

IN THE UNITED STATES SUPREME COURT

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MARIA ANDREA GONZALEZ, NICOLE LEE SUNNY CLOUD,  
BROOKLYN MARIE HERNANDEZ-PROCTOR, and LATISHA  
LAVERN BIRDSONG,

PETITIONERS,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT**

**Appendix**

**NOT FOR PUBLICATION****FILED****UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

SEP 13 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIA ANDREA GONZALEZ, et al.,

Defendant-Appellant.

Nos. 19-30270, 20-30000  
20-30018, 20-30044D.C. Nos. 1:18-cr-02039-SAB-1  
1:18-cr-02039-SAB-3  
1:18-cr-02039-SAB-2  
1:18-cr-02039-SAB-4

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Stanley A. Bastian, Chief District Judge, Presiding

Argued and Submitted September 1, 2021  
Seattle, Washington

Before: HAWKINS, TASHIMA, and McKEOWN, Circuit Judges.

Maria Andrea Gonzalez, Brooklyn Marie Hernandez-Proctor, Nicole Lee Sunny Cloud, and Latisha Lavern Birdsong (collectively “Defendants”) were state and federal inmates housed at Yakima County Jail (“Yakima”). While there, Defendants sexually assaulted a fellow federal inmate. They were charged with violating 18 U.S.C. § 2241(a)(1) and (2), conditionally pled guilty, and were

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

sentenced. Now, Defendants appeal the denial of their motions to dismiss their indictments and their criminal judgments, arguing that federal jurisdiction was lacking under Section 2241(a) and that Congress overreached in Section 2241(a) by criminalizing their conduct at a state jail. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review *de novo* both the denial of a motion to dismiss an indictment, *United States v. Marguet-Pillardo*, 560 F.3d 1078, 1081 (9th Cir. 2009), and a challenge to a criminal statute for unconstitutional overreach of congressional authority, *United States v. Mujahid*, 799 F.3d 1228, 1232 (9th Cir. 2015).

Defendants argue that the government has not met the jurisdictional element of Section 2241(a), which proscribes sexual assault at facilities “in which persons are held in custody by direction of *or* pursuant to a contract or agreement with the head of any Federal department or agency.” 18 U.S.C. § 2241(a) (emphasis added). Accordingly, the government needed to show that Yakima is a “facility in which persons are held in custody” either (1) “by direction of . . . the head of any Federal department or agency,” or (2) “pursuant to a contract or agreement with the head of any Federal department or agency.” *Id.* Because Yakima is a facility where persons, namely the victim, were held in federal custody by direction of the United States Marshal Service, the government has met the jurisdictional element of Section 2241(a).

Defendants also argue that 18 U.S.C. § 2241(a) is unconstitutional as applied to them. In *Mujahid*, we held that Section 2241 is facially constitutional because it is

“a ‘necessary and proper’ means of exercising the federal authority that permits Congress to create federal criminal laws, to punish their violation, to imprison violators, to provide appropriately for those imprisoned, and to maintain the security of those who are not imprisoned but who may be affected by the federal imprisonment of others.”

*Mujahid*, 799 F.3d at 1235–36 (quoting *United States v. Comstock*, 560 U.S. 126, 149 (2010)).

For the same reasons described in *Mujahid*, Section 2241(a) is constitutional as applied to Defendants—individuals in state and federal custody who sexually assaulted another federal inmate at the same facility. *See Mujahid*, 799 F.3d at 1235–36 (weighing the factors set forth in *Comstock* to determine whether Section 2241 is within the scope of Congress’s authority). The federal government plainly has an interest in protecting federal inmates from sexual abuse. *See also United States v. Pacheco*, 977 F.3d 764, 769 (9th Cir. 2020) (“The evolution of [18 U.S.C. §§ 2241–2244] over time affirms Congress’s intent to broadly protect federal detainees from sexual abuse.”).

**AFFIRMED.**

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 07, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

NO. 1:18-cr-02039-SAB

v.

MARIA ANDREA GONZALEZ,  
NICOLE LEE SUNNY CLOUD,  
BROOKLYN MARIE HERNANDEZ-  
PROCTOR, LATISHA LAVERN  
BIRDSONG,

**ORDER RE: PRETRIAL  
MOTIONS**

Defendants.

The Court held a pretrial conference in the above-captioned matter on June 5, 2019. Stephen Hormel appeared on behalf of Defendant Gonzalez, Ulvar Klein appeared on behalf of Defendant Cloud, Walter Ayers and Danielle Purcell appeared on behalf of Defendant Hernandez-Proctor, and Greg Lockwood appeared on behalf of Defendant Birdsong.<sup>1</sup> Thomas Hanlon and Troy Clements appeared on behalf of the Government.

At the hearing, the parties addressed the pending motions to dismiss, ECF Nos. 49, 50, 116, 117, and the Court took the matter under advisement. After careful consideration of the parties' briefs and oral presentation, the Court denies the pending motions to dismiss.

<sup>1</sup> All co-Defendants were present at the hearing except for Defendant Birdsong.

**ORDER RE: PRETRIAL MOTION.**

## BACKGROUND

**A. Defendant Gonzalez Is Housed at the Yakima County Jail Pending Trial on Federal Charges.**

On January 18, 2018, Maria Andrea Gonzalez was indicted for federal drug trafficking and unlawful firearm possession charges. No. 1:18-cr-02005-SAB. Defendant Gonzalez appeared before Magistrate Judge Dimke for a detention hearing on January 26, 2018. Judge Dimke ordered Defendant Gonzalez be detained pending trial, and she was housed at the Yakima County jail.

**B. Defendant Cloud Is Housed at the Yakima County Jail Pending Trial on Federal Charges.**

On October 11, 2017, Defendant Cloud was indicted for accessory to murder. No. 1:17-cr-02053-SAB-2. Defendant Cloud appeared before Magistrate Judge Rodgers for a detention hearing on January 12, 2018. Judge Rodgers ordered Defendant Cloud be detained pending trial, and she was housed at the Yakima County jail.

### **C. Defendant Birdsong and Defendant Hernandez-Proctor Are Housed at the Yakima County Jail Pending State Charges.**

Defendant Birdsong and Defendant Hernandez-Proctor were housed at the Yakima County jail on or about May 21, 2018. The Government's witness, Sergeant Merriman, confirmed Defendant Birdsong and Defendant Hernandez-Proctor were present at the Yakima County jail pending state charges.

#### **D. Attempted Aggravated Sexual Assault.**

On July 10, 2018, the grand jury returned an Indictment charging Defendants with Attempted Aggravated Sexual Abuse, in violation of 18 U.S.C. §§ 2241(a)(1) & 2. ECF No. 1. On March 12, 2019, the grand jury returned a Superseding Indictment that provided a more detailed account of the allegations against the Defendants. ECF No. 96. The Superseding Indictment alleges the following:

1 On or about May 21, 2018, in the Eastern District of Washington, the  
2 defendants, MARIA ANDREA GONZALEZ, NICOLSE LEE SUNNY  
3 CLOUD, BROOKLYN MARIE HERNANDEZ-PROCTOR, and LATISHA  
4 LAVERN BIRDSONG, being inmates of the Yakima County jail, located in  
5 Yakima, Washington, a facility in which person are held in custody by  
6 direction of and pursuant to an agreement with the Attorney General, did  
7 knowingly attempt to cause the victim, Victim 1, to engage in a sexual act,  
8 to wit, penetration of the genital opening by hand and finger, by the use of  
9 force against Victim 1, in that Victim 1 was forcibly held down on the  
10 ground.

11 *Id.*

12 **E. Motions to Dismiss**

13 Pending before the Court are several motions to dismiss. *See* ECF Nos. 49,  
14 50, 116, 117. These motions generally raise three issues: (1) Whether the charging  
15 document sufficiently alleges the jurisdictional element of the alleged offense; (2)  
16 Whether the Government can prove the jurisdictional element of the alleged  
17 offense; and (3) Whether the jurisdictional element of the alleged offense renders  
18 the statute unconstitutional, as applied to the Defendants in this case.

19 **DISCUSSION**

20 **(1) The Superseding Indictment Sufficiently Alleges the Jurisdictional  
21 Element of Attempted Aggravated Sexual Assault.**

22 Defendants first contend the Superseding Indictment should be dismissed  
23 because it fails to specify the facts necessary to charge Defendants with Attempted  
24 Aggravated Sexual Assault. The Court disagrees.

25 An indictment “shall be a plain, concise, and definite written statement of  
26 the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c). The  
27 Ninth Circuit Court of Appeals has held that “an indictment setting forth the  
28 elements of the offense is generally sufficient.” *United States v. Fernandez*, 388  
F.3d 1199, 1219 (9th Cir. 2004).

29 An indictment will survive a motion to dismiss “if it contains the elements  
30 of the charged offense in sufficient detail (1) to enable the defendant to prepare

31 **ORDER RE: PRETRIAL MOTION**

1 [her] defense; (2) to ensure [her] that [she] is being prosecuted on the basis of the  
 2 facts presented to the grand jury; (3) to enable [her] to plead double jeopardy; and  
 3 (4) to inform the court of the alleged facts so that it can determine the sufficiency  
 4 of the charge.” *U.S. v. Rosi*, 27 F.3d 409, 414 (9th Cir. 1994) (quoting *U.S. v.*  
 5 *Berhardt*, 840 F.2d 1141, 1145 (9th Cir. 1988)). An indictment “should be read  
 6 in its entirety, construed according to common sense, and interpreted to include  
 7 facts which are necessarily implied.” *U.S. v. Berger*, 473 F.3d 1080, 1103 (9th  
 8 Cir. 2007) (quoting *United States v. King*, 200 F.3d 1207, 1217 (9th Cir. 1999)).

9 In this case, Defendants are charged with Attempted Aggravated Sexual  
 10 Assault. The elements of this offense are as follows:

- 11 1. The defendant intended to [use force] [threaten or place (name of victim)]  
 12 in fear that some person would be subjected to death, serious bodily  
 13 injury or kidnapping] to cause (name of victim) to engage in a sexual act;
- 14 2. The defendant did something that was a substantial step toward  
 15 committing the crime and that strongly corroborated the defendant’s  
 16 intent to commit the crime; and
- 17 3. The offense was committed at [the special maritime and territorial  
 18 jurisdiction of the United States], or [in a Federal prison], or [in any  
 19 prison, institution, or **facility in which persons are held in custody by**  
 20 **direction of or pursuant to a contract or agreement with the head of**  
 21 **any Federal Department or agency**].

22 Ninth Circuit Model Criminal Jury Instruction No. 8.165 (modified) (emphasis  
 23 added).

24 In this case, the Superseding Indictment alleges the offense occurred at the  
 25 Yakima County jail, “a facility in which persons are held in custody by direction  
 26 of or pursuant to an agreement with the Attorney General.” ECF No. 96. Thus, the  
 27 Court finds the Superseding Indictment sufficiently alleges the jurisdictional  
 28 element of 18 U.S.C. § 2241(a).

## ORDER RE: PRETRIAL MOTIONS

**(2) The Government Can Prove the Jurisdictional Element of 18 U.S.C. § 2241(a).**

Defendants also argue the Superseding Indictment should be dismissed because the Government cannot prove the jurisdictional element of 18 U.S.C. § 2241(a). The issue is whether the Yakima County jail is a “facility in which persons are held in custody by direction of **or** pursuant to a contract or agreement with the head of any Federal department or agency.” *Id.* (emphasis added). The Court the Yakima County jail is a facility in which persons are held in custody (i) by direction of the Attorney General; and (ii) pursuant to a contract or agreement with the United States Marshals Service.

(i) The Yakima County jail houses federal detainees at the direction of the Attorney General.

The Yakima County jail is a “facility in which persons are held in custody by direction of ... the head of any Federal department or agency.” 18 U.S.C. § 2241(a). Defendant Gonzalez offers an example of how federal detainees are housed at the Yakima County jail at the direction of the Attorney General. Defendant Gonzalez was ordered detained pending trial on her federal drug trafficking and unlawful firearm possession charges. No. 1:18-cr-2005-SAB. Judge Dimke’s detention order states “[t]he defendant is remanded to the custody of the Attorney General or the Attorney General’s designated representative for confinement in a corrections facility ...” ECF No. 20. Defendant Gonzalez was transported to the Yakima County jail by the United States Marshals Service, which acts “under the authority and direction of the Attorney General.” 28 U.S.C. § 561. Accordingly, Defendant Gonzalez was held at the Yakima County jail at the direction of the Attorney General. It follows that the Yakima County jail is a “facility in which persons are held in custody by direction of ... the head of any Federal department or agency.” 18 U.S.C. § 2241(a).

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**ORDER RE: PRETRIAL MOTIONS**

(ii) The Yakima County Jail houses federal detainees pursuant to a contract or agreement with the United States Marshals Service.

The Yakima County jail is also a “facility in which persons are held in custody … pursuant to a contract or agreement with the head of any Federal department or agency.” 18 U.S.C. § 2241(a). The Ninth Circuit Court of Appeals has held that, in prosecutions under 18 U.S.C § 2241, “the district court may determine as a matter of law whether the facility at which the alleged crime took place is one ‘in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency.’ ”

*U.S. v. Mujahid*, 799 F.3d 1228, 1238 (9th Cir. 2015). The district court may do so only if there are no disputes of material fact underlying the question. *Id.* at 1237-38.

The Court finds, as a matter of law, the Yakima County jail is a “facility in which persons are held in custody … pursuant to a contract or agreement with the head of any Federal department or agency.” 18 U.S.C. § 2241(a). First, there is no dispute that on September 9, 2010, prior to the date of the alleged offense, the Yakima County jail signed an Intergovernmental Agreement (“IGA”) with the United States Marshals Service to house federal detainees. This is evidence of a formal written contract between the Yakima County jail and a federal agency to house federal detainees. *See Mujahid*, 799 F.3d at 1237-38 (finding a that a written contract between a facility and the United States Marshals Service is sufficient to trigger the jurisdictional reach of 18 U.S.C. § 2241). Second, the Court heard undisputed witness testimony confirming that on or about May 21, 2018, the Yakima County jail was being paid by the United States Marshals Service to house federal detainees. Given the undisputed evidence, the Court finds that at the time of the alleged offense, the Yakima County jail was facility in which persons were held in custody pursuant to a contract or agreement with the United States Marshals Service.

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1 Defendants argue that the September 9, 2010 IGA did not cover female  
2 detainees and had expired, and thus does not apply to this case. The Court finds  
3 Defendants arguments unpersuasive. Defendants ignore the plain language of the  
4 statute which covers a “facility in which **persons** are held in custody … pursuant  
5 to a contract or agreement with the head of any Federal department or agency.” 18  
6 U.S.C. § 2241(a) (emphasis added). The statute does not distinguish between male  
7 or female detainees. Thus, it makes no difference that the IGA did not explicitly  
8 cover adult female detainees at the time of the alleged offense.

9 Additionally, the Court finds that at the time of the alleged offense, the  
10 Yakima County jail had a “contract or agreement” with the United States Marshals  
11 Service to house adult female federal detainees. Undisputed witness testimony  
12 confirmed that at the time of the alleged offense, the Yakima County jail was  
13 being paid by the United States Marshals Service to house adult female federal  
14 detainees. There is nothing in 18 U.S.C. § 2241(a), and counsel fails to identify  
15 any authority, that requires the “contract or agreement” to come in the form of an  
16 intergovernmental agreement.

17 In a final effort to get the case dismissed, Defendants argue there was no  
18 contract between the Yakima County jail and the United States Marshals Service  
19 at the time of the alleged offense because the September 9, 2010 IGA had expired  
20 pursuant to 18 U.S.C. § 4002. Defendants offer no authority that supports finding  
21 18 U.S.C. § 4002 invalidates the IGA after three years, or that it somehow  
22 invalidates any other “contract of agreement” under 18 U.S.C. § 2241(a).

23 In sum, the Court finds the Government can prove the jurisdictional element  
24 of 18 U.S.C. § 2241(a).

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1       **(3) 18 U.S.C. § 2241(a) Is Constitutional as Applied to Defendants.**

2       Defendants' final argument for dismissal of the Superseding Indictment  
3 challenges the constitutionality of 18 U.S.C. § 2241(a). Defendants argues the  
4 statute is unconstitutional as applied to each Defendant because it exceeds  
5 congress's legislative authority.

6       The defendant in *Mujahid* mounted both a facial and as applied challenge to  
7 the constitutionality of 18 U.S.C. § 2241. 799 F.3d at 1233 – 36. The Ninth Circuit  
8 Court of Appeals concluded 18 U.S.C. § 2241 is facially constitutional pursuant to  
9 Congress's authority under the Necessary and Proper Clause. *Id.* at 1235. With  
10 respect to the defendant's as applied challenge, the Ninth Circuit found the statute  
11 is "plainly constitutional as applied to an individual in federal custody who is  
12 being held in a state facility pursuant to a contract with a federal agency." *Id.* at  
13 1326. The Ninth Circuit left open the question of whether the statute is  
14 constitutional as applied to an inmate in state custody being held at a facility  
15 where federal inmates are held pursuant to a contract with a federal agency. *Id.* at  
16 1235.

17       In this case, Defendant Gonzalez and Defendant Cloud were both in federal  
18 custody at the time of the alleged assault. Both Defendants were housed at the  
19 Yakima County jail pending trial on federal charges. Accordingly, the statute is  
20 "plainly constitutional" as applied to Defendant Gonzalez and Defendant Cloud.

