Turpen");

(06) **WESLEY MARK SUDBURY** (hereinafter "Sudbury");

(07) **DONALD JAMES GIBSON** (hereinafter "Gibson");

(08) **ROLAND GREGORY IGNACIO** (hereinafter "Ignacio");

(09) **PERRY EMILIO POLICICCHIO** (hereinafter "Policicchio");

(10) **JOHN DEBAPTIST BOUEY, III** (hereinafter "Bouey");

(11) **MICHAEL B. SHAPIRO**, also known as "Dewey" (hereinafter "Shapiro");

(12) **AARON GEORGE ZEEMAN** (hereinafter "Zeeman");

-Two former employees of the Ministry:

(13) **VICTORIA C. FIORE** (hereinafter "Fiore"),

(14) **JESSICA R. WALSH**, also known as "Jessica Hackman" (hereinafter "Walsh").

As averred in the "Ways and Means" provision in Count 1 of the Indictment (charging conspiracy to manufacture, distribute, and possess with intent to distribute 100+ marijuana plants):

⁴ Defendants Friend and Mann are husband and wife, residing at their farm/residence in Honokaa, HI.

Conducting his operation as the 'THC Ministry' or 'Hawaii Cannabis Ministry' (hereinafter 'Ministry') located in Hilo, Hawaii, Christie, with the assistance of St. Cyr, engaged in the illegal manufacture, distribution, and sale of marijuana. Christie and St. Cyr had several employees (as Fiore and Walsh) who worked at the Ministry's business premises and assisted in the distribution and sale of marijuana.

In order to obtain his marijuana sales inventory, Christie had several suppliers, as well as other persons growing marijuana for him, on the Island of Hawaii. During 2009, Christie's marijuana suppliers and other persons growing marijuana for him included Turpen, Sudbury, Gibson, Ignacio, Policicchio, Bouey, Shapiro, and Zeeman.

Sometime in 2009, Christie also recruited Friend and Mann to start up a marijuana cultivation operation for the Ministry on the Island of Hawaii; the plan was for all of Friend and Mann's harvested marijuana to be provided to the Ministry. As of July 22, 2009, Friend and Mann had approximately 284 marijuana plants under cultivation.

Christie is currently charged in Counts 1, 2, and 3 of the Indictment with felony marijuana offenses involving 100+ marijuana plants.⁵ If convicted, Christie faces a statutory imprisonment term of 5 - 40 years for each of these counts. As such, and given the Grand Jury's return of the Indictment herein, the rebuttable presumption in favor of pretrial detention set forth in the Bail Reform Act is fully applicable to Christie. See 18 U.S.C. § 3142(e)(3)(A).⁶

⁵ Counts 2 and 3 allege the 284 marijuana plant cultivation operation which law enforcement officers discovered at the Friend-Mann residence on July 22, 2009.

⁶ A Federal Grand Jury's return of an Indictment, based upon probable cause, will independently trigger the Bail Reform Act's rebuttable presumption. United States v. Dillan, 938 F.2d 1412, (continued...)

In addition, in the "Forfeiture Allegation" of the Indictment, notice has been given of the United States' intent to seek forfeiture of Christie's residence (#312, 360 Kauila St., Hilo, HI), as well as of \$21,494 in U.S. currency found in his joint possession with St. Cyr, as proceeds of the alleged offenses and/or used to facilitate the commission of said crimes, pursuant to 21 U.S.C. § 853.

This \$21,494 in cash subject to forfeiture consisted of the following: \$9,096 found in a bedroom safe in Christie's residence on March 10, 2010, and an additional \$12,398 found in a safety deposit box rented by Christie and St. Cyr at the Hilo branch of American Savings Bank on the same date (3/10/10).

B. Christie's conscious decision to re-open the THC Ministry's marijuana manufacture/trafficking operations after law enforcement officers searched the Ministry's premises on March 10, 2010.

On March 10, 2010, Federal law enforcement officers had searched the Ministry's business premises, Christie's residence, and Christie/St. Cyr's safety deposit box. At that time, about 12 live marijuana plants, marijuana seeds, and various liquids in vials suspected to contain marijuana by-products (as tinctures and oils) were found and recovered at the Ministry's business

⁶(...continued)
1416 (1st Cir. 1991), United States v. Contreras, 776 F.2d 51 (2d Cir. 1985), United States v. Suppa, 799 F.2d 115 (3d Cir. 1986), United States v. Hurtado, 779 F.2d 1467 (11th Cir. 1985).

premises.⁷ Aside from the cash discussed above, approximately 845 grams of processed marijuana (453.6 grams = one pound) and various bottles/jars containing suspected marijuana tinctures and oils were also seized from Christie's residence.

Christie also agreed to be interviewed by law enforcement officers on March 10, 2010; with regards to the \$21,494 found in his residence and safety deposit box, Christie stated that all of this cash was derived from the Ministry. Christie also said that he devoted all of his time and effort into the Ministry.⁸

Neither Christie nor St. Cyr were arrested on March 10, 2010. However, all of Christie's known marijuana inventory, proceeds, and other contraband had been removed from Christie's Ministry and residence on that date.

Subsequent to March 10, 2010, it was learned that Christie had re-opened the Ministry and appeared to again be engaging in his prior activities. As described in the underlying application/affidavit for warrants to search the Ministry and his residence in July 2010:

⁷ A listing of the marijuana products available for sale at the Ministry will be provided later in this memorandum.

⁸ This was generally consistent with what Christie later related to this Court's Pretrial Services Division post-arrest. As indicated in the preliminary Pretrial Services Report, Christie identified the "THC Ministry" as his employer, and he stated that "he has been operating the THC Ministry for the past ten years. He declined to provide his income, but informs he puts all of his earnings back into the ministry".

8. On Friday, July 2, 2010, two officers conducted surveillance in the vicinity of the Ministry business premises (94 Kamehameha Ave, Hilo). As described later in this Affidavit's 'premises description', the Ministry's business premises take up the entire second floor of the building located at this address. There is a stairwell fronting on Kamehameha Avenue (with a lockable front door) which gives access to the second floor. Windows of certain of the Ministry's second floor offices also face Kamehameha Ave. The Ministry's normal operating hours were about 2:00 - 5:00 p.m.⁹ On July 2, 2010, the officers observed the following, among other things:

(A) At about 1:30 p.m., the Ministry's second floor windows fronting on Kamehameha Avenue were open and indoor-type plants had been placed along the window sill (so they could get sunlight and air). This indicated that someone was present in the Ministry business premises at this time.

