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8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) No. CR08-224
13)
Plaintiff,) GOVERNMENT'S MEMORANDUM OF POINTS
14) AND AUTHORITIES IN SUPPORT OF
v.) APPLICATION TO CRIMINAL DUTY JUDGE
15) FOR REVIEW OF MAGISTRATE JUDGE'S
JAMES FAYED, et al.,) BAIL ORDER
16)
Defendant.) Court: TBD
17) Date: TBD
Time: TBD

18 Plaintiff United States of America, by and through its
19 counsel of record, the United States Attorney's Office for the
20 Central District of California, hereby applied to the Criminal
21 District Duty Judge for review of the August 4, 2008, order of
22 bail release upon conditions issued by the Hon. Ralph Zarefsky,
23 which the court stayed until August 6, 2008 at 4:00 p.m., at the
24 request of the government.

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1 was a signatory (along with his deceased, estranged wife),
2 received and transferred out over \$20,000,000 in proceeds from
3 Ponzi scheme victims. The victims did not intend to use
4 defendant's business to purchase gold or precious metals, as
5 defendant's website represents as the service offered by
6 defendant's company. Neither defendant nor the entities he
7 admittedly controls were licensed to transfer such funds.
8 Accordingly, defendant was charged with operating an unlicensed
9 money transmitting business. The indictment was returned on
10 February 26, 2008, under seal, to permit the government to
11 continue its investigation.

12 B. Defendant and Pamela Fayed Retained Criminal Defense Counsel

13 In connection with the government's criminal investigation,
14 defendant retained defense counsel. Pamela Fayed, his former
15 wife and a signatory on GCB accounts and an officer of GCB at one
16 time, retained her own defense counsel. It should be noted that
17 such counsel were separate and apart from the parties' divorce
18 counsel, as discussed below.

19 C. The Murder of Pamela Fayed and Defendant's Role as the
20 Primary Suspect

21 1. The Acrimonious Marital Dissolution

22 In October 2007, defendant filed to divorce his wife,
23 Pamela. The parties retained separate counsel with orders
24 entered requiring that James pay the cost of Pamela's counsel as
25 well as temporary support of about \$10,000 per month. In or
26 about April 2008, a hearing before a retained judge was held at
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1 which time a receiver was appointed to examine and secure gold
2 and holdings at the business location controlled by defendant.
3 At that time, defendant had been in substantial arrears in paying
4 Pamela's counsel as well as back support. Thus, about that time,
5 defendant paid approximately \$185,000 to her counsel, to her, and
6 to experts hired in connection with the dissolution matter. More
7 important, a hearing was scheduled for July 29, 2008, at 11:00
8 a.m., for the judge to rule on Pamela's request for support of
9 \$55,000 per month, for support arrearages, and for sanctions of
10 about \$400,000. Defendant was facing the likelihood of paying
11 approximately \$1,000,000 on July 29. **As will be apparent below,**
12 **the date of July 29, 2008 is crucial to the government's argument**
13 **that defendant is a flight risk and a danger.**

14 2. Subpoena for GCB's Business Records

15 In or about April 2008, defendant provided business records
16 to Pamela's forensic accountants, only after he was ordered to do
17 so after resisting for months, in order to allow the accountants
18 to ascertain the value of the marital estate and to provide
19 information to set spousal support. At that time, the
20 government's investigation into defendant's business affairs
21 remained underway and the government subpoenaed the accountants
22 to produce the records they had obtained from defendant. The
23 accountants obtained separate counsel. The accountants were
24 advised by Pamela's criminal defense counsel that the documents
25 sought might be privileged. Thus, the government provided
26 extensions of time for production of the documents to allow

1 counsel to sort out possible privilege issues. The government
2 gave the accountant's counsel until August 1, 2008 by which to
3 either provide the documents or to provide a log describing any
4 privileges.

5 3. Pamela Wanted to Cooperate

6 On or about June 24, 2008, Pamela's then defense counsel
7 advised the government that Pamela wanted to cooperate in its
8 investigation.

9 4. The July 28, 2008 Meeting is Scheduled

10 During the week of July 21, 2008, more specifically, either
11 on July 23, 24, or 25, Pamela's criminal defense counsel received
12 a call from defendant's criminal defense counsel. The call was
13 placed to schedule a meeting for the parties' criminal defense
14 counsel at defendant's counsel's office in Century City for July
15 28, 2008 at 3:30 p.m. **Defendant's divorce hearing had already**
16 **been set for July 29, 2008 (the next day), at which time**
17 **defendant faced the prospect of having to pay nearly a million**
18 **dollars.** Yet, Pamela's divorce lawyer was not asked to attend,
19 did not know about the meeting as scheduled, and did not attend
20 the meeting, nor did defendant's divorce lawyer.

21 5. The July 28, 2008 Century City Meeting Between Criminal
22 Defense Counsel, Not Divorce Counsel, and Pamela's
23 Murder

24 Pamela arrived at the Century City meeting just prior to
25 3:30 p.m. She had driven from Camarillo. Defendant had lived in
26 Moorpark at the time of the meeting. Pamela parked on the third
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1 floor of a parking structure adjacent to the defense counsel's
2 office building. The meeting lasted about three hours. Pamela
3 left the meeting about 6:30 p.m. Defendant remained in the
4 building with his lawyer. Pamela arrived at her car and was
5 accosted by a tall male who stabbed her in the chest, neck, and
6 face. She died of her wounds. There was no evidence of a
7 robbery or carjacking.