21       Defendant Hernandez-Proctor and Defendant Birdsong, on the other hand,  
22 were in state custody at the time of the alleged offense. Nonetheless, the Court  
23 finds 18 U.S.C. § 2241(a) is not unconstitutional as applied to these Defendants,  
24 principally because the facts of this case involve a victim who was in federal  
25 custody. As such, all the reasons the *Mujahid* court offered for finding the statute  
26 constitutional apply in this case with equal force. *See, e.g., Mujahid*, 799 F.3d at  
27 1235 ("Congress has a strong interest in and obligation to create a safe  
28 environment for federal prisoners and those housed with federal prisoners,

**ORDER RE: PRETRIAL MOTIONS**

1 including by preventing sexual assaults. To do anything less would risk denying  
2 prisoners their Eighth Amendment rights.”).

3 **CONCLUSION**

4 For the reasons provided above, Defendants’ motions to dismiss are denied.

5 **Accordingly, IT IS HEREBY ORDERED:**

- 6 1. Defendant’s Motion to Dismiss the Indictment for Lack of Specificity,  
7 ECF No. 49, is **DENIED**.
- 8 2. Defendant’s Motion to Dismiss for Lack of Jurisdiction, ECF No. 50, is  
9 **DENIED**.
- 10 3. Defendant’s Motion to Dismiss for Lack of Congressional Constitutional  
11 Authority, ECF No. 116, is **DENIED**.
- 12 4. Defendant’s Motion to Dismiss the Indictment with Prejudice, ECF No.  
13 117, is **DENIED**.

14 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
15 enter this Order and furnish copies to counsel.

16 **DATED** this 7th day of June 2019.



21 A handwritten signature in black ink that reads "Stanley A. Bastian". The signature is cursive and appears to be a formal or professional one.

22 **Stanley A. Bastian**  
23 United States District Judge

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NOV 5 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIA ANDREA GONZALEZ, et al.,

Defendants-Appellants.

Nos. 19-30270, 20-30000,  
20-30018, 20-30044

D.C. No.  
1:18-cr-02039-SAB-1  
Eastern District of Washington,  
Yakima

ORDER

Before: HAWKINS, TASHIMA, and McKEOWN, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing.

Judge McKeown has voted to deny the petition for rehearing en banc and Judges Hawkins and Tashima so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellants' petition for panel rehearing and petition for rehearing en banc are denied.

## **RELEVANT STATUTORY & REGULATORY PROVISIONS**

Title 8, United States Code, Section 1226 states:

### **§ 1226. Apprehension and detention of aliens**

#### **(a) Arrest, detention, and release**

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--

(1) may continue to detain the arrested alien; and

(2) may release the alien on--

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

#### **(b) Revocation of bond or parole**

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

#### **(c) Detention of criminal aliens**

##### **(1) Custody**

The Attorney General shall take into custody any alien who--

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

**(2) Release**

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of Title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

**(d) Identification of criminal aliens**

(1) The Attorney General shall devise and implement a system--

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available--

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

**(e) Judicial review**

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226.

Title 18, United States Code, Section 6 states:

**§ 6. Department and agency defined.**

As used in this title:

The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

18 U.S.C. § 6.

Title 18, United States Code, Section 751 states:

**§ 751. Prisoners in custody of institution or officer.**

(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is

by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than five years, or both; or if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined under this title or imprisoned not more than one year, or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title.

18 U.S.C. § 751.

Title 18, United States Code, Section 2241 states:

**§ 2241. Aggravated sexual abuse**

(a) By force or threat.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act--

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By other means.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or

agreement with the head of any Federal department or agency, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With children.--Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement.--In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

18 U.S.C.A. § 2241.

Title 18, United States Code, Section 3142 states:

**§ 3142. Release or detention of a defendant pending trial.**

(a) In general.--Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the

person be--

- (1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
- (2) released on a condition or combination of conditions under subsection (c) of this section;
- (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or
- (4) detained under subsection (e) of this section.

(b) Release on personal recognizance or unsecured appearance bond.--The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on conditions.--(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person--

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person--

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person

will appear as required and will not pose a danger to the safety of any other person or the community;

- (ii) maintain employment, or, if unemployed, actively seek employment;
- (iii) maintain or commence an educational program;
- (iv) abide by specified restrictions on personal associations, place of abode, or travel;
- (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;
- (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
- (vii) comply with a specified curfew;
- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;
- (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;
- (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion.--If the judicial officer determines that--

(1) such person--

(A) is, and was at the time the offense was committed, on--

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in

accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) Detention.--(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that--

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed--

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f) **Detention hearing.**--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community--

(1) upon motion of the attorney for the Government, in a case that involves--

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves--

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a

prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

**(g) Factors to be considered.**--The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning--

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

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

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

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community,

community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

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

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of release order.--In a release order issued under subsection (b) or (c) of this section, the judicial officer shall--

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of--

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) Contents of detention order.--In a detention order issued under subsection (e) of this section, the judicial officer shall--

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) **Presumption of innocence.**--Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

18 U.S.C. § 3142.

Title 18, United States Code, Section 3606 states:

**§ 3606. Arrest and return of a probationer**

If there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

18 U.S.C. § 3606.

Title 18, United States Code, Section 4002 states:

**§ 4002. Federal prisoners in State institutions; employment**

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

18 U.S.C. § 4002.

Title 18, United States Code, Section 4013 states:

**§ 4013. Support of United States prisoners in non-Federal institutions**

(a) The Attorney General, in support of United States prisoners in non-Federal institutions, is authorized to make payments from funds appropriated for Federal prisoner detention for--

- (1) necessary clothing;
- (2) medical care and necessary guard hire; and

(3) the housing, care, and security of persons held in custody of a United States marshal pursuant to Federal law under agreements with State or local units of government or contracts with private entities.

(b) The Attorney General, in support of Federal prisoner detainees in non-Federal institutions, is authorized to make payments, from funds appropriated for State and local law enforcement assistance, for entering into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services in any State or local jurisdiction which agrees to provide guaranteed bed space for Federal detainees within that correctional system, in accordance with regulations which are issued by the Attorney General and are comparable to the regulations issued under section 4006 of this title, except that--

(1) amounts made available for purposes of this paragraph shall not exceed the average per-inmate cost of constructing similar confinement facilities for the Federal prison population,

(2) the availability of such federally assisted facility shall be assured for housing

Federal prisoners, and

(3) the per diem rate charged for housing such Federal prisoners shall not exceed allowable costs or other conditions specified in the contract or cooperative agreement.

(c)(1) The United States Marshals Service may designate districts that need additional support from private detention entities under subsection (a)(3) based on--

(A) the number of Federal detainees in the district; and

(B) the availability of appropriate Federal, State, and local government detention facilities.

(2) In order to be eligible for a contract for the housing, care, and security of persons held in custody of the United States Marshals pursuant to Federal law and funding under subsection (a)(3), a private entity shall--

(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);

(B) meet the standards of the American Correctional Association;

(C) comply with all applicable State and local laws and regulations;

(D) have approved fire, security, escape, and riot plans; and

(E) comply with any other regulations that the Marshals Service deems appropriate.

(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).

(d) Health care fees for Federal prisoners in non-Federal institutions.--

(1) In general.--Notwithstanding amounts paid under subsection (a)(3), a State or local government may assess and collect a reasonable fee from the trust fund account (or institutional equivalent) of a Federal prisoner for health care services, if--

(A) the prisoner is confined in a non-Federal institution pursuant to an agreement between the Federal Government and the State or local government;

(B) the fee--

- (i) is authorized under State law; and
- (ii) does not exceed the amount collected from State or local prisoners for the same services; and

(C) the services--

- (i) are provided within or outside of the institution by a person who is licensed or certified under State law to provide health care services and who is operating within the scope of such license;
- (ii) constitute a health care visit within the meaning of section 4048(a)(4) of this title; and
- (iii) are not preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment.

(2) No refusal of treatment for financial reasons.--Nothing in this subsection may be construed to permit any refusal of treatment to a prisoner on the basis that--

- (A) the account of the prisoner is insolvent; or
- (B) the prisoner is otherwise unable to pay a fee assessed under this subsection.

(3) Notice to prisoners of law.--Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this subsection and the applicability of this subsection to the prisoner. Notwithstanding any other provision of this subsection, a fee under this section may not be assessed against, or collected from, such person--

- (A) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and
- (B) for services provided before the expiration of such period.

(4) Notice to prisoners of State or local implementation.--The implementation of this subsection by the State or local government, and any amendment to that implementation, shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of that implementation (or amendment, as the case may be). A fee under this subsection may not be assessed against, or collected from, a prisoner pursuant to such implementation (or

amendments, as the case may be) for services provided before the expiration of such period.

(5) Notice before public comment period.--Before the beginning of any period a proposed implementation under this subsection is open to public comment, written and oral notice of the provisions of that proposed implementation shall be provided to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed implementation.

(6) Comprehensive HIV/AIDS services required.--Any State or local government assessing or collecting a fee under this subsection shall provide comprehensive coverage for services relating to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) to each Federal prisoner in the custody of such State or local government when medically appropriate. The State or local government may not assess or collect a fee under this subsection for providing such coverage.

18 U.S.C. § 4013.

Title 18, United States Code, Section 4086 states:

**§ 4086. Temporary safe-keeping of federal offenders by marshals**

United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

18 U.S.C. § 4086.

Title 28, United States Code, Section 503 states:

**§ 503. Attorney General**

The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States. The Attorney General is the head of the Department of Justice.

28 U.S.C. § 503.

Title 28, United States Code, Section 561 states:

**§ 561. United States Marshals Service**

- (a) There is hereby established a United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States Marshals Service (hereafter in this chapter referred to as the "Service") a Director who shall be appointed by the President, by and with the advice and consent of the Senate.
- (b) The Director of the United States Marshals Service (hereafter in this chapter referred to as the "Director") shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.
- (c) The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.
- (d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.
- (e) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that--
  - (1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and
  - (2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.
- (f) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.
- (g) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.
- (h) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation

therefor.

(i) Each marshal appointed under this section should have--

(1) a minimum of 4 years of command-level law enforcement management duties, including personnel, budget, and accountable property issues, in a police department, sheriff's office or Federal law enforcement agency;

(2) experience in coordinating with other law enforcement agencies, particularly at the State and local level;

(3) college-level academic experience; and

(4) experience in or with county, State, and Federal court systems or experience with protection of court personnel, jurors, and witnesses.

28 U.S.C. § 561.

Title 28, Code of Federal Regulations, Section 0.111 states:

**§ 0.111 General functions.**

The Director of the United States Marshals Service shall direct and supervise all activities of the U.S. Marshals Service including:

(a) Execution of Federal arrest warrants pursuant to rule 4 of the Federal Rules of Criminal Procedure, Federal parole violator warrants pursuant to section 4206 of title 18 U.S. Code, and Federal custodial and extradition warrants as directed.

(b) The service of all civil and criminal process emanating from the Federal judicial system including the execution of lawful writs and court orders pursuant to section 569(b), title 28, U.S. Code.

(c) Provisions for the health, safety, and welfare of Government witnesses and their families, including the psychological well-being and social adjustment of such persons, pursuant to 18 U.S.C. 3521, et seq., and issuance of necessary regulations for this purpose on behalf of the Attorney General.

(d) Administration and implementation of courtroom security requirements for the Federal judiciary.

(e) Protection of Federal jurists, court officers, and other threatened persons in the interests of justice where criminal intimidation impedes the functioning of the Federal judicial process.

- (f) Provision of assistance in the protection of Federal property and buildings.
- (g) Direction and supervision of a training school for United States Marshals Service personnel.
- (h) Disbursement of appropriated funds to satisfy Government obligations incurred in the administration of justice pursuant to 28 U.S.C. 571.
- (i) Maintenance of custody, management control, and disposal of property and money seized or forfeited pursuant to any law enforced or administered by the Department of Justice, when the property is seized by the U.S. Marshals Service or delivered to the U.S. Marshals Service in accordance with regulations; and administer the Department of Justice Asset Forfeiture Fund.
- (j) Receipt, processing and transportation of prisoners held in the custody of a marshal or transported by the U.S. Marshals Service under cooperative or intergovernmental agreements.
- (k) Sustention of custody of Federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence, otherwise released from custody by the court, or returned to the custody of the U.S. Parole Commission or the Bureau of Prisons.
- (l) Coordination and direction of the relationship of the offices of U.S. Marshals with the other organizational units of the Department of Justice.
- (m) Approval of staffing requirements of the offices of U.S. Marshals.
- (n) Investigation of alleged improper conduct on the part of U.S. Marshals Service personnel.
- (o) Acquisition of adequate and suitable detention space, health care and other services and materials required to support prisoners under the custody of the U.S. Marshal who are not housed in Federal facilities.
- (p) Approval of “other necessary expenditures in the line of duty” of U.S. Marshals and Deputy U.S. Marshals under 28 U.S.C. 567(3).
- (q) Exercising the power and authority vested in the Attorney General under 28 U.S.C. 510 to conduct and investigate fugitive matters, domestic and foreign, involving escaped federal prisoners, probation, parole, mandatory release, and bond default violators.

1 Joseph H. Harrington  
2 United States Attorney  
3 Eastern District of Washington  
4 Thomas J. Hanlon  
5 Assistant United States Attorney  
6 Troy J. Clements  
7 Assistant United States Attorney  
402 E. Yakima Ave., Suite 210  
Yakima, WA 98901  
(509) 454-4425

FILED IN THE U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAR 12 2019

SEAN F. MCVOY, CLERK  
DEPUTY  
YAKIMA, WASHINGTON

9  
10 UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

1:18-CR-02039-SAB

12 Plaintiff,

SUPERSEDING INDICTMENT

13 vs.

14 18 U.S.C. §§ 2241(a)(1) & 2-  
15 Attempted Aggravated Sexual Assault

16  
17 MARIA ANDREA GONZALEZ,  
18 NICOLE LEE SUNNY CLOUD,  
19 BROOKLYN MARIE  
20 HERNANDEZ-PROCTOR, and  
LATISHA LAVERN BIRDSONG,

21 Defendants.

22 The Grand Jury charges:

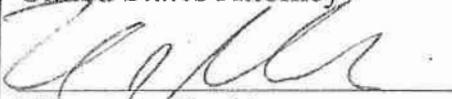
23  
24 On or about May 21, 2018, in the Eastern District of Washington, the  
25 defendants, MARIA ANDREA GONZALEZ, NICOLE LEE SUNNY CLOUD,  
26 BROOKLYN MARIE HERNANDEZ-PROCTOR, and LATISHA LAVERN  
27

28 INDICTMENT

1 BIRDSONG, being inmates of the Yakima County jail, located in Yakima,  
2 Washington, a facility in which persons are held in custody by direction of and  
3 pursuant to an agreement with the Attorney General, did knowingly attempt to  
4 cause the victim, Victim 1, to engage in a sexual act, to wit, penetration of the  
5 genital opening by hand and finger, by the use of force against Victim 1, in that  
6 Victim 1 was forcibly held down on the ground; all in violation of 18 U.S.C. §§  
7 2241(a)(1), 2.

10  
11  
12 DATED: March 12, 2019

13 A TRUE BILL

14  
15  
16 Joseph H. Harrington  
17 United States Attorney  
18   
19 Thomas J. Hanlon  
20 Assistant United States Attorney

21  
22 Troy J. Clements  
23 Assistant United States Attorney

24  
25  
26  
27  
28  
INDICTMENT

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, )  
Plaintiff, ) NO. 1:18-2039-SAB-1  
-vs- ) 1:18-2039-SAB-2  
1:18-2039-SAB-3  
1:18-2039-SAB-4  
MARIA ANDREA GONZALEZ (1), )  
NICOLE LEE SUNNY CLOUD (2), )  
BROOKLYN MARIE )  
HERNANDEZ-PROCTOR (3), LATISHA )  
LAVERN BIRDSONG (4), )  
Defendants. ) June 5, 2019  
Yakima, Washington

VERBATIM REPORT OF PROCEEDINGS  
EVIDENTIARY HEARING

BEFORE THE HONORABLE STANLEY A. BASTIAN  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

FOR THE PLAINTIFF: THOMAS J. HANLON  
TROY J. CLEMENTS  
Assistant United States  
Attorneys  
402 E. Yakima Ave. #210  
Yakima, WA 98901

FOR DEFENDANT GONZALEZ: STEPHEN R. HORMEL  
Attorney at Law  
17722 E. Sprague  
Spokane Valley, WA 99016

1 FOR DEFENDANT  
2 HERNANDEZ-PROCTOR:

WALTER L. AYERS  
Attorney at Law  
1312 N. Monroe, Ste. 153  
Spokane, WA 99201

4 DANIELLE PURCELL  
5 Attorney at Law  
1030 N. Center Parkway  
6 Kennewick, WA 99336

7 FOR DEFENDANT BIRDSONG:

JOHN G. LOCKWOOD  
8 Attorney at Law  
421 W. Riverside, Ste. 960  
9 Spokane, WA 99201

10 REPORTED BY:

11 Lynette Walters, RPR, CRR, CCR  
12 Official Court Reporter  
P. O. Box 845  
13 Yakima, WA 98907  
(509) 573-6613

14 Proceedings reported by mechanical stenography; transcript  
15 produced by computer-aided transcription.

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1 (JUNE 5, 2019, 9:26 A.M.)