(B) There was also a sign placed on a placard next to the Ministry's stairway door. That sign read: "We will be closed from June 19 - July 1. We will be opened July 2, Mahalo".¹⁰

(C) At about 1:45 p.m., four persons were standing near the ground floor doorway for the stairs leading to the Ministry business premises, with the appearance that they were waiting for the Ministry to open. At about 1:50 p.m., that door opened, and all four persons entered through that doorway.

(D) At one point during the afternoon, Roger Christie was also observed to be present at the Ministry, seen through the second floor windows. In addition, through the second floor windows, two adult males and one adult

⁹ There is a sign posted on the building's wall next to this stairwell door, which reads : THC Ministry, open Mon - Fri 2 - 5, (808) 217-9352 [this being the Ministry's landline]".

¹⁰ It should be noted that Christie and St. Cyr were out-of-town for a comparable period of time [one year earlier] in June 2009 and had similarly closed the Ministry during that absence. [The implication of this posted note, of course, was that the Ministry had been open for business sometime prior to June 19, 2010].

female could also be seen in the Ministry's business premises and gave the appearance of being employees. As customers disappeared from view into the stairway at ground level, these customers again could then be seen through the second floor windows and these two adult males/female seemed to be greeting them.

(E) The officers continued their surveillance until about 3:30 p.m. on July 2, 2010. During the approximately 1½ hour time period they were surveilling the Ministry business premises, approximately 20 persons entered the ground floor door for the stairway leading to the Ministry business premises.

* * *

10. On Tuesday, July 6, 2010, a federal law enforcement officer conducted surveillance of the Ministry business premises from about 1:35 p.m. to 5:10 p.m. This officer, among other things, observed the following:

(A) The stairway door leading upstairs to the Ministry business premises was opened at about 2:05 p.m. At this time, there were seven persons lined up on the sidewalk; once the door opened, they all proceeded upstairs to the Ministry.

(B) At or about 2:56 p.m., one customer exited from the Ministry stairway and then proceeded on a bicycle to the vicinity where the surveillance officer was located. Within hearing distance of the officer, a second customer approached the bicycle-riding customer and asked is he in? (or words to that effect); the bicycle-riding customer answered affirmatively. The second customer then smiled and clapped his hands together; this second customer then proceeded to the stairway and went upstairs to the Ministry. At about 3:07 p.m., this second customer exited the Ministry stairway and then went into the nearby Hilo Tobacco Company [presumably to purchase cigarette papers or other paraphernalia]. At about 3:17 p.m., that second customer exited from the tobacco shop, accompanied by another person who the officer had previously observed entering the Ministry stairway; as the second customer and other person exited the tobacco shop together, that other person was now carrying a large shopping bag (which the officer had not seen in his possession earlier).

(C) At about 4:04 p.m., a female entered the

Ministry stairway; within minutes thereafter, she exited from the stairway and proceeded directly to the Hilo Tobacco Company, where she entered at about 4:08 p.m.

(D) At about 4:26 p.m., an adult female (with two teenaged children in her vehicle) parked on the street in front of the Ministry stairway. The juvenile male-- who from his physical appearance appeared to be less than 18 years old-- then got out of the vehicle and entered the Ministry stairway. At about 4:32 p.m., that juvenile male then exited from the stairway and got back into the vehicle. The vehicle then drove off.

(E) During the period of this surveillance (1:35 p.m. - 5:10 p.m.), the officer observed about 42 different persons enter and/or exit the Ministry stairway.

On July 8, 2010, Christie and St. Cyr were also arrested pursuant to the aforesaid Indictment; in addition, search warrants for Christie's residence and the Ministry premises were also executed on this date. Slightly over one pound of processed marijuana and approximately \$5,512 in U.S. currency¹¹ were recovered from Christie's residence, and small amounts of marijuana were also found at the Ministry.

As U.S. District Judge Kay aptly noted during one of Christie's prior detention hearings in this case, "You know, you would think that the light would have come on when the first search of his residence was made [on 3/10/2010] and they found marijuana and an unusual amount of cash". T.P.(7/16/10) at 9.

Moreover, it would also be entirely erroneous to believe that the March 10, 2010 search of Christie's Ministry/residence

¹¹ The Pretrial Services Report at 3 referred to this amount as "\$4,000 to \$5,000"; however, the exact amount is \$5,512.00.

was his first "wake-up" call that what he was doing was illegal. As hereinbefore indicated, Christie back in 2009 had recruited co-defendants Friend and Mann to commence a marijuana farm whose harvest and produce was solely intended for the Ministry. On July 22, 2009-- that is, some eight months prior to the search of Christie's Ministry/residence on March 10, 2010-- DEA had also searched the Ministry's marijuana farm and seized the approximately 284 plants under cultivation at that time. The bottom line is that both the July 22, 2009 search/seizure of his marijuana farm and the events of March 10, 2010 should have given Christie more than ample notice of the illegality of his operation.

C. Relevant evidence demonstrating the scope and extent of Christie's manufacture/trafficking operations through the Ministry:

Christie has described himself as an ordained "cannabis sacrament minister" and the founder of the THC Ministry/Hawaii Cannabis Ministry (hereinafter "Ministry") in Hilo. The Ministry has also maintained a website (www.thc-ministry.org). According to the Ministry's website:

Cultivation and enjoyment of Cannabis sacrament is a fundamental human right provided by God and protected by the First Amendment of the U.S. Constitution. It is our opinion that Cannabis is the original sacrament of Hebrew, Muslim, Christian, Hindu, Shinto, Buddhist, Rasta and more, and fulfills the prophecies to 'raise up for them a plant of renown...'

Like the stone of the Bible that the builders rejected, the sacramental use of Cannabis is the cornerstone of the THC

Ministry. Our Ministry helps to build your mana by providing a real education in practical Cannabis spirituality. Among other wonderful things, our Ministry helps to protect you from arrest, prosecution and/or conviction of 'marijuana' charges - wherever you live - starting as soon as you sign-up, become ordained and receive your ministry documents. We provide a legitimate religious 'defense to prosecution' for sincere practitioners over 21 years old. [Underline and boldfacing added].

Becoming a "Minister" in the Ministry was simplicity itself, which Christie himself extolled in an article he wrote and posted on the Ministry website entitled "You can be a minister, too". In this article, Christie explained the process of becoming a minister as follows:

The fast, easy, free and effective way to become ordained as a Minister is to go online, or call by telephone:

(1) Go to www.ulchq.com, or call the Universal Life Church at (209) 527-8111. Ask them to ordain you as a Minister, and to please send you a 'letter of good standing' along with a beginners packet.

