

JAMES MICHAEL FAYED (PRO-SE)  
#AK3340  
PO BOX 213040  
STOCKTON, CA. 95213

CASE NO: 24-7445

• SUPREME COURT OF UNITED STATES •

JAMES M. FAYED }

(Petitioner) {

v.

• CASE NO: 24-7445

WARDEN'S }

C.S.P. - SAN QUENTIN

C.H.C.F. - STOCKTON {

(RESPONDANTS) {

• TRAVERSE •

(OF) Respondant's

'Brief in Opposition'

[ 28 USC 2248 ]

[ Habeas Rule - Five ]

1) Comes Now Petitioner, James Michael FAYED,  
WITH (HIS) TRAVERSE (TO) Respondant's Brief  
in Opposition, filed in this Court on/about  
12 AUGUST, 2025.

2) Petitioner attaches (herein) 'Court Report-  
er's Transcripts' from U.S.D.C. - Central CA.  
CASE NO: 08-CR-0224-PSG (as) "EXHIBIT-A".  
A DIRECTLY RELATED CASE - IN SUPPORT-  
(OF) Petitioner's CLAIMS & AS REBUTTAL TO  
Respondant's CLAIMS (IN) REPLY..

#01

JAMES MICHAEL FAYED (PRO-SE)  
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CASE NO: 24-7445

"Points & Authorities"

1) "18 USC § 241"

2) "18 USC § 242"

3) "18 USC § 249(a)"

4) "18 USC § 2680(h)"

5) "28 USC §§ 2241, 2248, 2254"

6) "EX PARTE YARBROUGH, 110 U.S. 651 (1884)"

7) "EX PARTE COLLINS, 154 F.980 (1907)"

8) "EX PARTE ROYALL, 117 U.S. 241 (1886)"

9) "UNITED STATES V. SALERNO, 481 U.S. 739"

10) "UNITED STATES V. MONTALVO-MURILLO, 495 U.S. 711"

11) "FOUCHA V. LOUISIANA, 504 U.S. 71"

12) "UNITED STATES V. QUINTERO, 995 F.3d. 1044 (9<sup>th</sup> CCA)"

13) "UNITED STATES V. TWINE, 344 F.3d. 79, 337 (9<sup>th</sup> CCA)"

14) "UNITED STATES V. PLOOF, 851 U.S. F.2d. 7, 11, (1<sup>st</sup> CCA)"

15) "UNITED STATES V. SINGLETON, 182 F.3d. 7, 9, (D.C. - CCA)"

16) "UNITED STATES V. BYRS, 969 F.2d. 106, 109, (5<sup>th</sup> CCA)"

17) "UNITED STATES V. FRIEDMAN, 837 F.2d. 156-60 (3<sup>rd</sup> CCA)"

18) CACIF: "THOMAS BANE CIVIL RIGHTS ACT"

19) CACIF: "RALPH CIVIL RIGHTS ACT"

#02

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CASE No: 24-7445

3) Petitioner submits these transcript's as Rebuttal to Respondant's claims (of) "LACK OF PROOF" to Petitioner's claims (of) UNLAWFUL SEARCHES & UNLAWFUL SEIZURES IN Petitioner's HABEAS before this Court.

4) Petitioner hereby re-asserts (ALL) claims, DEFENSES, RIGHT(S), PRIVILEGES & IMMUNITIES as previously presented in (BOTH) FEDERAL & STATE COURT(S), AND Petitioner WAIVES NONE (as presented) beginning in July/2008 & CONTINUING TO-DATE.

5) Respondant has filed an EIGHT PAGE 'Brief in Opposition' (AFTER) requesting additional time, to return a brief "which will be most helpful to this Court" as claimed - Respondant.

6) Respondant's Brief is roughly five pages copied from Respondant's previous Briefs (IN) this Court, plus three pages wherein Respondant claims that "Petitioner's Habeas is UNWORTHY of this Court's Attention & Petitioner's Habeas LACKS EXTRA-ORDINARY CIRCUMSTANCES".

#03

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7) However, and more importantly, Respondant  
Hopes, Prays & seeks (that) this Court deny  
Petitioner's Habeas so that Petitioner is  
"Pigeon-Holed", Restricted & Confined (to)  
Federal Court in Los Angeles for Review of  
Petitioner's Claims.. Specifically U.S.D.C. -  
Central Calif.. The same Court (which)  
Falsely Imprisoned & Unlawfully Incarcerated  
Petitioner (in) 2008. The same Court who  
Wilfully - Deliberately - Wantonly Dis-Obeys  
Mandatory Federal Law (as presented on Habeas),  
AND REVOKED BAIL GRANTED TO Petitioner  
in Full Compliance with 'Bail Reform Act'  
two days prior, executing a USURPATION  
of Power/Authority, Ruling in Clear Error  
& Abusing their Discretion by ordering pre-  
trial detention when Petitioner met NO  
conditions for pre-trial detention (nor) ANY  
conditions for consideration of pre-trial  
detention - AS CHARGED - THUSLY CREATING  
& ISSUING A 'NEW RULE OF LAW' IN DIRECT  
CONFLICT WITH: U.S. CONGRESS, 18 USC § 3142,  
well established law (via) this Supreme  
Court & the Supervisory Court U.S. - C.O.A.  
9th C.C.A..

#04

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8) U.S.D.C.-Central (also) summary and UN-WARRANTEDLY - DISMISSED - a Habeas previously submitted therein, without consideration of a single claim by Petitioner, INCLUDING Petitioner's claim(s) of UNLAWFUL INCARCERATION in 2008.

a) Petitioner contends, and the records supports (that) Petitioner cannot expect to receive a fair & IMPARTIAL Review of any claim in any Los Angeles, STATE (or) FEDERAL COURT, and believes they should be DIS-QUALIFIED from Consideration entirely..

10) The actions presented in Petitioner's Habeas (by) Los Angeles Authorities are TRULY REPUGNANT TO Constitutionally Protected RIGHT, REPUGNANT TO the LEGISLATIVE INTENT OF UNITED STATES Congress, REPUGNANT TO well established Precedent of this Supreme COURT, REPUGNANT TO SUPERVISORY AUTHORITY (of) U.S.-C.O.A. / 9<sup>th</sup> C.C.A. AND (the) MANDATORY BINDING LAW which is OBLIGATORY UPON U.S. DISTRICT COURT - CENTRAL CA.

#05

JAMES MICHAEL FAYES (PRO-SE)

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11) Petitioner contends (that) the action(s) & in-action(s) of state courts & U.S.D.C. - Central Calif., have themselves disqualified these courts as a venue for petitioner's claims.

12) Petitioner further contends (that) his "ORIGINAL HABEAS" IN SUPREME COURT OF United States is & remains the proper venue for the reason's thereof, and (that) the decision(s) below fully support a decision on petitioner's claims (on) Habeas:

a) "EX PARTE YARBROUGH, 110, U.S. 651"

"Wherein, (A) court responsible for inflicting violations of constitutionally protected right, -CANNOT- be expected to review the legality of their action(s), or be considered an IMPARTIAL ARBITRATOR ON CLAIMS CONCERNING that court's own error and/or bias."

b) Petitioner contends (that) "YARBROUGH" supports U.S.D.C. - Central disqualification (of) review (on) Habeas..

#06

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13) Petitioner further contends (that) Los Angeles Authorities deliberately committed a "HATE-CRIME" when (they) CONSPIRED & CONSPIRED together to falsely ACCUSE & WANTONLY CATEGORIZED Petitioner "as a LEVEL-THREE TERRORIST" (as shown on the records) to justify their egregiously UN-WARRANTED and UN-LAWFUL / MALICIOUS ACTIONS AGAINST Petitioner in 2008, WITH TOTAL DISREGARD OF VIRTUALLY EVERY FEDERAL & Constitutionally Protected RIGHT. IN violation of:

a) 18 USC § 241

b) 18 USC § 242

c) 18 USC § 249(a)

d) 18 USC § 2680 (n)

e) CA - "THOMAS BAY CIVIL RIGHTS ACT"

f) CA - "RALPH CIVIL RIGHTS ACT"

14) Los Angeles Authorities, The State of California, U.S. Attorney's Office - Central CA., & U.S. District Court - Central CA., (by) their Action(s) & IN-ACTION(s) were acting together & "IN-CONCERT"

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15) Petitioner also believes the Decision(s) below fully support Petitioner's ORIGINAL Habeas in this Court for decision on the MERITS (and) the relief requested therein, for Petitioner's false IMPRISONMENT, CONTINUING UN-LAWFUL INCARCERATION & MALICIOUS PROSECUTION:

- a) "EX PARTE' YARBROUGH, 110, U.S., 651 (1884)"
- b) "EX PARTE' COLLINS, 154, F.980 (1907)"
- c) "EX PARTE' FOYALL, 117, U.S. 241 (1886)"

16) Respondant CLAIMS Petitioner has ACTUATE Avenues of Relief WITH (the) STATE & U.S.D.C. - CENTRAL, CA..

a) for the REASON(s) as presented ON Habeas, the REASON(s) above and as supported by the RECORDS (in) STATE & FEDERAL COURT(s) from 2008 thru to Present Day, Respondant's CLAIM IS to be truly incredulous indeed.

#08

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17) RESPONDANT IN (HIS) REPLY BRIEF HAS  
ONCE AGAIN MIS-STATED SEVERAL "FACTS"  
REGARDING THE RECORD, INCLUDING RESPOND-  
ANT'S CLAIMS REGARDING PETITIONER'S BUS-  
INESSES, (A) RENTAL CAR, CIRCUMSTANCES INV-  
OLVING "PAMELA'S" REMOVAL FROM OFFICES, ETC.

18) HOWEVER, RESPONDANT'S (MOST) EGREGIOUS  
CLAIM IS "THAT THE DISTRICT COURT SIMPLY  
DENIED BAIL IN 2008". THAT CLAIM COULD  
(NOT) BE FARTHER FROM TRUTH & DOES NOT  
SQUARE WITH (THE) RECORDS.

a) DISTRICT COURT - REVOKED - BAIL  
PREVIOUSLY GRANTED (TWO) DAYS PRIOR. THIS  
BAIL WITH SUBSTANTIAL CONDITIONS & SECURED  
WITH A \$500,000.00 BOND (FULLY) COMP-  
LIED WITH 18 USC § 3142 AND MANDATORY  
LAW - VIA - (THIS) SUPREME COURT..

b) DISTRICT COURT HELD A 2ND "BAIL  
HEARING" TO REVOKE BAIL DESPITE PETITIONER'S  
FEDERAL CHARGES IN FEDERAL COURT PRE-  
CLUDING 'PRE-TRIAL' DETENTION.

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18) CONT'D

c) Petitioner unequivocally met [NO] CONDITIONS UNDER FEDERAL LAW for pre-trial Detention.

d) DISTRICT COURT EXECUTED (a) USURP-  
ATION of Authority / Power Reserved for  
UNITED STATES CONGRESS AND/OR (THIS)  
SUPREME COURT, & UPON USURPATION (THE)  
ISSUED a new Rule of LAW (from a IN-  
FERIOR COURT) - WHEN - DISTRICT COURT  
REVOKED BAIL PREVIOUSLY GRANTED (AND)  
ORDERED 'PRE-TRIAL' Detention of Petitioner,  
(IN) DIRECT CONFLICT WITH "B.R.A.-1984"

a) "UNITED STATES V. SALERNO, 481, US, 739"

b) "UNITED STATES V. MONTALVO - MURILLO,"  
495, US, 711

c) "FOUCHA V. LOUISIANA, 504, US, 71"

d) "UNITED STATES V. QUINTERO,"  
995, F.3d. 1044 (9th C.C.A.)

e) "UNITED STATES V. TWINE,"  
344, F.3d. 987 (9th C.C.A.)

f) "UNITED STATES V. PLOOF  
851, US, F.2d. 7.11 (1st C.C.A.)

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18.) CONT'D

G) "UNITED STATES V. SINGLETON"  
182 F.3d. 7, 9, 337 (U.S. D.C.-CCA)

H) "UNITED STATES V. BYRD"  
969 F.2d. 106, 109 (5<sup>th</sup> C.C.A.)

I) "UNITED STATES V. FRIEDMAN"  
837, F.2d. 156, 160 (3<sup>rd</sup> C.C.A.)

• Yet, despite (ALL) the CASE-LAW TO THE CONTRARY, Respondant, a SUPERVISING DEPUTY ATTORNEY GENERAL (FOR) the State OF CALIFORNIA, CONTINUES TO FILE BRIEF'S Stating (that) "DISTRICT COURT SIMPLY DENIES BAIL" & "That Petitioner WAS AND IS LAWFULLY INCARCERATED".

19.) Respondant CLAIMS (that) Petitioner's CLAIMS OF UNLAWFUL SEARCHES & UNLAWFUL SEIZURES - ARE - "UNFOUNDED". Petitioner SUBMITS the (Attached); 'EXHIBIT-A' IN SUPPORT OF Petitioner's CLAIMS ON HABEAS.

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20) FOR CLARIFICATION, ALTHOUGH THE ATTACHED TRANSCRIPTS (LIST) PETITIONER'S CORPORATION IN THE EMERGENCY PETITION, THE ORIGINAL PETITION INCLUDED (BOTH) PETITIONER (PERSONALLY) AND THE CORPORATIONS.. PETITIONER WAS EDITED (FROM) THE PETITION. -when- ALL CHARGES AGAINST PETITIONER WERE DISMISSED IN ENTIRETY (by) A.U.S.A. - AVEIS ONLY APPROXIMATELY THREE DAYS PRIOR. OTHER THAN THAT PARTICULAR ISSUE, THE PETITION (EXHIBIT-A) REMAINED VIRTUALLY UNCHANGED..

a) AS PRESENTED ON HABEAS, PETITIONER (AND) HIS CORPORATIONS WERE JOINTLY CHARGED BY AUSA - AVEIS (WITH) "OPERATING AN UNLICENSED BUSINESS".

b) A TRUE COPY OF THE INDICTMENT BY USAO - CENTRAL CAN BE FOUND AT "EXHIBIT A," page # 64.

c) IN THIS TRANSCRIPT (OF) PROCEEDINGS IN USDC - CENTRAL CAN BE FOUND BRIEF DESCRIPTIONS OF UNLAWFUL SEARCHES, UNLAWFUL SEIZURES, AND COLLUSION & CONSPIRACY BETWEEN THE U.S.A.O. - CENTRAL & STATE OF CALIFORNIA..

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20) CONT'D

1) Respondant, State of California, U.S. Atty's Office - Central, F.B.I. - Ventura field Ofc., A.U.S.A. - Aveis, A.U.S.A. - ALON, & LOS ANGELES Police Department, wilfully - deliberately with prejudicial intent, connived & conspired together (to) entirely disregard petitioner's constitutionally protected rights (to) falsely LABEL & CATEGORIZE Petitioner as "A level-three Terrorist" (to) effectuate the false arrest / false imprisonment / unlawful incarceration & malicious prosecution (of) Petitioner, and further, (to) unlawfully seize over \$100 million dollars worth of lawful liquid assets & unlawfully seize petitioner's worldwide business interests valued in 2008 at over \$350,000,000.00.

E) Precious Metals values - alone - and by themselves are [today] more than (10x) their 2008 value(s). The assets unlawfully seized & the businesses unlawfully destroyed would be valued at well above \$3,500,000,000.00 (3.5 Billion) - TODAY.

#13

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20) CONT'S

F) Petitioner Directs (this) Court's Attention TO; PAGES # 50 thru Page # 70, IN SUPPORT OF (his) CLAIMS.

G) PAGE-51; describing & OUTLINING (the) Relationship between Petitioner and his BUSINESSES.

H) PAGE-54: describing (why) (How) the Related SEARCHES and SEIZURES WERE WITHOUT WARRANT (and) "WARRANTLESS"

I) PAGES-54/70; describing in further discussion "LACK OF PROBABLE CAUSE", the "WARRANTLESS" SEIZURES, DONE at the BEHEST of the state (by) AUSA-AVEIS (at) Petitioner's BUSINESS OFFICES & WAREHOUSES IN 2008.. SEARCHES & SEIZURES DONE to FURTHER a STATE INVESTIGATION - BY FEDERAL AUTHORITIES (WITH) NO JUSTIFICATION (OR) LAWFUL ORDER, seeking MURDER EVIDENCE IN (a) L.A.P.D. INVESTIGATION.

#14

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20) CONT'D

J) IN the TRANSCRIPTS attached, Petitioner's CORPORATE Attorney (MR. JAMES W. SPERTUS) describes how Federal Authorities used the "Licensing-Violation" as (a) Cover & A SHAM to unlawfully search Petitioner's BUS- INESSES & WAREHOUSES at the behest of Respond- ant & C.A.P.D. (whom having NO evidence conn- ecting Petitioner to their investigation & NO lawful Authority to pursue Petitioner) and upon effectuating the UNLAWFUL SEARCH further seized the BUSINESSES & over \$43 million (2008 VALUE) in GOLD/SILVER/PLATINUM at WAREHOUSES.

K) The 'Returns/Receipts' left pursuant to the UN- LAWFUL SEARCHES - VERIFIED & CONFIRMED - (that) A.U.S.A. - AVEIS WAS ACTING IN SUPPORT OF Respond- ant (CALIF.) & SEARCHING FOR: "BLOODY CLOTHING, KNIVES, TRACE EVIDENCE, CLEANING SUPPLIES, RESID- UAL BLOOD EVIDENCE, ETC..". IN the TRANSCRIPTS Petitioner's Counsel even remarks: "He's never seen a white collar financial case searching for blood evidence".

#15

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21) DESPITE FEDERAL & STATE AUTHORITIES  
"CAMPING-OUT" at Petitioner's BUSINESS  
AND PERSONAL ADDRESSES FOR OVER  
TWELVE DAYS ON A 24-HR BASIS,  
[NO] MURDER EVIDENCE WAS EVER RECOVERED  
OR FOUND.

22) CONTRARY to Respondant's CLAIMS,  
PETITIONER CONTENTS HE HAS SUBMITTED  
A HABEAS WITH NOTHING BUT EXTRA-  
ORDINARY and EXCEPTIONAL CIRCUMSTANCES,  
WHICH REQUIRE REVIEW by THIS SUPREME  
COURT OF UNITED STATES.

Respectfully Submitted;

28 AUGUST, 2025

By:



JAMES MICHAEL FAYED  
(PRO-SE')

JAMES MICHAEL FAYES (PRO-SE')

#AK 3340

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"EXHIBIT - A"

• Emergency Petition

U.S. C.O.A. - 9<sup>th</sup> C.C.A.

• Petition for MANDAMUS / Prohibition  
(on)

U.S.D.C. - CENTRAL Calif.

(CASE # 08-CR-0224-PSG)

2008

**DOCKET NO.**

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

In re: GOLDFINGER COIN & BULLION, INC.

Petitioner

v.

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent.

---

THE UNITED STATES OF AMERICA,

Real Party in Interest.

---

**EMERGENCY**

**PETITION FOR A WRIT OF MANDAMUS  
AND/OR WRIT OF PROHIBITION**

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District Court Case No.: 08-224 PSG

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## **I. INTRODUCTION**

Pursuant to Federal Rule of Appellate Procedure 21 and Circuit Rule 21-1, Petitioner Goldfinger Coin & Bullion, Inc. ("GCB") hereby petitions this Court for extraordinary relief by way of writ of mandamus vacating the district court's order disqualifying GCB counsel from serving as counsel of record for defendant GCB in the pending criminal proceedings. The district court's disqualification order violates GCB's Sixth Amendment right to counsel. Extraordinary relief is necessary because the government seized all of GCB's assets at the outset of this case leaving GCB without sufficient assets to retain alternate counsel. In addition to disqualifying GCB's counsel, the district court refused to hear GCB's Rule 41 motion for the return of assets to pay attorney's fees and other emergency expenses. As a corporation, GCB cannot appear pro se or qualify for CJA appointed counsel. Unless extraordinary relief is granted, GCB will not be able to appear in the criminal proceedings below to assert defenses to the pending criminal charges, and will have no ability to prosecute a direct appeal from the inevitable conviction that will soon be entered by default.