2 THE CLERK: This is the time set for the  
3 United States of America versus Maria Andrea Gonzalez,  
4 Case No. 1:18-CR-02005-SAB, and also the time set for  
5 United States of America versus Maria Andrea Gonzalez, Nicole  
6 Lee Sunny Cloud, Brooklyn Marie Hernandez-Proctor, and Latisha  
7 Marie Birdsong, Case No. 1:18-CR-02039-SAB-1, 2, and 3, a motion  
8 hearing.

9 Counsel, please state your presence for the court and  
10 record.

11 MR. HANLON: Your Honor as to the first cause number,  
12 Tom Hanlon, for Ian Garriques, for the United States. As to the  
13 second cause number, Tom Hanlon and Troy Clements are appearing.

14 THE COURT: All right. Thank you.

15 MR. LEE: And Troy Lee on behalf Ms. Gonzalez on one  
16 of the cause numbers, the first cause number.

17 MR. HORMEL: On the second cause number, Your Honor,  
18 Steve Hormel on behalf of Ms. Gonzalez. She's in custody.

19 THE COURT: All right. Very good.

20 MR. KLINE: Good morning, Your Honor. Ulvar Klein  
21 here with Ms. Cloud.

22 THE COURT: All right. Thank you.

23 MS. PURCELL: Good morning, Your Honor. Danielle  
24 Purcell and Walter Ayers on behalf of Brooklyn Marie  
25 Hernandez-Proctor.

1                   THE COURT: All right. Thank you.

2                   MR. LOCKWOOD: Good morning, Your Honor. Greg  
3 Lockwood on behalf of Latisha Birdsong.

4                   THE COURT: All right. And your client is not here.

5                   MR. LOCKWOOD: That's correct, Your Honor.

6                   THE COURT: All right. Very good. It's unfortunate  
7 that you had to drive from Spokane this morning, I assume, and  
8 you don't have a client.

9                   MR. LOCKWOOD: That's actually correct. But, you  
10 know, I think the motion pertains to us this morning, and we  
11 have some scheduling issues.

12                  THE COURT: All right. Let's -- before we get into  
13 the hard part of the day, let's deal with some other issues, the  
14 first case involving Ms. Gonzalez, which Mr. Lee is here for.

15                  (PROCEEDINGS ON CAUSE NO. 1:18-2005-SAB-1 NOT TRANSCRIBED)

16                  THE COURT: All right. Let's deal with the issue of  
17 Ms. Birdsong, who is not currently in federal custody, correct?

18                  MR. HANLON: That is correct, Your Honor.  
19 Ms. Birdsong had a state case. That case was recently resolved,  
20 within the last two weeks. We had issued a writ to bring her  
21 into federal custody. My understanding is she got out quickly  
22 out of Yakima County Jail, and she's at the women's correctional  
23 facility for the state. And they have a date set for I think  
24 it's June -- sometime in June. June 24th, June 22nd.

25                  THE COURT: Okay. So you're attempting to get her

1 into federal custody so she can join us at these hearings?

2 MR. HANLON: Yes, Your Honor. And she'll be here this  
3 month, Your Honor.

4 THE COURT: Okay. Mr. Lockwood, any comments about  
5 that?

6 MR. LOCKWOOD: No, Your Honor, other than if she is  
7 going to be put in federal custody at least here in Yakima, so I  
8 have access. Right now she's on the west side of the state, and  
9 logically, it's almost impossible to work with a client to  
10 prepare for trial at that distance.

11 THE COURT: Okay. I assume once we get her into  
12 federal custody, she'll be housed here at the Yakima County  
13 Jail.

14 MR. HANLON: That is correct.

15 THE COURT: That's usually what happens.

16 MR. HANLON: Yes.

17 THE COURT: All right. So that leads us, then, to the  
18 pending pretrial motions, unless there's other issues that I've  
19 overlooked.

20 MR. HANLON: No, Your Honor.

21 MR. HORMEL: No, Your Honor.

22 THE COURT: All right. So we have some motions. I  
23 have reviewed all the paperwork. How do you propose we proceed?

24 MR. HANLON: Your Honor, we have three witnesses that  
25 the government is going to call. In addition, the parties have

1 stipulated to a number of exhibits.

2 THE COURT: Okay.

3 MR. HANLON: Should I address the exhibits first?

4 THE COURT: Yeah, if you could just put the exhibits  
5 before the court, and then we can deal with the witnesses.

6 MR. HANLON: Certainly, Your Honor.

7 We're moving to admit by stipulation Government's  
8 Exhibit No. 1, and Government's Exhibit No. 2, and Defense  
9 Exhibit 101, 102, and 201.

10 THE COURT: Okay. And those are all being offered by  
11 stipulation?

12 MR. HANLON: That is correct, Your Honor.

13 THE COURT: Any disagreement from the defense side?

14 MR. HORMEL: No, Your Honor.

15 MS. PURCELL: No, Your Honor.

16 MR. LOCKWOOD: No, Your Honor.

17 THE COURT: All right. Exhibits 1 and 2, 101, 102,  
18 and 201 are all the admitted.

19 MR. HANLON: That's correct, Your Honor.

20 THE COURT: Do I have copies, or are copies before me?

21 MR. HANLON: I can hand them up, Your Honor.

22 Government's Exhibits 1 and 2 were attached to the government's  
23 briefing, as well as Mr. Hormel's briefing.

24 THE COURT: Okay.

25 MR. HANLON: I can hand them up.

1                   THE COURT: Are those your only copies? Because, if  
2 they are, we can make some copies.

3                   MR. HANLON: They are, Your Honor.

4                   THE COURT: Okay. Francisco will make some copies and  
5 bring them back.

6                   Does everybody have copies, so that we're only making  
7 copies for me? All right. Okay. That shouldn't take too long.  
8 But then you have three witnesses?

9                   MR. HANLON: Yes, Your Honor. And the witnesses are  
10 Darrick Swick, Brad LaCompte, and Loren, L O R E N, Merriman.

11                  THE COURT: All right.

12                  MR. HANLON: Would you like me to proceed, Your Honor?

13                  THE COURT: Why don't you go ahead and call the first  
14 witness. We'll get that person sworn in, and hopefully  
15 Francisco will be back with the copies.

16                  MR. HANLON: Sure.

17                  THE COURT: Go ahead and raise your right hand, and  
18 the courtroom deputy will swear you in.

19                  (DARRICK SWICK, appearing as a witness for the government,  
20 being duly sworn, testified as follows:)

21                  THE CLERK: Thank you.

22                  THE COURT: Before we get started, I'm having some  
23 trouble with my computer. It says it's on, but it's not on.

24                  (PAUSE)

25                  THE COURT: Sorry. Mr. Hanlon, you can wait for the

SWICK - Direct

9

1 exhibits, or you can get started. Your choice.

2 MR. HANLON: I'd like to get started, Your Honor.

3 THE COURT: All right.

4 DIRECT EXAMINATION

5 BY MR. HANLON:

6 Q Good morning. Could you please introduce yourself to the  
7 court, and spell your name for the court reporter.

8 A My name is Darrick Swick. I work for the U.S. Marshals  
9 Service. D A R R I C K, S W I C K.

10 Q And you said you work for the United States Marshals  
11 Service?

12 A Yes. Correct.

13 Q How long have you worked for the United States Marshals  
14 Service?

15 A Starting my 19th year right now.

16 Q And are you a deputy with the United States Marshals  
17 Service?

18 A That's correct.

19 Q And what is your current assignment with the United States  
20 Marshals Service?

21 A Currently, I'm a task force team leader on the fugitive  
22 task force down in Richland.

23 MR. HORMEL: I'm having a hard time hearing.

24 THE CLERK: Okay. I just bumped up the volume on it,  
25 so it should be better.

SWICK - Direct

10

1                   THE COURT: Okay. And make sure you speak into the  
2 microphone as best you can.

3                   THE WITNESS: Do you need me to repeat that?

4                   THE COURT: I think you're fine.

5                   MR. HORMEL: We're good.

6                   Q    (By Mr. Hanlon) What is team leader?

7                   A    I'm in charge of local agencies down in the Tri-Cities to  
8 apprehend violent offenders that have felony warrants.

9                   Q    And what, if any, responsibilities do you have in regards  
10 to transporting inmates?

11                  A    Right now, I do not have any.

12                  Q    Okay. And prior to working in the Richland office, where  
13 did you work?

14                  A    In the Yakima office right here.

15                  Q    And what were your primary responsibilities when you were a  
16 deputy with the Marshals Service here in Yakima?

17                  A    Courtroom security, prisoner transport, serving process.

18                  THE COURT: Okay. Let's take a break for just a  
19 moment while we get these exhibits distributed.

20                  (PAUSE)

21                  MR. HANLON: Thank you.

22                  THE COURT: All right. I've been given a copy of  
23 Exhibit 1, 2, 101, 102. Okay. 201. I'm not seeing 102. Oh.  
24 I have 102.

25                  All right. Mr. Hanlon, you can proceed.

SWICK - Direct

11

1 MR. HANLON: Thank you, Your Honor.

2 Q (By Mr. Hanlon) And are you familiar with the Department  
3 of Justice?

4 A Yes, I am.

5 Q How so?

6 A They employ me through the U.S. Marshals Service.

7 Q And who's the head of the Department of Justice?

8 A That would be AG Barr.

9 Q And how does the Marshals Service fit in in regards to the  
10 Department of Justice?

11 A We handle all of the federal court issues for the  
12 Department of Justice, which is judicial security, witness  
13 protection, prisoner transport, producing prisoners for court,  
14 and serving process.

15 Q And does the Attorney General have the responsibility for  
16 safekeeping of federal pretrial detainees?

17 A Yes, he does.

18 Q And what, if any, agency is delegated to carry out that  
19 mission?

20 A The U.S. Marshals Service is the only one.

21 Q You indicated you previously worked in Yakima. Are you  
22 familiar with the William O. Douglas United States Courthouse?

23 A Yes, I am.

24 Q And where are the majority of federal pretrial detainees  
25 housed who are scheduled to appear in this courthouse?

SWICK - Direct

12

1 A Yakima County Jail.

2 Q And why are they housed at the Yakima County Jail?

3 A Because they need to be housed in the closest courthouse  
4 that their hearings are for the judge that's hearing their case.  
5 And Yakima County is by far the closest to this courthouse.

6 Q And in regards to local jails, what, if any, collateral  
7 duties do you have with the United States Marshals Service?

8 A One of them is I'm the jail inspector. I'm also a fit  
9 coordinator, task force team leader, and I'm also a threat  
10 investigator.

11 Q What is a jail inspector?

12 A A jail inspector is the bottom rung in the whole -- the  
13 whole line of prisoner services division to the U.S. Marshals  
14 Service. We're the ones who do the initial inspections on the  
15 jails to make sure that they are safe to house our inmates.

16 Q And how long have you been a jail inspector for the United  
17 States Marshals Service?

18 A Approximately 15 years.

19 Q And what jails do you personally inspect?

20 A Yakima County, Kittitas County, Sunnyside, Benton County  
21 Jail, and Benton-Franklin juvenile.

22 Q And have you inspected the Yakima County Jail over the 15  
23 years?

24 A Yes.

25 Q Can you describe, what is the inspection?

SWICK - Direct

13

1 A It's about a 16- to 17-page checklist, if you will, that  
2 the inspector gets. I go to talk to the head of the jail, their  
3 staff, and then inspect cleanliness, living conditions, to make  
4 sure that no civil rights are being violated, to make sure that  
5 they have access to their attorneys, and legal paperwork. And  
6 then once all the boxes are checked that they're safe to house,  
7 then an intergovernment agreement is set with them.

8 Q And has the Yakima County Jail, since you've been  
9 conducting these inspections, passed the inspections?

10 A Oh, yes.

11 Q And what's the significance of passing the inspection?

12 A As long as they pass the inspection, we can continue to  
13 have an agreement with them to house our prisoners there.

14 Q And is there an agreement in place between the federal  
15 government, the Attorney General, and the Yakima County Jail to  
16 house federal inmates?

17 A Yes.

18 Q How long has that agreement been in place in one form or  
19 another?

20 A I can tell you from my -- since I've been in the Marshals  
21 Service since 2001, it's been in place since then.

22 Q Are you aware there's been some form of that agreement in  
23 place since the 1980s?

24 A Yes.

25 Q I'm showing you what's been admitted as Government's

SWICK - Direct

14

1      Exhibit No. 1, which I'll hand it to you, and Government's  
2      Exhibit No. 2.

3                    MR. HANLON: May I approach, Your Honor?

4                    THE COURT: Yes.

5   Q    (By Mr. Hanlon) Government's Exhibit No. 1.

6   A    Exhibit No. 1 would be a signed copy of the intergovernment  
7      agreement between the jail and U.S. Marshals Service.

8   Q    And was that agreement in place on May 21st of 2018?

9   A    Yes. Correct.

10   Q    And in that agreement, what is the significance of that  
11     agreement?

12   A    The significance of the agreement, if you look at it, on  
13     Block 16 it's signed by Edward Campbell, who is the director of  
14     the jail, and then Block 19 it's signed by Mary Horsey, who is  
15     no longer the grant specialist. It's somebody else. But once  
16     the pen and paper has been put on both those blocks, its an  
17     agreement between the Marshals Service and that facility to  
18     house our inmates under the agreed amount of money in Block 12.

19   Q    And to your knowledge, does the Marshals Service have the  
20     authority delegated to them by the Attorney General?

21   A    Correct.

22   Q    And, then, Exhibit No. 1, is it fair to say that the female  
23     box was not checked?

24   A    That's correct.

25   Q    And despite the fact that the female box was not checked,

SWICK - Direct

15

1 was there an agreement in place between the Marshals Service and  
2 the Yakima County to house female inmates?

3 A Yes.

4 MR. HORMEL: Objection, Your Honor. That's a legal  
5 conclusion that the court is going to have to make.

6 MR. HANLON: I'm asking as to his knowledge.

7 THE COURT: Overruled.

8 Q (By Mr. Hanlon) Let's go to May of 2018. Who was paying  
9 for federal pretrial detainees, their housing costs while at the  
10 Yakima County Jail?

11 A U.S. Marshals Service.

12 Q And was the Marshals Service paying for male inmates?

13 A Yes.

14 Q How about female inmates?

15 A Yes.

16 MR. HANLON: Can I have just a second, Your Honor?

17 THE COURT: Yes.

18 (PAUSE)

19 MR. HANLON: I'm done, Your Honor. Thank you. May I  
20 approach the witness?

21 THE COURT: You may.

22 Mr. Hormel.

23 MR. HORMEL: Thank you, Your Honor.

24

25

SWICK - Cross

16

1 | **CROSS-EXAMINATION**

2 BY MR. HORMEL:

3 Q What's your title, deputy?

4 A Criminal investigative deputy.

5 Q Okay. So I can call you Deputy Swick?

6 A Yes, counsel. Yes.

7 Q Thank you. So is the agreement that was in place -- are  
8 you familiar with -- and you've reviewed this Government's  
9 Exhibit No. 1, correct?

10 A Yes, sir.

11 Q And this is the agreement that was made between the Yakima  
12 County Jail and the United States Marshals Service in 2010,  
13 correct?

14 A Correct.

15 Q Okay. So that is the most current United States Marshals  
16 Service contract that applies to adult males, correct, written  
17 contract?

18 | A      Correct.

19 0 And --

20 MR. HANLON: I'm sorry. Would it be possible -- is  
21 there a button to press to turn on our monitor?

22 MR. HORMEL: Is your -- are your monitors on?

23 THE CLERK: Are yours on?

24 THE COURT: What's the issue here?

25 MR. HANLON: This monitor is not working.

1                   THE COURT: Oh, your monitor.

2                   (PAUSE)

3                   THE COURT: Is it working now?

4                   MR. HANLON: No, Your Honor.

5                   THE CLERK: Theirs isn't showing up.

6                   THE COURT: Are all the other monitors working?

7                   MR. LOCKWOOD: Yes, Your Honor.

8                   THE COURT: So, Mr. Hanlon, yours is the only one?

9                   MR. HANLON: Both of ours don't work, Your Honor.

10                  THE COURT: At your table. Can you send a message to  
11                  Curt. We'll try to get IT up here. Do you object if we  
12                  proceed?

13                  MR. HANLON: No, we can proceed. I'll just move seats  
14                  here.

15                  THE COURT: All right.

16                  Q     (By Mr. Hormel) And also, towards the upper middle of  
17                  the -- this agreement, it is an agreement to house up to 200  
18                  male inmates, correct?

19                  A     Correct.

20                  Q     Are you familiar with the Prisoners Operations Directive  
21                  laid down by the United States Marshals Service Policy  
22                  Directives?

23                  A     Some of them.

24                  Q     Are you familiar with the one that was promulgated on  
25                  July 6th of 2010?

SWICK - Cross

18

1 A I'd have to look at it.

2 Q I'm going to show you what's been admitted as defense  
3 Exhibit 101. I'm going to zoom in a little bit. Do you see  
4 what's been admitted as Exhibit -- Defense Exhibit 101?

