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 CENTRAL DISTRICT OF CALIFORNIA  
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 8 United States of America

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, )  
 12 )  
 13 Plaintiff, )  
 14 )  
 15 v. )  
 16 )  
 17 TODD P. MCCORMICK, )  
 and )  
 18 KIRILL N. DYJINE, )  
 Defendants. )

No. CR 97-997-GHK

GOVERNMENT'S OPPOSITION TO  
 DEFENDANT MCCORMICK'S MOTION  
 FOR REVIEW OF BOND AND  
 MODIFICATION OF CONDITIONS OF  
 RELEASE

DATE: March 10, 1998  
 TIME: 11:00 a.m.

19  
 20 Plaintiff United States of America, by and through its counsel  
 21 of record, Assistant United States Attorneys Fernando L. Aenlle-  
 22 Rocha and Mary E. Fulginiti, hereby files its opposition to

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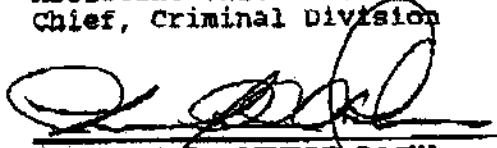
1 defendant Todd P. McCormick's motion for review of bond and  
2 modification of conditions of release.

3 DATED: This 2nd day of March, 1998.

4 Respectfully submitted,

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I.

INTRODUCTION

Defendant Todd P. McCormick ("McCormick") is presently charged with manufacturing approximately 4,116 marijuana plants, in violation of 21 U.S.C. § 841(a)(1). Given the large quantity of marijuana, McCormick faces a mandatory minimum term of ten years incarceration and a maximum term of life imprisonment. Accordingly, a statutory presumption exists that McCormick is a risk of flight and danger to the community.

These allegations arise from the search and seizure of approximately 4,116 marijuana plants growing at McCormick's residence located at 1605 Stone Canyon Road, Bel Air, California (hereinafter the "Stone Canyon Residence"). During the search of this residence law enforcement officers also seized numerous bags of marijuana, sophisticated cultivation equipment and a number of records, including cultivation diagrams, expenditure sheets, profit projections and employee payment schedules regarding the marijuana grow.

On August 1, 1997, United States District Judge Terry J. Hatter, Jr. ordered that McCormick's appearance bond be increased to \$500,000 and that it be secured with an affidavit of surety and full deeding of property. He also required McCormick to surrender his passport or provide an affidavit regarding the loss of his passport, refrain from using or possessing illegal drugs, including marijuana, and submit to drug testing. Defendant subsequently posted the bond, filed an affidavit regarding the loss of his passport and was released from custody.

1 Defendant now contends, with no new material facts or  
2 circumstances, that his bail should be exonerated and that he  
3 should be allowed to use and possess marijuana while on pre-trial  
4 release. Defendant's motion should be denied for the following  
5 reasons.

6 First, a bond review hearing may be reopened only if new  
7 information exists that was not known to the defendant at the time  
8 of the original hearing which has a material bearing on the issues  
9 of flight risk and safety to other persons and the community.  
10 Here, McCormick has presented no new material information that  
11 justifies any modification. Moreover, defendant's claim that he  
12 has not been indicted for distribution does not justify any  
13 modification in his bond. In fact, evidence seized from the  
14 defendant's residence has confirmed that McCormick was not, as he  
15 contends, growing over 4,000 plants for his "personal medical  
16 marijuana use" (See Defendant's Motion at 1) but, instead,  
17 cultivating marijuana for commercial distribution and profit.

18 Second, defendant should not be allowed to use or possess  
19 marijuana while on pre-trial release. Federal law clearly  
20 prohibits the possession and use of marijuana. See 21 U.S.C. §  
21 844. An order allowing McCormick to possess and use marijuana is  
22 tantamount to granting defendant immunity from prosecution for this  
23 offense. In addition, defendant can neither litigate the medicinal  
24 usefulness of marijuana before this tribunal nor rely upon  
25 Proposition 215 to authorize his proposed unlawful conduct.

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II.

