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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,) NO. 1:08-cr-0224 OWW
12)
Plaintiff,) GOVERNMENT'S OPPOSITION TO
13 v.) MOTION FOR REVOCATION OF
14) DETENTION ORDER
15)
RAY MARTIN HEFFINGTON,) Date: December 23, 2008
16) Time: 9:00 a.m.
Defendant.) Courtroom: Three
Hon. Oliver W. Wanger

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18 The United States of America, by and through the undersigned
19 counsel, hereby submits its Opposition to defendant Heffington's
20 Motion For Revocation of the Detention Order in this case. For the
21 following reasons, the United States requests that the defendant
22 remain detained as both a flight risk and a danger to the community.

23 1. Standard of Review

24 This court reviews the evidence in a Motion for Revocation
25 of a Magistrate Judge's Detention Order under the de novo standard.
26 United States v. Fernandez-Alfonso, 813 F.2d 1571, 1573 (9th Cir.
27 1987).

28 2. The Defendant's Self-Surrender Is of No Moment

1 Counsel initially argues that the defendant self-surrendered on
2 the instant charges. That fact is of no moment. The defendant knew
3 he would be arrested on the instant charges when he appeared in
4 Fresno County Superior Court to face his pending weapons charges and
5 that his bond would thereafter be forfeited.

6 3. The Defendant's Criminal History

7 Counsel for the defendant makes much of the fact that the
8 Magistrate erroneously concluded that the defendant had been
9 convicted of two misdemeanors and one felony, when in actuality, the
10 defendant had sustained two misdemeanor convictions. However, when
11 one looks closely at the defendant's record, one can see that the
12 defendant has been given leeway by the criminal justice system over
13 the course of the last twenty years, and that his criminal history is
14 under-represented.

15 In 1989, the defendant was convicted in Madera County of a
16 violation of Ca. Health and Safety Code § 11358, possession of
17 cocaine for sale, and was granted drug diversion under Proposition
18 36.

19 In 1993, he suffered a misdemeanor conviction in Madera County
20 of resisting or obstructing a peace officer, in violation of Ca.
21 Penal Code § 148(a).

22 In 1994, he suffered another misdemeanor conviction in Madera
23 County for vandalism, in violation of Ca. Penal Code § 594(a).

24 In 1997, the defendant pled guilty to a felony drug possession
25 charge under Ca. Health and Safety Code section 11357(a), which was
26 later reduced to a misdemeanor, then dismissed after the defendant
27 successfully completed his probation.

28 As counsel admits, the defendant is currently facing felony gun

1 charges (with a gang enhancement) in Fresno County, arising out of
2 his possession of a firearm in 2006. The United States understands
3 that the evidence in that case is that the defendant was carrying a
4 firearm with other Hells Angels members as they went to a meeting in
5 San Bernardino. The government believes that the defendants were
6 carrying the guns to protect themselves from rival gang members that
7 they might run into along the trip. The defendant is currently
8 charged with a felony in Fresno County Superior Court as a result of
9 this conduct. That activity occurred in 2006. The charges in the
10 current indictment allege activities that occurred in 2007 involving
11 conspiracy, chop shop and trafficking in stolen motorcycle parts, all
12 the while the defendant is the Merced Chapter President of the Hells
13 Angels.

14 Furthermore, the defendant currently has two pending cases at
15 the Madera County D.A.'s office that are being reviewed: (1) C2008-
16 0878, which is a Criminal Threats case dated April 12, 2008, (Exhibit
17 1, attached hereto and incorporated herein) and (2) C2008-1545, which
18 is a Criminal Threats and Participation in a Criminal Street Gang
19 case dated June 27, 2008 (Exhibit 2, attached hereto and incorporated
20 herein).

21 In sum, the defendant currently has a pending felony State gun
22 and gang case out of Madera County, a federal conspiracy, chop shop
23 and motor vehicle parts trafficking case in the Eastern District of
24 California, and two criminal threat cases in Madera County - the last
25 incident of which occurred two weeks before the federal indictment in
26 this case, presumably while defendant knew he was the target of a
27 federal investigation.

28 For the foregoing reasons, the United States maintains that the

1 defendant has little or no respect for the law or court orders, and
2 is a danger to the community, and should be detained as such.