The basis for the district court's disqualification order is the district court's finding that there is a potential conflict of interest arising from GCB's counsel's prior representation of two unindicted GCB employees during proffer sessions with the government. Neither of these employees is a defendant in this case and,

prior to representing the employees at the proffer sessions, GCB counsel obtained affirmative representations from the government that neither employee was a target of the government's investigation. Approximately ten days after the proffer sessions and approximately two weeks before trial, the government sent target letters to the employees at issue, and then promptly moved the district court for an order disqualifying GCB's counsel. The district court granted the government's disqualification motion without conducting any waiver colloquies with the employees despite GCB's repeated request. *After* the district court disqualified GCB counsel, the government promptly filed a proposed order denying GCB's pending Rule 41 motion without a hearing. Consequently, GCB is presently unrepresented in the criminal proceedings below, cannot be heard on the pending Rule 41 motion to argue that GCB's assets were seized without a warrant and are not alleged to be forfeitable, and is headed directly to automatic conviction by default. Extraordinary relief is necessary.

## **II. FACTS UNDERLYING THIS PETITION**

### **A. Procedural Overview of Case**

On February 26, 2008, a federal grand jury returned a two-page, sealed indictment charging GCB and its President, James Fayed, with a single count of operating an unlicensed money remitting business in violation of 18 U.S.C.

§ 1960(a) and (b). (Exhibit C; Petition 63).<sup>1</sup> The indictment was unsealed on August 1, 2008. (Exhibit H, CR 14; Petition 100). James Fayed was arrested on August 1, 2008, and on that date federal agents entered GCB's business premises and remained on site until August 8, 2008. (SER 82; In Camera Submission, Declaration of James W. Spertus ("Spertus Decl.") ¶¶ 6-8). On August 7, 2008, agents obtained a search warrant for GCB's premises and seized over \$4 million in gold bullion that was not authorized by the warrant to be seized. (SER 73-74; SER 86-92; SER 94-129). On September 15, 2008, the lower court dismissed co-defendant James Fayed on the government's motion, leaving GCB as the only defendant. (Exhibit H, CR 59; Petition 105).

GCB's counsel represented GCB in the criminal proceedings since GCB's arraignment on August 18, 2008, until his disqualification by the district court on October 20, 2008. (Exhibit H, CR 29; Petition 102; Exhibit A; Petition 33). Trial was set for November 4, 2008, but on October 21, 2008, the day *after* the lower court disqualified GCB counsel, the government asked the district court to vacate the November 4, 2008 trial date and continue the trial to December 9, 2008. (Exhibit H, CR 62; Petition 106). On October 24, 2008, the district court granted

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<sup>1</sup> "Exhibits" refers to the documents appended to this Petition, and each Exhibit citation is followed by the Petition page number for the citation. "CR" refers to the Clerk's Record attached as Exhibit H, and is followed by the document control number. "RT" refers to the Reporter's Transcript attached as Exhibit B, and is followed by the applicable page and line references. "SER" refers to the separately filed Sealed Excerpt of Record, and is followed by page references.

the government's request. (Exhibit H, CR 88; Petition 109; Exhibit G; Petition p.90). GCB could not oppose the government's request for a trial continuance because GCB was unrepresented. (Id.)

**B. GCB's Counsel's Representation of GCB Employees**

Through his representation of GCB, GCB's counsel represented two GCB employees at proffer sessions requested by the government. Prior to the proffer sessions, the government affirmatively informed GCB's counsel that the employees were not targets of the government's investigation, and the government granted letter immunity to each employee prior to each proffer. (SER 31-32; GCB Response to Gov. Conflict Br. ("Response") pp. 2-3).

On Friday, September 12, 2008, more than a week after the proffer sessions and immediately before the final pre-trial status conferred scheduled for September 15, 2008, the government issued "target" letters to the two employees. (SER 5; Gov. Conflict Brief, p.2). Upon receiving the target letters, GCB's counsel immediately informed the GCB employees that he could no longer represent them. (SER 60-61; In Camera Submission, pp. 1-2).

**C. The Government's Motion To Disqualify GCB Counsel**

On September 24, 2008, the government filed a motion to disqualify GCB's counsel on the ground that, through his representation of the employees during their proffer sessions, GCB counsel became privy to confidential information.

(SER 1). The government initially characterized the conflict as a “possible” conflict of interest between GCB and the employees, but in subsequent briefing the government transformed its claim to state that there was “an actual conflict of interest,” although the facts had not changed. (*Compare* SER 10:18 *with* SER 45:19; *Compare* Gov. Conflicts Brief, p.7:18 *with* Gov. Reply Brief, p.19). On October 1, 2008, GCB filed its Response, and on October 6, 2008, GCB received permission to file *in-camera* a supplemental brief disclosing to the district court factors that would bear on the court’s analysis, such as defense strategy, that were not appropriate to disclose to the government. (SER 55-82). From this *in camera* submission, the district court could readily determine that there is no adversity between GCB’s defenses and the potential defenses of the unindicted employees who received target letters from the government.

In its *in camera* submission and at the October 20, 2008, hearing on the conflict issues, GCB urged the district court to engage in the required waiver colloquies with the GCB employees to determine whether the employees would knowingly and intelligently waive any potential conflicts of interest the target letters may have created. (Exhibit B; RT 5:5-6:1, 7:24-9:8; Petition pp.44-45, pp. 46-48). GCB also urged the district court to grant GCB’s Rule 41 motion so GCB could pay for the employees to hire counsel of their choice to advise them in connection with the proposed waiver colloquies. (SER 68-72; Response, pp. 9-13).

#### **D. The Rule 41 Motion**

The same day that the government moved to disqualify GCB counsel, September 24, 2008, GCB filed a motion pursuant to Fed. R. Crim. P. 41(g) seeking the return of assets to enable GCB to retain separate counsel for the employees and to properly fund its own defense. (Exhibit D; Petition 66; Exhibit H, CR 65; Petition 107). The Rule 41 Motion was noticed for hearing on October 27, 2008, but, concurrently with the Rule 41 Motion, GCB filed an *ex parte* application to hear the Motion on shortened time since the district court had granted the government's request to hear the conflicts motion on shortened time. (Exhibit H, CR 66; Petition 107). Although the district court had granted the government's request to hear the conflicts motion on shortened time, the district court denied GCB's *ex parte* request to hear the Rule 41 Motion on shortened time. (Exhibit H, CR 68; Petition 107). Consequently, the government's opposition to the Rule 41 motion would normally have been due on October 14, 2008, because October 13, 2008 was a court holiday. At the October 6, 2008, hearing, the district court agreed to hear the Rule 41 Motion on October 20, 2008 because the district court was not available to hear the Motion on October 27, 2008. The government's opposition to the Rule 41 Motion was due on October 14, 2008 at the latest. The government failed to oppose the Motion. On Friday, October 17, 2008, the government filed a three-page document stating that it reserved the right

to oppose the motion in the future. (Exhibit E; Petition pp. 83-87). At the October 20, 2008, hearing, the district court refused to allow GCB's counsel to argue the Rule 41 Motion. On October 21, 2008, the day after GCB counsel was disqualified at the October 20, 2008 hearing, the government filed a proposed order denying the Rule 41 Motion without a hearing. (Exhibit F; Petition 88; Exhibit B, RT pp. 6:8-11:10; Petition 45-50).

**E. The District Court's Disqualification Order**

On October 20, 2008, which was the final status conference before the pending November 4, 2008 trial date, the district court heard argument on the government's Conflicts Motion. (Exhibit B; Petition 39; Exhibit H, CR 85; Petition 108). At the hearing, the district court made clear that it would refuse to engage the employees in any waiver colloquies, would refuse to address GCB's pending Rule 41 motion, and would disqualify GCB counsel from this case. (Exhibit B; Petition 39). The district court then issued the written order disqualifying GCB counsel that underlies this Petition. (Exhibit A; Petition 34 (the "Disqualification Order"))).

In the Disqualification Order, the district court ruled GCB's counsel could not concurrently represent GCB and the employees because "a serious potential for conflict exists," given the possibility that the employees may be charged with wrongdoing or be asked to be witnesses for the government against GCB.

(Exhibit A, p. 3; Petition 36). Although GCB counsel had stopped representing the employees immediately upon receiving the target letters on September 12, 2008, the district court nonetheless ruled that even if GCB counsel withdrew from his representation of the employees “his ability to effectively represent GCB may be compromised by his previous representation of the employees.” (Exhibit A, p. 3 (emphasis added) ; Petition 36). According to the court, GCB counsel “may have learned confidential information about each employee’s role” during the proffer sessions, which information “could impede his cross-examination of Brooks and Layton (if called as government witnesses) because he owed them a duty of confidentiality. (Exhibit A, p. 3 (emphasis added) ; Petition 36). In addition, the district court reasoned that GCB counsel’s “duty of loyalty to his former clients would prevent Spertus not only from disclosing Brooks’ and Layton’s confidences, but from using those confidences in any way to the detriment of his former clients.” (Exhibit A, p. 4; Petition 37).

Significantly, the lower court did not find that GCB counsel actually learned any confidential information from the employees. Rather, the district court “presume[d]” the employees disclosed confidential information to GCB counsel given his representation of them in a matter “substantially related” to his representation of GCB. (Exhibit A, p. 4; Petition 37).

Based on the district court's presumption that the employees had disclosed confidential information to GCB counsel that could be used against them, the district court held that GCB counsel's "former representation of the employees will disqualify him from continuing to represent GCB if their interests are adverse." (Exhibit A, p. 5 (emphasis added) ; Petition 38). However, the district court made no finding that there was any actual adversity between GCB and its employees, and refused to engage the employees in any waiver colloquies as requested by GCB. Rather, the district court concluded only that "[t]he interests of Brooks and Layton may well be adverse to those of GCB – for instance, the government might offer the employees immunity or a plea deal in exchange for testifying against GCB." (Exhibit A, p. 5 (emphasis added) ; Petition 38). The district court further stated that "[i]f Brooks or Layton are called as government witnesses" against GCB, "Spertus' duty of loyalty to his former clients might hinder his ability to effectively cross-examine them," and "if they are indicted, [their] defenses might involve finger-pointing at others within GCB." (Exhibit A, p. 5 (emphasis added) ; Petition 38).

Despite refusing to engage the employees in waiver colloquies, the district court nonetheless noted in the Disqualification Order that the "representation of a criminal defendant by counsel with an actual conflict of interest" may constitute a Constitutional violation "when there is no valid waiver of the right to independent

counsel.” (Exhibit A. at 2 (emphasis added) ; Petition 35). The district court, despite acknowledging the importance of waiver colloquies, engaged in none.

The day after the district court granted the government’s disqualification motion, the government submitted a proposed order to the district court denying GCB’s pending Rule 41 motion without a hearing. (Exhibit F; Petition 89; Exhibit H, CR 83; Petition 109). Also on October 21, 2008, the government submitted proposed “Findings and Conclusions Re: Excludable Time,” which indicated that “[O]n October 20, 2008, the Court denied” GCB’s Rule 41 motion. (Exhibit G, p. 3; Petition 93). The district court on October 24, 2008, adopted the government’s proposed findings and conclusions in its entirety, at a time when GCB was unable to respond because it was unrepresented, thereby denying GCB’s Rule 41 motion without a hearing. (Exhibit H, CR 88; Petition 109).

### **III. ISSUE PRESENTED**

Whether a writ should issue vacating the Disqualification Order and compelling the district court to engage in waiver colloquies with GCB’s employees and to hear GCB’s Rule 41 Motion to release assets to pay attorney’s fees.

### **IV. REASONS WHY THE WRIT SHOULD ISSUE**

Mandamus and Prohibition are extraordinary remedies that are justified only in exceptional circumstances. *Bauman v. U.S. District Court*, 557 F.2d 650, 654 (9th Cir. 1977). GCB respectfully submits that the Disqualification Order creates

exceptional circumstances justifying writ relief because, without counsel, without assets to retain counsel, and with an upcoming criminal trial date, GCB faces certain conviction by default. GCB will never have an opportunity to appeal its conviction or the Disqualification Order because, without the return of its assets, GCB will be unable to retain counsel. This Court has expressly stated “that a writ of mandamus may be used to review the disqualification of counsel.” *Cole v. U.S. District Court*, 366 F.3d 813, 816 (9th Cir. 2004). “The reason is because the harm of such disqualification cannot be corrected with an ordinary appeal.” *Id.* Thus, this Court on several occasions has granted petitions seeking vacature of lower court orders disqualifying counsel. *See, e.g., In re: City of San Diego*, No. 08-70678, 2008 WL 3565795 (9th Cir. Aug. 12, 2008) (granting petition and vacating lower court order disqualifying defense counsel); *In re Kahre*, No. 08-70954, 2008 WL 2951389 (9th Cir. Aug. 1, 2008) (granting petition and vacating lower court order disqualifying defense counsel); *Christensen v. U.S. District Court*, 844 F.2d 694 (9th Cir. 1988) (granting petition and vacating lower court order disqualifying counsel). In *Kahre*, which was recently decided in August 2008, this Court granted writ relief and vacated an order disqualifying a criminal defendant’s counsel in a case where, as here, the lower court disqualified counsel prior to trial because of a successive representation conflict issue without first conducting an evidentiary hearing to establish the necessary factual basis for disqualifying

counsel. *See, In re Kahre*, 2008 WL 2951389.

Whether a writ should be granted in this Circuit is guided by weighing five factors: (1) whether the party seeking the writ has no adequate means, such as direct appeal, to attain the relief sought; (2) whether the petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems, or issues of law of first impression. *Bauman v. U.S. District Court*, 557 F.2d 650, 654 (9th Cir. 1977).

As this Court held in *Bauman*, and in subsequent decisions, not every factor need point in the same direction or even be relevant or applicable in order for relief to be granted. Rather, "[t]he considerations are cumulative and proper disposition will often require a balancing of conflicting indicators." *Id*; *see also Christensen*, 844 F.2d at 697 ("All factors are not relevant in every case and the factors may point in different directions in any one case.").

The district court's disqualification of GCB counsel in the instant case without first conducting a hearing into counsel's purported conflict of interest constituted clear error under the authority of this Court and the United States Supreme Court, and violated GCB's Due Process and Sixth Amendment rights.

Consequently, the *Bauman* test is satisfied in this case and an extraordinary writ is necessary to protect GCB's constitutional rights.

In *Kahre*, the district court disqualified one of a defendant's attorneys prior to trial based on the attorney's prior representation of an acquitted co-defendant. *In re Kahre*, No. 08-70954, 2008 WL 2951389 (9th Cir. Aug. 1, 2008). The district court disqualified the attorney in *Kahre* without first conducting an evidentiary hearing to determine "whether [counsel's] successive representation . . . would impair her ability to represent Petitioner or breach her duty of confidentiality to [the former client] or any other defendant." *Id.* at \*2. In response to the disqualification order at issue in *Kahre*, this Court held that "the district court did not conduct sufficient inquiry before striking" counsel and, therefore, there was not a clear record to evaluate the disqualification. *Id.* at \*1. Thus, this Court granted the petition for mandamus, vacated the disqualification order, and instructed the district court to conduct a further inquiry into the facts underlying the disqualification. The *Kahre* Court held that "the key [*Bauman*] factor – clear error – is present here because the record does not show that a 'compelling purpose' justified abridging Petitioner's Sixth Amendment right to counsel of choice . . . . The district court failed the conduct 'inquiries . . . important to [a] decision that a compelling purpose would be served by denying

the defendant his qualified constitutional right to hire counsel of his choice.” *Id.* at \*1, quoting *United States v. D’Amore*, 56 F.3d 1202, 1205 (9th Cir. 1995).

As in *Kahre*, the district court disqualified GCB’s counsel without conducting the necessary factual inquiry into the purported conflict of interest or conducting a waiver colloquy with the employees at issue. Consequently, the record is insufficient to overcome GCB’s Sixth Amendment right to counsel. The facts of the instant case are even more dire and extraordinary than in *Kahre* because the defendant in *Kahre* still had lead counsel to represent him at trial. GCB is now unrepresented and subject to conviction by default. GCB is without assets to retain new counsel, and is not entitled to appointed counsel. *United States v. Unimex*, 991 F.2d 546 (9th Cir. 1993). The Disqualification Order constituted a clear violation of GCB’s Sixth Amendment rights and effectively insulates the order from appellate review. Consequently, the need for this Court’s extraordinary relief is more necessary than it was in *Kahre*.

This Court’s decision in *United States v. Unimex*, 991 F.2d 546 (9th Cir. 1993), demonstrates how the Disqualification Order constitutes a violation of GCB’s Sixth Amendment and Due Process rights that can only be cured by **mandamus relief**. In *Unimex*, a corporation and its President were indicted and convicted for failing to file currency transaction reports. Unimex was unrepresented at trial because it lacked funds to retain counsel, and counsel for the

President could not represent the company because of a possible conflict of interest arising from the fact that both defendants had been indicted and would proceed to trial in the same case. As is the case with GCB, all of Unimex's assets had been seized prior to trial. In *Unimex*, the Court noted the following about the company:

All of its assets had been seized prior to trial. . . . Unimex sought return of \$100,000 of the \$2,000,000 seized, to retain counsel. The motion was denied without an evidentiary hearing. Without money, Unimex could not retain counsel. Counsel could not be appointed for it under the Criminal Justice Act, because it is a corporation. Counsel could not ethically represent Unimex on contingent fee. . . . There was nothing Unimex could do to defend itself.

*Id.* In *Unimex*, the Court held that neither the Sixth Amendment nor the Criminal Justice Act provide for appointment of counsel for corporations without sufficient assets to retain counsel on their own. Thus, "[t]he seizure of Unimex's assets effectively denied it the opportunity to obtain counsel with its own money, if its assets were not forfeitable." *Id.* at 550. The district court did not provide Unimex with an opportunity to demonstrate whether the money it sought to retain counsel was its own money or forfeitable. *Id.* Thus, the Ninth Circuit held:

The government prevented Unimex from hiring counsel by taking all its property, and there has been no showing at an adversary hearing at which Unimex could be heard that the property belongs to the government . . . .

Unimex's right to counsel under the Sixth Amendment and to Due Process under the Fifth Amendment were violated by taking away all of its assets, denying it an opportunity to show cause prior to its criminal trial that an amount it could have used for attorney's fees was nonforfeitable, and then forcing it to trial without counsel.

*Id.* at 551.

As in *Unimex*, the government has placed GCB in a situation where it has no counsel to defend itself against criminal charges and lacks access to its own money to retain counsel. Unlike *Unimex*, however, the government has not even alleged that GCB's seized assets are forfeitable. Nonetheless, the government has refused to release funds to GCB to retain counsel, and urged the district court to deny GCB's Rule 41(g) motion without a hearing. The government's conduct constitutes clear governmental interference with GCB's Sixth Amendment rights under *Unimex*. Because GCB lacks the assets to defend itself at trial, let alone to appeal the inevitable default conviction that will follow, a writ of mandamus from this Court is GCB's only chance to correct the clear violation of its constitutional rights.

For the reasons set forth in *Kahre* and *Unimex*, and based upon the authority discussed below, this Court should grant GCB's petition for a writ of mandamus.