FACTUAL BACKGROUND

A. Nature of the Case

On July 30, 1997, McCormick first appeared before this court pursuant to the filing of a criminal complaint charging McCormick and others with conspiring to manufacture and possess with intent to distribute over 1,000 marijuana plants, in violation of 21 U.S.C. §§ 846 and 841(a)(1). The government moved for detention on the grounds that defendant was a flight risk and danger to the community. At that time, the Pre-trial Services Office recommended, and the court set, a \$100,000 appearance bond with a justified affidavit of surety and full deeding of property, along with the condition that the defendant refrain from possessing or using any illegal drugs, including marijuana. The government requested a stay of the court's order and appealed said order to the district court.

On August 1, 1997, United States District Judge Terry J. Hatter, Jr. ordered that McCormick's appearance bond be increased to \$500,000 with a justified affidavit of surety and full deeding of property. The court also prohibited McCormick from using or possessing any illegal drugs, including marijuana. Thereafter, at McCormick's request, the government stipulated that the bond be secured with cash provided by Woody Harrelson, a well known actor. A true and correct copy of the Stipulation and accompanying documents are attached hereto as Exhibit "A."

On October 14, 1997, a grand jury returned a single count indictment charging McCormick and one of his accomplices, Kirill Dyjine ("Dyjine"), a.k.a. Hermes Zygott, with manufacturing over

1 1,000 marijuana plants, in violation of 21 U.S.C. § 841(a)(1). On  
2 February 11, 1998, McCormick filed a motion seeking judicial review  
3 of his bond and conditions of pre-trial release.

4 B. The Underlying Offense

5 In or about July 1997, law enforcement officers received  
6 information that Todd McCormick was operating a large scale  
7 marijuana cultivation site at a "castle-type" house in Bel Air,  
8 California and that he was associated with other individuals  
9 considered to be professional marijuana growers and distributors.

10 Drug Enforcement Administration ("DEA") agents subsequently  
11 determined that McCormick's residence was located at 1605 Stone  
12 Canyon Road, Bel Air, California and conducted surveillance. On  
13 July 29, 1997, Los Angeles County Sheriff's Deputies ("LASD")  
14 observed, among other things, numerous marijuana plants outside of  
15 the residence and individuals tending to the plants while McCormick  
16 and Dyjine unloaded several bags of potting soil and fertilizer  
17 from a van. The LASD also observed McCormick, Dyjine and others  
18 smoking from a large glass "bong," a device used to inhale  
19 marijuana, for approximately 45 minutes, and then depart from the  
20 residence in their respective vehicles.

21 McCormick was thereafter arrested. After being advised of his  
22 Miranda rights, which he voluntarily waived, McCormick admitted he  
23 had thousands of marijuana plants at his residence, which served as  
24 a "medical research facility," and that he planned on either  
25 doubling or tripling the size of his marijuana grow within a few  
26 months. When asked about his rent and financial resources,  
27 McCormick stated he paid his rent and monthly expenses by working  
28 as a writer. He stated that he received "obscene" monthly advances

1 for future articles from his "backers."

2 On that same day, LASD deputies obtained and executed a state  
3 search warrant for the Stone Canyon residence. During the search,  
4 DEA agents and LASD deputies seized approximately 4,116 marijuana  
5 plants growing indoors and outdoors, including several hundred  
6 marijuana "clones," cultivation equipment, including grow lights,  
7 hoods, exhaust fans, ballasts, and scales, zip lock baggies, and  
8 approximately ten sieves of varying sizes with hash residue. In  
9 addition, agents recovered numerous records, including, cultivation  
10 diagrams, expenditure sheets, profit projections regarding the  
11 marijuana grow and employee payment schedules which reflected  
12 payments in cash and processed marijuana.

13 Significantly, the profit projections revealed that McCormick  
14 anticipated earning from "\$118,400" to "\$166,500" "every 8 weeks,"  
15 depending on the price of the processed marijuana per pound, with  
16 annual earnings of "\$710,400 to \$999,000." Other documents  
17 revealed that defendant anticipated a "clone production of 17,000  
18 units over [the] next 15 weeks" wherein he expected to earn  
19 "\$42,500."