(2) To legitimize your new Ministry, I recommend that you become licensed by the State of Hawaii to legally marry people. It's easy, it's free and it lasts for life. All you need are three things [that is, (i) filling out the application, (ii) providing appropriate identification, and (iii) the letter of good standing from the Universal Life Church].

There is zero credit or background check involved. Everyone qualifies.

The highlighted portion of the website quotation previously referenced best described one of the principal purposes of Christie's Ministry, namely, to construct a religious defense to counter arrest and prosecution for marijuana crimes. A former

Ministry employee, defendant Jessica Walsh ("Jessica"), expressly reiterated this particular purpose during an intercepted telephone call on 6/24/09, wherein she (Jessica) was attempting to recruit "V" as a new member. See Call #8342, Target Telephone 1. In this call, "V" had initially asked "is Roger [that is, Christie] in?" and explained that "somebody told me that you can get your marijuana license through him." Jessica asked if "V" was a member, to which the latter replied in the negative. Jessica then asked if "V" was "interested in becoming [a] member here?" and "V" replied "yes," and further inquired "what does this help us do?" Jessica then explained:

[W]ell, if you, ah, basically our membership is not medical marijuana. We're not a dispensary, um, we're not a church. We are a ministry. Um, there is a fifty-dollar honorary donation, ah, to become a member here. But it's a lifelong membership. Um, it's basically a defense to prosecution. Um, we are going on the angle on our constitutional rights as our freedom of religion, ah, and we use cannabis religiously. So that is our, basically defense to prosecution. Um, we do have a lot of members here that give testimonies all the time. Ah, if they were stopped by police or anything like that. They were able to show 'em our card [that is, membership card] and be let go and not be arrested. Um, it doesn't happen all the time, but it does help if you're growing over the legal limit [unintelligible].

However, there was a second, more sinister purpose of the Ministry, which Jessica also included in her membership recruitment pitch to "V":

Um, but being a member here, um, it's a, you're able to pick up your sacrament here, um, instead being on the streets. Ah, we help medical marijuana patients, so because there is

not acting dispensary here on the Big Island or any of the islands for that matter as well. [emphasis added].

In short, the two primary purposes of Christie's Ministry were: (1) to distribute marijuana (code-named "sacrament") to anyone willing to become Ministry members;¹² and (2) to provide its members with a so-called religious defense to arrest/prosecution for marijuana offenses.

Co-defendant St. Cyr was also deeply involved with Christie in the Ministry's business and at one point, was running the Ministry while Christie convalesced at home with a broken ankle during 2009. St. Cyr's description of how the Ministry operated its "distribution" side during an intercepted telephone call with "A" was very telling indeed (Call #2997, TT1), as follows:

A: California is really going towards, ah, legalizing it [marijuana]. In fact, certain parts of it is, is, in California is legal and people are making a fortune on it. They had it on, on, television, that these guys, they, all you have to do is get a note from your doctor and go in there and buy it. You've heard of that?

St. Cyr: Of course. This is my field, honey.

A: Yeah, this is your new field [laughter].

St. Cyr: So I mean, you know, so what I was going to tell you was because he [Christie] broke his foot, I've been running the Ministry and I see-

A: Oh.

St. Cyr: Seventy people a day.

¹² In 2009, there was a \$50 "donation" to join the Ministry. However, most recently, the Ministry's website advertised "Aloha, become a member of the THC Ministry for free".

A: Ooh. That, in counseling or are they lectures?

St. Cyr: Mostly counseling, but mostly I'm distributing.

A: Distributing the cannabis?

St. Cyr: Right.

A: And do, do they have to have a prescription for it?

St. Cyr: No.

A: Then, can, and uh-

St. Cyr: They just become a member.

A: Oh. Become a member and you could use because it's medicinal?

St. Cyr: Because, because, we we're, Roger's on, uh, religious rights.

A: Oh, okay.

St. Cyr also made it perfectly clear in this call to "A" that the Ministry was supporting itself by selling marijuana to its members (these sales being code-named "donations"):

A: And, and where does the money come from? From selling the cannabis?

St. Cyr: From the donations from the cannabis.

A: From the donat- well, they donate money to buy the cannabis?

St. Cyr: Right.

A: But there's no price attached to it. It's a contribution?

St. Cyr: We have a suggested donation.

A: Oh, yeah, right.

St. Cyr: That's how you, that's how you, you know.

A: Yeah, of course. And the, financially, it, it works out real well?

St. Cyr: Yeah, and, and, you know, we see, only ten percent of our clients are, are medical marijuana patients.

A: Oh.

St. Cyr: The other ninety is, members.

A: Members. Okay. Now, who grows the cannabis?

St. Cyr: We have various people starting to do it.

A: Oh, oh, I see. You got, in other words, you gotta, it's suppliers in Hawaii that grow it?

St. Cyr: Yeah.

A: And then you, you're able to purchase it or bought or whatever you do.

St. Cyr: Yeah.

That these so-called "suggested donations" were in fact prices for marijuana products was further made clear in another intercepted call which St. Cyr had with former Ministry employee Victoria Fiore ("Victoria") on 4/16/09, wherein St. Cyr expressed her concern about seeing written price lists on the Ministry premises:

St. Cyr: ... The one thing, and I did leave a note for Heather [another Ministry employee at that time] about, um, no more of those numbers. I don't care if it's for Ann [another Ministry employee at that time]. I don't want to see any of those around, and Roger [that is, Christie] already said something about.

Victoria: No more, what, what, what numbers? What are you talking about?

St. Cyr: The piece of paper that says how much things are.

Victoria: Oh, that has to go?

St. Cyr: No way, no way, if we ever got, no way, absolutely.

Victoria: Okay.

St. Cyr: And especially anything with a dollar sign on it.

Victoria: Now, what do we tell people then that are asking, how much the something costs?

St. Cyr: You memorize it.¹³

Moreover, on many occasions Christie himself answered the Ministry landline telephone (TT1) and during these calls, he made it quite clear that the marijuana was for sale. For example, in Call #2480, TT1, 4/21/09, a customer identifying himself as "R" said "I need to get a bag of sacrament [code-word for marijuana buds] from Roger." Shortly thereafter, Christie telephoned "R" back (see Call #2482, TT1, 4/21/09) and the following discussion occurred:

R: Listen, I'd like to, um, get some sacrament.