5 A Yes, counselor.

6 Q It says United States Marshals Service Policy Directives,  
7 correct?

8 A Correct.

9 Q And that consists of one, two, three, four, five pages,  
10 correct?

11 A Correct.

12 Q And the back page is signed by Director John F. Clark?

13 A Yes. He was the director at that time.

14 Q So he was the marshal director at that time, correct?

15 A Yes.

16 Q So let's talk about sort of the hierarchy first, so it's  
17 clear on the record. The Attorney General is the head of the  
18 Department of Justice, correct?

19 A Correct.

20 Q So he's the head of an agency --

21 A Correct.

22 Q -- federal agency?

23 The -- Congress has passed a statute that allows the  
24 Attorney General to have a United States Marshal director  
25 actually do some of the policy work for the Attorney General,

SWICK - Cross

19

1 correct?

2 A Correct.

3 Q And one of those functions is to locate and contract for  
4 inmate housing, correct?

5 A Correct.

6 Q In federal facilities and also in state facilities?

7 A Yes.

8 Q And that's the function of the director of the United  
9 States Marshals Service?

10 A Yes.

11 Q And the United States Marshals Service is a federal agency,  
12 correct?

13 A Correct.

14 THE COURT: Is everything working at counsel table?

15 MR. CLEMENTS: Yes, Your Honor.

16 THE COURT: Okay. Thanks, Curt.

17 Q (By Mr. Hormel) Have you heard of an intergovernmental  
18 agency agreement?

19 A Yes, sir.

20 Q And those are agreements between the federal and, often,  
21 state agencies, correct?

22 A That's correct.

23 Q And that includes contracts between the United States  
24 Marshals Service and state facilities to house folks who are  
25 charged with federal crimes, correct?

SWICK - Cross

20

1 A Correct.

2 Q And that's what we're talking about today, correct?

3 A Yes.

4 Q So showing you -- and I'll zoom in on it a little more.

5 IGA would be short for intergovernmental agency agreement,  
6 correct?

7 A Intergovernment agreement, yes.

8 Q Intergovernmental agreement, yes. Okay. I put one more  
9 word than is necessary. If you would look at Section A,  
10 Section A says that the local United States Marshal -- so USM  
11 means local United States Marshal, correct --

12 A Correct.

13 Q -- is to review the district's prisoner population needs  
14 and any special needs, i.e., dot, dot, dot, special needs for  
15 female detention facilities, correct?

16 A Correct.

17 Q And to assess the district's detention requirements,  
18 correct?

19 A Correct.

20 Q So that was promulgated, again, in July of 2010; is that  
21 correct?

22 A Yes.

23 Q Okay. The agreement that was made between the United  
24 States Marshals Service that applies only to males was enacted  
25 after the Policy Directive on September 9th, 2010, correct?

SWICK - Cross

21

1 A Correct.

2 Q So this is a subsequent contract made pursuant to this  
3 Policy Directive, correct?

4 A Correct.

5 Q The Policy Directive also states, on Page 2 -- so I'll turn  
6 to Page 2 -- at the bottom, which is sub 4, that the  
7 United States --

8 A Counsel, could you -- I can't see the sub 4.

9 Q Sorry. Let me zoom it just a little bit.

10 A Thank you.

11 Q If I can figure out how to work this thing.

12 Sub 4 says the local United States Marshal -- because  
13 that's what USM means, the district's marshal, correct?

14 A Correct.

15 Q The local United States Marshal will not negotiate with any  
16 detention facility about rates or make promises to the facility  
17 regarding the specific rates, correct?

18 A Correct.

19 Q So this agreement is not between the local United States  
20 Marshal, the local United States Marshal facilitates obtaining  
21 these agreements, correct?

22 A Correct.

23 Q And, so -- oh, one other provision. The last page says --  
24 has a cancellation clause, correct?

25 A Correct.

SWICK - Cross

22

1 Q The last page says that this policy supersedes Policy  
2 Directive 9.2, prisoner detention and housing, correct?

3 A Correct.

4 Q So it would be the agreements that occurred after this  
5 Policy Directive that are in force and effect at this point in  
6 time, correct?

7 A Correct.

8 Q So that would mean, if you'll look at Defense Exhibit  
9 102 -- do you see Defense Exhibit 102 there?

10 A Yes, sir.

11 Q And you see that's another multi-agency detention services  
12 agreement?

13 A Correct. That's the signature page.

14 Q Yes. And it shows July 7th of '07, correct?

15 A Correct.

16 Q And that applies to male and female, correct?

17 A Yes.

18 Q But this Policy Directive was a cancellation of all prior  
19 contracts, and new contracts were required to be made, correct?

20 A Correct.

21 Q So according to, according to the directive that we just  
22 read, the responsibility of the United States Marshal is to  
23 locate and facilitate detention facilities for female inmates,  
24 correct?

25 A Correct.

1 Q And there were no intergovernmental agreements in effect  
2 between 2010 and March 24th -- excuse me, September of 2010 and  
3 May 24th of 2018 relating to female inmates, federal inmates,  
4 correct?

5 A Correct.

6 Q And what is seen in exhibit -- excuse me. I used my copy.  
7 Government's Exhibit No. 2. Do you recognize that as the  
8 amendment or addendum to the preexisting interagency agreement  
9 from July 2010?

10 A Correct.

11 Q And that says that they were to add adult females as  
12 contract inmates at the Yakima County Jail, correct?

13 A Correct.

14 Q And, again, the date on that agreement is May 24th, 2018?

15 A Correct.

16 Q Are you familiar with 18 U.S.C. 4002, 4002?

17 A No.

18 Q Let me ask if you've heard this law in any of your  
19 training. For the purposes of providing suitable quarters for  
20 safekeeping, care, and subsistence of all persons held under  
21 authority of any enactment of Congress, the Attorney General may  
22 contract for a period not exceeding three years with the proper  
23 authorities of any state, territorial, or political subdivision  
24 thereof, for imprisonment, subsistence, care, and proper  
25 employment of such persons. Have you been made familiar with

SWICK - Cross

24

1 that law --

2 A Yes. Yes.

3 Q -- during your training?

4 A Yes.

5 Q So that statute, to your knowledge, is still in place,  
6 correct?

7 A Well, some of it that you said is not.

8 Q Which part would you say is not?

9 A It's the three-year statute.

10 Q So if I have the 2019 edition --

11 A Correct.

12 Q -- of the revised statute, you would say that that's been  
13 taken out of the statute?

14 MR. HORMEL: I think that's a legal question,  
15 Your Honor. I'll --

16 A It has not been taken out. There has been a modification  
17 to it by the Marshals Service.

18 Q Okay. The statute from Congress?

19 A Yes.

20 Q The Marshals Service is attempting to --

21 A No.

22 Q -- modify it?

23 A It's been modified for the Marshals Service. The way it  
24 should read is they are allowed to ask for a bed increase rate  
25 every three years. The contracts are eternal now,

SWICK - Cross

25

1 Q Okay. But if 400 -- 18 U.S.C. 4002 will speak for itself,  
2 correct?

3 A Correct.

4 Q Thank you.

5 MR. HORMEL: Your Honor, may I have a moment with  
6 co-counsel?

7 THE COURT: Yes.

8 (PAUSE)

9 MR. HORMEL: Your Honor, I'll just put these exhibits  
10 back in order so they're usable.

11 THE CLERK: Mr. Hormel, I wasn't able to see the tabs.  
12 You used 101, 102, 1 and 2?

13 MR. HORMEL: I used 101 and 102. And I also used  
14 Government's 1 and 2.

15 THE CLERK: But not 201?

16 MR. HORMEL: Not 201. Yeah. That's for Ms. Proctor.  
17 Thank you.

18 THE COURT: Mr. Hanlon.

19 First of all, were any of the other defense attorneys  
20 expecting to participate in questioning?

21 MS. PURCELL: One moment, please, Your Honor.

22 MR. KLEIN: Not here, Judge. This is Ulvar Klein.  
23 Thank you.

24 (PAUSE)

25 MS. PURCELL: No questions, Your Honor.

1 THE COURT: Thank you.

2 MR. LOCKWOOD: I have no questions, Your Honor.

3 THE COURT: Okay. Mr. Hanlon.

4 MR. HANLON: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. HANLON:

7 Q Deputy Swick, Mr. Hormel asked you a number of questions in  
8 regards to Defense Exhibit No. 101?

9 A Correct.

10 Q Has this Policy Directive, to your knowledge, been updated?

11 A To my knowledge, it has been. I think that one is from  
12 2010.

13 Q So is this the most recent Policy Directive from the United  
14 States Marshals Service?

15 A Probably not.

16 Q And between September of 2010 and May 23rd of 2018, for  
17 federal female pretrial detainees who were supposed to appear in  
18 this courthouse in Yakima, where were those females housed?

19 A In Yakima.

20 Q Who paid to house them in Yakima?

21 A U.S. Marshals Service.

22 Q If there was no IGA in place, how were they housed at the  
23 Yakima County Jail?

24 A Because there was an IGA.

25 Q Was there an agreement in place?

SWICK - Recross

27

1 A Yes.

2 Q To your knowledge, would the Yakima County Jail have housed  
3 those females if they were not being paid?

4 A Absolutely not.

5 MR. HANLON: I have no further questions, Your Honor.

6 THE COURT: Mr. Hormel.

7 MR. HORMEL: May I? Thank you.

8 RECROSS-EXAMINATION

9 BY MR. HORMEL:

10 Q Let me use the actual exhibit. Turning your attention  
11 again to Defense Exhibit 101, Section B of the intergovernment  
12 agreement program -- intergovernmental agreement program,  
13 Section B defines what a IGA is, correct?

14 A Correct.

15 Q And it says it's -- IGA is a formal written agreement  
16 between the United States Marshals Service and the local or  
17 state government for housing, care, and safekeeping of federal  
18 prisoners, correct?

19 A That's correct.

20 Q So the IGA is required to be in writing, correct?

21 A Correct.

22 Q So it seems to me that what was going on with female  
23 inmates is that there was a custom or practice of housing female  
24 inmates in the Yakima County Jail, correct?

25 A Correct.

SWICK - Recross

28

1 Q Under the same per diem terms as the written contract for  
2 males, correct?

3 A Correct.

4 Q And you say you've been working at this local United States  
5 Marshals Service, or in this district, for 19 years?

6 A Correct.

7 Q Okay. You're not the head of a federal agency?

8 A Oh, no.

9 Q The Yakima County Jail, who had this sort of unwritten  
10 formal agreement to house federal inmates, they're not the head  
11 of a federal agency, correct?

12 A You're asking if the Yakima County Jail is the head of --  
13 no.

14 Q Yeah, the ones who house the female inmates --

15 A No.

16 Q -- under this arrangement they had with your office.

17 Correct?

18 A Correct.

19 Q They're not the head of a federal agency?

20 A No.

21 Q And the only written contract pursuant to the Policy  
22 Directive that applied to female inmates is that contract  
23 between July of 2010 and May 24th of 2018, the only one that  
24 applied to female inmates that was written, was the one that was  
25 entered and executed on May 24th, 2018, correct?

1 A Correct.

2 Q And that would be reflected in Government's Exhibit No. 2,  
3 correct?

4 A Correct.

5 MR. HORMEL: That's all the questions I have,  
6 Your Honor.

7 THE COURT: All right. Mr. Hanlon, anything further?

8 MR. HANLON: No, Your Honor.

9 THE COURT: Thank you, Deputy. You may step down.

10 THE WITNESS: Thanks, Judge.

11 MR. HANLON: Your Honor, may I get my next witness?

12 THE COURT: You may.

13 (PAUSE)

14 THE COURT: Officer or deputy, I'm not sure which, if  
15 you could raise your right hand, we're going swear you in for  
16 your testimony.

17 (LOREN MERRIMAN, appearing as a witness for the government,  
18 being duly sworn, testified as follows:)

19 THE CLERK: Thank you.

20 THE COURT: Go ahead and have a seat, please. It's a  
21 big room, and, so, I'm going to ask you to make sure, when you  
22 answer a question, you talk right into the microphone.

23 THE WITNESS: If I can fit.

24 THE COURT: Okay.

25 THE WITNESS: There it goes.

MERRIMAN - Direct

30

1 THE COURT: Is that going to work out?

2 THE WITNESS: Yes. Sorry.

3 THE COURT: That's all right.

4 DIRECT EXAMINATION

5 BY MR. CLEMENTS:

6 Q Good morning.

7 A Good morning.

8 Q Please introduce yourself, and state your name, and spell  
9 it for the record, please.

10 A Loren Merriman. L O R E N, M E R R I M A N. Sergeant at  
11 Yakima County Department of Corrections.

12 Q And where is that located?

13 A Downtown, City of Yakima.

14 Q Okay. And how long have you been in that position?

15 A I've been a sergeant since May 2015, been an internal  
16 affairs special investigator since January of last year.

17 Q What are some of your duties and responsibilities as an  
18 internal affairs investigator?

19 A I investigate essentially any wrongdoing by anybody within  
20 the jail. That goes for inmates, staff members, contracted  
21 staff members. Also the PREA investigator for the department.

22 Q Can you briefly describe some of the types of incidences  
23 you would investigate? You mentioned the term PREA. Could you  
24 speak up a little bit so everybody can hear you in the back.

25 A Yeah. Sorry. I'm fighting allergy issues right now.

MERRIMAN - Direct

31

1 Q Maybe just lean forward a little more.

2 A Sure.

3 So as the PREA investigator, I investigate any -- it's  
4 the Prison Rape Elimination Act. So we fall under that. Within  
5 our department, we try to follow the guidelines for  
6 investigating any acts of sexual misconduct, harassment,  
7 anything like that.

8 Q Is that an issue within the Yakima County Jail?

9 A Yeah, it is.

10 Q What other -- you indicated you investigated other issues.  
11 When inmates are -- come into the jail, what concerns, if  
12 they're coming in from the Marshals Service or a local agency,  
13 what concerns does the jail have?

14 A So anybody -- any person that is booked into the Yakima  
15 County Jail there, we -- we have a lot of concerns about drugs  
16 making its way -- drugs and weapons making their way into the  
17 facility. And, so, we've had a lot of issues with that over the  
18 years, and we're constantly trying to come up with new and  
19 better ways to prevent that from happening, so...

20 Q What are some of the ways that inmates attempt to bring in  
21 contraband into the jail?

22 A So they will -- lot of the times they hide it within their  
23 body cavities, inside of them.

24 Q So is that male and female?

25 A Both, yes.

MERRIMAN - Direct

32

1 Q Okay. And has the jail taken any precautions to try to  
2 prevent that from happening?

3 MR. HORMEL: Your Honor, I normally don't interfere,  
4 but I don't know what relevance this has to whether the  
5 contract --

6 THE COURT: I'm not sure what relevance any of this  
7 testimony has had to any of the very simple legal issue. But  
8 proceed.

9 MR. CLEMENTS: We'll tie it together, Judge.

10 THE COURT: I assume the relevance will be made clear  
11 in the arguments.

12 MR. HORMEL: Okay. Thank you.

13 Q (By Mr. Clements) What precautions has the jail taken to  
14 eliminate that process?

15 A So we've added walk-through metal detectors. We've added a  
16 full body scanner. And we've changed our booking layout down  
17 there so we have a more controlled flow to prevent the transfer  
18 of contraband.

19 Q Approximately how many inmates are housed at the Yakima  
20 County Jail?

21 A Last time I looked, it was somewhere around a thousand.

22 Q What are the costs associated with housing inmates?

23 A Well, we have staffing cost for officers, clerical staff,  
24 our medical staff, mental health staffing. We have -- we have  
25 to provide clothing, day-to-day, like, hygiene items. When they

MERRIMAN - Direct

33

1 first come in, they're given hygiene items to go up to the  
2 floors. They're given bedding. We feed them three times a day,  
3 provide medical care when needed. Medical is a big cost. Then  
4 we have to, you know, transfer -- transport costs for court, and  
5 stuff like that.

6 Q Okay. As far as inmates that are housed in the Yakima  
7 County Jail, do you house inmates from any other jurisdictions  
8 or agencies?

9 A So we house -- our local inmates that are all felons go  
10 Yakima County. Then we have contracts for the City of Yakima.  
11 We have contracts from many west-side agencies. And then we  
12 have an intergovernmental contract with the U.S. Marshals  
13 Service.

14 Q And what type of inmates are housed for the federal  
15 Marshals Service?

16 A They -- we have federal pretrial detainees. And we've  
17 been -- I think that there's an -- immigration and BOP are also  
18 a part of that contract.

19 Q And how are the inmates that are federal detainees, how are  
20 they paid for?

21 A When a person is booked into the jail that has, say, a  
22 federal -- a U.S. Marshal hold, when they are fully booked,  
23 there's a billing agency that's listed in the computer system.  
24 That billing agency is entered, and their file goes upstairs.  
25 The next day there's a lady that double checks and makes sure

MERRIMAN - Direct

34

1 that billing agency is accurate.

2           There's a computer program that's used for our  
3 billing, and it gives a monthly statement that it sends over  
4 to -- so each inmate each day is charged, per day, a certain  
5 rate. And that computer program logs -- keeps a record of each  
6 day for that certain individual that's booked into the jail.  
7 And it keeps track of that from the day they're booked until the  
8 day they're released from our custody.

9           And each month that computer program creates a list  
10 that's -- that is double checked, sent to the local U.S. Marshal  
11 office. They double check it for accuracy. And once it's clear  
12 there, then it's sent over to Spokane, and then it's cleared  
13 through them, and then we --

14 Q       Is that the Spokane U.S. Marshals office?

15 A       Yes. And then the money is electronically transferred to  
16 the Yakima County treasurer's office, and a statement is  
17 e-mailed over to our billing within the Yakima County Department  
18 of Corrections, notifying them that there has been a wire money  
19 transfer to the treasurer's office. Our billing people notify  
20 the treasurer's office that that money is allocated for the  
21 Yakima County Department of Corrections.