20 Most telling, no significant articles or drafts of any books  
21 that McCormick was purportedly writing in 1997 were located.  
22 Rather, documents containing references to a loan in the amount of  
23 \$133,000 and letters from McCormick to his purported publisher  
24 which pertained to the grow operation and which stated "[t]he only  
25

26 <sup>1</sup> At most, agents located inside defendant's computer a  
27 table of contents, an outline and the beginnings of a chapter  
28 last drafted and/or edited in late 1995 and early 1996, at least  
one year before defendant moved into the Stone Canyon residence  
and agreed to write a book for his purported publisher.

1 agreement . . . to date [was] me taking care of the plant material  
 2 . . . and us splitting the harvest three ways, you receiving 2/3rd  
 3 for providing space and equipment and me receiving 1/3 for labor  
 4 and expertise. In exchange you were to provide me with a loan to  
 5 procure my own place and I [was] to pay you back in the time  
 6 agreed." (Emphasis added.)

7 Agents also located a copy of the lease agreement for the  
 8 Stone Canyon residence which revealed that the monthly rent was  
 9 \$6,000 and that McCormick had leased the property for two years.

10 C. The Bail Hearings

11 On July 30, 1997, McCormick initially appeared before  
 12 Magistrate Judge James W. McMahon on charges that McCormick, and  
 13 others, conspired to manufacture and possess with intent to  
 14 distribute over 1,000 marijuana plants, in violation of 21 U.S.C.  
 15 §§ 846 and 841(a)(1). The government sought defendant's detention  
 16 because McCormick was a flight risk and danger to the community.  
 17 The court ordered an appearance bond in the amount of \$100,000,  
 18 secured with an affidavit of surety and justified with full deeding  
 19 of property. In addition, the court ordered that McCormick, among  
 20 other things, surrender his passport or provide the court with an  
 21 affidavit regarding its whereabouts, submit to drug testing and  
 22 refrain from using any illegal drugs. The government obtained a  
 23 stay of the court's order and appealed the bond to United States  
 24 District Judge Terry J. Hatter, Jr.

25 On August 1, 1997, the district court conducted a bail  
 26 hearing. At this hearing, the government again requested that  
 27 McCormick be detained and proffered the Pre-trial Services report,  
 28 criminal complaint and accompanying affidavit. The latter

1 described a large scale marijuana grow operation that McCormick was  
2 primarily responsible for organizing, overseeing and operating.  
3 The government reiterated that a statutory rebuttable presumption  
4 in favor of detention applied in the case, wherein McCormick was  
5 presumed to be both a flight risk and danger to the community.

6 In support of its request for detention, the government  
7 emphasized the following facts: (1) McCormick's short term residence  
8 (4 months) and lack of substantial ties to this district; (2)  
9 McCormick's travel, residence and connection to the Netherlands;  
10 (3) McCormick's lost passport; (4) McCormick's substantial income  
11 of \$250,000/year; (5) the size and scope of the marijuana grow  
12 operation which included a 5-story "castle" McCormick rented for  
13 \$6,000/month with sophisticated lighting and irrigation systems and  
14 which demonstrated McCormick's significant assets and/or access to  
15 substantial sums of money; (6) the marijuana was part of a large  
16 scale commercial operation; (7) marijuana was found in numerous  
17 packages and in various quantities; and (8) McCormick faced a  
18 substantial sentence and a minimum mandatory ten years  
19 imprisonment. See Reporter's Transcript, August 1, 1997  
20 proceedings, Exhibit "A" to McCormick's motion at 29-34.<sup>2</sup>

21 During the hearing, McCormick's counsel confirmed defendant's  
22 short term residence in this district as being "four or five  
23 months" and McCormick's income as being "about \$250,000 a year on  
24 a monthly basis" for "book services." RT at 38. In addition,  
25 defense counsel argued that McCormick was an "amateur scientist"  
26

27 <sup>1</sup> The Reporter's Transcript of the August 1, 1997 bond  
28 hearing hereinafter will be referred to as "RT" and will be  
followed by the applicable page number.