**A. GCB Will Be Unable To Obtain Review Of The Disqualification Order Absent Mandamus Relief.**

In *Kahre*, this Court held that the first two *Bauman* factors were established when a petition for mandamus relief arose from the disqualification of defense counsel. *Id.* at \*1. See also *In re: City of San Diego*, No. 08-70678, 2008 WL 3565795, at \*2 (9th Cir. Aug. 12, 2008) (“We have previously found that disqualification of one’s counsel establishes damage or prejudice not correctable on appeal.”); *Christensen v. U.S. District Court*, 844 F.2d 694, 697 (9th Cir. 1988) (party “could not . . . obtain the desired relief on direct appeal because he seeks to be represented by his chosen counsel at trial.”). In *Cole v. U.S. District Court*, 366 F.3d 813, 817 (9th Cir. 2004), this Court held that the first *Bauman* factor “is affirmatively presented in the context of a disqualification of counsel when the petition arises from the action of a district court. . . . Absent mandamus relief, a counsel’s wrongful disqualification, which cannot be immediately appealed, can cause great harm to a litigant.” This Court further held in *Cole*, that “[e]xcept for compelling reasons, such as necessary bar admissions, clients should be permitted to have counsel of their choice. A lost choice of counsel at trial cannot be remedied on direct appeal.” *Cole*, 366 F.3d at 820.

Accordingly, the facts underlying this Petition satisfy the first two elements of the *Bauman* test for extraordinary relief.

**B. The Disqualification Order Was Clearly Erroneous**

The district court's failure to conduct waiver colloquies with the GCB employees at issue, and its refusal to evaluate whether GCB and its unindicted employees will have inconsistent defenses if the employees are ever indicted, is clearly erroneous and satisfies the third *Bauman* factor for mandamus relief. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const., Amend. 6. "[A]n element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him." *United States v. Gonzalez-Lopez*, 548 U.S.140, 144 (2006). Thus, "the Sixth Amendment guarantees the defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Id.* (citations omitted). The government must honor and not seek to create impediments to a defendant's right to obtain counsel. As the Supreme Court held in *Maine v. Moulton*, 474 U.S. 159, 170-71 (1985), this means, "at the very least, the prosecutor and the police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel." In the instant case, the government carted off over \$4 million in gold bullion from a gold bullion trading company. The gold bullion is not contraband and is not forfeitable, and because

the seizure was accomplished without a warrant, the gold bullion could not be seized as "evidence." That unlawful seizure is preventing GCB from hiring attorneys to defend itself and its employees.

As a criminal defendant, GCB is entitled to counsel and counsel of its choice. "The District Court must recognize a presumption in favor of petitioner's counsel of choice." *Wheat v. United States*, 486 U.S. 153, 164 (1988). To overcome this presumption, the government must demonstrate either an actual conflict of interest or a serious potential for an actual conflict of interest. *Id.* Although "[c]onflicts of interest can arise both in cases of simultaneous representation and successive representation, . . . it generally is more difficult to demonstrate an actual conflict resulting from successive representation." *Fitzpatrick v. McCormick*, 869 F.2d 1247, 1252 (9th Cir. 1989).

The government, by relying on the hypothetical fantasies it described to the district court below in its briefing, which were then incorporated into the Disqualification Order, did not meet the burden necessary to overcome GCB's right to counsel. As the Supreme Court indicated in *Wheat*, overcoming the defendant's presumption in favor of chosen counsel turns on an "evaluation of the facts and circumstances of each case." *Id.* This Court's holding in *United States v. Washington*, 797 F.2d 1461, 1466 (9th Cir. 1986), establishes that it is error to

disqualify counsel based on an asserted conflict of interest without first conducting a hearing to resolve the relevant facts:

As we have said, a defendant's Sixth Amendment right to retain counsel of his choice is a qualified one. If, for example, Hinckley did in fact receive in confidence information that is material to the government's case that would give him an advantage in representing Washington, concerns about the integrity of the judicial process and our adversarial system of justice could possibly outweigh Washington's Sixth Amendment interests. As Judge Orrick acknowledged, the affidavits are in conflict on that very question. That conflict cannot be resolved without the benefit of an evidentiary hearing and findings by a trier of fact.

(Emphasis added). *See also Kahre*, 2008 WL 2951389, at \*1 (“clear error” by district court “is present because the record does not show that a ‘compelling purpose’ justified abridging Petitioner’s Sixth Amendment right to counsel of choice.”).

The district court disqualified GCB’s counsel based on its finding that “the possibility that the interests of GCB and the employees will become adverse is strong.” (Exhibit A, p. 5; Petition 38). The district court made this finding without the benefit of any evidence concerning the likelihood of adversity between GCB and the target employees. Instead, the lower court adopted wholesale speculation spun by the government concerning potential adversity between GCB and its employees. Moreover, the lower court’s reasoning for disqualifying GCB’s counsel presumed a factual showing for which there was no record. For example,

the lower court adopted the government's speculation that if Brooks and Layton were indicted, their defenses "might involve finger-pointing at others within GCB." (Exhibit A, p. 3; ; Petition 36). There is and was no factual basis for this speculation. To the contrary, GCB had made an *in camera* submission to the district court disclosing its defense strategy and demonstrating that GCB and the two employees have overwhelmingly strong defenses that are not antagonistic to one another.

In addition, the district court presumed that GCB's counsel "may have learned confidential information" from the employees, which might cause a conflict for GCB's counsel by virtue of his duties of loyalty and confidentiality to GCB and the employees. There is and was no evidence in the record on this issue. The district court erroneously presumed that GCB's counsel learned confidential information from the employees in connection with the proffers. (Exhibit 3, p.4, citing *Jessen v. Hartford Cas. Ins. Co.*, 111 Cal. App. 4th 698, 709, 3 Cal. Rptr. 3d 877 (Cal. Ct. App. 5th Dist. 2003) ; Petition 37). *Jessen*, however, was a civil case and, under California ethics law, there is no presumption of confidential disclosure and mandatory disqualification in criminal cases, especially in successive representation contexts such as the instant case. In *Rhaburn v. Superior Court*, 140 Cal. App. 4th 1566, 45 Cal. Rptr. 3d 464 (Cal. Ct. App. 4th Dist 2006), the court rejected the proposition that a criminal defense counsel's prior representation of a

prosecution witness created an irrefutable presumption that confidential information was disclosed by the former client. The court in *Rhaburn* discussed several California Supreme Court cases in which the court engaged in a factual inquiry regarding the disclosure of confidential information by the former client to the criminal defendant's counsel and the possibility of adversity between the former client and current client. *Id.* at 1577-79, 45 Cal. Rptr. 3d at 471-73. As the court held in *Rhaburn*, "[c]ertainly this approach is inconsistent with the rigid rule in civil cases that *presumes* the possession of confidential information and turns a deaf ear to counsel's protestations that he does not in fact possess any such information." *Id.* at 1578, 45 Cal. Rptr. 3d at 473. "Thus, counsels' former representation of a prosecution witness does not compel the assumption that confidential information was acquired from the witness."<sup>2</sup> *Id.* at 1578-79, 45 Cal. Rptr. 3d at 473. The district court's analysis in the instant case does not recognize the express holding of *Rhaburn* on this issue.

Had the lower court conducted a factual hearing to determine whether the GCB employees disclosed confidential information to GCB counsel, whether their defenses would be antagonistic to GCB if they were ever indicted, and whether the employees would waive any conflicts of interest arising from their prior

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<sup>2</sup> In addition, *Jessen* involved an effort by a former client to disqualify counsel for his adversary because of their prior attorney-client relationship, which is not the case here where there is no allegation that the employees seek to have GCB counsel disqualified. In any case, *Jessen* does not mandate disqualification without consideration of a waiver of the conflict by the prior clients.

representation by GCB's counsel at the proffers, the record would have been developed on these issues. It was error for the district court not to conduct such an inquiry before disqualifying GCB's counsel and sacrificing GCB's Sixth Amendment rights. Now that GCB is without counsel and without sufficient assets to hire new counsel, the mandamus relief requested here is GCB's only remedy. *See Kahre*, 2008 WL 2951389, at \*1 ("the key third factor – clear error – is present because the record does not show that a 'compelling purpose' justified abridging Peititioner's Sixth Amendment right to counsel of choice.").

The district court's failure to conduct waiver colloquies as urged by GCB counsel makes review of the waiver issues impossible and represents clear error. The district court chose to leave GCB unrepresented at trial without determining whether the employees want to waive any potential conflicts of interest in this case. "Even if counsel is subject to an actual conflict of interest, . . . the trial court may generally allow the attorney to proceed if the defendant makes a voluntary, knowing, and intelligent waiver." *Garcia v. Bunnell*, 33 F.3d 1193, 1195 (9th Cir. 1994), *citing Holloway v. Arkansas*, 435 U.S. 475, 483 n.5 (1978). For a waiver to be knowing and voluntary, the client must be "sufficiently informed of the consequences of his choice" and the "risks that are likely to develop" so that the waiver is "made with eyes open." *Lockhart v. Terhune*, 250 F.3d 1223, 1232-33 (9th Cir. 2001). Where the district court makes a defendant aware of his interests,

his right to unbiased counsel, his right to seek outside legal advice about the waiver, and his right to ask questions of the court, and the defendant indicates his understanding and his desire proceed despite the conflict, the waiver is appropriate. *United States v. Martinez*, 143 F. 3d 1266, 1269 (9th Cir. 1998), *citing Garcia*, 33 F.3d at 1197.

The lower court did not address the issue of waiver in its Disqualification Order, except to note in its recitation of the legal standard, in reliance on *Wheat v. United States*, 486 U.S. 153, 162-63 (1988), that “where a district court finds an actual or even a *potential* conflict of interest, it may decline a proffer of waiver and insist that the defendants be separately represented.” (Exhibit A, p. 2 (emphasis in original); Petition 35). *Wheat*, however, does not give the court carte blanche to bypass a waiver colloquy with the affected clients before concluding that there cannot be any knowing and intelligent waiver. *See United States v. Rewald*, 889 F.2d 836, 858 n.19 (9th Cir. 1989) (district court rejects waiver only after defendant advised of risks by separate counsel and questioned by court). *Wheat* was a dual representation case and there does not appear to be a single case holding that a potential conflict arising from a defense attorney’s successive representation of a government witness and a defendant cannot be waived by the former client.

In *United States v. Partin*, 601 F.2d 1000 (9th Cir. 1979), this Court held that even a conflict arising from concurrent representation of a defendant and a

witness against him can be waived when the waiver is knowing and intelligent.

The Court expressly held in that case that “Partin was aware of the possibility that a codefendant, represented by McPherson, would testify as a government witness at his trial.” *Id.* at 1008. “[O]nce a defendant exercises ‘his right to retain counsel after being informed of the possible conflict and its consequences’ he has waived ‘any subsequent claim based upon the alleged conflict.’” *Id.* (citation omitted).

It was incumbent upon the district court below to engage the GCB employees in waiver colloquies to determine if the employees would waive any potential conflicts of interest. Indeed, Fed. R. Crim. P. 44(c) requires the lower court in situations where multiple defendants are charged and simultaneously represented by the same counsel to “address each defendant personally and forthrightly advise him of the potential dangers of representation by counsel with a conflict of interest” to determine whether each defendant “understands the details of the attorney’s possible conflict of interest and the potential perils of such a conflict . . . and that he voluntarily waives his Sixth Amendment protections.”

Fed. R. Crim. P. 44 Advisory Committee Notes to the 1979 Amendments, *quoting United States v. Garcia*, 517 F.2d 272, 278 (5th Cir. 1975).<sup>3</sup>

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<sup>3</sup> Although the two employees have not been charged with any crime, and GCB counsel no longer represents the employees, the government urged the court below to treat this case as the “functional equivalent of a multi-defendant case where all parties are presently represented by the same counsel.” (SER 45; Gov. Reply, p. 2:9-10). The instant case is a successive representation case, not a dual representation case, but since actual conflicts are waivable even in dual representation cases, they are clearly waivable in successive representation cases.

It was error for the district court to disqualify GCB counsel without first determining whether the employees would waive any conflict arising from counsel's representation of them during their proffer sessions. The employees should have independent counsel to advise them during waiver colloquies, which implicates the issue raised by GCB in its pending Rule 41(g) motion seeking the release of seized funds to pay for separate counsel of the employee's choosing. Clearly the Rule 41 motion does not implicate any trial defenses directly, but focuses instead on the bases for the government's seizure of all of GCB's assets as "evidence." The government urged the court to deny the Rule 41 motion without an evidentiary hearing, in contravention of this Court's decision in *United States v. Unimex, Inc.*, 991 F.3d 546, 550 (9th Cir. 1993).

### **C. Remaining Bauman Factors**

As this Court has repeatedly held, it is not necessary to satisfy all five Bauman factors to obtain mandamus relief, and "[a]ll factors are not relevant in every case." *Christensen*, 844 F.2d at 697. Thus, as was the case in *Kahre*, the last two *Bauman* factors do not apply to this case. The Disqualification Order does raise, however, a "new and important problem" insofar as the district court disqualified counsel for a corporate criminal defendant that is not entitled to appointed counsel and is unable to retain substitute counsel because the government has seized all of its assets as "evidence" only and urged the lower

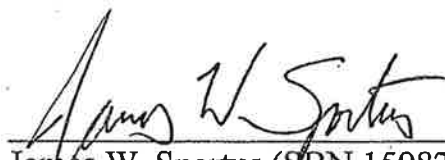
court to deny the company's pending Rule 41(g) motion without a hearing. GCB, as a result of the lower court's Disqualification Order, is unrepresented, unable to retain new counsel, unable to advocate for the release of funds pursuant to its Rule 41(g) motion, and will be convicted by default in criminal proceedings. These are extraordinary issues that call for extraordinary relief.

**V. RELIEF SOUGHT**

GCB respectfully requests that this Honorable Court grant this Petition and issue a Writ of Mandamus vacating the Disqualification Order and compelling the district court to engage in waiver colloquies with GCB employees and hear GCB's Rule 41 Motion to release assets to pay attorney's fees.

DATED: October 28, 2008

Respectfully submitted,



James W. Spertus (SBN 159825)  
Amanda R. Touchton (SBN 220430)  
Law Offices of James Spertus  
12100 Wilshire Blvd., Ste. 620  
Los Angeles, California 90025

Attorneys for Petitioner, Goldfinger Coin &  
Bullion, Inc.

### **STATEMENT OF RELATED CASES**

Petitioner Goldfinger Coin & Bullion, Inc. is unaware of any related cases pending before this court.

## **CORPORATE DISCLOSURE STATEMENT**

Petitioner Goldfinger Coin & Bullion, Inc. states that there is no publicly held corporation that owns 10% or more of its stock, either directly or indirectly.

## CERTIFICATE OF COMPLIANCE

Pursuant to Ninth Circuit Rule 32(a; 7), I certify that the answering brief is:

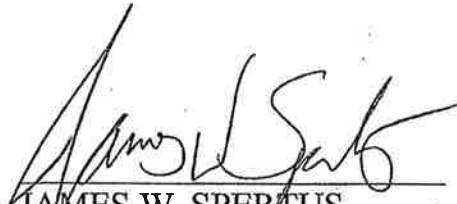
\_\_\_\_\_ Proportionately spaced, has a typeface of 14 points or more and contains \_\_\_\_\_ words, or is

X Monospaced, has 10.5 or less characters per inch and

\_\_\_\_\_ Does not exceed 30 pages (opening and answering briefs) or 15 pages (reply briefs), or

X Contains 6022 words

October 28, 2008

  
\_\_\_\_\_  
JAMES W. SPERTUS

# EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 08-224 PSG  
United States v. Fayed, et al.

Date: October 20, 2008

Present: The Honorable Philip S. Gutierrez, United States District Judge

Interpreter: n/a

Wendy K. Hernandez

Not Reported

Mark Aveis

*Deputy Clerk*

*Court Reporter*

*Assistant U.S. Attorney*

U.S.A. v. Defendant(s):

Present Cust. Bond

Attorneys for  
Defendant(s):

Present App. Ret.

Goldfinger Coin & Bullion, Inc.

James Spertus

Yes

**Proceedings:** (In Chambers) Order Disqualifying James Spertus

**I. Background**

On February 26, 2008, defendant Goldfinger Coin & Bullion, Inc. ("GCB") was charged with operating an unlicensed money transmitting business, in violation of 18 U.S.C. § 1960. GCB is represented by James W. Spertus. According to the government, it initially told Spertus that there was a potential conflict of interest if he continued to represent GCB employees Robert Brooks and Scott Layton<sup>1</sup> in addition to GCB, but Spertus disagreed. On September 3 and 4, 2008, Brooks and Layton agreed to submit to separate proffer sessions and were each interviewed at some length. During the proffer sessions, Brooks and Layton each spoke about his job duties, as well as the duties of others within GCB. On September 12, 2008, the government advised Spertus that Brooks and Layton were targets of the government's investigation. In a letter, the government informed Spertus that it believed Brooks and Layton, along with others, "conducted, controlled, managed, supervised, directed, or owned all or part of an unlicensed money transmitting business."

The issues presently before the Court are: (1) whether Spertus may concurrently represent GCB, Brooks, and Layton, and (2) whether, assuming that he terminates his representation of the employees, Spertus is disqualified from continuing to represent GCB.

<sup>1</sup> Brooks and Layton are collectively referred to herein as "the employees."

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

II. Legal Standard

A criminal defendant's Sixth Amendment right to the assistance of counsel includes an entitlement to "representation that is free from conflicts of interest," that is, to representation by an attorney who pursues the defendant's interest "single-mindedly," and whose strategic decisions are not influenced by obligations to others. *Wood v. Georgia*, 450 U.S. 261, 271-72, 101 S. Ct. 1097, 67 L. Ed. 2d 220 (1981). The representation of a criminal defendant by counsel with an actual conflict of interest, when there is no valid waiver of the right to independent counsel, constitutes a violation of due process and may be grounds for vacating the defendant's conviction and/or sentence. *Id.* at 273-74. Because trial courts have an independent duty to ensure that defendants receive a fair trial, they must inquire into a particular conflict of interest when alerted of a conflict by one of the parties. *Wheat v. United States*, 486 U.S. 153, 161, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988); *Cuyler v. Sullivan*, 446 U.S. 335, 374, 100 S. Ct. 1708, 64 L. Ed. 2d 333, (1980); *see also* Fed. R. Crim. P. 44(c)(2) ("The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effect assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.")

The Supreme Court has held that district courts have "substantial latitude" in determining whether an attorney may continue to represent a criminal defendant in the face of a potential conflict of interest. *Wheat*, 486 U.S. at 163. The presumption in favor of a defendant's counsel of choice may be overcome "not only by a demonstration of actual conflict[,] but by a showing of serious potential for conflict." *Wheat*, 486 U.S. at 164. Therefore, where a district court finds an actual or even a *potential* conflict of interest, it may decline a proffer of waiver and insist that the defendants be separately represented. *Id.* at 162-63. This principle helps to preserve the court's interest in the fairness of its proceedings and the integrity of its judgments. *See id.* at 160-62.

III. Discussion

A. Concurrent Representation

The Supreme Court has noted that the risk of a conflict of interest is "evident" when an alleged criminal enterprise pays an attorney to represent both itself and its employees. *Wood*, 450 U.S. at 267. "One risk is that the lawyer will prevent his client from obtaining leniency by preventing the client from offering testimony against his former employer or from taking other actions contrary to the employer's interest." *Id.* at 269. Another dilemma posed by concurrent representation is an attorney's inability to ethically engage in vigorous cross-examination of clients who testify against one another. *Wheat*, 486 U.S. at 164. The risks of concurrent representation are particularly acute when the attorney's clients are alleged coconspirators of varying stature in a complex scheme (as opposed to two coequal defendants in a straightforward criminal prosecution). *See Wheat*, 486 U.S. at 164; *United States v. Shwyder*, 312 F.3d 1109, 1118 (9th Cir. 2002).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

In the instant case, there is at least a potential conflict of interest if Spertus continues to represent Brooks, Layton, and GCB because their interests are likely to be adverse. The applicable criminal statute, 18 U.S.C. § 1960, provides that "[w]hoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business" may be indicted. Brooks and Layton have not been charged, but the government is currently investigating their roles within GCB. During a hearing on September 15, 2008, Spertus stated that GCB was defendant Fayed's company and that the two were, in effect, inextricably intertwined.<sup>2</sup> According to the government, that statement is at odds with the information Brooks and Layton revealed during their proffer sessions. The government also maintains that Brooks's and Layton's statements could put them at odds with one another if they are indicted. For instance, Layton stated that he was in charge of tracking wire transfers at GCB, while Brooks was in charge of due diligence: ensuring that no funds were received or sent to facilitate criminal activity. These roles, the government argues, could result in conflicting defenses, with Brooks and Layton each shifting the blame onto the other, or onto Fayed, who would blame Brooks and/or Layton.