3 4. Evidence Against the Defendant

4 Counsel argues that the sole evidence against the defendant is
5 his participation in the alleged delivery and/or sale of motorcycle
6 parts from a single motorcycle. A summary of the evidence is set
7 forth below:

8 Through information received from a confidential witness, in
9 2007 defendant Heffington and an unidentified Hells Angel prospect
10 delivered a stolen motorcycle, stripped of the engine, transmission,
11 and frame, to Bob Holloway at Road Dog Cycle.

12 The motorcycle was completed by Alfredo Rincon and received by
13 the confidential witness at Dream Rides in San Joaquin County,
14 California. Mr. Rincon received cash payments from the confidential
15 witness for the assembly of the motorcycle. Law enforcement has
16 confirmed this motorcycle, in it's departed state, was stolen in
17 Fresno in the summer of 2007 and was taken from a Fresno chapter
18 Hells Angel prospect. This evidence of the stolen motorcycle (absent
19 the frame, engine, transmission, and triple tree) is now in the
20 possession of the FBI.

21 A. The Stolen Motorcycle

22 On June 29, 2007, a confidential witness received a
23 telephone call from Bob Holloway at approximately 10:55. Holloway
24 asked when the confidential witness was going to get to Road Dog
25 Cycle with the money. The confidential witness told Bob Holloway
26 that the confidential witness had the money and was on the way.

27 A review of telephone records shows that just prior to speaking
28 with the confidential witness, at approximately 10:53 a.m., defendant

1 Heffington placed a call to Road Dog Cycle. Following the call with
2 the confidential witness, a phone call was placed from Road Dog Cycle
3 to defendant Heffington's phone at approximately 10:56 a.m. The
4 confidential witness was observed by the task force meeting at Road
5 Dog Cycle. The confidential witness paid Bob Holloway \$2,796.00 of
6 the agreed \$3,000.00 asking price, and asked Bob Holloway if he could
7 cover the rest until Monday. Bob Holloway agreed. When asked how
8 long it was going to take to put the motorcycle together, Bob
9 Holloway said it depended on who does the work, "We should be able to
10 get it together pretty fast, I would think."

11 After Bob Holloway counted and confirmed the money, Holloway
12 told the confidential witness that he did not know if he could get
13 the frame for the motorcycle. Holloway told the confidential
14 witness, "I can't even discuss it on the phone.... But they told me
15 it was a full bike, ah, minus the shit with numbers...." The
16 confidential witness asked Holloway if the motorcycle was "stolen
17 from around here" to which Holloway replied, "I, I don't know, I
18 didn't ask. I'll find out, cuz I don't know. But, I mean, I'm sure
19 that they not gonna bring anything with a bunch of heat on it.
20 They've had it for a while." Holloway told the confidential witness
21 that it was going to be about an hour or two and that he would have
22 them drop the bike off at Bob Holloway's house and then the two of
23 them would drive over to Holloway's house to get it. When the
24 confidential witness stated, "Yeah, here probably wouldn't be the
25 best thing," Holloway replied, "No."

26 As the confidential witness waited for the motorcycle to be
27 delivered, Brent Holloway told Confidential witness that he had
28 overheard his dad talking with them (Holloway and defendant

1 Heffington) on the phone saying, "They didn't want anybody to know
2 who it was going to or where it came from. Cuz, I overheard them
3 talking, I overheard my dad talking on the phone."

4 The confidential witness was then directed away from the area by
5 Bob Holloway while the motorcycle was being delivered and unloaded,
6 but the confidential witness identified defendant Heffington and a
7 Hells Angels Merced chapter prospect a red pick-up truck and saw them
8 unload the motorcycle parts into Road Dog Cycle. A short time later
9 after the parts were unloaded from the red pick-up truck and it left
10 Road Dog Cycle, Bob Holloway approached the confidential witness and
11 said, "We gotta talk. Everything's good. Its in the back. Pull in
12 the alley, I'll tell you what's going on." Bob Holloway said to the
13 confidential witness, "They trust me, but they don't trust me," and
14 went on to explain why the confidential witness had to leave the area
15 and how the delivery went down.

16 While the confidential witness and Bob Holloway loaded the
17 motorcycle parts into the confidential witness's vehicle, they talked
18 about the parts and what they were, and their condition. After the
19 parts were loaded and just prior to the confidential witness's
20 departure from Road Dog Cycle, Bob Holloway and the confidential
21 witness removed coded stickers placed on newer model Harley Davidson
22 motorcycles which Holloway believed could identify the original VIN
23 number of the motorcycle even if the parts containing the VIN were
24 not present. Holloway also instructed the confidential witness to
25 check the lower triple tree for a number.