1 experimenting with different strains of marijuana for his own  
2 personal use, not for profit. RT at 39-40. When asked by the  
3 court to present evidence which would overcome the presumption,  
4 counsel reiterated McCormick's lack of criminal record and argued  
5 that McCormick was "not likely to flee this jurisdiction because he  
6 ha[d] a very strong interest in this case and . . . in the issues  
7 concerning this case . . . he believe[d], rightly or wrongly, that  
8 Proposition 215 ha[d] allowed California citizens . . . to use  
9 marijuana where medically indicated under the guidance of a doctor.  
10 . . . And I don't think there [was] any evidence . . . presented  
11 here to show that he was doing anything other than growing  
12 marijuana for that use." RT at 43-44.

13 The district court then specifically rejected McCormick's  
14 "medical experimentation" claim and stated, "as I understand it,  
15 there was a secret kind of operation going on which seems to just  
16 fly in the face of what you say to me." RT at 48. In addition,  
17 the court considered all the facts presented and expressed its  
18 concern about defendant's failure to appear in another matter (RT  
19 at 42), his travel to Ohio and the Netherlands (RT at 46), his lost  
20 or stolen passport (RT at 47) and "the sheer volume of the items of  
21 illegal nature found" at the Stone Canyon residence. RT at 47. At  
22 the conclusion of the hearing, Judge Hatter increased McCormick's  
23 bond to \$500,000, affirmed all other conditions of release  
24 originally ordered by Magistrate Judge McMahon and specifically  
25 prohibited McCormick from using or possessing illegal drugs,  
26 including marijuana. RT at 54.

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III.

THE DISTRICT COURT PROPERLY SET BAIL

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3 Defendant contends that his bail should be significantly  
4 reduced because new material information exists that justifies a  
5 re-hearing on the amount of his bond. Specifically, McCormick  
6 argues there is new information regarding the charges against him,  
7 his salary, his lost passport and his length of residence in this  
8 district that justifies a bail reduction. Defendant's claims are  
9 without merit and should be rejected.

10 A close review of the purportedly new and material information  
11 reveals that it is virtually identical to the information presented  
12 to the district court at the prior bail hearing during which the  
13 court raised McCormick's bail to \$500,000.

14 A. The Applicable Law

15 1. Standard of Review

16 A bail hearing may be reopened prior to trial only if:

17 the judicial officer finds that information  
18 exists that was not known to the movant at the  
19 time of the hearing and that has a material  
20 bearing on the issue whether there are  
21 conditions of release that will reasonably  
22 assure the appearance of the person as  
23 required and the safety of any other person  
24 and the community (emphasis added).

25 18 U.S.C. § 3142(f)(2)(B).

26 2. Defendant is Presumed to be a Risk of Flight and Danger  
27 to the Community.

28 The Bail Reform Act of 1984 ("the Act") establishes a  
rebuttable presumption that a defendant is both a flight risk and  
a danger to the community in cases involving narcotics offenses  
punishable by a term of imprisonment of ten years or more. 18  
U.S.C. § 3142(e). A finding that a defendant is a danger to the

1 community must be supported by clear and convincing evidence. 18  
2 U.S.C. § 3142(f). A finding that a defendant is a flight risk must  
3 be supported by a preponderance of the evidence. United States v.  
4 Motamedi, 767 F.2d 1403, 1406 (9th Cir. 1985).

5 A grand jury indictment, as returned in this case, establishes  
6 "probable cause" under 18 U.S.C. § 3142(e) and gives rise to the  
7 Act's presumption. United States v. Vargas, 804 F.2d 157, 162-63  
8 (1st Cir. 1986); United States v. Suppa, 799 F.2d 115, 117-19 (3d  
9 Cir. 1986); United States v. Contreras, 776 F.2d 51, 53-55 (2d Cir.  
10 1985). Once the presumption is triggered, a defendant has the  
11 burden of producing or proffering evidence to rebut the  
12 presumption. United States v. Hare, 873 F.2d 796, 798 (5th Cir.  
13 1989); United States v. King, 849 F.2d 485, 488 (11th Cir. 1988).