Therefore, although Brooks and Layton are not currently defendants in this criminal proceeding, a serious potential conflict of interest exists. Were Brooks and Layton to be charged in connection with GCB's activities, arguing for leniency for one of them (or GCB) would likely necessitate shifting responsibility onto one of the other three. Similarly, Spertus could find himself in an untenable situation if the government offered a plea deal to one of the defendants in exchange for testimony against the other. *See People v. Mroczko*, 35 Cal. 3d 86, 101-03, 197 Cal. Rptr. 52 (1983). In addition, Spertus would be unable to engage in vigorous cross-examination of Brooks or Layton if they are called as government witnesses. There is also a danger that Spertus's ability to pursue Brooks's and Layton's interests "single-mindedly" could be compromised by his duty of loyalty to their employer, as well as by the fact that GCB is paying for the representation.

*B. Successive Representation*

Assuming that Spertus withdraws from representing Brooks and Layton, his ability to effectively represent GCB may be compromised by his previous representation of the employees. This situation would implicate both Spertus's duty of confidentiality and his duty of loyalty to his former clients.

First, Spertus has a duty to preserve the confidences of Brooks and Layton after termination of the attorney-client relationship. *See Cal. Bus. & Prof. Code § 6068(e); UMG Recordings, Inc. v. MySpace, Inc.*, 526 F. Supp. 2d 1046, 1058-59 (C.D. Cal. 2007). Spertus spent several hours representing each of the employees in separate proffer sessions with the government. Accordingly, he may have learned confidential information about each employee's role in the indicted company. Spertus's duty of confidentiality could impede his cross-examination of Brooks and Layton (if called as government witnesses) because he would be precluded from using the employees' confidential

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<sup>2</sup> The indictment against Fayed was dismissed without prejudice on the government's motion.

UNITED STATES DISTRICT COURT  
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CRIMINAL MINUTES - GENERAL

statements to impeach them. See *Shwayder*, 312 F.3d at 1118; *United States v. Stepney*, 246 F. Supp. 2d 1069, 1083 (N.D. Cal. 2003) (citing *United States v. Moscony*, 927 F.2d 742, 750 (3d Cir. 1991) ("Conflicts of interest rise whenever an attorney's loyalties are divided, and an attorney who cross-examines former clients inherently encounters divided loyalties.") (citations omitted)).

Furthermore, the duty of loyalty to his former clients would prevent Spertus not only from disclosing Brooks' and Layton's confidences, but from using those confidences in any way to the detriment of his former clients. See *Stepney*, 246 F. Supp. 2d at 1081 (citing Model Rules of Prof'l Conduct R. 1.9(c) ("A lawyer who has formerly represented a client in a matter . . . shall not thereafter . . . use information relating to the representation to the disadvantage of the client.")). The law presumes that an attorney who has learned confidential information relevant to her representation of a client "cannot avoid relying on the information—however indirectly or unintentionally—in forming legal advice and trial strategy." *Stepney*, 246 F. Supp. 2d at 1085 (citing *United States v. Henke*, 222 F.3d 633, 637-38 (9th Cir. 2000)). This is because the lawyer cannot realistically "unlearn" all she has already learned about a matter. *Baytree Capital Assocs., LLC v. Quan*, No. CV 08-2822, 2008 WL 3891226, at \*9 (C.D. Cal. Aug. 18, 2008) (citing *Stepak v. Addison*, 20 F.3d 398, 405-06 (11th Cir. 1994)).

Courts presume that an attorney learned confidential information from his former client whenever a "substantial relationship" exists between the former and current representations. As the California Court of Appeal has explained:

If the relationship between the attorney and the former client is shown to have been direct—that is, where the lawyer was personally involved in providing legal advice and services to the former client—then it must be presumed that confidential information has passed to the attorney and there cannot be any delving into the specifics of the communications between the attorney and the former client in an effort to show that the attorney did or did not receive confidential information during the course of that relationship.

*Jessen v. Hartford Cas. Ins. Co.*, 111 Cal. App. 4th 698, 709, 3 Cal. Rptr. 3d 877 (2003). A "substantial relationship," in turn, exists when the "subjects of the prior and the current representations are linked in some rational manner." See *id.* (citing *Flatt v. Sup. Ct.*, 9 Cal. 4th 275, 283, 36 Cal. Rptr. 2d 537 (1994)).

Here, the representations of GCB and of the employees are clearly substantially related because they both involve the criminal investigation of GCB's activities. Furthermore, Spertus's representation of Brooks and Layton was direct; he aided in preparing them for a proffer session and thus was in a position in which confidences material to his defense of GCB "would normally have been imparted to counsel." *UMG Recordings*, 526 F. Supp. 2d at 1058; see also *People v. Baylis*, 139 Cal. App. 4th 1054, 1066-67, 43 Cal. Rptr. 3d 559 (2006). Therefore, Spertus's former representation of the

UNITED STATES DISTRICT COURT  
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CRIMINAL MINUTES - GENERAL

employees will disqualify him from continuing to represent GCB if their interests are adverse. *See* Cal. Rules of Prof'l Conduct R. 3-310(E).

The interests of Brooks and Layton may well be adverse to those of GCB—for instance, the government might offer the employees immunity or a plea deal in exchange for testifying against GCB. In fact, Spertus has indicated that federal prosecutors previously corresponded with him in an attempt to negotiate state court immunity for the GCB employees. If Brooks or Layton are called as government witnesses in the prosecution of GCB, Spertus's duty of loyalty to his former clients might hinder his ability to effectively cross-examine them. Furthermore, if Spertus no longer represents Brooks and Layton, he cannot predict what defenses the employees will raise if they are indicted; those defenses might involve finger-pointing at others within GCB.

In sum, the possibility that the interests of GCB and the employees will become adverse is strong. Accordingly, Spertus's prior representation of Brooks and Layton disqualifies him from continuing to represent GCB.

**IT IS SO ORDERED.**

cc:

Initials of Deputy Clerk AB for WH

# EXHIBIT B

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE PHILIP S. GUTIERREZ, JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
Vs.	)	No. CR08-224-PSG
	)	
	)	
GOLDFINGER COIN & BULLION, INC.,	)	
	)	
	)	
Defendant.	)	
	)	
	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

*Status Conference*

Los Angeles, California

Monday, October 20, 2008

MIRIAM V. BAIRD, CSR 11893  
OFFICIAL U.S. DISTRICT COURT REPORTER  
255 East Temple Street, # 181-K  
Los Angeles, California 90012  
(213) 894-2853  
MVB11893@AOL.COM

A P P E A R A N C E S

IN BEHALF OF THE PLAINTIFF,  
UNITED STATES OF AMERICA:

U.S. DEPARTMENT OF JUSTICE  
U.S. ATTORNEY'S OFFICE  
BY: MARK AEVIS  
312 North Spring Street  
12th Floor  
Los Angeles, California 90012  
(213) 894-4477

IN BEHALF OF THE DEFENDANT,  
GOLDFINGER COIN & BULLION  
INC:

JAMES W. SPERTUS  
12100 Wilshire Boulevard  
Suite 620  
Los Angeles, CA 90025

1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 20, 2008; 0900

2  
3  
4 THE CLERK: Calling CR 08-224-PSG, USA vs.  
5 Goldfinger Coin & Bullion, Inc.

6 Counsel, please state your appearance for the  
7 record.

8 MR. AEVIS: Good morning, Your Honor, Mark Aevis  
9 for the United States.

10 THE COURT: Good morning.

11 MR. SPERTUS: Good morning, Your Honor.  
12 James Spertus for defendant Goldfinger and Coin Bullion.

13 THE COURT: I've read the conflict issue. I've  
14 read the Government's memo, the initial opposition, and the  
15 reply. I most recently considered the submission of counsel  
16 that was provided in camera.

17 Simply to get to the point. It just seems to me  
18 that there's an obvious conflict of interest that relates  
19 to -- separate and apart from confidentiality, that relates  
20 to duty of loyalty as it relates to the corporation and the  
21 two defendants.

22 Mr. Spertus, you may be heard.

23 MR. SPERTUS: Your Honor, may I be heard in camera?  
24 Can we not do this in open courtroom? In particular, there's  
25 a --

1 THE COURT: I've already considered in camera  
2 materials. Everything that should have been submitted,  
3 should've been submitted in writing.

4 MR. SPERTUS: It was, but in order for me to argue  
5 and be heard, I would like --

6 THE COURT: Why would you repeat yourself? If I've  
7 read it, I considered it. If you say it again, that's not  
8 going to change my mind to simply say it again. I don't see  
9 the need for an in camera review. I've given you the  
10 opportunity to produce it in writing. You did you it. I  
11 read it. I considered it. Having considered it, to me the  
12 conflict is obvious.

13 MR. SPERTUS: But, Your Honor, there's not ever  
14 been a single case ever in any courtroom that would hold  
15 under the facts of this case that there's an unwaivable  
16 conflict. There is not one case cited by the Government.

17 THE COURT: You say that. I'm dumbfounded. I'm  
18 dumbfounded by your inability to see this plank in your face.  
19 You can't represent the corporation. Granted, there are  
20 instances where you can waive, but to simply think you can  
21 represent two employees and the corporation at the same time  
22 and somehow go on your merry way and represent the  
23 corporation, and at some later point in time not see any  
24 potential breach of a duty of loyalty. How would you ever --  
25 what happens if the two defendants want to provide

1 substantial assistance to the Government? What happens if  
2 the corporation wants to provide substantial assistance  
3 against the two individuals? What would you do then? What  
4 loyalty do you have to this particular client?

5 MR. SPERTUS: First of all, these are not  
6 defendants, for one. So that's an important material fact.  
7 Second of all, if those two employees were to waive the issue  
8 that I've identified in camera, then there's absolutely no  
9 reason that I would not be able to continue to represent the  
10 company.

11 Separate from that, what the Government is alleging  
12 created a conflict, I submit, couldn't create conflict. The  
13 conflict law requires some actual conflict. The potential  
14 for conflict can be waived as a matter of law.

15 THE COURT: Isn't it my discretion, my discretion  
16 to accept the waiver, totally my discretion to accept the  
17 waiver?

18 MR. SPERTUS: Well, Your Honor, the Court's  
19 discretion is limited to whether the employees have an  
20 awareness of the potential conflict. If they want to waive  
21 under those circumstances, they have a Sixth Amendment right  
22 to counsel of their choice. The company has a Sixth  
23 Amendment right to counsel of its choice.

24 No, I respectfully do not agree that the Court  
25 would have discretion to order the company's counsel from the

1 case under those circumstances.

2 THE COURT: Anything else?

3 MR. SPERTUS: Yes, Your Honor, I believe --

4 THE COURT: Go to the lectern, please.

5 MR. SPERTUS: Yes.

6 Your Honor, the backdrop for this motion is the  
7 Rule 41 motion to release assets.

8 THE COURT: You keep raising that. It doesn't.  
9 Even the motion that you submitted doesn't present any new  
10 facts from the prior ruling. In fact, I took some umbrage to  
11 your ex parte submission, because what you did in your  
12 ex parte submission, you dealt with that issue in a way so  
13 that the Government could not respond to your legal  
14 arguments. It had no business in the ex parte in camera,  
15 none. Yet, you put it there. I thought it was unethical to  
16 put it there. You put things in your ex parte in your in  
17 camera you had no business putting. The sole purpose you put  
18 it there was to prevent the Government from responding. I'm  
19 not talking about the release of funds. We're talking about  
20 your conflict. That's the first issue.

21 MR. SPERTUS: Your Honor, the Government has  
22 briefed this as a dual representation case. This is not a  
23 dual representation case. All of the Government's  
24 authorities focus on this issue that the Court has in front  
25 of it; the equivalent of three defendants represented by one

1 attorney. That is not accurate.

2 The focus of my in camera submission was to address  
3 that misbriefing by the Government, first of all.

4 Second of all --

5 THE COURT: If it was misbriefing, why did you  
6 submit in camera so that the Government could be educated by  
7 your brief so that it could respond and say gee, you're right  
8 or gee, you're wrong as opposed to putting it in a format  
9 that the Government could not respond?

10 MR. SPERTUS: I stated the reason for that in  
11 camera, Your Honor, because I -- I'm trying to protect these  
12 employees. I mean, I -- I don't see the need to divulge  
13 these facts to the Government that make it not a dual  
14 representation case.

15 THE COURT: I understand that. But you were  
16 starting to talk about the release of funds. There was  
17 points and authorities that related to release of funds.  
18 That has nothing to do with any protection of the other  
19 employees. It's a legal question as to whether or not the  
20 funds should be released.

21 I don't think we get there. First, we've got to  
22 talk about the conflict issues before we get to the other  
23 issue.

24 MR. SPERTUS: Well, the other issue is only  
25 relevant -- is very relevant to the conflict issue to the

1 extent the Government is treating this as a dual  
2 representation case, which it's not. The minute I can put a  
3 voice to whatever positions these employees may have -- I  
4 have present in the courtroom two former AUSAs, very  
5 competent lawyers who have done conflict checks who are  
6 uncompensated for their time this morning, but I asked them  
7 to come to advise the Court that there are attorneys ready,  
8 willing, and able to represent these employees. Attorneys of  
9 the employees' choice. The company wants to pay their  
10 attorneys' fees.

11 I believe that having these attorneys representing  
12 these employees would moot the conflicts issues and allow the  
13 Court to do whatever analysis the Court deems appropriate  
14 with attorneys representing these employees.

15 I mean, right now I'm not standing before the Court  
16 speaking on behalf of these employees, but I don't believe  
17 that the Court could tell the company that -- that the  
18 company's attorney cannot represent the company anymore  
19 without conducting a waiver colloquy with the employees with  
20 their separate counsel.

21 I don't know how to accomplish that. I've asked  
22 these attorneys to do conflict checks, but short of that,  
23 they can't make appearances, obviously. I have a strong  
24 belief that the Rule 41 motion is inextricably intertwined  
25 with this conflict analysis.

1 the employees want to waive any conflicts that the concurrent  
2 representation issue presented.

3 I mean, at the time that I represented these  
4 employees through my representation of the company, the  
5 Government had represented they were not targets. So I just  
6 don't see how the Court could say now that the Government has  
7 changed its mind; company counsel, you're gone. I just don't  
8 believe that the law permits that. That's why we've taken  
9 such pains to brief each and every case cited by the  
10 Government. They are dual representations cases with actual  
11 conflicts of interest.

12 There is a strong presumption under the Sixth  
13 Amendment that the company and the employees are entitled to  
14 attorneys of their choice. For the Government to just  
15 interfere with that choice is improper. All the Government  
16 can do ever is tell the Court, hey, here's a situation where  
17 I believe there's an actual conflict; we're alerting the  
18 Court. The Government did that.

19 I want to direct the Court's attention to the  
20 speculation of actual conflict that is in the Government's  
21 briefing. They've scripted a fantasy that these employees  
22 could say that I was entitled to fudge on this or that. The  
23 Government has met with these employees. That is not the  
24 record. The Government has no factual basis for making those  
25 factual representations to the Court, none.

1           As soon as the employees have their attorneys of  
2       record who can say, I'm aware of what happened during the  
3       proffer; the employees were sitting there; GCB counsel  
4       sat present at those proffers; there was no privileged  
5       information that was communicated to the Government; there's  
6       no possible inconsistent defense in this case; I want to  
7       waive my conflict. Once those employees do that, if they do,  
8       the Government and the Court cannot interfere with those  
9       Sixth Amendment rights of GCB to have counsel of its choice,  
10      which is me.

11           THE COURT: Mr. Aegis?

12           MR. AEVIS: Thank you, Your Honor. Your Honor, I  
13      think the parties are diametrically opposed here. The  
14      Government, of course, believes there's a conflict. I think  
15      what is more important in terms of what counsel has said this  
16      morning, is counsel is continuing to conflate and muddy the  
17      waters regarding how the matter ought to be approached, what  
18      the logical analysis ought to be.

19           The Government is entirely consistent in its view  
20      with the Court. The first step is, is there a conflict? If  
21      so, what is that conflict, and how ought it to be resolved?  
22      Mr. Spertus was present during those proffers. Mr. Spertus  
23      met with those parties prior to their attendance at the  
24      proffers. Whether or not they were then or are now either  
25      targets or even defendants is not the analysis. It's not

1 relevant.

2           Indeed, if Mr. Spertus' position is to be accepted,  
3 the Government ought to indict them, and then we can have  
4 this discussion. That certainly is not in the best interest  
5 of either of those individuals. It may very well be in the  
6 best interest of GCB because then Mr. Fayed, who controls it,  
7 can point to those individuals. That ought not to be the  
8 analysis and isn't under the case law.

9           I believe the Court is dead-on as well in analyzing  
10 that there is both a duty of loyalty and a question about  
11 communications. We are here, I believe, confronting the bull  
12 by the horns, grabbing it, and saying, there's a duty of  
13 loyalty that is at risk here. We ought not to be in a  
14 position where the Court has discretion to allow this to  
15 completely blow up when one of these individuals takes the  
16 witness stand.

17           Finally, consistent with what the Court is saying,  
18 both Brooks and Leighton have attended and given proffers.  
19 We don't know whether they'll continue to do that, but the  
20 fact that they've already proffered, already sets the  
21 complexion for how they may, if they testify at all, testify  
22 at a trial. In a multiple defendant case where this would be  
23 going, that clearly is a huge factor. Mr. Spertus is not in  
24 a position to compromise or bargain in light of everything he  
25 knows.

1           So I don't believe that Mr. Spertus can continue to  
2 represent any party or any target or any, however we want to  
3 characterize it, other individuals like Brooks or Leighton.  
4 I'm happy that counsel are here and present, and may be  
5 available to represent either Mr. Brooks or Mr. Leighton, but  
6 that's an issue for another day. It has nothing to do with  
7 the resolution of the conflict matter, Your Honor.

8           MR. SPERTUS: Your Honor, it has everything to do  
9 with resolution of the conflict matter.

10           I mean, the proffers themselves were superficial,  
11 background proffers. No privileged information was given to  
12 the Government. Let's just say hypothetically it was. Let's  
13 just say one of these employees went in -- and I'm just  
14 saying this arguendo -- and said, I'm guilty of something; I  
15 would, as GCB counsel, certainly be getting witness  
16 statements. I mean, there's nothing that came to me that I  
17 wouldn't otherwise be receiving. Now that didn't happen;  
18 quite the opposite happened.

19           For the Government to start representing now that I  
20 can't negotiate on behalf of the employees and the company --  
21 the in camera submission was designed to show the Court that  
22 there are real defenses here. There's no negotiation. There  
23 is no conflicted loyalty. There's a complete alignment of  
24 interest, I believe, between the employees and the company.  
25 Even if there isn't, the employees' attorneys will be able to

1 advise them of that.

2 THE COURT: Doesn't, though, the initial problem  
3 start with your initial letter to the Government that you  
4 represent the company and all employees? Doesn't the problem  
5 start with that first sentence of that first letter?

6 MR. SPERTUS: No.

7 THE COURT: Why not?

8 MR. SPERTUS: Because the Government represented  
9 that these employees were not targets. It's routine under  
10 these types of situation to have employees represented  
11 through company counsel. These employees were not targets at  
12 the time. These employees were being contacted in their  
13 homes by investigators. They were calling company counsel  
14 saying, make it stop.