Christie: Cool, we got some.

R: Okay.

Christie: Donation bag or purchase?

¹³ St. Cyr also made it clear in other telephone calls that nothing is free at the Ministry. For example, on 4/21/09, in Call #335, TT2, a caller indicated that her boyfriend had lost his Ministry membership card and wanted it replaced. St Cyr then provided the Ministry's telephone number and advised to make an appointment there for a new card. St Cyr also added "and give a donation for that."

R: Purchase.

Christie: Cool, how much would you like?

"R" then said he preferred not to talk on the telephone and asked to come to the Ministry immediately.

Likewise, in Call #3293, TT1, on 4/25/09, customer "F" asked Christie "what is the donation going for?" Christie replied "fifty [that is, \$50] an eighth [that is, 1/8 ounce or 3.5 grams], a hundred [\$100] a quarter [that is, 1/4 ounce] for, for grade A."

Furthermore, in Call #1751, TT2, on 5/18/09, Christie spoke to a person named "D". Christie advised that the Ministry was open from 2:00 p.m. - 5:00 p.m., and "so you're welcome to, to go by there and make a donation. We've got some, some free bags of, aloha bags of some pretty good shake, and we have some triple A bud." "D" then asked "at regular, um, donation prices?" and Christie replied "yeah." "D" then inquired "how much for a, for an ounce?" and Christie said "four hundred [that is, \$400]." "D" remarked "wow, that's high," and Christie answered "it's retail," and added "normal retail. You know, we buy it, you know, at forty five hundred, five grand a pound, so."¹⁴

¹⁴ That is to say, in order to rationalize why he was selling at "normal retail" of \$400 per ounce, Christie was explaining to "D" that he acquired his marijuana inventory at a wholesale price of \$281.25 - \$312.50 per ounce (converting the unit "per pound" prices to their respective "per ounce" prices).

(continued...)

In this connection, it was not necessary to have any spiritual blessing or other arguably religious experience at the Ministry in order to obtain the marijuana "sacrament", because the Ministry had instituted "express" service to expedite its distribution of marijuana. Former employee Victoria explained this to customer "J" during an intercepted telephone call (see Call #1847, TT1, 4/17/09) after "J" inquired what "express" was. Victoria replied: "um, basically, if you don't wanna have to, if you don't wanna sit down, talk to Roger, you can just come on in, make a donation and pick up your sacrament".

Intercepted telephone calls indicated that Christie was offering a variety of marijuana products at the Ministry, available at the following "donation" prices:

- "Sacrament" (that is, female marijuana flower "buds", which are the most prized part of the marijuana plant due to its

¹⁴(...continued)

Actual wholesale purchase prices for the marijuana buds which Christie acquired from some of his suppliers during 2009 were as follows:

- From defendant Ignacio: \$250 - 300 per ounce

- From defendant Zeeman: \$2,200 per ½ pound (\$275 per ounce), \$1,150 per 1/4 pound (\$287.50 per ounce).

- From defendant Shapiro: two pounds at \$3,900 each (\$243.73 per ounce); \$250 per ounce for a purchase of 11-12 ounces.

- From defendant Sudbury: \$4,000 - 4,200 per pound (\$262.50 - \$250 per ounce).

high THC content): \$50 per 1/8 ounce (3.5 grams), \$100 per 1/4 ounce, \$400 per ounce.

- "Shake" (that is, the stems and leaves of the marijuana plant, which were less valuable due to the lower THC content), which were available in either "twenty bags [\$20]" or "aloha bags [for a more minimal donation amount of a couple dollars]".

- Anointing oil (to ingest THC through the skin): \$20 for the small bottle, \$50 for the large bottle.

- Tinctures (THC in liquid form, to be taken orally), in both an alcoholic and non-alcohol form: \$60 for either.¹⁵

- Edibles, such as brownies and ganja balls (\$5 each).
In addition, live marijuana plants and marijuana seeds were also available at the Ministry for a "donation". As Christie bragged during Call #9521, TT1, on July 9, 2009:

[The Ministry was] only open to serve, um, our people, our practitioners here Monday, Wednesday, Friday from two to five. So, during this time, we serve about fifty or seventy people and we dispense cannabis. So that's, so yeah, we go through, ah, easily a half a pound a day in three hours. And we, we, this is taking packets away, during this time, two to five, Monday, Wednesday, Friday. Then they can take live plants away. We have clones, we have seeds, we have candy, we have brownies and chocolate chip cookies, all with cannabis. We have tinctures made with cognac or vegetable

¹⁵ In one call, Christie explained to customer "B" how to use tinctures as follows (see Call #2034, TT1, 4/18/09): "you carry [it] in your purse, you can dose yourself at the movie theater, at the restaurant, you know what I mean? You just take out the bottle and give a drop on your tongue and away you go, nobody even looks at you".

glycerin, the non-alcohol kind.

Christie's Ministry also offered for sale certain, arguably non-contraband products, as for example, the "Sanctuary Kit", for a donation price of \$250.00. However, these products were expressly intended to aid and abet the manufacture and distribution of marijuana. As described on the Ministry website:

Our Cannabis Sanctuary Kit provides you with proof of your legitimacy as a religious practitioner of Cannabis Sacrament. You become a full supporting member of the THC Ministry the moment you receive your Cannabis Sanctuary Kit

To protect your sacred plants and sacrament: One of the 'plant tags' can be put in your container of Sacrament. Other tags can be placed on the stems of cannabis plants in your private garden home. These tags work in a similar fashion as a prescription label on medicines.^[16]

To protect your home and garden: One Sanctuary sign can be framed and hung inside your front door or kept in private. Another Sanctuary sign can be framed and hung inside your greenhouse. These Sanctuary Signs designate your home and garden as a 'place of Refuge' for the practice of cannabis spirituality and are legal notification if law enforcement ever visits.

To protect your body: The THC Ministry identification card is to be signed, laminated and kept in your wallet or purse. It will protect your use of cannabis sacrament in any of the 50 United States and elsewhere throughout the world.

¹⁶ These plant tags-- designed to either be inserted into plastic bags of processed marijuana, or affixed to live plants themselves, read as follows:

On one side: "We use cannabis religiously and you can too".

On the other side: "sacred plant and sacrament. It's the high that heals. Thank you for honoring all of my human, civil and religious rights and powers, as I honor yours".