14 If a defendant proffers evidence to rebut the presumption, the  
15 Act identifies several relevant factors to determine whether  
16 pretrial detention is, nevertheless, appropriate: (1) the nature  
17 and seriousness of the offense charged; (2) the weight of the  
18 evidence against the defendant; (3) the defendant's character,  
19 physical and mental condition, family and community ties, past  
20 conduct, history relating to drug or alcohol abuse, and criminal  
21 history; and (4) the nature and seriousness of the danger to any  
22 person or the community that would be posed by the defendant's  
23 release. 18 U.S.C. § 3142(g); United States v. Winsor, 785 F.2d  
24 755, 757 (9th Cir. 1986); Motamedi, 767 F.2d at 1407. The weight  
25 of the evidence is the least important of the four factors, and the  
26 Act neither requires nor permits a pre-trial determination that the  
27 person is guilty. Winsor, 785 F.2d at 767. However, the nature of  
28 the offense and the evidence of guilt are relevant indicators of

1 the likelihood that a person will fail to appear or will pose a  
2 danger to the community. *Id.*

3 Congress intended that the statutory presumption have a  
4 practical effect. United States v. Jessup, 757 F.2d 378, 382 (1st  
5 Cir. 1985). The presumption does not disappear when a defendant  
6 meets his burden of producing rebuttal evidence. United States v.  
7 Perez-Franco, 839 F. 2d 867, 870 (1st Cir. 1988); United States v.  
8 Dominguez, 783 F.2d 702, 707 (7th Cir. 1986). The presumption  
9 remains in the case as an evidentiary finding militating against  
10 release, to be weighed along with other evidence relevant to the  
11 factors listed in Section 3142(g). *Id.*

12 B. McCormick Has Not Introduced Any New Material Information  
13 Warranting A Reduction In His Bond.

14 McCormick contends that since the last bond hearing on August  
15 1, 1997, "new information has been revealed which has a material  
16 bearing to this case." See Defendant's Motion at 9. McCormick  
17 primarily contends that at the bond hearing "there was confusion on  
18 the issue of whether Mr. McCormick was distributing marijuana," and  
19 "confusion regarding [his] salary, passport and length of residence  
20 in and ties to this community," which he now attempts to clarify.  
21 See Defendant's Motion at 12. A close review of the transcript  
22 from the prior hearing reveals that at the conclusion of the  
23 hearing there was no confusion at all regarding these issues. As  
24 discussed in detail below, McCormick has presented no new evidence  
25 regarding these issues that justifies any modification in his bond.

26 1. The Charges

27 McCormick boldly contends that the grand jury "refused" to  
28 indict him for distribution of marijuana and that this purportedly

1 changed circumstance "is a significant and material difference from  
2 the facts used by Judge Hatter in setting the bond amount." See  
3 Defendant's Motion at 13.

4 McCormick, however, has presented no evidence that the grand  
5 jury "refused" to indict him for other offenses.<sup>1</sup> Significantly,  
6 the evidence presented to the district court at the bond hearing  
7 clearly revealed that McCormick was responsible for organizing and  
8 overseeing a large scale marijuana grow operation at a five story  
9 "castle" in Bel Air, California. Law enforcement officers seized  
10 from McCormick's residence, among other things, over 4,000  
11 marijuana plants along with sophisticated cultivation equipment,  
12 scales, baggies and bags of marijuana. Indeed, the district court  
13 rejected McCormick's incredible claim that he was an "amateur  
14 scientist" growing all of this marijuana for his own personal use  
15 and experimentation and commented on "the sheer volume of the items  
16 of illegal nature found" at the Stone Canyon residence. RT at 47-  
17 48.

18 Moreover, the government's claim that McCormick was "suspected  
19 of being involved in a large scale marijuana production conspiracy"  
20 (RT at 30) is further substantiated by records recovered from  
21 McCormick's residence which revealed anticipated annual earnings  
22 from the marijuana grow of nearly 1 million dollars. In addition,  
23 employee payment schedules were recovered which reflected payments  
24 in cash and processed marijuana.

25  
26 Moreover, it is completely irrelevant which offense  
27 within 21 U.S.C. § 841 has been charged. Given the large  
28 quantity of marijuana plants found at McCormick's residence (over  
1,000), the same statutory presumption and minimum and maximum  
penalties apply.