22 Q       And is that for both male and female federal inmates?

23 A       Yes.

24 Q       Okay. And how long have you been in -- working at the  
25 county jail?

MERRIMAN - Direct

35

1 A Since February 2nd, 2004.

2 Q Okay. In your experience working at the county jail --  
3 strike that.

4 If the U.S. Marshals Service stopped paying for the  
5 male and female inmates, would Yakima County continue to house  
6 them?

7 A No.

8 Q If another agency --- you mentioned some other counties  
9 around the state -- stopped paying for their inmates to be  
10 housed in the Yakima County Jail, would Yakima County house  
11 their inmates?

12 A No, sir.

13 Q Is it fair to say the Yakima County Jail is a business?

14 A Yes.

15 Q And do those revenues from those agreements go into the  
16 county?

17 A Yes.

18 Q If there were no agreement or contract in place, would  
19 Yakima County house federal inmates?

20 A No.

21 Q What, if any, federal agency transports federal detainees  
22 in and out of the Yakima County Jail?

23 A I'm sorry?

24 Q What agency transports federal detainees in and out of the  
25 Yakima County Jail?

MERRIMAN - Direct

36

1 A Over the years, I've seen the U.S. Marshals do the  
2 transports in and out of the jail, and I've also seen Benton  
3 County Corrections transport them.

4 Q Okay. Do you have familiar -- are you familiar with the  
5 event that happened on May 21st, 2018, in the county jail --

6 A Yes.

7 Q -- concerning Ms. Buchanan, Margaret Buchanan?

8 A Yes.

9 Q And how are you familiar with that?

10 A I was made aware of an incident that happened through one  
11 of the -- one of our staff members, and I was notified to start  
12 an investigation into that.

13 Q Can you describe what your knowledge was, what had  
14 occurred? Where did that occur?

15 MR. HORMEL: Your Honor, I would object -- do object.  
16 Not would, but do object, because this is getting way afield  
17 from the issue of the motion to dismiss.

18 THE COURT: Counsel.

19 MR. CLEMENTS: It's relevant to explain Ms. Buchanan's  
20 status, and where she's located, and her relation to the other  
21 inmates that are in the tank.

22 THE COURT: I'll allow it.

23 A I was told that there was a possible sexual assault that  
24 occurred in a bathroom upstairs in one of our housing units.  
25 And, so, I looked into the list of who the suspects were, and

MERRIMAN - Direct

37

1 the victim.

2 Q (By Mr. Clements) And was Ms. Buchanan a federal detainee  
3 at that time?

4 A Yes.

5 Q And was the Marshals Service paying for her detention at  
6 that time?

7 A Yes.

8 Q Okay. And where, exactly, did the alleged assault occur?

9 A On the second floor.

10 Q Okay. Is that a female housing unit?

11 A Yeah. The one she was in is a female housing unit.

12 Q Okay. And who else -- was Maria Gonzalez a detainee, a  
13 federal detainee at that time?

14 A She was.

15 Q Was she also housed in the same unit as Ms. Buchanan?

16 A The same, yes.

17 Q Okay. Was Ms. Nicole Lee Sunny Cloud a federal detainee at  
18 that time?

19 A Yes.

20 Q Was she also housed with Ms. Buchanan?

21 A Yes.

22 Q Was Brooklyn Marie Hernandez-Proctor in the same unit at  
23 that time?

24 A Yes.

25 Q Do you know what her status was as an inmate?

MERRIMAN - Direct

38

1 A From what I understood, she was a state -- in on state  
2 charges, felony.

3 Q Okay. And Latisha Birdsong, was she in the same unit?

4 A Yes.

5 Q Do you know her status at that time?

6 A She was a state inmate as well.

7 Q Who was paying for the incarceration costs of Buchanan,  
8 Gonzalez, and Cloud?

9 A The U.S. Marshals.

10 Q You talked briefly about some of the procedures to ensure  
11 the safety. You indicated there was an allegation of rape. Do  
12 you know why the alleged rape occurred?

13 A From what the victim told me, it was --

14 MR. HORMEL: Your Honor, that's definitely irrelevant.  
15 I object.

16 THE COURT: Counsel.

17 MR. CLEMENTS: It goes to show what safety precautions  
18 the county jail uses as associated with the allegation here,  
19 which is that she was transporting narcotics into the jail.

20 THE COURT: I'll sustain the motion. I don't think  
21 that's relevant to the issue that we have today.

22 MR. CLEMENTS: May I confer?

23 (PAUSE)

24 MR. CLEMENTS: I'll pass the witness.

25 THE COURT: Thank you.

MERRIMAN - Cross

39

1                   Mr. Hormel.

2                   CROSS-EXAMINATION

3   BY MR. HORMEL:

4   Q    Sergeant Merriman, right?

5   A    Yes, sir.

6   Q    And you state you have been in your position since 2004; is  
7   that correct?

8   A    No, not my current position.

9   Q    What is your current position, again?

10   A    Special investigator for internal affairs department.

11   Q    Okay. And do you have anything to do with the contracts  
12   between the United States Marshals Service and the Yakima County  
13   Jail facility?

14   A    No, sir.

15   Q    Okay. And you weren't involved in the process in September  
16   of 2010 in the interagency agreement between the United States  
17   Marshals Service and Yakima jail?

18   A    No, sir.

19   Q    And same is true about the interagency agreement that was  
20   executed last year on May 24th, 2018, you weren't involved in  
21   that, correct?

22   A    No, just aware of it.

23   Q    Okay. And you are familiar with the fact that there are  
24   federal female inmates that are housed in the Yakima County  
25   Jail, correct?

MERRIMAN - Cross

40

1 A Yes, sir.

2 Q But you don't know the status of or the existence of an  
3 existing contract between the agencies, correct?

4 A Just the paper that I've seen.

5 Q Okay. But you weren't involved in the execution of those,  
6 correct?

7 A No, sir.

8 Q And, also, you're not familiar with the United States  
9 Marshals Service Policy Directives for prisoner operations and  
10 intergovernmental agreement programs, are you?

11 A No.

12 Q Never read those?

13 A I have not.

14 Q Okay.

15 MR. HORMEL: If I may have a moment, Your Honor.

16 THE COURT: You may.

17 (PAUSE)

18 MR. HORMEL: Thank you, Your Honor.

19 MS. PURCELL: May I, Your Honor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MS. PURCELL:

23 Q Good morning, Sergeant.

24 A Good morning.

25 Q Just one question for you. Ms. Brooklyn Marie

MERRIMAN - Cross

41

1 Hernandez-Proctor was not in federal custody at the time of the  
2 alleged incident, correct?

3 A Correct.

4 MS. PURCELL: Thank you. That's it.

5 MR. LOCKWOOD: If I may ask a question.

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MR. LOCKWOOD:

9 Q Good morning, Sergeant.

10 A Good morning.

11 Q I represent Ms. Birdsong. Now, Ms. Birdsong, she was on  
12 state charges, correct?

13 A Yes, sir.

14 Q So no federal funds were expended in her support at the  
15 facility, was it?

16 A Not that I'm aware of.

17 MR. LOCKWOOD: No further questions, Your Honor.

18 THE COURT: All right. Counsel.

19 MR. CLEMENTS: No further questions.

20 THE COURT: All right. I just have one question for  
21 Sergeant Merriman. Since we're all getting a chance to ask  
22 questions, I'll take my opportunity.

23 Did the Yakima County Jail have a contract with the  
24 federal government to house federal defendants, federal inmates,  
25 on May 21 of 2018?

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you. No further questions.

3 Counsel?

4 MR. HANLON: No, Your Honor.

5 THE COURT: I meant that as a question, not as a  
6 statement. Any further questions from counsel?

7 MR. CLEMENTS: Not from the government.

8 THE COURT: All right. Mr. Hormel.

9 RECROSS-EXAMINATION

10 BY MR. HORMEL:

11 Q You're not familiar with the law relating to  
12 intergovernmental agency contracts, correct?

13 A No.

14 Q You're not familiar with the Policy Directives?

15 A No.

16 Q And you're not familiar with the directive that requires  
17 the United States Marshals Service to specifically view for  
18 female detention facilities before entering a contract?

19 A No, sir.

20 Q You're not the head of a federal agency, are you?

21 A No, sir.

22 Q You're not the Attorney General?

23 A No, sir.

24 Q You're not Eric Holder?

25 A No, sir.

MERRIMAN - Recross/Redirect

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1 Q So you don't have any ability to control or have any say in  
2 what happens with these contracts, correct?

3 A No, sir.

4 THE COURT: Counsel.

5 REDIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q Regarding a written contract, has the Yakima County Jail  
8 been paying for female federal detainees since the time Yakima  
9 County has accepted them into their facility?

10 THE COURT: I think you meant have they received  
11 payment.

12 MR. CLEMENTS: Sorry. U.S. Marshals. Excuse me.

13 Q (By Mr. Clements) Has the U.S. Marshal been paying Yakima  
14 County since the time Yakima County has agreed to accept federal  
15 inmates?

16 A As long as I've worked there, they've paid to have inmates  
17 within our jail, male and female.

18 Q Okay.

19 MR. HORMEL: Your Honor, that brings up one question.

20 THE COURT: All right. You're cutting into argument  
21 time. I'm just going to warn counsel.

22 MR. HORMEL: Okay.

23 RECROSS-EXAMINATION

24 BY MR. HORMEL:

25 Q You understand, though, the money you receive from the U.S.

LeCOMPTE - Direct

44

1 Marshals Service are funds designated to this local district,  
2 correct?

3 A Correct.

4 MR. HORMEL: No further questions. Thank you.

5 MR. CLEMENTS: Nothing further, Your Honor.

6 THE COURT: Thank you.

7 THE WITNESS: That's it? All right.

8 (BRAD LeCOMPTE, appearing as a witness for the government,  
9 being duly sworn, testified as follows:)

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. HANLON:

13 Q Good morning.

14 A Okay.

15 Q Can you please state your name and spell your name for the  
16 court reporter.

17 A Brad LaCompte. B R A D. LeCompte, L E C O M P T E.

18 Q How are you currently employed?

19 A I'm a Deputy U.S. Marshal with the United States Marshals  
20 Service.

21 Q And how long have you been a deputy with the United States  
22 Marshals Service?

23 A Approximately nine and a half years.

24 Q What's your current duty station?

25 A Here in Yakima, at this courthouse.

LeCOMPTE - Direct

45

1 Q What are your duties and responsibilities as a deputy with  
2 the United States Marshals Service?

3 A Court security, prisoner movements, service of process,  
4 fugitive investigations, along with other collateral things.

5 Q And how often do you travel to the Yakima County Jail to  
6 pick up federal pretrial detainees?

7 A Weekly.

8 Q And have you done that throughout your career here in  
9 Yakima?

10 A The whole time.

11 Q Is that for males and females?

12 A Yes.

13 Q And are you familiar with Maria Andrea Gonzalez?

14 A I am.

15 Q And are you aware that she came into federal custody in the  
16 summer of 2018?

17 A Yeah. Actually, probably before, on her other charge.

18 Q And approximately how many times have you transported her  
19 back and forth between the courthouse from today and the Yakima  
20 County courthouse? Or I'm sorry, Yakima County jail.

21 A Average, once a month, for bail hearings, other stuff,  
22 pretrial.

23 Q Were you present at a bail hearing before Magistrate Judge  
24 Dimke on July 28, 2018, to your knowledge?

25 A Yes.

LeCOMPTE - Direct

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1 Q And Judge Dimke, does she issue orders in her courtroom?

2 A She does, yes.

3 Q And do you recall her issuing an order that Ms. Gonzalez  
4 was to be committed to the custody of the Attorney General for  
5 confinement?

6 A Yes.

7 Q What does that mean to you as a deputy with the United  
8 States Marshals Service?

9 A That she's remanded to our custody, to the Marshals Service  
10 custody.

11 Q And do you have authority, as an individual, to make a  
12 decision where to take her if you don't feel like taking her to  
13 the jail one day?

14 A Like to any other facility?

15 Q Yeah. Can you just change your mind and decide to take her  
16 some other place?

17 A No, I don't have that authority.

18 Q And to your knowledge, who pays for Ms. Gonzalez to be  
19 housed at the Yakima County Jail?

20 A The Marshals Service.

21 Q And has the Marshals Service been paying for her to be  
22 housed at that jail for some time?

23 A Yes.

24 Q Are you aware of Ms. Nicole Sunny Lee Cloud?

25 A Yes.

1 Q Was she brought into federal custody in another matter  
2 prior to this case?

3 A Yes.

4 Q And had she been housed at the Yakima County Jail?

5 A Yes, the whole time.

6 Q Did you transport her back and forth between the Yakima  
7 County Jail and this federal courthouse?

8 A Yes.

9 MR. HANLON: I have no further questions, Your Honor.

10 THE COURT: All right. Mr. Hormel.

11 CROSS-EXAMINATION

12 BY MR. HORMEL:

13 Q So you're a deputy marshal?

14 A Yes, sir.

15 Q You're not the head of a federal agency?

16 A No, sir.

17 Q You're not the director of the United States Marshals  
18 Service?

19 A No.

20 Q You do not enter into any contracts with the Yakima County  
21 Jail?

22 A No, sir.

23 MR. HORMEL: That's all I have.

24 THE COURT: Anyone else from the defense side?

25 MS. PURCELL: Nothing further.

1 THE COURT: All right.

2 MR. LOCKWOOD: No questions, Your Honor.

3 THE COURT: Mr. Hanlon.

4 MR. HANLON: No further questions.

5 THE COURT: All right. Thank you, Deputy LaCompte.

6 Is that all the testimony we're going hear?

7 MR. HANLON: Yes, Your Honor.

8 THE COURT: All right. We've got 30 minutes to argue  
9 the issues before us. Mr. Hormel. I have read all the briefs.

10 MR. HORMEL: Yes. And I don't really want to harken  
11 on the briefs, more so the facts. But I kind of want to outline  
12 the way I see this -- how this plays out.

13 I think the first question is was there an existing  
14 federal contract. The case of *Mujahid* indicates it's the  
15 court's function to determine whether or not there's an existing  
16 federal contract that fits under the statute, 2241. So I think  
17 that's the first issue.

18 The second issue is, if there is an existing federal  
19 contract in existence at the time this incident occurred, then  
20 does the fact it doesn't apply -- the written contract doesn't  
21 apply to female inmates, does that have any relevance to the  
22 issue. And I believe that's where the issue of exceeding  
23 congressional authority kicks in.

24 And, so, I think the first issue I want to address is  
25 whether or not there was actually a contract in existence at the

1 time of this incident.

2 THE COURT: Let me tell you my initial thoughts, and  
3 that way you can tell me why you think I'm wrong.

4 The answer to question number one, yes, there was an  
5 existing federal contract. The answer to question two, no, it  
6 doesn't matter the contract doesn't apply to females; although,  
7 I think there was an existing contract that applied to females.

8 Tell me why you think I'm wrong and why any of the  
9 testimony we heard today has any relevance to the legal issue  
10 you're asking me to decide?

11 MR. HORMEL: Well, I would argue none of that  
12 testimony had any relevance. But I will -- I think --

13 THE COURT: But it was brought here because of your  
14 motion. The statute in which all of these defendants have been  
15 charged, 18 U.S.C. 2241(a), is completely gender neutral in  
16 terms of who the defendant is, who the persons who are held in  
17 custody are, and who the victim is. Gender neutral. So why are  
18 we talking about a contract that applies to males or females?

19 MR. HORMEL: Because *Mujahid* left that open. And I'll  
20 tell you why it's left wide open in *Mujahid*.

21 THE COURT: Okay.

22 MR. HORMEL: *Mujahid* didn't address the issue as to  
23 whether or not -- what *Mujahid* held -- it's better to say what  
24 it held first. And what it held was, because there was a  
25 federal contract in place that applied to that particular

1 defendant, that they found no problem finding that the statute  
2 as applied to that defendant applied to the defendant.

3                   What it left open was whether or not it would apply to  
4 state inmates, and whether or not it applied to those who were  
5 in the facility charged with a federal crime, but not under a  
6 specific contract.

7                   THE COURT: Well, and the statute itself, not only is  
8 it gender neutral, it's also neutral regarding federal and state  
9 custody. It doesn't specify that the victim has to be a federal  
10 detainee, or that the defendant, the assaulter, alleged  
11 assaulter, has to be a federal detainee.

12                  MR. HORMEL: And that's where the overbroad and beyond  
13 the scope of authority. Because then you've got to get into the  
14 proper -- and, you know, the -- necessary and proper clause.

15                  THE COURT: I think we can agree a contract exists.

16                  MR. HORMEL: Can I say why it doesn't? You did ask  
17 that.

18                  THE COURT: The contract that I have as Exhibit 1  
19 doesn't actually exist?

20                  MR. HORMEL: It's clear cut. 18 U.S.C. 4002. For the  
21 purpose of providing suitable quarters for the safety, care, and  
22 subsistence of all persons held under the authority of any  
23 enactment of Congress, the Attorney General may contract for a  
24 period not exceeding three years with the proper authorities of  
25 any state, territory, or political subdivision thereof, for the

1 imprisonment, subsistence, care, and proper employment of such  
2 persons.