15 I mean, there's no way --

16 THE COURT: So why didn't the company do what  
17 you're proposing now when it had the money at the time? When  
18 they were being contacted, had the assets been seized at that  
19 point?

20 MR. SPERTUS: Yes. That's the point. This was a  
21 warrantless seizure that preceded the arrests of -- of the --  
22 the indictment of the company or the arrest of its president.  
23 The Government just took all of the assets that are set forth  
24 in Exhibit C without a warrant; just took them. It's  
25 prevented the company from retaining counsel for these

1 employees. We, from the get-go, have been trying to get  
2 assets released for these employees to preserve evidence, to  
3 pay rent.

4 I mean, these are issues that confronted the  
5 company immediately. I'm underfunded on my own retainer with  
6 the company. I'm not in a position to -- to -- we did file a  
7 Rule 41 motion, I believe, at the outset of this case, but  
8 the Government was very improperly repeatedly reaching out to  
9 these employees in their homes in front of their children  
10 saying, we want to interview you; you have nothing to hide;  
11 why do you need an attorney? I just think it's disingenuous  
12 now for them to say that because I finally put a stop to that  
13 behavior, I now am conflicted out of the whole case.

14 The Government will win by default. Let's just say  
15 hypothetically that the Government gets its way, the  
16 Government shouldn't even be advocating, first of all. It's  
17 improper to do anything more than alert the Court to a  
18 concern the Government has. I'm entitled to in camera  
19 argument.

20 Let's just say the Government gets its way and  
21 accomplishes the goal it is affirmatively advocating for, now  
22 suddenly we're two weeks away from trial. The company can't  
23 represent itself. No assets are being released for counsel.  
24 I mean, as a matter of law, the *Unimex* decision would make  
25 the Government face an insurmountable hurdle on appeal.

1           The other -- the Ramson decision talks about how  
2 when evidence is properly seized, that it should be released  
3 if its evidentiary value is -- can be addressed through other  
4 means. We'll stipulate to whatever evidentiary value the  
5 seizure has. The Government carted away millions of dollars  
6 in gold and in other GCB assets and is leaving the company  
7 and its employees defenseless. It's been doing that since  
8 the onset of this case. This case started with the seizure.  
9 We've been struggling with an impossible situation since the  
10 onset of this case.

11           So to answer the Court's question directly, if I  
12 could have obtained assets initially to represent these  
13 employees, I would have. We asked for them. We're trying to  
14 get them. We've negotiated informally with the Government  
15 since the onset of this case. Mr. Aevis himself represented  
16 that it's likely he would dismiss the company. At the time  
17 this all unfolded, there was no plan by the Government, I  
18 think, to even proceed against the company. I don't know  
19 what changed. No one will tell me.

20           Now I'm faced with a situation where the company's  
21 assets are needed for these immediate purposes. The company  
22 has Sixth Amendment rights. The employees have Sixth  
23 Amendment rights. The company has Fourth Amendment rights  
24 that were violated by the Government carting off gold and  
25 silver without any basis, no warrant authorizing that

1 seizure. I'm left trying to clean up a mess that's very,  
2 very difficult.

3 The Court is asking me, why don't I see the plank  
4 staring me in the face. I don't know how to communicate with  
5 the Court that there -- the Government's fantasy about these  
6 inconsistent defenses and finger-pointing is just that. It's  
7 fantasy. The Court can discuss with counsel for the  
8 employees once they're retained why that is fantasy.

9 I tried to present to the Court two of the primary  
10 defenses at trial. We're two weeks away from trial. The  
11 company has Speedy Trial rights that its exercising. As the  
12 Court will recall, I even opposed the excludable time  
13 findings that were based on Jim Fayed's bail motions. I  
14 don't know what the Court expects me to do. To make a  
15 suggestion that I'm behaving unethically, I just don't think  
16 it's well-founded. I think I'm behaving ethically. I would  
17 welcome a Bar inquiry into my conduct on this case. I've  
18 been absolutely hamstrung by the Government's positions from  
19 day one.

20 To be precise, they take everything, then they say  
21 nothing goes back to hired counsel. They're separate issues  
22 regarding the return of assets from retaining counsel. They  
23 almost create this problem themselves by representing that  
24 the employees are not targets, and then proceeding with the  
25 proffers. Now I'm stuck with the Court's strong bias to

1 grant their motion, which they're not even permitted to make.  
2 Other than alerting the Court to a potential conflict, that's  
3 the limit of what the Government can do.

4 If money is released, as we've requested today,  
5 this will all become moot.

6 THE COURT: Mr. Aevis, last word.

7 MR. AEVIS: Your Honor, throwing money at the  
8 problem is not going to solve it. I do want to correct the  
9 record. When Mr. Spertus was called by Brooks and Leighton  
10 where they had asked him, we're being interviewed or we've  
11 been requested to provide interviews or statements to law  
12 enforcement, it wasn't the Federal Government. It was the  
13 LAPD. The LAPD detectives were investigating Mr. Fayed's  
14 involvement in the murder of his wife.

15 Mr. Spertus was representing the corporation and  
16 not Mr. Fayed at the time. Mr. Fayed, if the Court will  
17 recall, had Mr. Werksman as his personal counsel, none the  
18 less saw fit to step in on behalf of Mr. Fayed the  
19 individual. The corporation is not a target in the murder  
20 investigation, and asked me if I would call off the dogs. In  
21 other words, he asked me if I would tell LAPD, an  
22 investigative entity with which I was not involved in regard  
23 to a murder case investigation with which I was not involved,  
24 and asked them not to interview these two individuals who  
25 were the subject of our white collar investigation now before

1 this Court.

2 This is another example of conflating the facts to  
3 try and blend, as Mr. Spertus is doing, the Rule 41 matter  
4 into this. It's not related. There's a conflict. He made a  
5 choice early on to represent everyone. GCB is not General  
6 Motors. It's a closely if not solely held company in the  
7 control of James Fayed.

8 Mr. Spertus made a decision early on to represent  
9 and protect Mr. Fayed by causing two individuals to squelch  
10 their involvement or refrain from any involvement in respect  
11 of the murder case involving Mr. Fayed, which is not before  
12 this Court. He made that choice. So he's connected himself  
13 with yet a different, unrelated matter, but again, confused  
14 his role deliberately so.

15 So to now come before this Court and ask that the  
16 Court ought to force the Government to write a check so that  
17 those individuals can be further controlled by Mr. Fayed  
18 underlies the entirety of the matter relating to the duty of  
19 loyalty. It emphasizes it. It makes it all the more  
20 important.

21 I have one final thing to say, Your Honor. I took  
22 the moral high ground in my initial comments in not  
23 commenting on Mr. Spertus' filing, his in camera filing, as a  
24 choice I made. The fact is it is sounding more and more like  
25 from his comments that there were things that the Government

1 would like to see. We would request that Mr. Spertus provide  
2 that filing to us redacted if there are any communicative  
3 statements that could be privileged, but otherwise provide us  
4 with all of the argument he made. It is simply not proper to  
5 be asking the Court to litigate any other matter. The  
6 Court's ruling was very clear. Only privileged  
7 communications can be disclosed to the Court. If there is  
8 anything else, we'd like to see it. Thank you.

9 THE COURT: Thank you.

10 MR. SPERTUS: Your Honor, to add one comment only.  
11 I don't know how the Government can make this claim that  
12 there is a separate State investigation. The search warrant  
13 that was left at the scene after the seizure that preceded my  
14 appearance in this case states: Item 12, clothing containing  
15 blood, including but not limited to a dark hoody, sweat --

16 THE COURT: Mr. Spertus, can you slow down and read  
17 that again.

18 MR. SPERTUS: Yes.

19 For example, the Federal search warrant, okay, that  
20 was left at the business premises after the Federal search of  
21 the business premises has as Item 12, clothing containing  
22 blood, including but not limited to a dark hoody  
23 sweatshirt.

24 That was solely to seize items for the State murder  
25 case. Item 11: Cleaning material and substance, including

1 but not limited to Armor All, towels, and buckets.  
2 That was in pursuit of what the Government is now  
3 claiming is a separate State murder case.

4 I'm reading tea leaves. I go to the premises. I  
5 pick up a search warrant that is clearly designed to further  
6 a State murder investigation. The Government is accusing me  
7 of somehow misleading the Court when I repeatedly represent  
8 that this was a joint Federal and State investigation. The  
9 first day of the proffers had more LAPD detectives than it  
10 did Federal agents. I don't see the reason for the  
11 separation. I mean, I don't think it matters, but this was a  
12 joint Federal and State investigation, and I'm a little bit  
13 confused why the Government is resisting that  
14 characterization. I've never seen a white collar criminal  
15 case have as an item to be seized blood evidence.

16 Now, I've repeatedly since August asked the  
17 Government for the search warrant affidavits. They have  
18 steadfastly refused. I have asked them in writing, I  
19 believe, three times. They steadfastly refused. I don't  
20 understand how they can be surprised. I'd ask them to  
21 fulfill their discovery obligations and produce discovery.  
22 We're two weeks away from trial. That would allow me to  
23 evaluate suppression issues and other things.

24 I just wanted to correct the Government's  
25 mischaracterization as somehow they're separate from the

1 State. I've never seen a Federal warrant in a white collar  
2 case looking for blood evidence.

3 MR. AEVIS: Your Honor, I want to add one thing for  
4 the Court's benefit. Mr. Spertus did raise a point about the  
5 default where the corporation might after today be  
6 unrepresented. That has never been our intention to somehow  
7 as matter of tactics cause Mr. Spertus to be disqualified so  
8 that the corporation would be unrepresented, and then we  
9 could swoop in and take the corporation's default. I will go  
10 on the record right now on behalf of the Government we will  
11 not do that. We will give the corporation a reasonable  
12 amount of time before we would take such action. I would  
13 define a reasonable amount of time as at least 30 days,  
14 certainly more if the Court would feel that would be  
15 appropriate. That is not our intention. We will not do  
16 that.

17 MR. SPERTUS: Your Honor, the company has Speedy  
18 Trial rights. The Government is desperately trying to get a  
19 continuance of this November trial. There are creditors.  
20 There are people not being paid. I've submitted in the  
21 Rule 41 motion notice from the landlord that they're going to  
22 evict the business from its premises.

23 There is no way that the company should be forced  
24 to forfeit Speedy Trial rights under these circumstances.

25 THE COURT: The Court will issue a minute order

1 today ruling that there is a conflict of interest, and that,  
2 Mr. Spertus, you are disqualified from representing the  
3 corporation in this matter. That will go out today. Thank  
4 you.

5 MR. AEVIS: Thank you.

6 We will submit if it's okay, Your Honor, excludable  
7 time findings to follow this because I believe the record  
8 ought to be clear about what may happen with the trial date.  
9 Although, as a practical matter, I believe so long as the  
10 corporation is unrepresented, the trial date may need to be  
11 vacated.

12 THE COURT: You may.

13 MR. SPERTUS: Your Honor, for the record, the  
14 company would have desire to exercise its Speedy Trial rights  
15 as it did previously when it opposed the Speedy Trial  
16 findings submitted by the Government. I don't believe that  
17 the Government can move to exclude time in this case.

18 THE COURT: Thank you.

19 MR. AEVIS: Thank you, Your Honor.

20 (Whereupon proceedings were concluded at 9:35 a.m.)  
21  
22  
23  
24  
25

# EXHIBIT C

FILED

2008 FEB 26 PM 3:23

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2008 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES MICHAEL FAYED,  
and

GOLDFINGER COIN & BULLION,  
INC.,

Defendants.

CR. NO. 08- **08-00224**

**I N D I C T M E N T**

[18 U.S.C. § 1960: Operating  
an Unlicensed Money  
Transmitting Business]

The Grand Jury charges:

[18 U.S.C. § 1960]

Beginning at a time unknown and continuing through on or  
about April 5, 2006, in Ventura County, within the Central  
District of California, and elsewhere, defendants JAMES MICHAEL  
FAYED and GOLDFINGER COIN & BULLION, INC., knowingly conducted,  
controlled, managed, supervised, directed and owned at least part  
of an unlicensed money transmitting business affecting interstate  
and foreign commerce, with said business operating without an


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1 appropriate money transmitting license, in violation of  
2 California Finance Code Sections 1800.3(a) and 1823, and failing  
3 to comply with the money transmitting business registration  
4 requirements under Title 31, United States Code, Section 5330,  
5 and the regulations prescribed thereunder.

6  
7 A TRUE BILL

8  
9   
10 FOREPERSON

11 THOMAS P. O'BRIEN  
12 United States Attorney

13   
14 CHRISTINE C. EWELL  
15 Assistant United States Attorney  
Chief, Criminal Division

16 MICHAEL ZWEIBACK  
17 Assistant United States Attorney  
Chief, Cyber & Intellectual Property Crimes Section

18 WESLEY D. HSU  
19 Assistant United States Attorney  
Deputy Chief, Cyber & Intellectual Property Crimes Section

20 MARK AVEIS  
21 Assistant United States Attorney  
Cyber & Intellectual Property Crimes Section  
22  
23  
24  
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26  
27  
28

# EXHIBIT D

DEFENDANT GOLDFINGER COIN  
& BULLION, INC.'S MOTION FOR  
RETURN OF PROPERTY

FILED: SEPTEMBER 24, 2008

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Attorneys for Defendant Goldfinger Coin  
& Bullion, Inc.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**GOLDFINGER COIN & BULLION,  
INC.**

Defendant.

**CASE NO. 08-224 PSG**

**DEFENDANT GOLDFINGER COIN  
& BULLION, INC.'S MOTION FOR  
RETURN OF PROPERTY  
PURSUANT TO RULE 41(g) OF  
THE FEDERAL RULES OF  
CRIMINAL PROCEDURE**

PLEASE TAKE NOTICE that on October 27, 2008, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Philip S. Gutierrez, located in Court Room 790 of the United States Courthouse, 255 East Temple Street, Los Angeles, California 90012, defendant Goldfinger Coin & Bullion, Inc. ("GCB") will move this Court for an order to return a limited amount of the funds seized by the United States from GCB on or about August 7, 2008. This motion is made under Rule of Criminal Procedure 41(g) on the ground that GCB will be aggrieved by GCB's continued deprivation of the seized funds, and the seized funds are not stolen or contraband, or otherwise have any evidentiary value to which GBC would not stipulate.

1 This Motion is based on this Notice of Motion and Motion, the Memorandum  
2 of Points and Authorities and Declarations attached hereto, the Court's file in this  
3 matter, and upon such other oral and documentary evidence as may be presented to  
4 the Court at the hearing on this Motion.

5 Dated: September 24, 2008 Law Offices of James W. Spertus  
6

7  
8 By: /S \_\_\_\_\_  
9 James W. Spertus  
10 Amanda R. Touchton  
11 Attorneys for Goldfinger Coin & Bullion, Inc.  
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1       **1. Introduction**

2           Goldfinger Coin & Bullion, Inc. ("GCB") is charged in a single count  
3 indictment with operating an unlicensed money transmitting business in violation of  
4 Title 18, United States Code, Section 1960. GCB operated an on-line bullion  
5 service that allowed individuals to open accounts and purchase gold bullion, silver  
6 or United States currency, providing the average individual with an opportunity to  
7 own gold, silver or currency without taking the risks associated with actual  
8 possession of precious metals. GCB stored account holders' deposits in various  
9 bank accounts and gold depositories.

10           On or about August 7, 2008, the government seized all of GCB's bank  
11 accounts and certain precious metals, including funds and precious metals placed on  
12 deposit with GCB by third party clients. GCB believes that the assets seized exceed  
13 \$20 million, but the government has steadfastly refused to provide any accounting  
14 of the amounts seized. (Declaration of James W. Spertus ("Spertus Decl."), ¶ 6).  
15 The government has thus far refused to release any of the seized funds to GCB, let  
16 alone provide GCB with basic information pertaining to the seizure. In addition, the  
17 government refuses to produce the seizure warrant affidavits it used to take  
18 possession of GCB's bank accounts, the search warrants affidavits by which the  
19 government seized the precious metals stored in GCB's premise, or even an  
20 inventory of what was seized other than generic statements that make it clear that  
21 the government seized currency, gold, and silver.

22           The government's refusal to release any funds to GCB places GCB and its  
23 third party account holders in a precarious position. Without basic operating funds,  
24 GCB is unable to pay vendors who are integral to maintaining the company's  
25 computer network infrastructure, or to pay its landlord to stave off eviction  
26 proceedings. Without its computer infrastructure and office, GCB will be unable to  
27 reconcile accounts and return funds to innocent third-party account holders, much  
28

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1 less defend itself against charges sought by the government against which GCB  
2 maintains its innocence.

3 Additionally, GCB does not have funds to provide representation for two  
4 employees whom the government recently identified as targets of its investigation.  
5 GCB is willing to pay the legal expenses for these employees, and indeed believes it  
6 is obligated to do so under the California Labor Code. GCB likewise lacks  
7 resources to pay counsel to defend itself at trial in the pending criminal  
8 investigation.

9 Federal Rule of Criminal Procedure 41(g) entitles a criminal defendant  
10 "aggrieved" by a government seizure and deprivation of its property to recover the  
11 property from the government where the property is not needed as evidence, and is  
12 not "alleged to be stolen, contraband or otherwise forfeitable." The government has  
13 seized GCB's assets as evidence only. As discussed below, there is no justification  
14 under Rule 41(g) for the government to withhold the requested funds from GCB.  
15 The government has not alleged the seized funds to be contraband or forfeitable, and  
16 to the extent that the funds have any evidentiary value, GCB is prepared to provide  
17 the government with a stipulation regarding the amounts and location of the seized  
18 funds. There can be no dispute that GCB will be "aggrieved" by the continued  
19 deprivation of its funds. Indeed, unless the requested relief is granted, and a limited  
20 amount of seized funds are immediately released, the government's seizure of  
21 GCB's assets will not only be catastrophic for GCB's business and its innocent  
22 account holders, but it will in effect deny GCB and its employees the ability to  
23 exercise their Sixth Amendment rights to counsel of their choosing.

24  
25 **2. Fed. R. Crim. P. 41(g) Mandates The Return Of Seized Funds That**  
26 **Serve No Evidentiary Purpose, Are Not Contraband and Are Not**  
**Subject to Forfeiture**

27 Federal Rule of Criminal Procedure 41 authorizes the return of property  
28 seized under a lawful warrant under certain circumstances. Rule 41(g) provides that

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1 a "person aggrieved . . . by the deprivation of property may move for the property's  
2 return."<sup>1</sup> A Rule 41(g) motion is the appropriate mechanism "to seek the return of  
3 seized property after an indictment has been issued." *Ramsden v. United States*, 2  
4 F.3d 322, 324 (9<sup>th</sup> Cir. 1993).<sup>2</sup>

5 The Ninth Circuit case law applying Rule 41(g) as well as its legislative  
6 history make clear that the government does not have unfettered authority to retain  
7 property seized from a criminal defendant, even where that property was lawfully  
8 seized. Rather, the government's retention of seized property must be "reasonable  
9 under all of the circumstances." *Ramsden v. United States*, 2 F.3d 322 (9<sup>th</sup> Cir.  
10 1993), *quoting* Advisory Committee Notes to the 1989 Amendment of Rule 41(g);  
11 *see also United States v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085 (9<sup>th</sup> Cir.  
12 2008).

13 In *Ramsden*, the Ninth Circuit held that the "United States' retention of  
14 property generally is reasonable if it has a need for the property in an investigation  
15 or prosecution." 2 F.2d at 326. The Court in *Ramsden* further held, however, that  
16 where "the United States' legitimate interests can be satisfied even if the property is  
17 returned," continued retention is unreasonable. *Id.*; *United States v. Kaczynski*, 416  
18 F.3d 971 (9<sup>th</sup> Cir. 2005) *quoting* Advisory Committee Notes to the 1989  
19 Amendment of Rule 41(g). According to the Ninth Circuit, "[t]he spirit of Rule  
20 41(g) is one of compromise." *Ramsden*, 2 F.3d at 327. Thus, even where the  
21

22 <sup>1</sup> Rule 41(g) also permits a person to seek the return of property on the grounds that it was the  
23 product of an unlawful search and seizure. GBC does not waive its right to do so in the future, but  
24 since the government has refused to produce the affidavits underlying the search warrants, GCB is  
25 not in a position now to evaluate the lawfulness of the government seizures. *United States v.*  
*Wilson*, 540 F. 2d 1100, 1104 (D.C. Cir. 1976) (finding that the right to return enunciated in Rule  
41 is independent of the validity or invalidity of the underlying search and seizure).