1 Accordingly, any purported confusion has been created solely  
2 by McCormick who continues to claim that he was growing over 4,000  
3 plants for his "personal medical marijuana use" (See Defendant's  
4 Motion at 1) when, instead, the evidence revealed that he was, in  
5 fact, cultivating the marijuana for commercial distribution and  
6 profit.

7 2. Salary and Assets

8 At the previous bond hearing, the government argued, and  
9 McCormick's counsel and the Pre-trial Services Office confirmed,  
10 that McCormick's annual salary was \$250,000. RT at 38.<sup>4</sup> McCormick  
11 does not refute this fact and, in fact, confirms that the \$250,000  
12 "was a one time, one year advance on the expected profits from his  
13 book." See Defendant's Motion at 15. McCormick, however, now  
14 claims that he "has been unable to meet his publisher's deadlines,  
15 and thus has not been receiving his advances." Id. Defendant  
16 concludes that this "new material information shows that Mr.  
17 McCormick does not have a large salary, and thus is unlikely to  
18 flee the court's jurisdiction with a reduced bond." Id.

19 Again, McCormick has presented no evidence to substantiate  
20 this claim. Nonetheless, he does not deny the fact that he  
21 received a \$250,000 advance, which was the same information  
22 presented to the district court at the prior bond hearing.  
23 Moreover, the evidence presented to the district court confirmed

24  
25 <sup>4</sup> Accordingly, there was no confusion over this fact.  
26 Initially, there appeared to be some discrepancies between the  
27 face page and the body of the Pre-trial Services report regarding  
28 McCormick's income. The face page of the report indicated a  
monthly gross income of \$25,000, while the body of the report  
indicated an income of \$250,000. RT at 45. This discrepancy,  
however, was cleared up by the Pre-trial Services officer and  
McCormick's counsel. RT at 38.

1 that McCormick had significant assets and/or access to substantial  
2 sums of money. In fact, McCormick continued to reside at the Stone  
3 Canyon residence and pay \$6,000/month in rent, until recently.<sup>5</sup>

4 The fact that the bond is a "heavy burden upon him" is not a  
5 relevant concern. See Defendant's Motion at 16. Here, the bond  
6 has been secured with cash provided by Woody Harrelson, not  
7 McCormick. The fact that McCormick may feel somewhat indebted to  
8 Mr. Harrelson is precisely the reason the court required that the  
9 bond be fully secured. It is precisely this "burden" that will  
10 hopefully provide McCormick with the incentive to abide by the  
11 conditions of his release and remain in this jurisdiction.

12 3. McCormick's Lost Passport

13 McCormick has presented no new material information regarding  
14 the status of his passport. At the prior bond hearing he claimed,  
15 as he does now, that his passport was lost. RT at 47. McCormick's  
16 submission of an affidavit confirming this fact does not create new  
17 material information. Indeed, one of his conditions of release was  
18 to surrender his passport or provide the court with an affidavit  
19 regarding its whereabouts. As a result, on approximately August 6,  
20 1997, McCormick filed an affidavit regarding his lost or stolen  
21 passport. McCormick cannot now claim that his compliance with this  
22 condition of release is a new fact that justifies a bond reduction.

23  
24 5 McCormick suggests that the district court was  
25 presented with repeated misportrayals by the government  
26 concerning his assets because "[a]t the time of his arrest, he  
27 only had \$40 on his person and about \$640 in his savings  
28 account." See Defendant's Motion at 15. This specious argument  
was presented to the district court and rejected. RT at 31.  
Moreover, it flies in the face of McCormick's own admission  
regarding the purported "obscene" advances he received to write a  
book.

1           Moreover, the fact that McCormick has not fled this  
2 jurisdiction in the past four months does mitigate in favor of  
3 reducing or exonerating his bond. See Defendant's Motion at 17.  
4 Rather, it establishes that the current bond amount creates an  
5 incentive for McCormick not to flee this jurisdiction and thus  
6 should not be reduced.