26 Bob Holloway stated that he had asked "Ray Ray" (defendant
27 Heffington) if it was possible to get the original frame, if they
28 could find it, and was told they'd try. Bob Holloway said, "He's got

1 a fucking frame, I mean as long as I've done business with these guys
2 I've got..." Bob Holloway appeared to change the subject in mid-
3 sentence as he continued without pause, "...they've never done this
4 to me." Bob Holloway said he was glad that the confidential witness
5 stuck around so that the parts didn't remain at Road Dog Cycle too
6 long. When the confidential witness mentioned to Bob Holloway that
7 he knew it was "red and white" [meaning Hells Angels members]
8 Holloway responded, "The only other ones it could have been is the
9 East Bay Dragons, and we quit buying from them. (whispered) Those
10 fucking guys wanted to do like ten bikes (unintelligible) week."
11 Before the confidential witness left, Holloway and the confidential
12 witness had the following discussion:

13 BH: So, you know anybody else that builds them or works on
14 them, that's worth a shit? Because, I mean when you bring
15 this shit its gotta be somebody you can trust, because when
16 they see it there gonna know what the fuck's what's going
17 on.

18 Confidential witness: Oh, yeah, definitely. Well, its
19 definitely, I'm definitely taking it to
20 Danny's house (William Daniel
21 Dugranrut). That's all there is to it.
22 He's the only one that I know that's
23 not gonna say anything.

24 BH: Yeah.

25 At approximately 12:52 p.m., as the confidential witness was
26 driving away, Bob Holloway telephoned and directed the confidential
27 witness to return to the alley at Road Dog Cycle because an item was
28 left behind. While back inside Road Dog Cycle, a conversation
between Bob Holloway and Brent Holloway was recorded as follows:

BH: There wasn't one on the front fender.

Brent: Yeah, yeah, I'm just not sure if those stickers are
traceable, or what, I'm not sure.

BH: The bar code?

1 Brent: Yeah.

2 BH: The cops told me they were.

3 Brent: Yeah?

4 BH: Yeah, I think Tyler, I think Tyler told me they were.

5 Confidential witness: We found one already.

6 Brent: They'll be me more then. I always worry.

7 The conversation concluded as it was agreed upon by Bob Holloway,
8 Brent Holloway and the confidential witness that anything on the
9 motorcycle with a number could possibly allow the motorcycle's origin
10 and VIN to be discovered had to be removed. It was made clear to the
11 confidential witness to get rid of those numbers. The task force met
12 with the confidential witness immediately following the purchase and
13 were able to obtain the number from the lower triple tree "WS3377",
14 which ultimately led to the identification of the stolen motorcycle.

15 On July 10, 2007, at approximately 2:40 p.m., during a
16 consensually recorded telephone conversation with Bob Holloway, the
17 confidential witness asked Bob Holloway if there was any way Holloway
18 could call "Ray Ray" (defendant Heffington) and get the frame for
19 motorcycle confidential witness purchased. After a pause, and
20 discussion by the confidential witness as to the issues about delays
21 in getting a frame and the costs, Bob Holloway said, "Okay, well let
22 me, ah, let me see what I can do for you." Bob Holloway indicated
23 that it would be later in the day but that he would see what he could
24 do and call the confidential witness. Holloway said, "But, ah, on
25 that one, that was, ah, probably gonna be free, but, you know, I
26 don't know. Its not my decision, you know."

27 On November 17, 2007, in a chance meeting with defendant
28 Heffington, the confidential witness showed defendant Heffington the

1 completed motorcycle while at a funeral for William Daniel Dugranrut.
2 During the meeting, the confidential witness implied to defendant
3 Heffington that they both knew Heffington was the source of the
4 motorcycle. Defendant Heffington first denied knowledge but
5 eventually confided in confidential witness that he knew where the
6 motorcycle originated.

