

1 MICHAEL C. ORMSBY  
2 United States Attorney  
3 Eastern District of Washington  
4 Earl Hicks  
5 Caitlin Baungard  
6 Assistant United States Attorney  
7 Post Office Box 1494  
8 Spokane, WA 99210-1494  
9 Telephone: (509) 353-2767

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,  
13  
14 Plaintiff,

15 vs.

16 RHONDA FIRESTACK-HARVEY,  
17 ROLLAND MARK GREGG, and  
18 MICHELLE LYNN GREGG,  
19 Defendants.

20 2:13-CR-0024-TOR

21 UNITED STATES' MOTION FOR  
22 DETENTION

23 April 3, 2015, at 6:30 p.m. without  
24 oral argument

25 After the jury verdicts were published in the above-entitled case, the United  
26 States moved to detain the Defendants pursuant to the mandatory language in  
27 18 U.S.C. § 3143. The Court asked for the United States to submit a written motion.

28 The Defendants do not have the right to bail after a conviction. *See e.g. United States v. Bynum*, 344 F.Supp. 647 (S.D.N.Y. 1972) (discussing legislative history).

The plain language of 18 U.S.C. § 3143 provides the Court “shall” order an individual convicted of an offense described in subsections (A) - (C) of 18 U.S.C. § 3142(f)(1) detained pending sentencing unless the Court makes the specific findings outlined in

1 the statute. 18 U.S.C. § 3143(a)(2) (emphasis added). 18 U.S.C. § 3142(f)(1)(C)  
2 provides for detention for an “offense for which the maximum term of imprisonment  
3 of ten years or more is prescribed under the Controlled Substances Act.”  
4

5 The Defendants have been convicted of manufacturing more than 50 marijuana  
6 plants under which they must be detained pending sentencing because the statutory  
7 maximum is 20 years of imprisonment. *See* 21 U.S.C. § 841(a)(1),(b)(1)(C); 18  
8 U.S.C. § 3143(a)(2); 18 U.S.C. § 3142(f)(1)(C).  
9

10 Accordingly, the Defendants must be detained unless the Court finds:

- 11 • There is a “substantial likelihood” that a motion for acquittal or new trial  
12 will be granted; or the United States recommends no sentence of  
13 imprisonment be imposed; **AND**  
14
- 15 • The Court finds by clear and convincing evidence that the person is not  
16 likely to flee or pose a danger to the community.  
17

18 18 U.S.C. § 3143(a)(2). The Defendants have the burden of proof on these very  
19 limited exceptions to the mandatory detention requirement. *See e.g. United States v.*  
20 *Valera-Elizondo*, 761 F.2d 1020 (5th Cir. 1985).  
21

22 The United States respectfully submits the Court should order the Defendants  
23 detained pursuant to the plain language of the statute because the Defendants will not  
24 be able to meet the requisite burden of proof to warrant an exception to the mandatory  
25 detention requirement. The United States submits the Defendants are unable to meet  
26 their burden in showing there is a “substantial likelihood” that they will be granted a  
27  
28

1 motion for a new trial or be acquitted by the Ninth Circuit. *See e.g. United States v.*  
2 *McAllister*, 974 F.2d 291 (2d Cir. 1992) (following conviction for a serious drug  
3 offense, trial judge could not deny revocation of bail pending sentencing simply  
4 because there were issues which could be raised to set aside the verdict; rather,  
5 defendant could only be released upon showing of substantial likelihood that motion  
6 for acquittal or new trial would be granted). Further, the United States is  
7 recommending a term of imprisonment for each Defendant. As neither of the options  
8 in the first prong is viable in this case, the Court does not need to reach a  
9 determination on the second prong based on the clear language of the statute.

13 If the Court does find there is a “substantial likelihood” the Defendants would  
14 be granted a new trial or grant a motion for acquittal, the United States submits the  
15 Defendants should still be detained because they will not be able to produce clear and  
16 convincing evidence that they are not likely to flee or pose a danger to the community.  
17 First the statutory presumption of danger to the safety of the community when the  
18 defendant is charged with a drug crime applies equally in the situation where the  
19 defendant has been convicted of a drug crime. *See United States v. Strong*, 775 F.2d  
20 504, 507-8 (3d Cir. 1985) (“In light of the explicit equation of a drug offense with  
21 danger to the safety of the community for purposes of release or detention of a  
22 defendant pending trial, it is manifest that Congress intended the same equation when  
23 dealing with a defendant who had already been convicted of such a drug offense and  
24 is awaiting sentence”).

1 Based on the foregoing reasons, the United States respectfully requests the  
2 Defendants be detained pending sentencing pursuant to the clear mandate of 18 U.S.C.  
3 § 3143(a)(2).  
4

5 Additionally, the United States submits Rhonda Firestack-Harvey has violated  
6 her release conditions by sending an email to Mr. Zucker after he decided to testify.  
7 Defendant Firestack-Harvey admitted to this conduct on the first day of trial.  
8

9 DATED March 4, 2015.

10 Michael C. Ormsby  
11 United States Attorney

12 s/ Caitlin Baungard

13 Caitlin Baungard  
14 Assistant United States Attorney  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following-, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant(s):

Bevan Jerome Maxey  
Maxey Law Offices  
1835 W Broadway  
Spokane, WA 99201

Jeffrey Scott Niesen  
Jeffrey S Niesen Law Office  
1411 W Pinehill Road  
Spokane, WA 99218

Phil Telfeyan  
Equal Justice Under Law  
916 G Street Northwest  
Suite 701  
Washington, DC 20001

*s/ Caitlin Baunsgard*

Caitlin Baunsgard  
Assistant United States Attorney

1  
2 UNITED STATES DISTRICT  
3 FOR THE EASTERN DISTRICT OF WASHINGTON

4 UNITED STATES OF AMERICA,

5  
6 Plaintiff,

7 vs.

8  
9 RHONDA FIRESTACK-HARVEY,  
10 ROLLAND MARK GREGG, and  
11 MICHELLE LYNN GREGG,

12 Defendants.

Case No.: 2:13-CR-0024-TOR

Order Granting United States'  
Motion For Detention

13 THIS MATTER coming before the Court upon motion by the United States  
14 for an order to detain defendants, the Court having considered the motion and the  
15 Court being fully advised in the premises,

16  
17 IT IS HEREBY ORDERED that the United States' Motion for Detention is  
18 granted.  
19

20 IT IS SO ORDERED this \_\_\_\_\_ of March, 2015.

21  
22  
23 \_\_\_\_\_  
24 Thomas O. Rice  
25 United States District Judge  
26  
27  
28