3 THE COURT: Does that require it to be written?

4 MR. HORMEL: What requires it to be written is the  
5 directive from the Marshals Service. And there has to be.

6 So --

7 THE COURT: So you're saying that the contract that  
8 expired in 2010 didn't exist as it relates to your client in  
9 2018?

10 MR. HORMEL: That's correct. Because there was --  
11 there is evidence of an agreement in 2010. There's no evidence  
12 of an agreement thereafter.

13 THE COURT: Okay.

14 MR. HORMEL: So that is the position, that there was  
15 no valid -- so I do not agree that there was a valid agreement  
16 between the Yakima jail and the United States Marshals Service  
17 after three years, from July --

18 THE COURT: It would have been 2013.

19 MR. HORMEL: Correct. And I believe that's pretty  
20 clear from the statute.

21 And that's, like I said --

22 THE COURT: What statute is that?

23 MR. HORMEL: 18 U.S.C. 4002, 4002.

24 THE COURT: Okay.

25 MR. HORMEL: There is no evidence, even from the

1       witnesses, that these contracts were renewed every three years  
2       after 2010, and the date of enactment or execution of these  
3       agreements.

4               THE COURT: Okay. So do you want to talk about your  
5       second issue?

6               MR. HORMEL: Yes, Your Honor.

7               The second issue is really the issues that were left  
8       open. If the court determines that Ms. Gonzalez was not housed  
9       under a federal interagency contract, as required by the  
10      directive -- director of the United States Marshals Service --  
11      let me back up.

12               The Attorney General delegated to the director of the  
13       United States Marshals Service to set up the policies and find  
14       the locations. That is statutory.

15               So the United States Marshals Service, the director,  
16       is the one who promulgated these directives and requires it to  
17       be in writing. So Congress gave the Attorney General --  
18       Congress gave, through the Attorney General, the director of the  
19       Marshals Service, and the Marshals Service has required that  
20       these contracts be in writing.

21               And I think that makes sense, because, Your Honor, if  
22       there was no contract in place, and there was one federal  
23       prisoner housed in the Yakima County Jail, it certainly would  
24       not be considered a federal facility. What Congress was doing  
25       in enacting 2241, and expanding the jurisdiction of 2241, was

1       essentially turning a local jail into, quote, a federal  
2       facility, because the jurisdictional element is so broad that it  
3       could literally, at least the way it's so broad now, that it  
4       literally would allow the federal prosecution of a state inmate  
5       who did the same conduct on another state inmate.

6           That's where *Mujahid* left open the question of whether  
7       or not this enactment by Congress exceeds congressional  
8       authority under the necessary and proper clause, because the  
9       necessary and proper clause -- you don't even get to the  
10       necessary and proper clause unless you have a valid  
11       constitutional underlying authority. For example, the commerce  
12       clause, the spending clause, any other clause that, you know,  
13       exists. The necessary and proper clause relies on the fact of  
14       an underlying constitutional authority. So you don't even get  
15       to the necessary and proper clause unless there is.

16           And if there's no existing contract, then the  
17       necessary and proper clause -- then Congress then has exceeded  
18       the authority under the necessary and proper clause. So that's  
19       the sum and substance of the argument.

20           If the court doesn't have any questions, I --

21           THE COURT: No. You've explained your argument.

22           MR. HORMEL: Thank you.

23           THE COURT: Mr. Hanlon.

24           MR. HANLON: Your Honor, in regards to the last part,  
25       the issue of state on state inmates assaulting each other, is

1 not the issue before the court. It's undisputed that Margaret  
2 Buchanan, the victim in this case, was a federal inmate. In  
3 addition, it's undisputed that Mr. Hormel's client is a federal  
4 inmate.

5 In regards to the court's first question as to why did  
6 we have any of this testimony, in regards to this issue being  
7 raised, there's very little in regards to case law. One case  
8 the government found was a Third Circuit case from 2008 in  
9 regards to the existence of an agreement. And in that case an  
10 agreement was found because the government called a witness from  
11 the jail and a marshal who transported the inmate back and forth  
12 from the jail. And based upon those facts, the court was able  
13 to determine that there was, in fact, an agreement in place.

14 So to answer the court's question as to why we had  
15 these witnesses, we had them here because of that Third Circuit  
16 case.

17 THE COURT: Thank you.

18 MR. HORMEL: May I rebut that, Your Honor?

19 THE COURT: Of course.

20 MR. HORMEL: None of that proves these agreements were  
21 made by the head of the agency, either Eric Holder, Jeff  
22 Sessions, Richard Barr, or anybody. That's what the statute  
23 requires.

24 THE COURT: Or anybody that person has delegated  
25 responsibility to.

1                   MR. HORMEL: Which is the director of the Marshals  
2 Service, and nobody else.

3                   THE COURT: Counsel.

4                   Go ahead. We'll let Mr. Hormel finish.

5                   MR. HORMEL: In fact, the local United States Marshal  
6 has no authority to make these contracts.

7                   THE COURT: All right. Mr. Hanlon, anything else?

8                   MR. HANLON: Your Honor, my briefing substantially  
9 covers the statutes and the CFRs in regards to the delegation of  
10 authority from the Attorney General, so I don't have anything  
11 additional to add.

12                  THE COURT: Thank you.

13                  Anything else in regards to the pretrial motions?

14                  I'm going to take that under advisement and work  
15 through statutes that were mentioned, the cases that were  
16 mentioned, and the testimony. It shouldn't take too long.

17                  Yes, Mr. Lockwood.

18                  MR. LOCKWOOD: I wanted to make a comment on Birdsong.

19                  THE COURT: Go ahead.

20                  MR. LOCKWOOD: Your Honor, Ms. Birdsong, she concurs  
21 with the argument of Mr. Hormel. Further, it's pretty clear  
22 that Ms. Birdsong was not in federal hold at the Yakima County  
23 Jail. That being the case, I don't believe federal jurisdiction  
24 applies to her under the statute, seeing how she wasn't housed  
25 under federal detention in the facility at the time of the

1 incident. So I think she falls in a little different category.

2 THE COURT: Thank you.

3 Mr. Hanlon, did you want to respond to that argument?

4 MR. HANLON: No, Your Honor.

5 THE COURT: Okay. Did you want to make --

6 MS. PURCELL: Briefly. I think my filed motions speak  
7 for themselves that we join Mr. Hormel in his arguments.

8 THE COURT: Yes.

9 All right. I think, actually, our practice in this  
10 district is that, when co-defendants are involved, it's assumed  
11 that the co-defendants join the pretrial motions. And, so, that  
12 was the assumption I was making.

13 MS. PURCELL: Thank you.

14 THE COURT: Thanks for clarifying that.

15 I will take the motion under advisement. I don't  
16 think it will take too long to decide it.

17 On the assumption that I rule against that, I believe  
18 that we have trial scheduled for July 29th. I'm not indicating  
19 I'm going to rule against. I'm just trying to plan ahead. I  
20 hope you understand.

21 Will this case be ready for trial on July 29th?

22 MR. HANLON: Your Honor, I don't believe so.

23 Ms. Birdsong is coming at the end of June. I had an opportunity  
24 to speak with counsel prior to today's hearing, and I think  
25 everybody believes it's in best interests of everybody to have

1 one more continuance so counsel for Ms. Birdsong can get up to  
2 speed.

3 MR. LOCKWOOD: That's correct, Judge. My schedule  
4 right now in September, I have a number of matters set in  
5 September.

6 MR. HORMEL: I agree.

7 THE COURT: You agree to everything?

8 MR. HORMEL: Well, to this part.

9 THE COURT: I understood.

10 MR. KLEIN: Just to mention real briefly, my client  
11 has been in custody a long time. She'd like this case to move  
12 along. On the other hand, I have a murder trial starting that  
13 day in state court.

14 THE COURT: On the 29th?

15 MR. KLEIN: I was going to have a real problem if we  
16 had stayed on schedule here. If it moves it a couple weeks,  
17 that's best for me. If it moves a couple months, I think we're  
18 stuck along for the ride.

19 THE COURT: Of course, my decision is going to be  
20 either grant the motion, in which case I think the case  
21 disappears, or -- do I understand that correctly, Mr. Hanlon?

22 MR. HANLON: Unless the government filed an appeal.

23 THE COURT: Right. I know. Then --

24 MR. HANLON: Yes, you are correct, Your Honor.

25 THE COURT: In terms of --

1                   MR. HANLON: Yes. I just didn't want to feel like I  
2 was waiving any kind of appeal.

3                   THE COURT: We wouldn't have a trial unless you  
4 appealed and were successful on appeal.

5                   So do you want to talk about a new trial date now, so  
6 we have that on the schedule, or do you want to wait until after  
7 I've made a decision, and we can have a pretrial hearing? We'll  
8 make arrangements so those of you from Spokane can attend by  
9 video for that purpose.

10                  How would you like to proceed.

11                  MR. HANLON: Your Honor, I would prefer a status  
12 conference sometime in late June or early July, when  
13 Ms. Birdsong is here, because we will have her in federal  
14 custody.

15                  THE COURT: I'm going to leave the trial date the  
16 29th. I understand we're not going to actually go trial on the  
17 29th, but I think it makes sense to get Ms. Birdsong in custody.  
18 That way everybody is here, and we can talk about a trial date  
19 that works for everyone.

20                  MR. HANLON: She will be here. I just don't have the  
21 exact date. I thought it was the 24th of June. She will be  
22 here this month, Your Honor.

23                  THE COURT: All right. Let me make a decision on the  
24 pretrial motion, and, then, if necessary, we'll schedule a  
25 status conference. Those of you from Spokane can attend by

1 video, and we'll make those arrangements, and we'll get a trial  
2 date worked out. But we're going to leave it on July 29th for  
3 now.

4 MR. HANLON: Thank you, Your Honor.

5 MR. LOCKWOOD: Thank you, Your Honor.

6 THE COURT: Court is in brief recess.

7 (ADJOURNMENT AT 10:44 A.M.)

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1 REPORTER'S CERTIFICATE  
2  
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5 I, LYNETTE WALTERS, Registered Professional Reporter,  
6 Certified Realtime Reporter and Certified Court Reporter;

7 DO HEREBY CERTIFY:

8 That the foregoing transcript, Pages 1 through 59,  
9 contains a full, true, complete and accurate transcription of my  
10 shorthand notes of all requested matters held in the foregoing  
11 captioned case, including all objections and exceptions made by  
12 counsel, rulings by the court, and any and all other matters  
13 relevant to this case.

14 DATED this 14th day of January, 2020.

15

16

17 s/ Lynette Walters  
18 LYNETTE WALTERS, RPR, CRR, CCR  
CCR NO. 2230

19

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21

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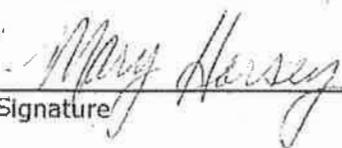
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U. S. Department of Justice  
United States Marshals Service

Detention Services  
Intergovernmental Agreement

1. Agreement Number 85-07-0040	2. Effective Date See Block 19	3. Facility Code(s) OCV	4. DUNS Number 01-020-3644
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division 2604 Jefferson Davis Hwy Alexandria, VA 22301		6. Local Government Yakima County 111 N. Front Street Yakima, WA 98901 Tax ID#: 91-6000138	
7. Appropriation Data  15X1020		8. Local Contact Person Ed Campbell, Director	
		9. Tel: (509) 574-1758 Email: ed.campbell@co.yakima.wa.us	
Services		Estimated Number of Federal Beds	Per-Diem Rate
10. This agreement is for the housing, safekeeping, and subsistence of federal prisoners, in accordance with content set forth herein.		11. Male 200	12. \$84.51
13. Optional Guard/Transportation Services to:  <input checked="" type="checkbox"/> Medical Facility <input checked="" type="checkbox"/> U.S. Courthouse		14.  Guard/Transportation Hourly Rate: \$35.00  Mileage shall be reimbursed by the Federal Government at the GSA Federal Travel Regulation Mileage Rate.	
15. Local Government Certification  <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct, this document has been duly authorized by the body governing the Department or Agency and the Department or Agency will comply with all provisions set forth herein.</i>		16. Signature of Person Authorized to Sign (Local)   Signature Ed Campbell Print Name Director Title Date	
17. Prisoner and Detainee Type Authorized  <input checked="" type="checkbox"/> Adult Male <input type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female	18. Other Authorized Agency User  <input checked="" type="checkbox"/> BOP <input checked="" type="checkbox"/> ICE	19. Signature of Person Authorized to Sign (Federal)   Signature Mary Horsey Print Name Grants Specialist Title Date SEP - 9 2010	

GOVERNMENT  
EXHIBIT

Continuation of Signature Page - U.S. Department of Justice Detention Services Intergovernmental Agreement

Dated on this 31 day of August 2010.



BOARD OF COUNTY COMMISSIONERS

A handwritten signature in black ink.

Michael D. Leita, Chairman

A handwritten signature in black ink.

Kevin J. Bouchey, Commissioner

A handwritten signature in black ink.

J. Rand Elliott, Commissioner

*Constituting the Board of County Commissioners  
for Yakima County, Washington*

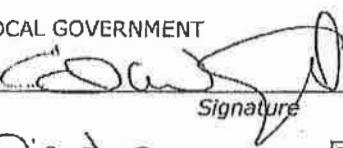
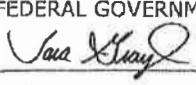
Attest:

Tiera Gerard 8/31/10  
Tiera Gerard BCCC507-2010  
Deputy Clerk of the Board

Perry Austin  
Corporate Counsel Division

U. S. Department of Justice  
United States Marshals Service

Modification of Intergovernmental Agreement

1. Agreement No. 85-07-0040	2. Effective Date May 24, 2018	3. Facility Code(s) OCV	4. Modification No. Two (2)	5. DUNS No. 01-120-3644
6. Issuing Federal Agency  United States Marshals Service Prisoner Operations Division Intergovernmental Agreements Branch CG-3, Suite 300 Washington, DC 20530-0001		7. Local Government  Yakima County Jail 111 N. Front Street Yakima, WA 98901		
8. Appropriation Data 15X1020	9. Per-Diem Rate \$ 84.51	10. Guard/Transportation Hourly Rate \$ 35.00		
11. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 1, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:				
The purpose of this modification is to:  1) Page 1 of IGA Block #17: Prisoner and Detainee Type Authorized: Add Adult Female				
NO OTHER TERMS OR CONDITIONS TO INCLUDE PRICE, ARE AFFECTED BY THIS CHANGE				
12. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:  A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT				
B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ALL COPIES TO U. S. MARSHAL				
13. APPROVALS				
A. LOCAL GOVERNMENT  Signature Director TITLE	B. FEDERAL GOVERNMENT  Signature Grants Specialist TITLE			
	DATE 5/23/18			
	DATE May 24, 2018			

Page 1 of 1

GOVERNMENT  
EXHIBIT

2



# United States Marshals Service POLICY DIRECTIVES

## PRISONER OPERATIONS

### 9.22 INTERGOVERNMENTAL AGREEMENT PROGRAM

**A.** **Authority:** Title 18 of the United States Code was amended by the USMS Act of 1988 and the Department of Justice (DOJ) Appropriations Act of 2001 to include the following:

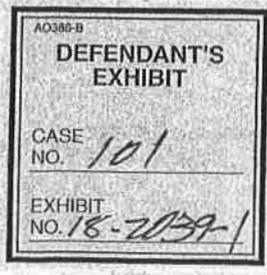
1. Section 4013(a) authorizes the Attorney General to make payments from the Federal Prisoner Detention (FPD) Account for the necessary clothing, medical care, guard services, housing and care of prisoners held in a USM's custody in accordance with federal law, under agreements with state or local governments.
2. Section 4006, Subsistence for Prisoners: The Attorney General will allow and pay only the reasonable and actual costs of the subsistence of prisoners in any USM's custody.

**B.** **General:** An IGA is a formal written agreement between the USMS and a local or state government for the housing, care and safekeeping of federal prisoners in exchange for payment by the USMS, at a fixed per diem rate, for each prisoner held. State and local detention facilities the USMS uses must have an approved award document describing the services to be performed and the daily rate the USMS will pay. An approved IGA authorizes the expenditure of funds from the FPD Account. Additional IGA considerations are:

1. **Electronic Intergovernmental Agreement (eIGA):** A new on-line automated system established by the Office of the Federal Detention Trustee (OFDT) which is used to establish new IGAs and per diem rate increases for existing IGAs.
2. **Non eIGA (Exempt):** Actions exempt from eIGA include:
  - a. IGAs at non-continental United States (CONUS) locations;
  - b. Limited Use Agreements (LUAs);
  - c. Juvenile Facilities; and
  - d. Administrative medications involving non-monetary terms.