26 <sup>2</sup> *Ramsden* refers to Fed. R. Crim. P. 41(e), which contained the materially identical provision for  
27 seeking the return of property prior to the Amendments of Rule 41 whereby subdivision (g)  
superseded subdivision (e). To avoid confusion, all references in cited authority to the superseded  
28 subdivision (e) have been changed to reflect subdivision (g).

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1 government can assert that the seized property has some possible evidentiary value,  
2 it still should be returned to its owner if the government's interests can be satisfied  
3 by means other than retention. *Id. at* 326-27 (requiring the return of seized  
4 document originals where the government's interest in the documents could be  
5 satisfied by maintaining copies of the documents.)

6 Where, however, there is no evidentiary need for the government to retain the  
7 property in question, the burden is on the government to demonstrate a legitimate  
8 reason to retain the property. *United States v. Harrell*, 530 F.3d 1051, 1057 (9<sup>th</sup>  
9 Cir. 2008). In *Harrell*, the Court held that the government "must justify its  
10 continued possession of the property by demonstrating that it is contraband or  
11 subject to forfeiture." *Id.* (internal citations omitted.); *see also United States v.*  
12 *Mills*, 991 F.2d 609, 612 (9<sup>th</sup> Cir. 1993) (holding that a Rule 41(e) motion is only  
13 properly denied where "the defendant is not entitled to lawful possession of the  
14 seized property, the property is contraband or subject to forfeiture or the  
15 government's need for the property as evidence continues"), *quoting United States*  
16 *v. Van Cauwenberghe*, 934 F.2d 1048, 1061 (9<sup>th</sup> Cir.1991).

17  
18 **3. There Is No Evidentiary Need For The Government To Retain**  
19 **The Funds Seized From GCB**

20 GCB is charged with one count of violating 18 U.S.C. § 1960 for allegedly  
21 operating a money transmitting business without a license. The indictment contains  
22 a single paragraph, and contains no allegations that GCB engaged in any otherwise  
23 illegal or unauthorized activity. Moreover, the indictment contains no charges that  
24 monies deposited by clients or otherwise obtained by GCB were stolen, contraband,  
25 fruits of illegal activity or subject to forfeiture.

26 This is not an illegal firearms or narcotics distribution case where the  
27 proceeds of the business are per se illegal. *See Harrell*, 530 F.3d at 1057 ("An  
28 object is contraband per se if its possession, without more, constitutes a crime").

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1 Rather, the government has seized money and precious metals, which do not  
2 constitute contraband. *See In re Search of 2847 East Higgins Road, Elk Grove*  
3 *Village, Illinois*, 390 F. 3d 964, 965 (7<sup>th</sup> Cir. 2004) (holding that \$12 million in cash  
4 seized from owner of strip joints should have been returned since the bills  
5 themselves had no evidentiary value and was not alleged to be fruit of a crime.).  
6 The government therefore cannot justify the retention of GCB's funds by now  
7 asserting for the first time that the funds are contraband or subject to forfeiture.  
8 GCB is in need of an immediate order from the Court permitting the limited release  
9 of funds to pay emergency bills as set forth herein.

10 Nor can the funds properly be considered "evidence" in support of the  
11 government's charged violation of 18 U.S.C. § 1960. The government must prove  
12 that GCB engaged in "an unlicensed money transmitting business affecting  
13 interstate and foreign commerce." GCB is not contesting that it had a money  
14 transmitting license. Rather, GCB believes that it did not need to obtain a license  
15 because it is not a money remitting business. Thus, whether the government can  
16 prove its case will turn on the nature of GCB's business and whether GCB met the  
17 statutory definition for a "money transmitting business." A trial of this issue does  
18 not justify the continued seizure of assets that have no evidentiary value.

19 That GCB maintained a given amount of funds in bank accounts and held  
20 precious metals under safekeeping for its account holders does not evidence that  
21 GCB engaged in a "money transmitting business" and therefore required a license.  
22 Rather, the seizure merely establishes that GCB held significant assets in banks  
23 accounts and vaults, which facts are not in dispute in this case. This is not a case  
24 where the currency itself has independent evidentiary value because it creates a  
25 nexus between the defendants and the crime. The funds seized from GCB have no  
26 independent evidentiary value, and the fact that the currency was seized from a  
27 business charged with a regulatory violation does not justify the continued retention  
28 of the seized funds when the company will stipulate to the manner and method of

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1 the seizure. See *In re Search of 2847 East Higgins Road, Elk Grove Village,*  
2 *Illinois*, 390 F. 3d 964, 965 (7<sup>th</sup> Cir. 2004) (ordering release of \$12 million in cash  
3 seized from owner of strip joints even though they might evidence a tax violation).

4 To the extent the seized funds have any evidentiary at all, GCB is prepared to  
5 stipulate to the amount and location of the seized funds, and any other objective  
6 facts pertaining to the seizure that the government reasonably proposes.

7 Accordingly, such claimed evidentiary value cannot justify the continued  
8 withholding of GCB's funds. See *Ramsden*, 2 F.2d at 326 (holding that where "the  
9 United States' legitimate interests can be satisfied even if the property is returned,"  
10 continued retention is unreasonable).

11 Because the seized funds are not needed for any evidentiary purpose, are not  
12 contraband, and are not subject to forfeiture, GCB is entitled to the return of all  
13 seized funds.

14 **4. GCB Will Suffer Severe Harm Without The Return Of Funds**

15 The government seized all of GCB's assets. Although GCB is entitled to the  
16 immediate return of all funds and precious metals seized by the government, GCB at  
17 this time seeks the return of only those funds needed to pay vendors and its landlord  
18 so that it can maintain its infrastructure, pay legal fees for certain employees, and  
19 defend itself against the pending charges. Without such relief, GCB will shortly  
20 lose its ability to defend itself and its employees because, as previously briefed, the  
21 evidence needed for the defense will be lost. *Ramsden*, 2 F. 3d at 327 (finding that  
22 the spirit of Rule 41(g) is one of compromise and recognizing that "reasonable  
23 accommodations might protect both the law enforcement interests of the United  
24 States and the property rights of property owners and holders".)

25 **A. GCB Needs Funds To Maintain Its Computer Infrastructure For**  
26 **The Ultimate Benefit of its Accountholders**

27 GCB is a largely computerized operation that maintains a minimal staff. The  
28 account information is primarily contained in computer based files. These files are

1 maintained on servers that are housed by outside entities. To maintain its  
2 infrastructure and be in a position to ultimately return funds and assets to its account  
3 holders, GCB must be able to pay the companies that house the servers that contain  
4 GCB's account holder information.

5 For example, one company provides GCB with protection against distributed  
6 denial of service attacks and charges GCB \$5,000 per month for such services.  
7 (Spertus Decl. ¶ 7). This company has not been paid for its services and has  
8 indicated to GCB that unless it is paid it will cease providing services to GCB. (*Id.*)  
9 Another company provides GCB with server rack space and connectivity. (*Id.*)  
10 This company charges GCB \$7,500 per month for such services and has not been  
11 paid. (*Id.*). Another company provides GCB with internet connectivity. (*Id.*). This  
12 company charges GCB \$1,200 per month for such services and has not been paid  
13 (*Id.*). Unless these vendors are paid, they will cease providing services to GCB.  
14 Thus, GCB needs the return of funds necessary to pay outstanding charges owed to  
15 these computer vendors, as well as monthly charges for the foreseeable future. GCB  
16 requests the release of funds to pay for six months of service from these vendors,  
17 and if the case is not resolved within six months, GCB will apply to the court for the  
18 release of funds for continued payments during the pendency of this case. In  
19 camera, outside the presence of the government, GCB will provide the names of  
20 each of these specific vendors.

#### 21 B. GCB Needs Funds To Pay Rent On Its Office

22 In addition to information maintained on its computer network, GCB  
23 maintains additional infrastructure at its business premises, such as account  
24 information, local computers, account holder identification documents, and other  
25 documentation in GCB's office. To secure these records, protect the interests of its  
26 accountholders, and run its business, GCB must be able to pay the rent on its office  
27  
28

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1 space. The government cannot dispute the fact that GCB needs an office to operate  
2 and cannot simply fail to pay rent and become a holdover tenant.

3 GCB leases office space from R.T Enterprises in Camarillo, California.

4 Declaration of Robert Taylor ¶2, attached hereto (hereinafter, "Taylor Decl."). GCB  
5 owes R.T Enterprises \$4,821.68 for the September 2008 rent and soon will owe an  
6 additional \$4,821.68 on October 1 for the October 2008 rent. (Taylor Decl. ¶3.)

7 R.T. Enterprises has agreed to extend GCB's lease for an additional six month  
8 period from November 1, 2008 through April 30, 2008 at a rate of \$4,966.33 per  
9 month. (Taylor Decl. ¶4.) However, R.T. Enterprises will seek to evict GCB if  
10 GCB does not pay the amounts owed in a timely fashion. (Taylor Decl. ¶5.)

11  
12 **C. GCB Needs Funds To Defend Itself and Pay The Legal Fees Of  
Current And Former Employees Who Are Now Targets**

13 California Labor Code §2802 obligates employers to indemnify employees  
14 for legal fees and defense costs incurred by the employee "in direct consequence of  
15 the discharge of his or her duties . . . ." Accordingly, GCB has sought to retain  
16 counsel for GCB's employees related to the pending criminal charges and  
17 investigation of GCB, but needs funds released to pay attorneys fees. Unless funds  
18 are released to GCB for this purpose, GCB will be unable to fulfill its legal  
19 obligation to its employees under the California Labor Code.

20 In addition, GCB needs additional funds released to pay for its own defense.  
21 Without such funds, GCB will be denied counsel, which is most likely the  
22 government's goal in refusing to release funds to pay attorney's fees. If the Court  
23 were to order the release of funds to pay attorney's fees, GCB request an in camera  
24 hearing, outside the presence of the government, for a hearing on the amount of  
25 funds necessary to retain counsel in this case.

26 **5. Conclusion**

27 The above listed funds are absolutely necessary if GCB is going to maintain  
28 the resources necessary to reconcile third-party accounts and to defend itself and its

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1 employees in these criminal proceedings. The government has not and cannot assert  
2 any rightful claim of title to the property, and has seized the assets at issue in this  
3 Motion as evidence only. The seized funds are not subject to forfeiture and are not  
4 contraband. Given GCB's offer to stipulate to the any evidentiary purpose for the  
5 seizure, the funds no longer have any evidentiary value. GCB is therefore entitled  
6 under Rule 41(g) to the immediate return of the seized currency and precious metals.  
7 Nonetheless, in the spirit of reasonable compromise, GCB asks at this time only for  
8 the limited release of funds to maintain the company's basic infrastructure, to permit  
9 the company to mount a defense to the pending criminal charges, and to allow the  
10 company to retain separate representation for those employees the government has  
11 recently designated as targets. Given GCB's right to all funds, GCB's request for a  
12 release of limited funds to serve only these immediate needs is inherently  
13 reasonable.

14  
15 Dated: September 24, 2008      Respectfully submitted,

16  
17 **LAW OFFICES OF JAMES W. SPERTUS**

18  
19 By: /s \_\_\_\_\_  
20 James W. Spertus  
21 Amanda R. Touchton  
22 Attorneys for Goldfinger Coin & Bullion, Inc.  
23  
24  
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28

## DECLARATION OF JAMES SPERTUS

I, James W. Spertus, hereby state and declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am the attorney of record for defendant Goldfinger Coin & Bullion, Inc. ("GCB") in United States v. Goldfinger Coin & Bullion, Inc., CR 08-224 PSG.

2. Under the Labor Code for the State of California, I believe GCB has a duty to pay the fees for legal representation for its employees.

3. I believe that the United States has seized all of GCB's liquid assets, and has frozen all of GCB's bank accounts.

4. I have reviewed the indictment in this case, and I have researched the law pertaining to the charged violation, and I believe that GCB and its employees are factually innocent of the crime charged. The government is alleging that GCB is an unlicensed money remitting business, and I do not believe that the government can prove its case. The government has thus far failed to produce any meaningful discovery, and I am aware of know facts that would support the charges in the indictment. I am willing to divulge the complete defense strategy in this case to the Court in camera outside the presence of the government.

5. I have contacted several criminal defense attorneys regarding this case in an effort to determine the amount of money that would be needed to retain separate counsel for company employees, and at the hearing on this motion I will request an in camera hearing to disclose this information to the Court outside the presence of the government.

6. I am informed and believe that, on or about August 7, 2008, the government seized all of GCB's bank accounts and certain precious metals, including funds and precious metals placed on deposit with GCB by third party account holders. I am informed believe that the value of the seized assets exceeds \$20 million, and the government has steadfastly refused to provide me with any

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1 accounting of the amounts seized. In addition, the government refuses to produce  
2 the seizure warrant affidavits used to obtain warrants to take possession of GCB's  
3 bank accounts, or the search warrants affidavits underlying the search warrants in  
4 this case by which the government seized the precious metals stored in GCB's  
5 premises. The government will not even give me an accounting of the amounts  
6 seized.

7 7. I reviewed bills and records that I have been able to scrape together  
8 pertaining to GCB's operations. Most business records have been seized by the  
9 government. I believe the account information for GCB account holders is  
10 primarily contained in computer based files. These files are maintained on servers  
11 that are housed by outside entities. To maintain its infrastructure and remain in a  
12 position to ultimately return funds and assets to account holders, GCB must be able  
13 to pay the companies that house the servers that contain GCB's account holder  
14 information.

15 7. I am informed and believe that the company that provides GCB with  
16 protection against distributed denial of service attacks charges GCB \$5,000 per  
17 month for such services, and that the company has not been paid for its services and  
18 has indicated to GCB that unless it is paid it will cease providing services to GCB.  
19 A separate company provides GCB with server rack space and connectivity, and  
20 charges GCB \$7,500 per month for such services and has not been paid. Another  
21 company provides GCB with internet connectivity, and charges GCB \$1,200 per  
22 month for such services and has not been paid. Unless these vendors are paid, they  
23 will cease providing services to GCB. Thus, GCB needs the return of funds  
24 necessary to pay outstanding charges owed to these vendors, as well as monthly  
25 charges for the foreseeable future. GCB requests the release of funds to pay for six

26 //

27 //

28 //

1 months of service from these vendors, and if permitted by the Court I will disclose  
2 the names of these vendors to the court outside the presence of the government.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Signed this 24th day of September, 2008 in Los Angeles, California.  
5  
6  
7

/S

James W. Spertus

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DECLARATION OF ROBERT TAYLOR

I, Robert Taylor state and declare as follows:

1. I am the owner of R.T. Enterprises.


2. R.T. Enterprises leases office space to Goldfinger Coin & Bullion, Inc. at 1330 Flynn Road, Camarillo, California, Units F and G.

3. Goldfinger Coin & Bullion, Inc. did not pay its rent for September 2008. The current balance is \$4,821.68, exclusive of any fines and penalties. This same amount will be due on October 1, 2008.

4. I have agreed to extend Goldfinger Coin & Bullion, Inc.'s lease for a six month period from November 1, 2008 through April 30, 2008 at a rate of \$4966.33 per month.

5. If Goldfinger Coin & Bullion, Inc. does not pay the amounts owed in a timely fashion, I will immediately begin eviction proceedings.

I declare under the penalty of perjury that the foregoing is true and correct.  
Signed this 24th day of September, 2008 in Camarillo, California.

  
Robert Taylor

DECLARATION OF ROBERT TAYLOR

# EXHIBIT E

**GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO  
RETURN PROPERTY**

**FILED: OCTOBER 17, 2008**

1 THOMAS P. O'BRIEN  
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9 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) No. CR 08-224-PSG  
13 )  
14 Plaintiff, ) GOVERNMENT'S RESPONSE TO  
15 ) DEFENDANT'S MOTION TO RETURN  
16 v. ) PROPERTY  
17 )  
18 GOLDFINGER COIN & BULLION, )  
19 INC., )  
20 )  
21 Defendants. )

22 Plaintiff United States of America, by and through its  
23 counsel of record, the United States Attorney's Office for the  
24 Central District of California, hereby provides its partial  
25 response to defendant Goldfinger Coin & Bullion, Inc.'s ("GCB's"  
26 or "defendant's") motion to return property.

27 The government received notice today that the Court advanced  
28 this motion to October 20, 2008. The government had expected not  
to have to respond, if at all, until after the conflict hearing.  
The government requests leave to file additional briefing to the  
extent the Court is inclined to consider defendant's motion.

1 CONFLICTS ISSUE SHOULD BE RESOLVED FIRST

2 No matter when the motion will be heard, it is nonetheless  
3 tainted by defense counsel's unwaivable conflict of interest.  
4 The conflict of interest matter needs to be resolved first, and  
5 the ostensible merits of defendant's proposed motion fall  
6 squarely within the conflicts matter. It does not seem  
7 reasonable for defendant's counsel to seek the release of funds  
8 because that is a "merits" issue which is affected by the  
9 conflict of interest and because the funds defense counsel wants  
10 to be freed-up are to a large extent to pay himself and to retain  
11 counsel on behalf of defense counsel's other clients, defendant's  
12 employees.

13 MOTION FOR RECONSIDERATION WITHOUT NEW EVIDENCE

14 Moreover, defendant has essentially filed a motion for  
15 reconsideration of the Court's denial of its previous motion for  
16 the release of \$300,000. However, defendant has again provided  
17 no evidence to support its motion, and again relies entirely on  
18 its attorney's declaration.

19 Despite the Court's previous ruling, defendant has failed to  
20 provide any credible or admissible evidence to support its  
21 motion.

22 Additionally, the government is troubled that the sole  
23 support for the Motion has been provided by a sworn statement by  
24 a lawyer for defendant, no less upon mere "information and  
25 belief" throughout his declaration. See, e.g., Spertus  
26 Declaration to Motion, 1:23-27, 2:15. Counsel's supporting  
27 declaration is not only legally inadequate, as it is based upon  
28 unexceptionable hearsay, but persisting in its use in support of

1 the Motion could result in disclosure of confidential attorney-  
2 client communications where the government would expect to cross-  
3 examine the declarant/counsel regarding the basis for counsel's  
4 statements.

5 For all the foregoing reasons, the government requests that  
6 defendant's motion be denied.

7 DATED: October 17, 2008

THOMAS P. O'BRIEN  
United States Attorney

CHRISTINE C. EWELL  
Assistant United States Attorney  
Chief, Criminal Division

/s/

MARK AVEIS  
EDWARD E. ALON  
Assistant United States Attorneys  
Attorneys for Plaintiff  
UNITED STATES OF AMERICA

# EXHIBIT F

1 THOMAS P. O'BRIEN  
United States Attorney  
2 CHRISTINE C. EWELL  
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9 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) No. CR 08-224-PSG  
13 )  
Plaintiff, ) [proposed] ORDER DENYING MOTION  
14 ) WITHOUT PREJUDICE  
v. )  
15 ) [No hearing required]  
GOLDFINGER COIN & BULLION, )  
16 INC., )  
17 Defendants. )

18  
19 Based upon the record in this case,

20 IT IS HEREBY ORDERED that the motion of defendant Goldfinger  
21 Coin & Bullion, Inc., for return of property pursuant to  
22 Fed.R.Crim.P. 41, filed on or about September 24, 2008, is hereby  
23 DENIED WITHOUT PREJUDICE.