It should be noted that all of Christie's defendant-suppliers in this case were Ministry members, and when their respective residences were searched by law enforcement officers on March 10, 2010, their growing areas utilized Christie's Sanctuary Kit paraphernalia, as e.g., the Sanctuary Sign being posted in the indoor grow areas, as well as use of the plant tags.

More recently in 2010, the Ministry was now offering on its website a new product called the "Congregation Kit" for a donation price of \$1,000.00. According to the Website, this Congregation Kit:

combines our Sanctuary Kit with the following additions: 1 Minister-size bottle of Holy Anointing Oil (Made Prayerfully with the ancient and sacred recipe of Exodus 30:23); 1 bottle of Cognac and Cannabis Tincture (Made prayerfully with Grand Marnier and Chambord, both premium label French cognacs + an organic Hawaiian Cannabis flower bud); 1 bottle Sweet Cannabis Tincture (Non-alcoholic. Made prayerfully from vegetable glycerin + a premium organic Hawaiian cannabis flower); 12 Practitioner Kits".

Moreover, all of the counseling, education and services provided by Christie's Ministry were similarly for the express purpose of aiding and abetting in the manufacture/distribution of marijuana. In October 2009, Christie opened the "Hawaii Cannabis College" on the first floor of the building in which the Ministry's business premises was located (on the second floor). Quoting directly from the Hawaii Cannabis College website located at www.hawaiicannabiscollege.org:

The Hawaii Cannabis Ministry (aka THC Ministry) and the Reverend Roger Christie would like to invite medical

marijuana patients, caregivers, and members of the THC Ministry to the 2nd Cannabis College on Saturday November 14, 2009 from 10:00 am - 4:20 pm.

You are invited to attend Cannabis College and learn to grow the ganja garden of your dreams. Some of the best cannabis growers on the Big Island will demonstrate their techniques for growing the highest quality medicine and sacrament.

The classes will include lighting, cloning, fertilizing, harvesting, curing, and more. . . . Your \$100 donation will include classes, great teachers, and a catered hemp seed lunch. [emphasis added]

The website also contained photographs taken at the first Cannabis College session held in October 2009. That first session was described on the website as being "an incredible day as Big Island Teachers shared their knowledge of cannabis growing and enjoyment with students eager to learn". Among the posted photographs was one of Wesley Sudbury-- that is, one of Christie's marijuana suppliers and charged as a defendant herein-- and his girlfriend apparently teaching in front of the class. The caption to this photograph read "the Hawaii Cannabis College had the privilege to be able to present such great teachers such as Michelle and Wes who are experts in meditation and agriculture".

In addition, Christie also appeared to be hosting several "experts from the Netherlands" who specialized in indoor marijuana cultivation, and he (Christie) had arranged to have them speak at the Ministry on the night of July 2, 2009. Among the persons to whom Christie extended invitations to attend this

session were defendants Susanne Friend and Timothy Mann (who, as alleged in the Indictment, were operating the Ministry's marijuana farm). Christie also told Friend that even if they could not attend the session, ". . . we're going to tape it so, so we, we'll get it to you either way. Don't stress. I mean, either way you're going to get this much knowledge as we can transfer to you". See Call #746, TT3, and Call #3303, TT2. In other words, whatever training and educational benefits Christie could provide to his marijuana suppliers through the Ministry also inured to his benefit, in that those suppliers' harvested product would be of higher quality and more readily salable by Christie.

In addition, as indicated on the Ministry's website, Christie was a long-time supporter of the "lowest law enforcement priority of cannabis ordinance" (hereinafter "marijuana ordinance"), which was approved by the voters of Hawaii County as an amendment to the Hawaii County Code in the November 2008 general election. While arguably Christie's support and advocacy of the marijuana ordinance was merely an exercise of his freedom of speech, this superficial observation is not accurate. In truth, Christie had a hidden agenda in supporting the marijuana ordinance, namely, to enhance his marijuana sources of supply. Section 5 of the marijuana ordinance purported to make the cultivation, possession and use for adult personal use of

cannabis (marijuana) the lowest law enforcement priority in Hawaii County; the ordinance did not apply to the distribution and sale of marijuana. The marijuana ordinance's definition of "lowest law enforcement priority" also stated that:

The Lowest Law Enforcement Priority regarding possession or cultivation of Cannabis shall apply to any single case involving 24 (twenty four) or fewer Cannabis plants at any stage of maturity or the equivalent in dried Cannabis, where the Cannabis was intended for adult personal use. [emphasis added]

Christie's view was that with the marijuana ordinance's enactment, it was now lawful for each person in Hawaii County to cultivate up to 24 marijuana plants, and in a telephone call with "J" on April 17, 2009 (Call #269, TT2), Christie explained his thinking and strategy to use this ordinance to his benefit to alleviate his supply problems, as follows: "and so I'm thinking how to step it up another notch, uh, forward, and that's to, like for instance, your situation or somebody else's, let, let some people know that the Ministry needs more herb, but our new law passed in November allowing 24 plants per adult, in private, at home." The following discussion then occurred later in this call:

J: Um, yeah, so the use's and all that, but the supply, yeah, that's the thing, that's the key thing.

Christie: That's the trick, you know, I'm allowed to have a farm, but I'm too busy to have one and I don't have the finances to have one, so if somebody else has a location, then I'll be happy to, you know, put my stamp of approval on it and, uh, you, you know, make, make it happen now.

* * *

Christie: Yeah, so what I, I wanted to express here, too, is that besides the Ministry, just, you know, doing our, our simple, you know, daily sacraments and services, because ballot question 1 [that is, the marijuana ordinance] was approved, it's 24 plants per adult here. Um, it's private at home, but there's no commerce allowed with it.

J: No commerce allowed with it.

Christie: Right, it's not allowed to be grown for sale. So this, this is [where] the Ministry comes in. I think my license allows me to accept offerings of that backyard produce.

J: Uh, huh.

Christie: And then offer something back to the, uh, to the, to the grower. So...

J: Okay.

Christie: So I'm, I'm just, I'm exploring this possibility here, how to take people's backyard profit centers, or the potential profit center in somebody's backyard, and turn it into, you know, make it more legit through the Ministry, and that the Ministry would make medicine, we would weigh it and grade and process it and make medicine and sacrament with it, and provide it under a, a Ministry label to Ministry members.

* * *

Christie: ... [y]ou know, like you have a little bit of property and other people have a little bit of property, and you know, maybe wanna tend to, you know, have a whole cultivation situation, uh, if there's extra [that is, growing in excess of 24 marijuana plants] and you're looking for another choice of what to do with your extra, I think you can offer it to the Ministry.