8 6. Further Evidence Connecting Defendant to Pamela's
9 Murder

10 Pamela's murderer left the crime scene in a red SUV that was
11 captured on surveillance video, along with its license. The
12 license was traced to Avis car rentals in Camarillo, not far from
13 defendant's business. The vehicle had been rented from Avis on
14 July 3, 2008 using an American Express card issued to defendant
15 and GCB. An American Express credit card with the same account
16 number was found in defendant's wallet during a search of his
17 residence in the days following Pamela's murder.

18 During the search of defendant's residence, officers also
19 found approximately \$60,000 in cash wrapped in plastic material;
20 approximately \$3,000,000 in gold; and approximately 31 firearms,
21 including one with a long-range night vision scope, along with
22 thousands of rounds of matching ammunition. The cash and gold
23 were seized. The firearms were left as lawfully in defendant's
24 possession.

25 Defendant's residence is located near the end of a dirt road
26 near the center of a several hundred-acre parcel in a remote part
27

1 of the mountains between Moorpark and Simi Valley.

2 During a meeting between defendant and Pamela in the weeks
3 before her murder, when tensions regarding the production of
4 incriminating accounting documents and the looming divorce
5 hearing were especially high, defendant told Pamela (as related
6 to officers by Pamela's friend) that "I could have you killed and
7 my hands would be clean." He patted his hands in a motion as if
8 to show they were clean.

9 During a search of defendant's business on August 4, 2008,
10 agents found several million dollars in gold and coins.

11 D. The August 4, 2008 Detention Hearing

12 At the detention hearing on July 28, 2008, Magistrate Judge
13 Zarefsky ordered defendant released on bond with conditions
14 including the posting of \$500,000, secured by real estate. The
15 court relied on the Pretrial report indicating that defendant had
16 approximately \$2.2MM in real estate equity and over \$7,000,000 in
17 assets. Judge Zarefsky concluded that the evidence of
18 defendant's "obstruction" was "thin," referring to the judge's
19 conclusion that there was a "thin" link between the murder
20 investigation and the facts that supported the present charge.

21 II.

22 THIS COURT CAN AND SHOULD ORDER DEFENDANT DETAINED BECAUSE
23 HE IS A FLIGHT RISK AND A DANGER

24 Section 3142(g) sets forth the factors the Court should
25 consider in determining whether detention is appropriate:

- 26 (1) the nature and circumstances of the offense
27 charged, including whether the offense is a crime

1 of violence, a Federal crime of terrorism, or
2 involves a minor victim or a controlled substance,
firearm, explosive, or destructive device;

3 (2) the weight of the evidence against the person;

4 (3) the history and characteristics of the person,
5 including--

6 (A) the person's character, physical and mental
7 condition, family ties, employment, financial
8 resources, length of residence in the
9 community, community ties, past conduct,
history relating to drug or alcohol abuse,
criminal history, and record concerning
appearance at court proceedings; and

10 (B) whether, at the time of the current offense
11 or arrest, the person was on probation, on
12 parole, or on other release pending trial,
sentencing, appeal, or completion of sentence
for an offense under Federal, State, or local
law; and

13 (4) the nature and seriousness of the danger to any
14 person or the community that would be posed by the
person's release. . . .

15 18 U.S.C. § 3142(g); see also United States v. Winsor, 785 F.2d
16 755, 757 (9th Cir. 1986). When applied to defendant, these
17 factors weigh conclusively in favor of detention.

18 The government argued and continues to argue that
19 defendant's role as the primary suspect in Pamela's murder makes
20 him a serious risk of flight and a danger to others, whether or
21 not Pamela was murdered in order to obstruct the present case.
22 The facts show that defendant had become desperate. He was
23 facing a serious family law hearing at which time he would likely
24 be required to pay Pamela a substantial amount of money. He had
25 resisted doing so for months. He was likely concerned that
26 Pamela would cooperate and be a witness against him in this case.

1 His business records that he had resisted turning over to her
2 were about to be turned over to the government. Pamela traveled
3 to the Century City meeting alone and for the purpose of
4 attending that meeting, which had been set up only days before
5 defendant would atone to the family law judge. There was no
6 other reason for Pamela to be in the parking structure and it is
7 reasonable to assume that only a few people knew exactly what
8 structure she would be parking in, and where in that structure
9 she would park her car among the hundreds, if not thousands, of
10 parking spaces: defendant is at the top of that list. Moreover,
11 few people would have known how long the meeting lasted and how
12 convenient it was that defendant remained in the building at the
13 time of Pamela's murder.

14 Based upon these facts, and such additional facts as may be
15 introduced at the hearing, this Court can and should conclude
16 that defendant, at this time, has every reason to flee, and that
17 no condition or combination of conditions can assure his
18 appearance in this case. It is respectfully submitted that Judge
19 Zarefsky erred in determining that there was no nexus between the
20 murder case facts and the present case facts, which he concluded
21 was required in order to find that defendant was a flight risk
22 for this case. The law does not require that determination and,
23 indeed, it would be absurd if that were the case. No connection
24 between the case facts for the murder and the case facts for this
25 case need be found. It is simply a question of whether or not
26 defendant is a flight risk for any reason. Thus, for example,