24 Dated: October \_\_, 2008

25 PHILIP S. GUTIERREZ  
26 UNITED STATES DISTRICT JUDGE  
27  
28

# EXHIBIT G

1 THOMAS P. O'BRIEN  
United States Attorney  
2 CHRISTINE C. EWELL  
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3 Chief, Criminal Division  
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FILED 10/24/08

CC: AUSPO / PTS

9 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) No. CR 08-224-PSG  
13 )  
14 Plaintiff, ) FINDINGS AND CONCLUSIONS RE:  
15 ) EXCLUDABLE TIME  
16 v. ) [No hearing required]  
17 GOLDFINGER COIN & BULLION, )  
18 INC., )  
19 Defendants. )

20 Pursuant to the statements and request of the government,  
21 and the record in this case, the Court makes the following  
22 findings in respect of excludable time:

23 1. On February 26, 2008, defendants James Michael Fayed  
24 ("Fayed") and Goldfinger Coin & Bullion, Inc. ("GCB") were  
25 charged in a single-count indictment with operating an unlicensed  
26 money transmitting business, in violation of 18 U.S.C. § 1960.

27 2. Defendant GCB first appeared before a judicial officer  
28 of this Court on August 18, 2008, at which time defendants Fayed  
and GCB each appeared for post-indictment arraignment. A joint

1 trial was then set for September 30, 2008.

2 3. On August 18, 2008, after defendants' post-indictment  
3 arraignment, defendants filed an "Ex Parte Joint Defense  
4 Application for an Order Releasing . . ." funds (the  
5 "Application"). In the joint Application, defendants stated,  
6 among other things, that "[d]efendant James M. Fayed is the  
7 founder of [defendant] Goldfinger [Coin & Bullion, Inc.] and  
8 e-Bullion.com, an Internet site . . ." Application, 3:7-10. The  
9 Application further states that "[d]efendants Mr. Fayed and  
10 Goldfinger . . . operated a lawful business enterprise . . ."  
11 Application, 3:18-19.

12 4. On August 29, 2008, this Court denied defendants' joint  
13 application for release of funds.

14 5. On September 15, 2008, this Court granted the  
15 government's motion to dismiss without prejudice the indictment  
16 against defendant Fayed only.

17 6. This Court has previously ordered that certain time be  
18 excluded, and that, accordingly, trial be continued to November  
19 4, 2008.

20 7. At a September 19, 2008 status conference, counsel for  
21 the government informed the Court of a conflict of interest in  
22 regard to GCB's counsel of record, James Spertus (including Mr.  
23 Spertus' law firm and associates therein). In light of the  
24 conflict of interest issue, the Court set a briefing schedule.  
25 All filings were to be filed under seal, with the government's  
26 initial filing due on September 25, 2008. A hearing regarding  
27 the conflict of interest was set for October 6, 2008.

28 ///

1 8. On September 24, 2008, defendant GCB filed a second  
2 motion for return of property pursuant to rule 41(g) of the  
3 Federal Rules of Criminal Procedure, with a request that a  
4 hearing be set on shortened time. The Court denied the request  
5 for a hearing on shortened time and the motion was set for  
6 hearing on October 27, 2008.

7 9. On October 6, 2008, the Court held a hearing regarding  
8 the conflict of interest. Based on GCB's counsel request to file  
9 additional supporting evidence under seal, and in camera, the  
10 Court continued the hearing to October 20, 2008. On October 16,  
11 2008, the Court advanced to October 20, 2008 the hearing on GCB's  
12 second motion for return of property.

13 10. On October 20, 2008, the Court disqualified defendant  
14 GCB's counsel James Spertus from representing Scott Layton,  
15 Robert Brooks, or GCB.

16 11. On October 20, 2008, the Court denied without  
17 prejudice GCB's second motion for return of property.

18 Based upon the foregoing findings and the record in this  
19 case, the Court makes the following conclusions:

20 1. Pursuant to 18 U.S.C. § 3161(c)(1), trial in this case  
21 was required to commence not later than 70 days after the later  
22 of the filing of the indictment in this case, or the date of  
23 defendant's first appearance before a judicial officer of this  
24 Court. Accordingly, trial in this case was initially required to  
25 commence not later than October 27, 2008 as to defendant GCB.

26 2. On September 19, 2008, the Court made findings and  
27 conclusions of law regarding excludable time, and ordered that  
28 the period from August 19, 2008; through September 15, 2008,

1 inclusive, 28 days, was deemed an excludable period under 18  
2 U.S.C. § 3161 et seq. Accordingly, trial in this case was  
3 required to commence not later than November 24, 2008 as to  
4 defendant GCB.

5 3. Pursuant to 18 U.S.C. § 3161(h)(1)(F), delay resulting  
6 from any pretrial motion, from the filing of the motion through  
7 the conclusion of the hearing on such motion, shall be excluded.  
8 The Court deems defendant GCB's second motion for return of  
9 property pursuant to rule 41(g) of the Federal Rules of Criminal  
10 Procedure a motion for the purposes of § 3161(h)(1)(F).

11 4. The time period of September 24, 2008 to October 20,  
12 2008, inclusive, in which defendant GCB's motion for return of  
13 property was pending, is excluded in computing the time within  
14 which the trial must commence, pursuant to 18 U.S.C.  
15 § 3161(h)(1)(F). As such, a period of 26 days is deemed  
16 excludable time. Accordingly, trial in this case is required to  
17 commence not later than December 20, 2008 as to defendant GCB.

18 5. The Court further concludes that, based on the above-  
19 stated findings, the ends of justice are served by continuing the  
20 case as requested and outweigh the interest of the public and the  
21 defendant in a trial within the original date prescribed by the  
22 Speedy Trial Act.

23 6. Nothing in this Order shall preclude a finding that  
24 other provisions of the Speedy Trial Act dictate that additional  
25 time periods are excluded from the period within which trial must  
26 commence. Moreover, the same provisions and/or other provisions  
27 of the Speedy Trial Act may in the future authorize the exclusion  
28 of additional time periods from the period within which trial

1 must commence.

2 Based upon the foregoing, the Court hereby finds, concludes,  
3 and orders that (1) the period from September 24, 2008 through  
4 October 20, 2008, inclusive, is deemed an excludable period under  
5 18 U.S.C. § 3161 et seq.; and (2) continues trial in this matter  
6 to December 9, 2008 at 9:00 a.m.

7  
8 Dated: October 24, 2008

**PHILIP S. GUTIERREZ**  
PHILIP S. GUTIERREZ  
UNITED STATES DISTRICT JUDGE

# EXHIBIT H

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF  
CALIFORNIA (Western Division - Los Angeles)  
CRIMINAL DOCKET FOR CASE #: 2:08-cr-00224-PSG All Defendants**

Case title: USA v. Fayed et al

Date Filed: 02/26/2008

Assigned to: Judge Philip S.  
Gutierrez

Appeals court case number: '08-  
50367' '9TH CCA'

**Defendant (1)**

**James Michael Fayed**  
**TERMINATED: 09/15/2008**

represented by **Mark M Hathaway**  
Mark J Werksman Law Offices  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Mark J Werksman**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Pending Counts**

None

**Disposition**

**Highest Offense Level (Opening)**

None

**Terminated Counts**

**Disposition**

Based on the government's motion  
pursuant to Rule 48(a) of the Federal

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Operating an Unlicensed Money  
Transmitting Business  
(1)

Rules of Criminal Procedure, IT IS  
HEREBY ORDERED that the  
indictment in this case is hereby  
DISMISSED without prejudice  
against defendant JAMES  
MICHAEL FAYED only.

**Highest Offense Level**  
**(Terminated)**

Felony

**Complaints**

None

**Disposition**

Assigned to: Judge Philip S.  
Gutierrez

**Defendant (2)**

**Goldfinger Coin & Bullion Inc**

represented by **Amanda R Touchton**  
Law Offices of James W. Spertus  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**James W Spertus**  
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Fax: 310-826-4711  
Email: jim@spertuslaw.com  
**TERMINATED: 10/20/2008**  
**LEAD ATTORNEY**  
**Designation: Retained**

**Pending Counts**

Operating an Unlicensed Money  
Transmitting Business  
(1)

**Disposition**

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

**Disposition**

**EXHIBITS TO PETITION - PAGE 98**

None

**Highest Offense Level**  
**(Terminated)**

None

**Complaints**

None

**Disposition****Plaintiff**

USA

represented by **Edward E Alon**

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**Mark Aveis**

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USACAC.Criminal@usdoj.gov  
**TERMINATED: 08/25/2008**

Date Filed	#	Docket Text
02/26/2008	<u>1</u>	SEALED INDICTMENT filed as to James Michael Fayed (1) count(s) 1, Goldfinger Coin & Bullion Inc (2) count(s) 1. Offense occurred in VEN. (ja) (Entered: 02/28/2008)
02/26/2008	<u>2</u>	EX PARTE APPLICATION to Seal Case Filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc(ja) (Entered: 02/28/2008)

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02/26/2008	<u>3</u>	ORDER Sealing Case by Magistrate Judge Stephen J. Hillman as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc, RE: EX PARTE APPLICATION to Seal Case <u>2</u> (ja) (Entered: 02/28/2008)
02/26/2008	<u>4</u>	CASE SUMMARY filed by AUSA Mark Aveis as to Defendant James Michael Fayed; defendant's Year of Birth: 1963 (ja) (Entered: 02/28/2008)
02/26/2008	<u>5</u>	CASE SUMMARY filed by AUSA Mark Aveis as to Defendant Goldfinger Coin & Bullion Inc (ja) (Entered: 02/28/2008)
02/26/2008	<u>6</u>	MEMORANDUM filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc. This criminal action, being filed on 2/26/08, was not pending in the U. S. Attorneys Office before the date on which Judge Stephen G. Larson began receiving criminal matters. (ja) (Entered: 02/28/2008)
02/26/2008	<u>7</u>	MEMORANDUM filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc. in regards to the following Magistrate Judges: John C. Rayburn, Jr., Jacqueline . . Chooljian, Patrick J. Walsh, Jennifer T. Lum, Jeffrey W. Johnson. (ja) (Entered: 02/28/2008)
02/26/2008	<u>8</u>	MEMORANDUM filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc. This criminal action, being filed on 2/26/08, was not pending in the U. S. Attorneys Office before the date on which Judge Nora M. Manella, and Judge Lourdes G. Baird began receiving criminal matters. (ja) (Entered: 02/28/2008)
08/01/2008	<u>13</u>	NOTICE OF MOTION AND MOTION to Unseal Case Filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc (mhe) (Entered: 08/06/2008)
08/01/2008	<u>14</u>	ORDER by Magistrate Judge Alicia G. Rosenberg as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc, re MOTION to Unseal Case <u>13</u> . (mhe) (Entered: 08/06/2008)
08/04/2008	<u>9</u>	REPORT COMMENCING CRIMINAL ACTION as to Defendant James Michael Fayed; defendants Year of Birth: 1963; date of arrest: 8/1/2008 (mhe) (Entered: 08/05/2008)
08/04/2008	<u>10</u>	MINUTES OF ARREST ON INDICTMENT HEARING held before Magistrate Judge Ralph Zarefsky as to Defendant James Michael Fayed. Defendant states true name as charged. Attorney: Mark J Werksman for James Michael Fayed, Retained, present. Court orders bail set as: James Michael Fayed (1) \$500,000 Appearance Bond, see attached for terms and conditions. Defendant's request for forthwith release is DENIED. Release stayed until 8/6/08 at 4:30PM. Defendant remanded to the custody of the USM. Post-Indictment Arraignment set for 8/18/2008 08:30 AM before Duty Magistrate Judge. Detention hearing held. Agent Timothy L. Swec, CST. Court Smart: CS 8/4/08. (mhe) (Entered: 08/05/2008)
08/04/2008	<u>11</u>	NOTICE OF REQUEST FOR DETENTION filed by Plaintiff USA as to Defendant James Michael Fayed (mhe) (Entered: 08/05/2008)
08/04/2008	<u>12</u>	NOTICE DIRECTING DEFENDANT TO APPEAR for Arraignment

EXHIBITS TO PETITION - PAGE 100

		on Indictment/Information. Defendant James Michael Fayed directed to appear on 8/18/08 at 8:30 AM before the Duty Magistrate Judge. (mhe) (Entered: 08/05/2008)
08/05/2008	<u>26</u>	GOVERNMENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO THE CRIMINAL DUTY JUDGE FOR REVIEW OF MAGISTRATE JUDGES BAIL ORDER <u>25</u> filed by Plaintiff USA as to Defendant James Fayed. (bm) (Entered: 08/21/2008)
08/06/2008	<u>15</u>	MINUTES OF Hearing on Application to the Criminal Duty Judge for Review of Magistrate Judge's Bail Order (Filed 8/6/08) held before Judge Otis D Wright, II as to Defendant James Michael Fayed, Court orders defendant is to remain in custody pending trial. The Government is to prepare and lodge proposed findings. This order of detention is without prejudice. Court Reporter: Anne Kielwasser. (mhe) (Entered: 08/07/2008)
08/06/2008	<u>25</u>	APPLICATION TO THE CRIMINAL DUTY JUDGE FOR REVIEW OF MAGISTRATE JUDGES BAIL ORDER Filed by Plaintiff USA as to Defendant James Michael Fayed. Application set for hearing on 8/6/2008 at 3:30 PM before Judge Otis D Wright II. (bm) (Entered: 08/21/2008)
08/06/2008	<u>27</u>	REPLY TO GOVERNMENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO THE CRIMINAL DUTY JUDGE FOR REVIEW OF MAGISTRATE JUDGE'S BAIL ORDER <u>25</u> filed by Defendant James Fayed. (bm) (Entered: 08/21/2008)
08/13/2008	<u>16</u>	NOTICE OF LODGING filed by Plaintiff USA as to Defendant James Michael Fayed (Attachments: # <u>1</u> Proposed Order Findings of Fact, Statement of Reasons, and Order for Detention Following Hearing on Government's Application to Criminal Duty Judge for Review of Magistrate's Judge's Order)(Hobbs, Bonnie) (Entered: 08/13/2008)
08/13/2008	<u>28</u>	FINDINGS OF FACT, STATEMENT OF REASONS, AND ORDER FOR DETENTION FOLLOWING HEARING ON GOVERNMENT'S APPLICATION TO CRIMINAL DUTY JUDGE FOR REVIEW OF MAGISTRATE JUDGE'S ORDER by Judge Otis D Wright, II as to Defendant James Michael Fayed, (bm) (Entered: 08/21/2008)
08/15/2008	<u>17</u>	NOTICE OF APPEARANCE of attorney Mark M. Hathaway, (Retained), appearing on behalf of Defendant James Michael Fayed, filed by Defendant James Michael Fayed. (Hathaway, Mark) (Entered: 08/15/2008)
08/18/2008	<u>18</u>	EX PARTE APPLICATION for Return of Property (PreTrial). Property described as: \$300,000.00. Filed by Defendant James Michael Fayed; Goldfinger Coin & Bullion Inc (Attachments: # <u>1</u> Exhibit Exhibit 1 Partial Agency Listing, # <u>2</u> Proposed Order Proposed Order Releasing \$300,000)(Hathaway, Mark) (Entered: 08/18/2008)
08/18/2008	<u>19</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Goldfinger Coin & Bullion Inc (tba) (Entered: 08/19/2008)
08/18/2008	<u>20</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by James

EXHIBITS TO PETITION - PAGE 101

		W Spertus appearing for Goldfinger Coin & Bullion Inc (tba) (Entered: 08/19/2008)
08/18/2008	<u>21</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant James Michael Fayed (tba) (Entered: 08/19/2008)
08/18/2008	<u>22</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by Mark J Werksman appearing for James Michael Fayed (tba) (Entered: 08/19/2008)
08/18/2008	<u>23</u>	ABSTRACT OF COURT PROCEEDING Issued by Magistrate Judge Charles F. Eick as to James Michael Fayed. The Court ordered that the defendant be provided with a medical examination, and or treatment for arthritis. (tba) (Entered: 08/19/2008)
08/18/2008	<u>29</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Charles F. Eick as to James Michael Fayed (1) Count 1 and Goldfinger Coin & Bullion Inc (2) Count 1. Defendant arraigned, states true name: As charged. Defendant entered not guilty plea to all counts as charged. Attorney: 1.) Mark Werksman for defendant 1.) James Michael Fayed, 2.) James W. Spertus for defendant 2.) Goldfinger Coin & Bullion Inc., retained present. Case assigned to Judge Philip S. Gutierrez. Jury Trial set for 9/30/2008 09:00 AM before Judge Philip S. Gutierrez. Status Conference set for 9/15/2008 10:00 AM before Judge Philip S. Gutierrez. Court Smart: CS08/18/2008. (tba) (Entered: 08/21/2008)
08/20/2008	<u>24</u>	CRIMINAL MOTION AND TRIAL ORDER by Judge Philip S. Gutierrez as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc; Pretrial motions shall be filed on or before August 18, 2008. Motions expected to take more than one hour of court time must include a time estimate beneath the hearing date on the face page of the motion. Oppositions (or notices of non-opposition) shall be filed on August 25, 2008. Replies (optional) shall be filed on September 8, 2008. Local Rule 7-12 will apply to papers not timely filed by a party. Adherence to these timing requirements is essential to chambers preparation of motion matters; Memoranda of Points and Authorities in support of or in opposition to motions shall not exceed 25 pages. Replies shall not exceed 12 pages. Only in rare instances and for good cause shown will the Court grant an application to extend these page limitations. No supplemental brief shall be filed without prior leave of court. Typeface shall comply with Local Rule 11-3.1.1. (Civil). NOTE: If Times Roman font is used, the size must be no less than 14; if Courier is used, the size must be no less than 12. Footnotes shall be in typeface no less than one size smaller than text size and shall be used sparingly; A Status Conference/Motions Hearing is set for September 15, 2008 at 10:00 a.m.; Trial is set for Tuesday, September 30, 2008 at 9:00 a.m. (SEE ATTACHMENT FOR FURTHER DETAILS) (ab) (Entered: 08/21/2008)
08/20/2008	<u>31</u>	MINUTES OF IN CHAMBERS ORDER by Judge Judge Philip S. Gutierrez SETTING STATUS CONFERENCE: The Court is in receipt of Defendants Ex Parte Joint Defense Application, filed August 18, 2008. Accordingly, the Court sets a Status Conference for Friday, August 29, 2008 at 9:00 a.m. (bm) (Entered: 08/21/2008)