J: Right.

Christie: And that, that we will offer a check back to

the, to people. It won't be black market prices, however.

J: Right, right.

Christie: You know, because we're looking for sincerity and we're looking, you know, to break the black market on this one.

[emphasis added]

Lastly, Christie has utilized his "Minister"-status for some highly questionable purposes on at least two instances. First, Christie offered to hide the marijuana stash of a Ministry member who was being sought by the police. On June 28, 2009, Ministry member "J" telephoned Christie (Call #3145, TT2); in this call, "J" advised that according to his friend "they said they got a whole bunch of cops out there looking for me. What do I do?" Christie then inquired "what you got on ya?", and "J" replied "um, I got some herbs and a bong [commonly-used slang for a pipe]". Christie then suggested "why don't you drop it off here first?", to which "J" said "to come to you first?"; Christie then said "yeah, you don't wanna?", and "J" answered "all right, I'll be over there to you first. I'll go come from the back way".

On another occasion, Christie attempted to use his "Minister" status to assist in an effort to have incriminating evidence removed from Ministry-member "N's" residence before the police could find it. On Thursday, April 30, 2009, "N" had been arrested by HCPD Officers after finding about 2½ pounds of marijuana in the vehicle he was driving; because "N" was pending

criminal charges for other felony marijuana offenses and was then released on state bail, "N" was held in detention over the ensuing weekend (May 2 - 3, 2009) at the Kailua-Kona HCPD station. During Call #707, TT2, on May 1, 2009, Christie was discussing with another person named "R" about how the police had found the marijuana in "N's" vehicle during a traffic stop. "R" then inquired "what about the residence?", to which Christie replied "I don't think that's connected in any way here, at the moment". "R" reminded Christie that "we gotta meet on that, because, uh, you know, he just got back from you know where?" Christie then apparently caught "R's" drift-- namely, that "N's" current residence could contain marijuana and other incriminating evidence brought back from "you know where"-- because Christie then said that he would call the HCPD Kona cellblock to put in a "support" call to N. Minutes later, on May 1, Christie did indeed telephone the Kona cellblock (see Call #710, TT2), identified himself as "Reverend Roger Christie" and requested a "clergy call" with inmate "N". During his telephone conversation with "N", Christie received a detailed listing of various coded items which had to be removed from "N's" residence; "N", for example, was particularly concerned that Christie "make sure that the master bedroom, which is my room, is, is clean". Christie indicated that he would ask a mutual friend named "P" to go to "N's" residence; Christie reiterated that "I'll get on to ["P"]

right now, I'm calling ["R"] back and our friends from Oregon back". Christie later had another telephone call with "R" (Call #730, TT1) in which he explained his prior conversation with "N", and indicated that "I've got to talk to ["P"], uh, pretty soon here. If I can find him to get to ["N's"] house and, and do some cleaning". In another "clergy call" with "N" on the following day (Call #801, TT2, 5/2/09), "N" advised Christie that "I, uh, talked to ["P"] a couple of times today"; Christie replied, with apparent relief, "okay. So things are OKAY [Christie emphasized 'OKAY'] on that end. Good".

D. This Court's (and the Ninth Circuit's) prior rulings on Christie's pretrial detention:

(1) The first set of detention rulings:

After the initial detention hearing in July 2010, Magistrate Judge Chang ordered defendant's pretrial detention. See Docket #0093, Order entered 7/16/2010. Christie appealed this detention ruling to the District Judge, and after extensive briefing by both sides and oral argument,¹⁷ Senior U.S. District Judge Kay affirmed the Magistrate Judge's detention ruling on July 20, 2010. In so doing, Judge Kay held that Christie had not overcome the rebuttable presumption that he was a danger to the community established in the Bail Reform Act (18 U.S.C. 3142(e)) and that the prosecution had demonstrated by clear and convincing

¹⁷ See Docket #0098 and 0111, Christie's motion to revoke detention order and the United States' opposition memorandum.

evidence that Christie posed a danger to the community, taking into account that scope and extent of his operations through the Ministry and most importantly, his decision to recommence his marijuana operations after the March 2010 search. Specifically, Judge Kay found:

Given the strength of the Government's evidence, coupled with the statutory presumption . . . , the Court finds there is an unacceptably high risk that Defendant would not comply in good faith with the proposed conditions, or any other combination of release conditions, imposed upon him. This is especially true given that a previous search of the Ministry and Defendant's residence in March 2010 did not prevent Defendant from continuing his involvement in the THC Ministry. That is, Defendant has demonstrated from his prior conduct between March and July of 2010, that it is highly probable he will continue to commit the same marijuana trafficking crimes with which he is charged if released on bond.

Docket #0121, Judge Kay's Order at 18-9.

Christie then sought appellate review of Judge Kay's Order by the Ninth Circuit Court of Appeals in C.A. No. 10-10355. By memorandum order entered 8/5/2010, the Ninth Circuit affirmed this Court's detention orders.

(2) The second set of detention rulings:

On October 18, 2010, Christie filed his motion to reopen the detention hearing. Again, both sides submitted extensive written briefing.¹⁸ There was further oral argument before U.S. District Judge Ezra at the hearing on October 22,

¹⁸ See Docket #181 & 0185, Christie's motion/memorandum and the United States' opposition memorandum.

2010, at the conclusion of which Christie's motion was denied in full. In so doing, Judge Ezra aptly observed that "I don't know about you, Mr. Winter [Christie's counsel], but if I had the, you know, federal authorities knocking on my door and doing a raid on activities that I had allegedly been doing, what I was doing, I would be very concerned about that. But apparently Mr. Christie wasn't". T.P.(10/22/2010) at 24. In addition, Judge Ezra also noted that:

[T]he bottom line is that I believe that what I'm doing is right. I think what Judge Kay did was right. I thought what Judge Chang did was right. I thought what the Ninth Circuit did previously was right.

T.P.(10/22/2010) at 25.

Christie again appealed Judge Ezra's ruling to the Ninth Circuit in C.A. No. 10-10500. On December 7, 2010, the Ninth Circuit affirmed Judge Ezra's denial of Christie's motion.