7 B. Suspicious About the Confidential Witness

8 On December 4, 2007, Bob Holloway telephoned defendant
9 Heffington and asked if he was around anywhere close, to which the
10 defendant said he was in Chowchilla. Holloway informed the defendant
11 he sent a message with "one of the guys" that stopped by the shop.
12 It should be noted that it was determined through wire intercepts
13 that a prospect had been sent to Road Dog Cycle to gather information
14 and return it to the Merced Hells Angels Chapter. Holloway said, "He
15 can kinda fill you in, but I just, little concerned with some shit
16 going on." Holloway implied that his phones are "not good" meaning
17 they were being monitored. Holloway explained to the defendant that
18 the person who was at the shop will be able to fill him [the
19 defendant] in on what is going on. Holloway said, "Yea, it's ah,
20 just a heads-up on your end and if you get a chance ah, ya know if
21 you're up this way we probably ought to talk face to face. It's
22 nothing ah, it's not real urgent but ah, just something we both need
23 to keep a handle on. The defendant said, "I don't know shit. You
24 know what I mean?" Holloway said, "Yea, yea. Me neither. Ah, I
25 talked to ah, the other guy that lives down the road from me ah, and
26 I told him you know the same thing so if he tires to get a hold of
27 ya, ah, we just ah, we need." The defendant said, "He better not,
28 I'll tell you that!" Holloway gives a nervous laugh. The defendant

1 said, "You know what I mean? He shouldn't even know my name. That's
2 your dumb ass fault, you know what I mean?" Holloway said, "There's
3 some bad ass shit going on."

4 C. Collections of Credit Via Extortionate Means

5 On October 14, 2007, Bob Holloway called Brent Holloway and
6 explained to him that he had spoke with Mike Pleasant and discussed
7 with him the money owed to Bob. Brent went on to say that he told
8 Ray "Ray Ray" (defendant Heffington) about the guy he was trying to
9 find [referencing Brian Hensen] and the defendant told Brent to just
10 give him the name and the address and he [the defendant] will take
11 care of him.

12 4. Donald Foster

13 Counsel alleges in his argument that evidence that the
14 motorcycle at issue was stolen is refuted by: (1) the fact that Mr.
15 Foster never reported it stolen; (2) the bike was taken from inside a
16 locked garage and there was no sign of forced entry, and (3) Mr.
17 Foster continued to pay liability insurance and finance payments on
18 the bike. Each of these arguments will be addressed.

19 On June 29, 2007, the confidential witness received delivery of
20 stolen motorcycle parts at Road Dog Cycle. The parts were delivered
21 by the defendant Ray Heffington, and given to Robert Holloway for
22 delivery to the confidential witness. After the purchase of these
23 parts, the parts were photographed by law enforcement, and a major
24 component part was traced, via Harley-Davidson, to Mr. Donald Foster.

25 At the time his bike was stolen, Mr. Foster was a prospect in
26 the Hells Angels. He did not initially report his motorcycle stolen
27 because he did not like reporting things to law enforcement.
28 However, once contacted by the FBI who related they had recovered

1 parts of his motorcycle, Mr. Foster did report the motorcycle stolen.
2 In the police report of the incident (attached hereto and
3 incorporated herein as Exhibit 3), Mr. Foster relates that in July,
4 2007 (Mr. Foster later tells law enforcement he is unsure of the
5 date), at approximately 2:00 p.m., he discovered his motorcycle
6 missing from his locked garage. Mr. Foster related that nobody had
7 permission to take the bike. He stated that he did not report the
8 bike stolen at the time because he thought it would be located and
9 that he didn't want to take a loss on the custom accessories on the
10 bike that he knew his insurance would not cover. Mr. Foster stated
11 that he continued to make his insurance payments and finance payments
12 (although he let his registration lapse), in the hope that the bike
13 would someday be found.

14 For counsel to argue that there is no evidence that the bike was
15 stolen is refuted by the language of Mr. Foster. According to Mr.
16 Foster, no one had permission to possess the bike, and the bike was
17 clearly taken from his garage. That the bike was stolen is made even
18 more apparent by the fact that parts of the bike were transported by
19 the defendant to Road Dog Cycle and given to Robert Holloway in the
20 presence of the confidential witness.

21 CONCLUSION

22 For the foregoing reasons, the United States requests that the
23 defendant remain detained as both a flight risk and a danger to the
24 community.

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Respectfully submitted,

McGREGOR W. SCOTT
United States Attorney

Date: December 22, 2008

_____/s/_____
By: MARK E. CULLERS
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