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08/21/2008	<u>30</u>	NOTICE OF APPEARANCE of attorney Amanda R. Touchton, (Retained), appearing on behalf of Defendant Goldfinger Coin & Bullion Inc, filed by Defendant Goldfinger Coin & Bullion Inc. (Spertus, James) (Entered: 08/21/2008)
08/22/2008	<u>32</u>	NOTICE OF APPEAL TO APPELLATE COURT (Interlocutory) filed by Defendant James Michael Fayed re Findings of Fact, <u>28</u> . N; (Werksman, Mark) (Entered: 08/22/2008)
08/22/2008	<u>33</u>	NOTIFICATION OF APPEAL NOTIFICATION form issued regarding Notice of Appeal - Interlocutory <u>32</u> as to Defendant James Michael Fayed. (lr) (Entered: 08/22/2008)
08/22/2008	<u>34</u>	ORDER OF TIME SCHEDULE filed as to Defendant James Michael Fayed, re Notice of Appeal - Interlocutory, <u>32</u> . Transcript designation due: 9/12/08, Court Reporter transcripts due: 12/12/08, Appellants briefs and excerpts due: 12/22/08, Appellees reply brief due: 1/21/09, Appellants reply brief due: 2/04/09. (cc: all counsel) (lr) (Entered: 08/22/2008)
08/22/2008		Transmission of Notice of Appeal and Docket Sheet as to James Michael Fayed to US Court of Appeals re Notice of Appeal - Interlocutory <u>32</u> (lr) (Entered: 08/22/2008)
08/25/2008	<u>35</u>	TRANSCRIPT DESIGNATION AND ORDERING FORM as to James Michael Fayed, for Dates: 8/4/08, 8/6/08; Court Reporter: Michelle Ortega, Anne Kielwasser; Court of Appeals Case Number: Not yet assigned; Re: Notice of Appeal - Interlocutory <u>32</u> (Werksman, Mark) (Entered: 08/25/2008)
08/25/2008	<u>36</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Edward E Alon on behalf of Plaintiff USA. Filed by Plaintiff USA. (Alon, Edward) (Entered: 08/25/2008)
08/26/2008	<u>37</u>	NOTICE OF MOTION AND MOTION for Release from Custody Filed by Defendant James Michael Fayed Motion set for hearing on 9/8/2008 at 10:00 AM before Judge Philip S. Gutierrez. (Werksman, Mark) (Entered: 08/26/2008)
08/26/2008	<u>38</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 08-50367 as to Defendant James Michael Fayed, 9TH CCA regarding Notice of Appeal - Interlocutory <u>32</u> . (car) (Entered: 08/26/2008)
08/26/2008	<u>42</u>	APPEAL FEES PAID as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc, re: Notice of Appeal - Interlocutory <u>32</u> ; Receipt Number 110678 in the amount of \$455.00. (dmap) (Entered: 09/02/2008)
08/27/2008	<u>39</u>	STATUS REPORT filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc (Alon, Edward) (Entered: 08/27/2008)
08/28/2008	<u>40</u>	STATUS REPORT filed by Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc (Hathaway, Mark) (Entered: 08/28/2008)
08/29/2008	<u>41</u>	MINUTES OF Status Conference held before Judge Philip S. Gutierrez

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		DENYING ex parte, without prejudice, as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc. Hearing on Review of Detention order set for 9/5/2008 09:00 AM before Judge Philip S. Gutierrez. Simultaneous oppositions due: September 3, 2008; Defendant's reply due: Close of business day September 4, 2008; Hearing advanced to September 5, 2008, at 9:00AM. Court Reporter: Miriam Baird. (da) Modified on 8/29/2008 (da). (Entered: 08/29/2008)
08/29/2008	<u>43</u>	ORDER of USCA filed as to James Michael Fayed, CCA #08-50367. This is an appeal from an order denying appellant's release pending trial and will thus be governed by Federal Rule of Appellate Procedure 9(a). The court vacates the previously established briefing schedule. Appellant's memorandum of law and facts in support of his appeal is due 9/5/08. Appellee's response is due 9/15/08; and appellant's optional reply to the response is due seven days after service of the response. Order received in this district on 8/29/08. (car) (Entered: 09/03/2008)
09/03/2008	<u>44</u>	OPPOSITION to MOTION for Release from Custody <u>37</u> filed by Plaintiff USA as to Defendant James Fayed. (Attachments: # <u>1</u> Exhibit) (Alon, Edward) (Entered: 09/03/2008)
09/03/2008	<u>45</u>	SUPPLEMENT to MOTION for Release from Custody <u>37</u> filed by Defendant James M. Fayed. (Hathaway, Mark) (Entered: 09/03/2008)
09/04/2008	<u>46</u>	REPLY In Support of Motion MOTION for Release from Custody <u>37</u> filed by Defendant James M. Fayed. (Attachments: # <u>1</u> Exhibit Exhibit 1 Reporter's Transcript, August 6, 2008, # <u>2</u> Exhibit Exhibit 2 Partial List Subpoenas Received from Law Enforcement and Regulatory Agencies) (Hathaway, Mark) (Entered: 09/04/2008)
09/05/2008	<u>47</u>	MINUTES OF DEFENDANT'S MOTION TO REVIEW DETENTION ORDER FILED 08-26-08 <u>37</u> held before Judge Philip S. Gutierrez as to Defendant James Michael Fayed: The Court hears oral argument regarding the above-referenced motion, and Denies the motion based on lack of jurisdiction. Court Reporter: Miriam Baird. (bm) (Entered: 09/05/2008)
09/08/2008	<u>48</u>	STIPULATION for Order Stipulated Protective Order filed by Plaintiff USA as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc (Attachments: # <u>1</u> Proposed Order Protective Order)(Alon, Edward) (Entered: 09/08/2008)
09/08/2008	<u>49</u>	TRANSCRIPT filed as to Defendant James Michael Fayed for proceedings held on 8-4-08 3:01p.m., 3:58p.m., 4:28p.m.. Court Reporter/Electronic Court Recorder: Babykin CourtHouse Services, phone number 626-963-0566. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 9/29/2008. Redacted Transcript Deadline set for 10/9/2008. Release of Transcript Restriction set for 12/7/2008.(bem, ) (Entered: 09/08/2008)
09/08/2008	<u>50</u>	NOTICE OF FILING TRANSCRIPT filed as to Defendant James Michael Fayed for proceedings 8-4-08 3:01p.m., 3:58p.m., and 4:28p.m.

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		(bem, ) (Entered: 09/08/2008)
09/10/2008	<u>51</u>	STIPULATED PROTECTIVE ORDER by Judge Philip S. Gutierrez as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc, re Stipulation for Order <u>48</u> , FINDINGS OF FACT by Judge Philip S. Gutierrez as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc.: Based upon the parties' STIPULATION IN SUPPORT OF PROTECTIVE ORDER, the representations of government counsel, the Court file, and good cause appearing, the Court hereby orders as follows: FINDINGS OF FACT AND CONCLUSIONS OF LAW: The parties, by and through their respective counsel of record, have executed a stipulation for the entry of a protective order based upon the following representations: (see document for further details). PROTECTIVE ORDER: Based upon the foregoing findings of fact and conclusions of law, and good cause appearing, IT IS HEREBY ORDERED: 1. All documents and media, of whatever nature (e.g., printed, digital) which contain access device information (as defined in 18 U.S.C. § 1029(e)), including, but not limited to, personal identification number, password, name, address, phone number, Social Security number, date of birth, or similar sensitive personal identifier or information, shall be covered by this stipulation and corresponding protective order. All documents or media shall hereafter be referred to as CONFIDENTIAL INFORMATION. (see document for further details) (bm) (Entered: 09/11/2008)
09/11/2008	<u>52</u>	MINUTES OF IN CHAMBERS ORDER by Judge Judge Philip S. Gutierrez re Status Conference Hearing: PLEASE TAKE NOTICE that at counsel's request, the hearing time on the above-referenced matter is hereby moved from 10:00 a.m. to 2:30 p.m. The hearing date shall remain as previously scheduled. (bm) (Entered: 09/12/2008)
09/15/2008	<u>53</u>	GOVERNMENT'S MOTION TO DISMISS INDICTMENT Filed by Plaintiff USA as to Defendant James Michael Fayed. Lodged Proposed Order. (bm) (Entered: 09/16/2008)
09/15/2008	<u>54</u>	ORDER by Judge Philip S. Gutierrez as to Defendant James Michael Fayed, re MOTION to Dismiss Indictment <u>53</u> : Based on the government's motion pursuant to Rule 48(a) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that the indictment in this case is hereby DISMISSED without prejudice against defendant JAMES MICHAEL FAYED only. (bm) (Entered: 09/16/2008)
09/15/2008	<u>59</u>	MINUTES OF Status Conference held before Judge Philip S. Gutierrez as to Defendant James Michael Fayed, Goldfinger Coin & Bullion Inc. The Court signs the proposed order. The action as to defendant James Michael Fayed only is hereby dismissed without prejudice. Defendant James Michael Fayed is ordered to be released forthwith to the custody of the Los Angeles Police Department on a arrest warrant. At government counsels request and in light the action against defendant James Michael Fayed is dismissed, the Court directs Mr. Werksman to return all confidential information that the government provided pursuant to the stipulated protective order. Regarding Defendant Goldfinger Coin and Bullion Inc., the Court hereby sets a further Status Conference for Friday, September 19, 2008 at 1:30 p.m. Defendant Goldfinger Coin & Bullion Inc. shall electronically filed a

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		stipulation and proposed order continuing the September 19th status conference and the trial date by close of business day Wednesday, September 17, 2008. The September 19, 2008 hearing shall be vacated AFTER the Court signs the above-mentioned stipulation and proposed order. Court Reporter: Miriam Baird. (ca) (Entered: 09/19/2008)
09/16/2008	<u>55</u>	RESPONSE filed by Defendant Goldfinger Coin & Bullion Inc to <i>Proposed Findings and Conclusions re: Excludable Time</i> (Spertus, James) (Entered: 09/16/2008)
09/17/2008	<u>56</u>	ABSTRACT OF COURT PROCEEDINGS Returned Executed as to James Michael Fayed Abstract received on 8/21/08. The aforementioned order was complied with prior to court order 8/18/08. (mhe) (Entered: 09/17/2008)
09/18/2008	<u>57</u>	GOVERNMENTS RESPONSE TO DEFENDANTS OBJECTIONS TO PROPOSED FINDINGS AND CONCLUSIONS RE: EXCLUDABLE TIME filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion Inc Re: Response (Non-Motion) <u>55</u> (Attachments: # <u>1</u> Proposed Order)(Alon, Edward) (Entered: 09/18/2008)
09/19/2008	<u>58</u>	RESPONSE to Miscellaneous Document, <u>57</u> , filed by Defendant Goldfinger Coin & Bullion Inc <i>Objecting to Plaintiff's Speedy Trial Calculations</i> (Spertus, James) (Entered: 09/19/2008)
09/19/2008	<u>60</u>	FINDINGS AND CONCLUSIONS RE: EXCLUDABLE TIME by Judge Philip S. Gutierrez as to Defendant Goldfinger Coin & Bullion Inc.: Based upon the foregoing, the Court hereby finds, concludes, and orders that (1) the period from August 19, 2008, through September 15, 2008, inclusive, is deemed an excludable period under 18 U.S.C. § 3161 et seq.,; and (2) continues trial in this matter to October 28, 2008 at 9:00 a.m. (see document for further details) (bm) (Entered: 09/22/2008)
09/19/2008	<u>61</u>	ORDER of USCA filed as to James Michael Fayed re Minutes of In Chambers Order/Directive - no proceeding held, Util - Set/Reset Deadlines/Hearings, <u>31</u> , CCA #08-50367. Appellant's motion for voluntary dismissal of this appeal is granted. This appeal is dismissed. See Fed. R. App. P. 42(b); 9th Cir. R. 27-9.1. This order served on the district court shall act as and for the mandate of this court. Mandate received in this district on 9/19/08. (lr) (Entered: 09/22/2008)
09/19/2008	<u>62</u>	MINUTES OF Status Conference held before Judge Philip S. Gutierrez as to Defendant Goldfinger Coin & Bullion Inc. Court signs the proposed order in open Court regarding excludable time. Court and counsel confer regarding trial dates. The Court having heard from counsel, continues the trial to November 04, 2008 at 9:00 a.m. Final status conference to be heard October 20, 2008 at 9:00 a.m. Counsel for plaintiffs informs Court of potential conflict with representation of defendants counsel. In light of potential conflict issues, the Court sets the following briefing schedule: plaintiffs brief due the close of business on September 25, 2008, defendant response due by no later than October 01, 2008, reply due October 03, 2008 by no later than the close of business. Courtesy copies to be delivered to chambers that day. Status conference regarding conflict of interest set for hearing on October 06, 2008 at 10:00 a.m. Upon the request of counsel all filings indicated above will be filed UNDER SEAL. Counsel to adhere to all under seal

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		rules and procedures when filing. Court Reporter: Miriam Baird. (ca) (Entered: 09/22/2008)
09/23/2008	<u>63</u>	NOTICE of COMPLIANCE WITH ORDER TO RETURN CONFIDENTIAL INFORMATION PROVIDED PURSUANT TO STIPULATED PROTECTIVE ORDER filed by Plaintiff Goldfinger Coin & Bullion Inc as to Defendant James Michael Fayed (Hathaway, Mark) (Entered: 09/23/2008)
09/24/2008	<u>64</u>	NOTICE of Manual Filing of Governments Memorandum of Points and Authorities Re: Conflict of Interest; Under Seal Documents 1-2 filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion Inc (Alon, Edward) (Entered: 09/24/2008)
09/24/2008	<u>65</u>	NOTICE OF MOTION AND MOTION for Return of Property (PreTrial). Property described as: Limited Assets to Pay Emergency Expenses. Filed by Defendant Goldfinger Coin & Bullion Inc Motion set for hearing on 10/27/2008 at 10:00 AM before Judge Philip S. Gutierrez. (Attachments: # <u>1</u> Declaration James W. Spertus, # <u>2</u> Declaration Robert Taylor)(Spertus, James) (Entered: 09/24/2008)
09/24/2008	<u>66</u>	EX PARTE APPLICATION for Order Shortening Time to Hear Rule 41 Motion. RE: MOTION for Return of Property (PreTrial). Property described as: Limited Assets to Pay Emergency Expenses. MOTION for Return of Property (PreTrial). Property described as: Limited Assets to Pay Emergency Expenses. <u>65</u> Filed by Defendant Goldfinger Coin & Bullion Inc (Attachments: # <u>1</u> Proposed Order)(Spertus, James) (Entered: 09/24/2008)
09/29/2008	<u>76</u>	SEALED DOCUMENT- Government's Exparte Application for Order Sealing Document.(mat) (Entered: 10/07/2008)
09/29/2008	<u>77</u>	SEALED DOCUMENT- Order granting Government's Exparte Application for Order Sealing Document. (mat) (Entered: 10/07/2008)
09/29/2008	<u>78</u>	SEALED DOCUMENT- Government's Memorandum of Points and Authorities Re: Conflict of Interest. (mat) (Entered: 10/07/2008)
10/01/2008	<u>67</u>	NOTICE of Manual Filing of Response to Government Brief filed by Defendant Goldfinger Coin & Bullion Inc (Spertus, James) (Entered: 10/01/2008)
10/01/2008	<u>68</u>	DENIED BY ORDER OF THE COURT ORDER SHORTENING TIME FOR HEARING ON DEFENDANT GOLDFINGER COIN & VULLION, INC.'S MOTION TO RETURN PROPERTY PURSUANT TO RULE 41(g), <u>66</u> by Judge Philip S. Gutierrez as to Defendant Goldfinger Coin & Bullion Inc. (ca) (Entered: 10/02/2008)
10/02/2008	<u>70</u>	SEALED DOCUMENT- Defendant Goldfinger Coin & Bullion, INC.'s Exparte Application for Order Sealing Document. (mat) (Entered: 10/06/2008)
10/02/2008	<u>71</u>	ORDER Re: Sealing of Defendant Goldfinger Coin & Bullion Inc's Exparte Application <u>70</u> , by Judge Philip S. Gutierrez (mat) (Entered: 10/06/2008)
10/02/2008	<u>72</u>	SEALED DOCUMENT- Defendant Goldfinger Coin & Bullion, INC.'s

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		Response to Government Brief Re: Conflict of Interest. (mat) (Entered: 10/06/2008)
10/03/2008	<u>69</u>	NOTICE of Manual Filing of Criminal Filing Under Seal filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion Inc (Alon, Edward) (Entered: 10/03/2008)
10/06/2008	<u>73</u>	SEALED DOCUMENT- Government's Exparte Application for Order Sealing Document.(mat) (Entered: 10/07/2008)
10/06/2008	<u>74</u>	SEALED DOCUMENT- Order granting Government's Exparte Application for Order Sealing Document. (mat) (Entered: 10/07/2008)
10/06/2008	<u>75</u>	SEALED DOCUMENT- Government's Response to Defendant's Position Re: Conflict of Interest. (mat) (Entered: 10/07/2008)
10/06/2008	<u>80</u>	MINUTES OF Status Conference re: Conflict Issues - Continued held before Judge Philip S. Gutierrez as to Defendant Goldfinger Coin & Bullion Inc.: Hearing held. The Court hears oral argument on the parties position papers filed under seal on October 2, 2008. Defense counsel is directed to file in-camera his supplemental brief on the issues addressed on the record by not later than October 14, 2008. Further, he does not need to serve opposing counsel, as long as the in-camera filing does not include information that ought to be served on government Matter is continued to October 20, 2008 at 10:00 am. The Final Status Conference shall also be held on October 20, 2008 at 10:00 a.m. Court Reporter: Miriam Baird. (bm) (Entered: 10/14/2008)
10/13/2008	<u>79</u>	NOTICE of Manual Filing of DEFENDANT GOLDFINGER COIN & BULLION, INC.'S IN CAMERA SUBMISSION IN RESPONSE TO GOVERNMENT BRIEF RE: CONFLICT OF INTEREST AND PENDING RULE 41 MOTION filed by Defendant Goldfinger Coin & Bullion Inc (Spertus, James) (Entered: 10/13/2008)
10/16/2008	<u>81</u>	MINUTES OF IN CHAMBERS ORDER by Judge Philip S. Gutierrez re DEFENDANT GOLDFINGER COIN & BULLION, INC.'S MOTION FOR RETURN OF PROPERTY PURSUANT TO RULE 41 (g) OF THE FRCP FILED 9-24-08 (DOC. 65): PLEASE TAKE NOTICE that the above-referenced motion is hereby advanced from October 27, 2008 to October 20, 2008 at 9:00 am, as requested at the last hearing. (bm) (Entered: 10/17/2008)
10/17/2008	<u>82</u>	OPPOSITION to MOTION for Return of Property (PreTrial). Property described as: Limited Assets to Pay Emergency Expenses. MOTION for Return of Property (PreTrial). Property described as: Limited Assets to Pay Emergency Expenses. <u>65</u> filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion, Inc.. (Alon, Edward) (Entered: 10/17/2008)
10/20/2008	<u>85</u>	MINUTES OF Final Status Conference re: Trial issues held before Judge Philip S. Gutierrez as to Defendant Goldfinger Coin & Bullion Inc. The Court has received and considered all papers submitted by counsel. Court and counsel confer regarding conflict issues. Court hereby disqualifies James Spertus as counsel of record for Goldfinger Coin & Bullion, Inc. Order to follow. IT IS SO ORDERED. Court Reporter: Miriam Baird. (da) (Entered: 10/21/2008)
10/20/2008	<u>87</u>	MINUTES OF IN CHAMBERS ORDER by Judge Philip S. Gutierrez

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		re Order Disqualifying James Spertus: In sum, the possibility that the interests of GCB and the employees will become adverse is strong. Accordingly, Spertuss prior representation of Brooks and Layton disqualifies him from continuing to represent GCB. (see document for further details) (bm) (Entered: 10/22/2008)
10/21/2008	<u>83</u>	NOTICE OF LODGING filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion Inc (Attachments: # <u>1</u> Proposed Order Denying Motion without Prejudice)(Alon, Edward) (Entered: 10/21/2008)
10/21/2008	<u>84</u>	NOTICE OF LODGING filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion Inc (Attachments: # <u>1</u> Proposed Order of Findings and Conclusions re Excludable Time)(Alon, Edward) (Entered: 10/21/2008)
10/21/2008	<u>86</u>	NOTICE OF LODGING filed by Plaintiff USA as to Defendant Goldfinger Coin & Bullion Inc (Attachments: # <u>1</u> Proposed Order Disqualifying Defense Counsel)(Alon, Edward) (Entered: 10/21/2008)
10/24/2008	<u>88</u>	FINDINGS AND CONCLUSIONS RE: EXCLUDABLE TIME by Judge Philip S. Gutierrez as to Defendant Goldfinger Coin & Bullion Inc.: Based upon the foregoing, the Court hereby finds, concludes, and orders that (1) the period from September 24, 2008 through October 20, 2008, inclusive, is deemed an excludable period under 18 U.S.C. § 3161 et seq.,; and (2) continues trial in this matter to December 9, 2008 at 9:00 a.m. (see document for further details). (bm) (Entered: 10/24/2008)

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