E. The trial continuances and other related matters that have occurred in this case to date:

In order to better comprehend the trial continuances that occurred herein subsequent to the aforementioned two detention determinations by this Court and the Ninth Circuit, we identify them in tabular form below:

TRIAL CONTINUANCES AND RELATED EVENTS IN THE INSTANT CASE:

<u>Docket#:</u>	<u>Filing Date:</u>	<u>Event/Activity:</u>
001	06/24/10	Sealed Indictment returned.
028	07/09/09	Initial appearance/A&P; preliminary trial date of 09/08/10 set.
139	08/09/10	USA's motion for complex litigation designation/trial continuance granted, with all defendants concurring/not objecting; new trial date of 04/26/11 set.
232	02/17/11	Christie's motion to continue trial filed.
234	02/24/11	Christie's trial continuance motion granted; New trial date of 07/06/11 set.
262	06/01/11	Stipulation/Order continuing trial date entered; new trial date set for 10/04/11.
		Quoting from the written stipulation itself: "Defendants [including Christie] request this continuance for the purpose of allowing defense counsel additional time to conduct a thorough investigation and interview of witnesses, review discovery, and file appropriate motions if necessary, and effectively prepare for trial".
299	08/25/11	USA's motion for trial continuance [grounds: deaths of two members of Government counsel's immediate family].
303	09/06/11	Trial continuation motion granted without objection from any defendant; new trial date set for 02/28/12.

<u>Docket#:</u>	<u>Filing</u> <u>Date:</u>	<u>Event/Activity:</u>
310, 319-20	11/21/11 11/30/11	St Cyr's motion to withdraw as defense counsel filed and granted; Dana Ishibashi replaced with Jeffrey Arakaki.
325	12-30-12	St Cyr's motion to continue trial filed.
329	01/04/12	St Cyr's trial continuance motion granted (Christie did not object); new trial date set for 08/28/12.
336-7, 347	02/17/12 02/28/12	St Cyr's motion to withdraw as defense counsel filed and granted; Jeffrey Arakaki replaced with Lynn Panagakos.
369, 371 380	03/19/12 03/23/12	Christie's motion to withdraw as defense counsel filed and granted; Alexander Silvert replaced with Thomas Otake.
388	05/21/12	Stipulation/Order to continue trial entered; Trial continued until 01/23/13.
		Quoting from the written stipulation itself: "The reason for the continuance is the recent entries into this case of Thomas Otake, Esq., and Lynn Panagakos, Esq., who are newly appointed counsel for defendants Christie and St. Cyr, respectively. These attorneys will require additional time to acquaint themselves with this case and to prepare for trial".

In other words, of the six trial continuances to date:

-Three were either initiated by or expressly stipulated-to by Christie himself;

-One was initiated by his wife, St. Cyr, to which Christie did not object; and

-Two were as a result of prosecution motions, to which Christie himself never objected. Moreover, a closer examination of these trial continuances vis a vis what was transpiring in this case at that time demonstrate that nearly all of the associated trial delays inured to Christie's benefit, because: (1) for at least a one year period, Christie was attempting to negotiate pleas for both St. Cyr and himself instead of going to trial; and (2) as to the remainder of the trial delay associated with these continuances, these were necessitated by Christie's and his wife's (St. Cyr) elections to change attorneys in midstream.

Commencing in about January 2011, Christie's predecessor counsel (Mssrs. Alexander Silvert and Matthew Winter) initiated plea discussions with the prosecution. These discussions also included St. Cyr's former counsel, Dana Ishibashi, and continued through summer 2011. In September 2011, the prosecution forwarded written plea agreements to Christie and St. Cyr's counsel. See attached Ex. "3" at 1.¹⁹ As a result of these ongoing discussions, the prosecution also deferred the filing of a superseding indictment. See attached Ex. "2" at 2 and Ex. "3" at 1. The following documents are proffered to substantiate the foregoing factual recitations:

¹⁹ Attached Exhibits "1", "2", "3", and "4" are true and correct copies of pertinent correspondence exchanged between counsel for Christie and St. Cyr and the U.S. Attorney's Office.

(1) Exhibit "1": Mr. Silvert's letter dated November 4, 2011 addressed to U.S. Attorney Nakakuni, wherein he requested on Christie's behalf that a meeting with "Ms. Monica Wallach, an attorney and friend of Mr. Christie, and defendant Sherryanne St. Cyr, and former UH Law School Dean and Professor Richard Miller"; the stated purpose of this meeting was to "discuss whether there is any further room to alter some of the terms of the plea agreements and hope to convey their opinion and thoughts to you in such a meeting." Ex. "1" at 1.

(2) Exhibit "2": The U.S. Attorney's reply letter declining such a meeting, stating, inter alia:

It is my understanding that both Dana Ishibashi, Esq. (CJA-appointed counsel for co-defendant St. Cyr) and you have had numerous and extensive discussions over the past many months with Mr. Kawahara concerning pleas for both defendants. Given that both Mr. Ishibashi and you are highly experienced trial attorneys and well-versed in Federal criminal law and procedure, I believe that everything that could and should be considered has already been discussed thoroughly and taken into account.

Ex. "2" at 2 [emphasis added].

(3) Exhibit "3": By letter dated November 9, 2011, the prosecution established a deadline of November 30, 2011 for both Christie and St. Cyr to accept the plea agreements previously tendered to them. Ex. "3" at 2.

(4) Exhibit "4": At the express request of St. Cyr and Christie's predecessor attorneys to extend the November 30, 2011 deadline, the prosecution in this letter established a new

deadline of January 18, 2012. Ex. "4" at 1. As things turned out, neither defendant accepted the plea agreements.

In other words, of the approximately two years that Christie has been detained pending trial, at least one year of this delay (January 2011 - January 2012) was directly attributable to Christie's efforts to avoid trial by negotiating a plea, albeit unsuccessfully.

Second, as indicated in the prior Table, Christie himself elected to have his counsel changed on one occasion and his co-defendant/spouse St. Cyr also sought new counsel on two occasions. Inasmuch as the instant case has been designated complex litigation and both defendants affirmed to the Court that continuances were necessary to accommodate their requests, the second year of trial delay (and Christie's concurrent pretrial detention) was again for Christie's and St. Cyr's mutual benefit, so as to permit the new attorneys to acquaint themselves with this case.