**C. IGA Award Procedures:**

1. Each USM will do the following:
  - a. Review the district's prisoner population loads and any special needs (i.e., juveniles, illegal aliens, hospital guard services, special separation cases, Justice Prisoner Alien Transport System (JPATS) hold-over needs, and female detention facility) to assess the district's detention requirements;
  - b. Identify potential state/local detention facilities that meet USMS detention standards and are willing to support the district's detention requirements;
  - c. Coordinate with the BOP, the United States Department of Homeland Security, United States Immigration and Customs Enforcement (DHS/ICE) and other



districts to determine if they have detention requirements in the district, including requirements in specific facilities or locations. The USMS has priority access to available jail space in facilities with IGAs;

- d. Contact detention facilities by location, capability and types of detention services provided to determine if they are interested in housing federal prisoners; and
- e. Conduct an initial on-site inspection of detention facilities to determine the facility's level of compliance with USMS inspection guidelines. A Form USM-218, Detention Facility Investigative Report, will be completed to document the inspection.
- f. Provide the detention facility with:
  - 1) A sample IGA to review or clarify any special terms or conditions (i.e., billing procedures, guard service). To obtain a sample IGA, contact the district's designated POD Regional Specialist;
  - 2) A Form USM-243, Cost Sheet for Detention Services and an instruction booklet for completing non eIGA applications;
  - 3) A copy of the Office of Management and Budget's (OMB) Circular No. A-87, Cost Principles for State, Local and Indian Tribal Governments; and
  - 4) For eIGA applicants, OFDT's website address: [www.usdoj.gov/ofdt](http://www.usdoj.gov/ofdt) and help desk number, 202-305-8790, for instructions on completing the eIGA application.
- g. Non eIGA (Exempt) applicants will review the USM-243 for completeness and accuracy of information (particularly staffing levels and type of services provided) and submit a completed IGA package to POD with the following items:
  - 1) Completed Form USM-242, Request for Detention Services (RDS) with any special conditions (such as guard services, including BOP/DHS/ICE as users);
  - 2) Form USM-218; and
  - 3) Completed Form USM-243.
2. OFDT will review eIGA applications for completeness and accuracy of information and submit directly to POD.
3. Upon receipt of completed IGA packages, POD will negotiate directly with the detention facility on a reasonable per diem rate. The standard processing time for all IGA actions is 60 to 90 days.
4. The USM will not negotiate with any detention facility about rates or make promises to the facility regarding a specific rate.

**D. IGA Modification Procedures:**

1. eIGA Rate Modification: If a facility desires a rate modification, the facility must complete the on-line application by contacting OFDT.

2. Non eIGA (Exempt) Modification: If a non-eIGA facility desires a rate modification, the USM must submit the following to POD:
  - a. Form USM-242; and
  - b. Form USM-243, information to be based on the previous fiscal year or an approved budget.
3. The USM will not pay a new per diem rate until a written modification, signed by POD and the state or local government, is received. The newly established rate and its effective date will be included in the modification.
4. The USM may only obligate funds in the district's workplan. If necessary, the district will request additional funding from POD to cover rate increases that will result in existing workplan funding being exceeded.
5. Rate increases will not be applied retroactively.

**E. Guard and Transportation Services:**

1. USMs will coordinate with local governments to determine if they are willing to provide guard services for medical appointments and/or transportation to and from federal court, and if they have enough employees to provide these services.
2. Detention facilities are not required to provide guard and transportation services other than for medical emergencies.
3. POD will conduct a cost comparison to verify if it is more efficient for detention facility guards or Deputy United States Marshals (DUSMs) to perform these services.
4. Hourly guard/transportation rates will be based on basic salary and fringe benefits of employees who will perform the service. The USMS will obtain a letter from the local government outlining this information.
5. Mileage fees charged for transportation services will be based on the current General Services Administration (GSA) rate.
6. Districts will contact POD for processing guidance regarding requests from private companies to provide guard and transportation services.

**F. Other Modifications:** Listed below are examples of other types of modifications that the USM or POD may request:

1. To include or delete BOP and/or DHS/ICE as authorized federal user agencies;
2. To include guard services for medical appointments and/or transportation to and from federal court;
3. To add a hold harmless clause for federal excess property (vehicles) being provided to the detention facility;
4. To include a BOP work-release program;
5. To increase/decrease the number of jail days; and/or
6. To include Cooperative Agreement Program (CAP) language.

**G. Limited-Use Agreements (LUAs):**

1. The USM is permitted to negotiate a reasonable per diem rate based on a facility of similar size, level of prisoner services, and staffing.
2. The USM will conduct an informal assessment of the detention facility's compliance with minimum standards and prepare a USM-218A.
3. The USM will submit the USM-242 and USM-218A to POD.
  - a. POD will assign and enter a Prisoner Tracking System (PTS) code.
  - b. A LUA may be issued for up to one year but will not exceed 150 calendar days of USMS prisoner day usage.
4. If the jail bill falls within district funding ceilings, the following should occur:
  - a. The USM will call POD for an agreement number and unit code (if one has never been assigned); and
  - b. The USM will report the use of the facility on the USM-268A report and enter the jail in PTS.

**H. Detention Facility Inactivation/Restriction and Court Orders:**

1. The USM will immediately notify POD in writing when a detention facility becomes inactive, restricted or is under a court order.
2. A detention facility is considered restricted if the USMS cannot obtain all the bed space they require in that facility due to overcrowding, court order, or if the facility cannot accommodate large numbers of federal prisoners due to limited capacity.
3. A detention facility may become inactive or restricted because of the following:
  - a. Prisoner litigation;
  - b. Overcrowding, according to local authorities;
  - c. Federal court order;
  - d. State court order;
  - e. State government order;
  - f. Detention facility has no desire to continue to house federal prisoners;
  - g. Dispute over IGA terms/provisions;
  - h. USMS decision to reduce/suspend use;
  - i. USMS does not need facility; and/or
  - j. Temporary restrictions due to physical plant factors (fire, renovation).
4. IGAs are terminated or canceled only when the detention facility no longer exists or is closed with no possibility of reopening.

5. Detention facilities that are no longer used to house federal prisoners but are still operating are placed in an inactive status because districts may wish to use them in the future. Once reactivated, a new IGA does not have to be negotiated unless the facility requests a per diem rate adjustment.
6. For detention facilities under federal or state court orders or under litigation, the USM will notify POD and provide the following information:
  - a. Facility name;
  - b. IGA number;
  - c. District;
  - d. Type of Action (i.e., federal or state court order or litigation);
  - e. Reasons for court order;
  - f. Effective date of action;
  - g. Copy of court order; and
  - h. Date court order canceled or satisfied.

**Cancellation Clause:** Supersedes Policy Directive 9.2, *Prisoner Detention and Housing*.

**Authorization and Date of Approval:**

**By Order of:**

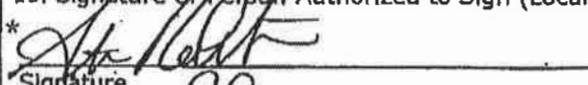
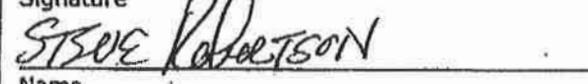
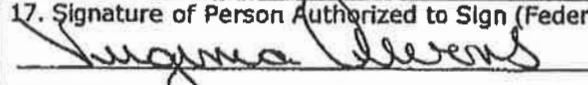
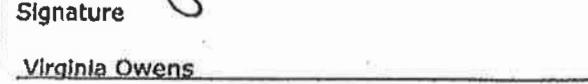
/S/  
John F. Clark  
Director  
U.S. Marshals Service

**Effective Date:**

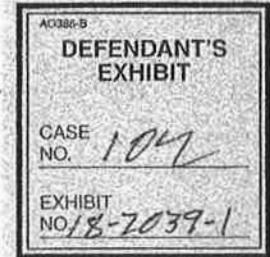
7/6/10

## Multi-Agency Detention Services

## Intergovernmental Agreement

1. Agreement Number 85-07-0040 (Cancels J-E85-M-040)	2. Effective Date June 1, 2007	3. Facility Code(s) OCV
4. Issuing Federal Agency  United States Marshals Service Witness Security & Prisoner Operations Division Washington, DC 20530-1000		5. Local Government  Yakima County Jail 111 North Front Street Yakima, WA 98901  Tax ID # 91-6001387
6. Appropriation Data  15X1020		7. Local Contact Person  Steve Robertson, Director
		8. Tel: (509) 574-1758 Fax: (509) 574-1701
9. This agreement is for the housing, safekeeping, and subsistence of federal prisoners, in accordance with content set forth herein.		Number of Federal Beds 10. 40,000
12. To Be Used if Prisoner Transportation is being provided.		Per-Diem Rate 11. \$ 71.25
14. Local Government Certification  <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct, this document has been duly authorized by the body governing of the Department or Agency and the Department or Agency will comply with all provisions set forth herein.</i>		13. Guard Hour Rate:  Mileage shall be reimbursed by the Federal Government at the GSA Federal Travel Regulation Mileage Rate.
		15. Signature of Person Authorized to Sign (Local)  *  Signature  Name  Title Date
16. Prisoner & Detainee Type Authorized  <input checked="" type="checkbox"/> Adult Male <input type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female		17. Signature of Person Authorized to Sign (Federal)   Signature  Name Title Date

\*See Board of County Commissioner's Signature Page on Back (Page 11)



Gonzalez Maria et al

000000121

1 JOSEPH H. HARRINGTON  
2 United States Attorney  
3 Eastern District of Washington  
4 Ian L. Garriques  
5 Assistant United States Attorney  
6 402 E. Yakima Ave., Ste. 210  
7 Yakima, WA 98901-2760  
8 Tel. (509) 454-4425

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
APR 10 2018  
SEAN F. McAVOY, CLERK DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIA ANDREA GONZALEZ,

Defendant.

No. 1:18-CR-2005-SAB  
SECOND SUPERSEDING INDICTMENT  
21 U.S.C. § 841(a)(1), (b)(1)(A)(viii) –  
Possession with Intent to Distribute 50  
Grams or More of Actual  
Methamphetamine (Count 1)  
21 U.S.C. § 841(a)(1), (b)(1)(B)(i) –  
Possession with Intent to Distribute 100  
Grams or More of a Mixture and Substance  
Containing a Detectable Amount of Heroin  
(Count 2)  
18 U.S.C. § 924(c)(1)(A) –  
Possession of Firearm in Furtherance of  
Drug Trafficking Crime (Count 3)  
18 U.S.C. § 922(g)(1) – Felon in  
Possession of Firearm and Ammunition  
(Count 4)  
21 U.S.C. § 841(a)(1), (b)(1)(C) –  
Possession with Intent to Distribute a  
Mixture and Substance Containing a  
Detectable Amount Methamphetamine  
(Count 5)  
21 U.S.C. § 841(a)(1), (b)(1)(C) –  
Possession with Intent to Distribute a  
Mixture and Substance Containing a  
Detectable Amount of Heroin (Count 6)  
Notice of Criminal Forfeiture

The Grand Jury charges:

COUNT 1

On or about November 21, 2017, in the Eastern District of Washington, the  
Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess

1 with intent to distribute 50 grams or more of actual methamphetamine, a Schedule II  
2 controlled substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii).

3 COUNT 2

4 On or about November 21, 2017, in the Eastern District of Washington, the  
5 Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess  
6 with intent to distribute 100 grams or more of a mixture and substance containing a  
7 detectable amount of heroin, a Schedule I controlled substance, in violation of 21 U.S.C.  
8 § 841(a)(1), (b)(1)(B)(i).

9 COUNT 3

10 On or about November 21, 2017, in the Eastern District of Washington, the  
11 Defendant, MARIA ANDREA GONZALEZ, did knowingly possess a firearm, to wit: a  
12 North American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial  
13 number L113635, in furtherance of a drug trafficking crime for which she may be  
14 prosecuted in a court of the United States, to wit: Possession with Intent to Distribute 50  
15 Grams or More of Actual Methamphetamine, in violation of 21 U.S.C. § 841(a)(1),  
16 (b)(1)(A)(viii); and Possession with Intent to Distribute 100 Grams or More of a Mixture  
17 and Substance Containing a Detectable Amount of Heroin, in violation of 21 U.S.C.  
18 § 841(a)(1), (b)(1)(B)(i); all in violation of 18 U.S.C. § 924(c)(1)(A).

19 COUNT 4

20 On or about November 21, 2017, in the Eastern District of Washington, the  
21 Defendant, MARIA ANDREA GONZALEZ, who had previously been convicted of a  
22 crime punishable by a term of imprisonment exceeding one year, did knowingly possess,  
23 in and affecting interstate commerce, a firearm and ammunition, to wit: a North  
24 American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial number  
25 L113635, and 4 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition  
26 bearing headstamp C, which firearm and ammunition had theretofore been shipped and  
27 transported in interstate and foreign commerce, in violation of 18 U.S.C. § 922(g)(1),  
28 924(a)(2).

## COUNT 5

On or about January 22, 2018, in the Eastern District of Washington, the Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess with intent to distribute a mixture and substance containing a detectable amount methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C).

**COUNT 6**

On or about January 22, 2018, in the Eastern District of Washington, the Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess with intent to distribute a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C).

## NOTICE OF CRIMINAL FORFEITURE

The allegations contained in this Second Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 21 U.S.C. § 853, 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

Pursuant to 21 U.S.C. § 853, upon conviction of an offense in violation of 21 U.S.C. § 841(a)(1), as set forth in Counts 1, 2, 5, and 6 of this Second Superseding Indictment, the Defendant, MARIA ANDREA GONZALEZ, shall forfeit to the United States of America, any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such offense(s) and any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of the offense(s). The assets to be forfeited include, but are not limited to:

- (a) \$903.00 in United States currency;
- (b) a North American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial number L113635; and
- (c) 4 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition

1 bearing headstamp C.

2 If any forfeitable property, as a result of any act or omission of the Defendant:

- 3 (a) cannot be located upon the exercise of due diligence;
- 4 (b) has been transferred or sold to, or deposited with, a third party;
- 5 (c) has been placed beyond the jurisdiction of the court;
- 6 (d) has been substantially diminished in value; or
- 7 (e) has been commingled with other property which cannot be divided without
- 8 difficulty,

9 the United States of America shall be entitled to forfeiture of substitute property  
10 pursuant to 21 U.S.C. § 853(p).

11 Upon conviction of an offense in violation of 18 U.S.C. § 924(c)(1)(A) or  
12 922(g)(1), as set forth in Counts 3 and 4 of this Second Superseding Indictment, the  
13 Defendant, MARIA ANDREA GONZALEZ, shall forfeit to the United States, pursuant  
14 to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), any firearms and ammunition involved  
15 in the commission of the offense, including, but not limited to:

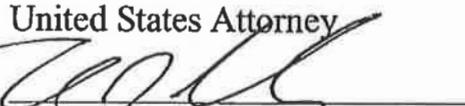
- 16 (a) a North American Arms, Model NAA-22LR, .22LR caliber revolver, bearing  
17 serial number L113635; and
- 18 (b) 4 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition bearing  
19 headstamp C.

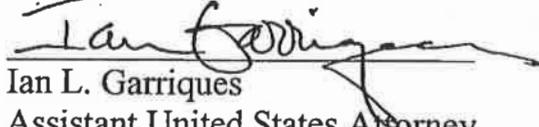
20 DATED this 10th day of April, 2018.

21 A TRUE BILL

22  
23 Presiding Juror

JOSEPH H. HARRINGTON  
United States Attorney

24   
25 Thomas J. Hanlon  
26 Assistant United States Attorney

27   
28 Ian L. Garriques  
29 Assistant United States Attorney  
Second Superseding Indictment

## UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 26, 2018

SEAN F. McAVOY, CLERK

United States of America	)	
v.	)	
MARIA ANDREA GONZALEZ	)	Case No. 1:18-CR-2005-SAB-1
Defendant	)	

## ORDER OF DETENTION PENDING TRIAL

## Part I - Eligibility for Detention

Upon the

Motion of the Government attorney pursuant to 18 U.S.C. § 3142(f)(1), or  
 Motion of the Government or Court's own motion pursuant to 18 U.S.C. § 3142(f)(2),

the Court held a detention hearing and found that detention is warranted. This order sets forth the Court's findings of fact and conclusions of law, as required by 18 U.S.C. § 3142(i), in addition to any other findings made at the hearing.

## Part II - Findings of Fact and Law as to Presumptions under § 3142(e)

**A. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(2) (*previous violator*):** There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the following conditions have been met:

(1) the defendant is charged with one of the following crimes described in 18 U.S.C. § 3142(f)(1):

(a) a crime of violence, a violation of 18 U.S.C. § 1591, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**

(b) an offense for which the maximum sentence is life imprisonment or death; **or**

(c) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508); **or**

(d) any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**

(e) any felony that is not otherwise a crime of violence but involves:

(i) a minor victim; (ii) the possession of a firearm or destructive device (as defined in 18 U.S.C. § 921); (iii) any other dangerous weapon; or (iv) a failure to register under 18 U.S.C. § 2250; **and**

(2) the defendant has previously been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed; **and**

(3) the offense described in paragraph (2) above for which the defendant has been convicted was committed while the defendant was on release pending trial for a Federal, State, or local offense; **and**

(4) a period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (2) above, whichever is later.

**B. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(3) (narcotics, firearm, other offenses):** There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses:

- (1) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508);
- (2) an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b;
- (3) an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
- (4) an offense under Chapter 77 of Title 18, U.S.C. (18 U.S.C. §§ 1581-1597) for which a maximum term of imprisonment of 20 years or more is prescribed; **or**
- (5) an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

**C. Conclusions Regarding Applicability of Any Presumption Established Above**

- The defendant has not introduced sufficient evidence to rebut the presumption above.

**OR**

- The defendant has presented evidence sufficient to rebut the presumption, but after considering the presumption and the other factors discussed below, detention is warranted.

**Part III - Analysis and Statement of the Reasons for Detention**

After considering the factors set forth in 18 U.S.C. § 3142(g) and the information presented at the detention hearing, the Court concludes that the defendant must be detained pending trial because the Government has proven:

- By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.
- By a preponderance of evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance as required.

In addition to any findings made on the record at the hearing, the reasons for detention include the following:

- Weight of evidence against the defendant is strong
- Subject to lengthy period of incarceration if convicted
- Prior criminal history
- Participation in criminal activity while on probation, parole, or supervision
- History of violence or use of weapons
- History of alcohol or substance abuse
- Lack of stable employment
- Lack of stable residence
- Lack of financially responsible sureties
- Lack of significant community or family ties to this district

- Significant family or other ties outside the United States
- Lack of legal status in the United States
- Subject to removal or deportation after serving any period of incarceration
- Prior failure to appear in court as ordered
- Prior attempt(s) to evade law enforcement
- Use of alias(es) or false documents
- Background information unknown or unverified
- Prior violations of probation, parole, or supervised release

#### OTHER REASONS OR FURTHER EXPLANATION:

As to the nature and circumstances of the alleged offense, the United States proffered that in November 2017, law enforcement sought to arrest Defendant on an outstanding state warrant. During the arrest, Defendant engaged in resistive behavior and reached for her purse. When the purse was searched after the arrest, law enforcement located a loaded firearm and approximately 364 grams of methamphetamine. At the time, Defendant was a prohibited person due to her prior felony history.

In this matter, the United States has filed a Section 851 enhancement, which elevates the penalties for this offense to a mandatory minimum of life imprisonment if convicted. This creates a significant incentive for Defendant to fail to appear for future court proceedings. The Court is also concerned about the safety risk Defendant poses due to the allegations involving the presence of the firearm during an altercation with law enforcement and in combination with a distribution level of narcotics.

Although the least important factor, the weight of the evidence as proffered by the United States appears to be significant, which is relevant to Defendant's incentive to fail to appear at future court proceedings.

Turning to Defendant's history and characteristics, Defendant is 29 years old, and resides with her parents and youngest child in Yakima. Defendant has secured employment if released. However, the Court is concerned about Defendant's criminal history. Defendant has had regular and consistent law enforcement contact since she was 13, and has a history of controlled substances charges that are similar to the conduct charged here. Defendant has failed to appear for court at least 20 times, including several times in 2017. Defendant also failed to report for a previously-imposed jail sentence. She has a history of non-compliance while on court supervision, including having probation revoked and drawing new charges while prior cases were pending. The instant charge arose while on release for a 2016 drug charge. Moreover, immediately after a recent state court appearance, Defendant was arrested upon leaving court on the instant federal warrant. When she was patted down during this arrest, law enforcement found 42 grams of heroin, 13 grams of methamphetamine, and 10 grams of marijuana on her person. This history of behavior indicates an unwillingness to comply with court imposed conditions and to refrain from criminal activity if released.

The Court finds by clear and convincing evidence that no combination of conditions exist that will reasonably assure the safety of the community, and by a preponderance of the evidence that no combination of conditions exist that will reasonably assure Defendant's future appearance as required.

#### Part IV - Directions Regarding Detention

The defendant is remanded to the custody of the Attorney General or to the Attorney General's designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: 01/26/2018

s/Mary K. Dimke

United States Magistrate Judge

1 JOSEPH H. HARRINGTON  
2 United States Attorney  
3 Eastern District of Washington  
4 Thomas. J. Hanlon  
5 Assistant United States Attorney  
6 402 E. Yakima Avenue, Suite 210  
7 Yakima, Washington 98901  
8 (509) 454-4425

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FEB 13 2013

SEAN F. McAVOY, CLERK  
YAKIMA, WASHINGTON DEPUTY

6 UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 GEORGE SKYLAR CLOUD,  
12 NICOLE LEE SUNNY CLOUD, and  
13 KRISTEN ASHLIE CLOUD,

14 Defendants.

1:17-CR-02053-SAB

SUPERSEDING INDICTMENT

Ct 1: 18 U.S.C. §§ 1111, 1153, 2 –  
First Degree Murder and Aiding and  
Abetting

Ct 2: 18 U.S.C. §§ 924(c)(1)(A), 2 –  
Discharge of a Firearm During a  
Crime of Violence and Aiding and  
Abetting

Ct 3: 18 U.S.C. § 3-Accessory After  
the Fact

22 The Grand Jury charges:

23 COUNT ONE

24  
25 On a date unknown to the grand jury, but between on or about March 14,  
26 2016, and on or about March 31, 2016, in the Eastern District of Washington,

27  
28 INDICTMENT

1 within the external boundaries of the Yakama Nation Indian Reservation, and on  
2 trust land, the Defendant, GEORGE SKYLAR CLOUD, an Indian, willfully,  
3 deliberately, maliciously, and with premeditation and malice aforethought, did  
4 unlawfully kill F.M. by shooting her with a firearm, and did aid and abet the same;  
5 all in violation of 18 U.S.C. §§ 1153, 1111, and 2.

6  
7 COUNT TWO  
8

9 On a date unknown to the grand jury, but between on or about March 14,  
10 2016, and on or about March 31, 2016, in the Eastern District of Washington,  
11 within the external boundaries of the Yakama Nation Indian Reservation, and on  
12 trust land, the Defendant, GEORGE SKYLAR CLOUD, an Indian, did knowingly  
13 use, carry, brandish, and discharge a firearm during and in relation to, and possess  
14 in furtherance of, a crime of violence for which GEORGE SKYLAR CLOUD may  
15 be prosecuted in a court of the United States, that is: First Degree Murder, as  
16 charged in Count One; and did aid and abet the same; all in violation of 18 U.S.C.  
17 §§ 924(c)(1)(A)(iii), 2.  
18  
19

20 COUNT THREE  
21

22 On a date unknown to the grand jury, but between on or about March 14,  
23 2016, and on or about March 31, 2016, in the Eastern District of Washington, the  
24 Defendants, NICOLE LEE SUNNY CLOUD and KRISTEN ASHLIE CLOUD,  
25 knowing that George Cloud and Neil Cloud had committed an offense against the  
26  
27

28 INDICTMENT

1 United States, to wit: First Degree Murder, in violation of 18 U.S.C. § 1111, did  
2 knowingly assist George Cloud and Neil Cloud in order to hinder and prevent their  
3 apprehension, trial, and punishment, in violation of 18 U.S.C. § 3.  
4  
5

6 DATED: February 13, 2018

7 A TRUE BILL  
8  
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10  
11  
12 JOSEPH H. HARRINGTON  
13 United States Attorney  
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15 Thomas J. Hanlon  
16 Assistant United States Attorney  
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Presiding Juror

INDICTMENT

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 12, 2018

SEAN F. MCALVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 1:17-CR-02053-SAB-1

Plaintiff,

ORDER GRANTING UNITED  
STATES' MOTION FOR  
DETENTION

v.

NICOLE LEE SUNNY CLOUD,

**MOTION GRANTED**  
(ECF No. 7)

Defendant.

At Defendant's January 12, 2018, detention hearing, Defendant was present, in custody, with counsel Ulvar Klein. Assistant U.S. Attorney Thomas Hanlon appeared for the United States. At the time of the hearing, Defendant consented to proceed by video (parties in Yakima, Judge Rodgers presiding in Spokane).

Defendant, personally and through counsel, waived the right to a detention hearing. Defendant shall be held in detention pending disposition of this case or until further order of the court. Defendant is committed to the custody of the U.S. Marshal for confinement separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded reasonable opportunity for private consultation with counsel.

If a party desires this Court to reconsider conditions of release because of material and newly discovered circumstances pursuant to 18 U.S.C. § 3142(f), that party shall file a two-page motion for reconsideration succinctly stating what circumstances are new, how they are established, and the requested change in

ORDER - 1

1 conditions of release. The motion shall indicate whether opposing counsel or  
2 Pretrial Services object, whether a hearing is desired, and whether a supplemental  
3 pretrial report is requested. This Court will treat the motion as expedited and  
4 submitted without argument, and will set a hearing or issue other orders as may be  
5 appropriate.

6 If a party desires that another Court review this order pursuant to 18 U.S.C.  
7 § 3145, that party shall promptly file a motion for review before the district judge  
8 to whom the case is assigned, as further described in the Detention Order Review  
9 Protocol published for the Eastern District of Washington. Both parties shall  
10 cooperate to insure that the motion is promptly determined.

11 The United States' Motion for Detention, ECF No. 7, is **GRANTED**.

12 **IT IS SO ORDERED.**

13 DATED January 12, 2018.

A handwritten signature in black ink, appearing to read "M", which is likely the initials of the judge.

14  
15 JOHN T. RODGERS  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
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ORDER - 2

1 MICHAEL C. ORMSBY  
2 United States Attorney  
3 Eastern District of Washington  
4 THOMAS J. HANLON  
5 Assistant United States Attorney  
6 402 E. Yakima Ave., Suite 210  
Yakima, WA 98901  
Telephone: (509) 454-4425

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUL 07 2015

SEAN F. McAVOY, CLERK DEPUTY  
SPOKANE, WASHINGTON

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10  
11 UNITED STATES OF AMERICA, ) INDICTMENT  
12 Plaintiff, ) ) 1:15-CR-2044-SAB  
13 ) ) Ct 1: 18 U.S.C. § 922(g)(1) – Felon in  
14 ) ) Possession of Ammunition  
15 ) ) vs. ) ) Ct 2: 18 U.S.C. § 922(d) – Transfer of  
16 ) ) ) Firearm to Felon  
17 ) ) TIMOTHY ROBERT MAXWELL, )  
18 ) ) MARGARET SHARON ) Ct. 3: 18 U.S.C. §922(g)(1) – Felon in  
19 ) ) BUCHANAN, and ) Possession of Firearm  
20 ) ) AARON JOSEPH BOUTILLIER, )  
21 ) ) Defendants. )  
22 ) )  
23 ) )  
24 ) )  
25 ) )  
26 ) )  
27 ) )  
28 ) )

The Grand Jury charges:

COUNT 1

25 That on or about June 25, 2015, in the Eastern District of Washington, the  
26  
27 Defendants, TIMOTHY ROBERT MAXWELL and MARGARET SHARON  
28

INDICTMENT

1 BUCHANAN, having been convicted of a crime punishable by imprisonment for a  
2 term exceeding one year, did knowingly possess in and affecting interstate  
3 commerce ammunition, to wit: 25 rounds of Blaster 9 millimeter ammunition,  
4 which ammunition had theretofore been transported in interstate and foreign  
5 commerce, in violation of Title 18, United States Code, Section 841(a)(1).  
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9 **COUNT 2**

10 Between on or about June 3, 2015 and June 12, 2015, in the Eastern District  
11 of Washington, the defendant, AARON JOSEPH BOUTILLIER, knowingly  
12 disposed of a firearm, to wit, a Smith and Wesson, Model SD9VE, 9 millimeter  
13 pistol, bearing serial number HFT9025, knowing and having reasonable cause to  
14 believe that TIMOTHY ROBERT MAXWELL had been convicted of a crime  
15 punishable by imprisonment for a term exceeding one year, in violation of Title 18,  
16 United States Code, Section 922(d).  
17  
18

19 **COUNT 3**

20 Between on or about June 3, 2015 and June 12, 2015, in the Eastern District  
21 of Washington, the Defendant, TIMOTHY ROBERT MAXWELL, having been  
22 convicted of a crime punishable by imprisonment for a term exceeding one year,  
23 did knowingly possess in and affecting interstate commerce, a firearm, to wit: a  
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1 Smith and Wesson, Model SD9VE, 9 millimeter pistol, bearing serial number  
2 HFT9025, which firearm had theretofore been transported in interstate and foreign  
3 commerce, in violation of Title 18, United States Code, Section 922(g)(1).  
4

5

6 DATED: July 7, 2015

7

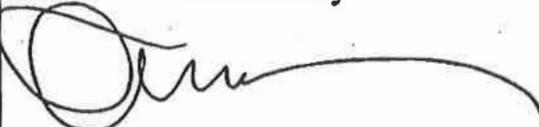
8 A TRUE BILL

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11 Fore~

12 MICHAEL C. ORMSBY  
13 United States Attorney

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15 SHAWN N. ANDERSON  
16 Assistant United States Attorney

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18 THOMAS J. HANLON  
19 Assistant United States Attorney

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INDICTMENT

## United States District Court

for the

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Eastern District of Washington

May 21, 2018

## Petition for Warrant or Summons for Offender Under Supervision

SEAN F. McAVOY, CLERK

Name of Offender: Margaret Buchanan

Case Number: 0980 1:15CR02044-SAB-2

Address of Offender:

Yakima, WA 98902

Name of Supervising Judicial Officer: The Honorable Stanley A. Bastian, U.S. District Judge

Date of Original Sentence: March 2, 2016

Original Offense: Felon in Possession of Ammunition, 18 U.S.C. § 922(g)(1)

Original Sentence: Prison - 7 months;  
TSR - 36 months

Type of Supervision: Supervised Release

Asst. U.S. Attorney: Thomas J. Hanlon

Date Supervision Commenced: August 18, 2016

Defense Attorney: Federal Defender's Office

Date Supervision Expires: August 17, 2019

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PETITIONING THE COURT**To incorporate the violation contained in this petition in future proceedings with the violations previously reported to the Court on May 16, 2018, and to issue a warrant.**

The probation officer believes that the offender has violated the following condition of supervision:

Violation Number    Nature of Noncompliance

2            **Special Condition #19:** You must abstain from the use of illegal controlled substances, and must submit to urinalysis and sweat patch testing, as directed by the supervising officer, but no more than six tests per month, in order to confirm continued abstinence from these substances.

**Supporting Evidence** On August 19, 2016, Ms. Buchanan signed her conditions of supervised release relative to docket number 1:15CR02044-SAB-2, indicating she understood all conditions as ordered by the Court.

Ms. Buchanan violated special condition #19, on or about May 17, 2018, by consuming an illegal controlled substance. On May 17, 2018, Ms. Buchanan provided a presumptive positive urinalysis (UA) test for opiates. Ms. Buchanan denied consuming any controlled substance and the UA was sent to Alere Toxicology (Alere) for confirmation. On May 21, 2018, Alere sent United States Probation a drug test report showing the UA tested positive for morphine.

Prob12C

**Re: Buchanan, Margaret**  
**May 21, 2018**  
**Page 2**

The U.S. Probation Office respectfully recommends the Court issue a warrant and incorporate the violation contained in this petition in future proceedings with the violations previously reported to the Court on May 16, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 21, 2018

s/Phil Casey

Phil Casey  
U.S. Probation Officer

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**THE COURT ORDERS**

- No Action
- The Issuance of a Warrant
- The Issuance of a Summons
- The incorporation of the violation(s) contained in this petition with the other violations pending before the Court.
- Defendant to appear before the Judge assigned to the case.
- Defendant to appear before the Magistrate Judge.
- Other

Stanley A. Sestan

Signature of Judicial Officer

May 21, 2018

Date

## UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 23, 2018

SEAN F. McAVOY, CLERK

United States of America

v.

Margaret Buchanan.

Case No. 1:15-CR-2044-SAB-2

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*Defendant*

## ARREST WARRANT

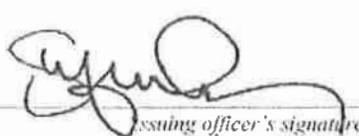
To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay  
 (name of person to be arrested) Margaret Buchanan,  
 who is accused of an offense or violation based on the following document filed with the court:

Indictment     Superseding Indictment     Information     Superseding Information     Complaint  
 Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

See Petition and Order filed on 05/21/18.

Date: May 21, 2018, 3:16 pm

  
Issuing officer's signature
Sean F. McAvoy, Clerk of Court/DCE  
Printed name and title

## Return

This warrant was received on (date) 5/21/18, and the person was arrested on (date) 5/21/18  
 at (city and state) Yakima, WA

Date: 5/21/18Arrested within the E/WA  
By: USMS

(Agency/Officer's signature)

Executed On: 5/21/18Sign: Leighann Harvey, USMS  
(Printed name and title)

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## About Our Facilities

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# Contract Prisons

We contract with the private sector to help manage our inmate population.

Contract prisons are secure institutions operated by private corporations. The majority of BOP inmates in private prisons are sentenced criminal aliens who may be deported upon completion of their sentence.

Held to a high standard.

### Accountable

Contract facilities operate according to a Statement of Work (SOW) or Performance Work Statement (PWS), which outlines the requirements for operating under the contract. Contractors are required to follow all applicable local, state, and federal laws, codes, and regulations for the jurisdiction in which they operate. In addition, they are required to adhere to some BOP policies such as, inmate discipline, use of force, sentence computation, and inmate classification.

### Accredited

Contract facilities must obtain accreditation through the American Correctional Association (ACA) and The Joint Commission within two years of receiving inmates.

### Answerable

Contractors are required to follow all applicable local, state, and federal laws, codes, and regulations for the jurisdiction in which they operate. To ensure the safety and security of the inmates and community, the Bureau places several staff on-site to monitor contract performance and to ensure contractors perform in accordance with the contract terms and conditions.

## Contract Prison Locations

- A CI Giles W. Dalby
- B CI McRae
- C CI North Lake
- D CI Reeves III



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