II. **ARGUMENT:**

Christie's instant revocation motion constitutes his third effort to be released on bond. The granting of his motion will necessitate the reconsideration of and reversal of this Court's and the Ninth Circuit's prior detention rulings. Therefore, 18 U.S.C. 3142(f)(2) of the Bail Reform Act governs and provides that:

[t]he hearing may be reopened, before or after a [detention] 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 such such person as required and the safety of any other person and the community. [emphasis added]

When Christie's third effort was initially considered by Magistrate Judge Chang in June 2012, the latter denied the motion. As Magistrate Judge Chang found in his Order entered 6/6/2012 (Docket #0396) at 2:

Specifically, the Court considered the length and reasons for the trial continuance from February 28, 2012 to January 23, 2013, the circumstances surrounding the illness of the defendant's mother and the availability of an emergency furlough should it become necessary, and the defendant's marriage to his co-defendant, Sherry-Anne St. Cyr, and her conduct while on pretrial release. The Court finds that none of these circumstances, either individually or collectively, substantially affect the prior determination that there are no condition or combination of conditions which would reasonably assure the safety of the community. [emphasis added]

In his instant revocation motion addressed to the District Judge, Christie again avers as "changes in circumstances" the same three factors he previously raised before Magistrate Judge Chang. We submit that the District Judge should similarly deny Christie's instant revocation motion for the same reasons articulated by Magistrate Judge Chang.

First, Christie's instant revocation motion at 8 speaks of his "being incarcerated for over 2½ years pending trial, an excessive amount of time". However, Christie has declined in his

moving papers to explain why such trial delays occurred and for good reason: nearly all of that delay was directly attributable to his own actions and that of his co-defendant spouse, and was primarily for their benefit. Moreover, that Christie has been kept "clean and sober" for the prior two years by incarcerating him is hardly, as he attempts to proffer in his motion at 8, a positive sign of self-rehabilitation. Of greater significance is what Christie voluntarily did after his Ministry was effectively "shut down" by the 3/10/2010 warranted searches, and his Ministry's marijuana farm (operated by Friend and Mann) previously closed by the 7/22/09 search, namely, he restarted the Ministry's activities.²⁰

Second, as we have previously argued to Magistrate Judge Chang, that Christie's mother is gravely ill is unfortunate but it does not make him less of a danger to the community or less of a flight risk. Unless he has lost his phone privileges,

²⁰ In yet another effort to rationalize his resumption of Ministry activities as innocent, Christie contended in his instant revocation motion at 29 that "the language quoted from the search warrant above clearly demonstrates this was not the cease and desist message that the Government portrays it as".

The short response to Christie would be-- as hereinbefore quoted in this memorandum-- District Judge Ezra's apt observation during the prior hearing that "I don't know about you, Mr. Winter [Christie's counsel], but if I had the, you know, federal authorities knocking on my door and doing a raid on activities that I had allegedly been doing, what I was doing, I would be very concerned about that. But apparently Mr. Christie wasn't". T.P.(10/22/2010) at 24.

he should be able to communicate with her, and if it becomes absolutely necessary, he could always request a furlough. Further, even assuming for the sake of argument only that this circumstance makes the defendant less of a flight risk or a danger to the community, it is only a temporary matter. Once Christie's mother passes, so will any of its beneficial effects with respect to detention/release considerations.

Third, Christie's recent marriage to his co-defendant St. Cyr hardly renders him a suitable candidate for release. St. Cyr played a leadership role in the Ministry, subordinate only to Christie. Reuniting them only raises the spectre of further danger to the community. Moreover, St. Cyr's pretrial release history to date is hardly stellar and raise considerable doubt about whether the two should be permitted to freely associate. Pretrial Services on more than one occasion has had to seek modifications/additions to St. Cyr's release conditions (e.g., most recently, inclusion of BOP's rules because St. Cyr has flouted them while visiting Christie at FDC-Honolulu). Similarly, it was necessary for Magistrate Judge Puglisi on July 13, 2012 to directly order St. Cyr to comply with Pretrial Services' repeated requests for proof/corroboration of her income status.

Lastly, Christie spent a considerable amount of time in his instant revocation motion at 11-29 addressing the relative

severity of marijuana vis a vis alcohol and other illegal drugs and contending that marijuana is genuinely part and parcel of his religion. However, marijuana is still treated under Federal law as a Schedule I controlled substance, for which statutory minimum penalties are mandated for different quantities of the drug (which directly apply to Christie, inasmuch as 100 marijuana plants were involved). Furthermore, under Federal law, the pending criminal charges of manufacture, distribution, and possession with intent to distribute are not subject to any defense of free exercise of religion. See, e.g., Guam v. Guerrero, 290 F.3d 1210, 1222-3 (9th Cir. 2002), United States v. Bauer, 84 F.3d 1549, 1559 (9th Cir. 1996).

The bottom line herein is the confidence level which should be attached to any naked assertion by Christie that he will comply with any release conditions this Court may impose, inasmuch as his prior statements and performance demonstrate that Christie really believes he is above the law. Several intercepted conversations previously described in this memorandum at 24-9 are telling in this regard. In the first series of calls concerning the impact of the marijuana ordinance and how he wanted to "step it up another notch", Christie essentially stated his belief that what would constitute an illegal drug sale if engaged-in by anyone else would somehow be legitimate if his Ministry was involved. By like token, in the second series of

calls, Christie also believed that his so-called "Minister" status immunized him so that he could engage in conduct tantamount to obstructing justice, in one instance offering to hide the marijuana stash of a Ministry member who was being sought by the police, and in another instance, taking steps to arrange to have another member's residence "cleaned out" of contraband before the police could search it. Consequently, it is easy to understand why Christie recommenced his marijuana trafficking activities at the Ministry after being searched on 3/10/2010 (not to mention the earlier search of the Ministry's marijuana farm eight months earlier on 7/22/09). It is, therefore, no wonder that Judge Kay opined that "although the proposed conditions of release in the PSR are strict, they depend on Defendant's good faith compliance to be effective and therefore do not adequately assure the safety of the community in this instance". Docket #121 at 18.

None of the ensuing circumstances Christie has postulated in his instant revocation motion has really altered this underlying lack of confidence. The logic underlying this Court's prior two detention rulings-- as affirmed by the Ninth Circuit-- is still cogent today. Consequently, Magistrate Judge Chang's detention order should be sustained and Christie's instant revocation

motion denied.

DATED: Honolulu, Hawaii, August 2, 2012.

FLORENCE T. NAKAKUNI
United States Attorney

/s/ Michael K. Kawahara
By _____
MICHAEL K. KAWAHARA
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

THOMAS M OTAKE, ESQ. Thomas@otakelaw.com
Attorney for Defendant
ROGER CUSICK CHRISTIE

DATED: August 2, 2012, at Honolulu, Hawaii

/s/ Valerie Domingo

U.S. Attorney's Office
District of Hawaii