7           4. Length of Residence and Community Ties

8           McCormick again claims that there "was confusion at the bond  
9 rehearing regarding how long [he] had lived in the community." See  
10 Defendant's Motion at 17. This claim is also meritless. At the  
11 prior bond hearing the government proffered the Pre-trial Services  
12 report which stated that McCormick's length of residence in this  
13 community was four months. Defense counsel confirmed this fact at  
14 the hearing when he stated that McCormick had lived in this  
15 district for "four or five months." RT at 38.<sup>6</sup>

16           McCormick also now claims he has numerous relatives in  
17 Southern California and that "this new material information was not  
18 available to Judge Hatter at the time of the rehearing." See  
19 Defendant's Motion at 17. This information, however, apparently  
20 was available to defendant at the time of the initial bail hearing  
21 and, thus, does not justify re-opening these proceedings. See 18

22  
23  
24  
25           <sup>6</sup> Initially, there appeared to be a discrepancy between  
26 the face page and the body of the Pre-trial Services report  
27 regarding McCormick's length of residence in this community. The  
28 face page of the report indicated five years, while the body of  
the report indicated 4 months. RT at 45. At the hearing,  
however, both the Pre-trial Services officer and McCormick's  
counsel confirmed that defendant's length of residence in this  
community was four or five months. RT at 38, 45.

1 U.S.C. § 3142(f)(2)(B).<sup>7</sup>

2 5. Conclusion

3 For these reasons, McCormick has presented no new material  
4 information justifying a bond reduction. Accordingly, Judge  
5 Hatter's bond determination should be affirmed.

6 IV.

7 DEFENDANT SHOULD NOT BE PERMITTED TO POSSESS OR USE MARIJUANA

8 WHILE ON PRETRIAL RELEASE

9 Defendant also contends that the terms and conditions of his  
10 pretrial release should be modified to allow for the use of  
11 marijuana. Specifically, defendant argues that marijuana has  
12 numerous beneficial medical uses, that Proposition 215 authorizes  
13 the use and possession of marijuana for personal medicinal purposes  
14 under state law, that defendant has a prescription from a foreign  
15 doctor and numerous recommendations from other doctors supporting  
16 his use of marijuana, and that defendant's physical condition would  
17 benefit from the use of marijuana. The government respectfully  
18 opposes defendant's request and submits that defendant should not  
19 be allowed to use or possess marijuana while on pretrial release.

20 A. Possession and Use of Marijuana Is Unlawful Under Federal Law.

21 Marijuana is a Schedule I controlled substance.<sup>8</sup> As such,  
22 federal law makes it unlawful to manufacture,<sup>9</sup> distribute, or

23  
24 <sup>7</sup> McCormick argues other factors, i.e., lack of criminal  
25 convictions, dedication to "the cause for medicinal marijuana",  
all of which were previously considered by the district court.

26 <sup>8</sup> See 21 U.S.C. § 812 Schedule I(c)(10).

27 <sup>9</sup> Congress defined "manufacture" as "the production,  
28 preparation, propagation, compounding, or processing of a drug or  
other substance \* \* \* \*," 21 U.S.C. § 802(15). Congress defined  
"production" as "the manufacturing, planting, cultivation,

1 possess marijuana, or possess the drug with the intent to  
2 manufacture or distribute it, except as otherwise authorized by the  
3 Controlled Substances Act. See 21 U.S.C. §§ 841(a)(1), 844. As  
4 with all criminal prohibitions, Congress also made it unlawful to  
5 conspire to violate the Act. Id. § 846.

6 To control the "problems related to drug abuse," H.R. Rep. No.  
7 91-1444, pt. 1, at 3 (1970), Congress made it unlawful, except as  
8 otherwise authorized by the Act, to "manufacture [or] distribute"  
9 any controlled substance without an appropriate DEA registration,  
10 or to "possess with the intent to manufacture [or] distribute" a  
11 controlled substance. 21 U.S.C. § 841(a)(1). For the same reason,  
12 Congress made it unlawful, except as authorized by the Act, to  
13 possess a controlled substance. Id. § 844.

14 Because marijuana is listed in Schedule I of the Controlled  
15 Substances Act, it cannot lawfully be cultivated, distributed,  
16 possessed, or possessed with the intent to cultivate or distribute  
17 the substance, for any purpose outside of a research project  
18 registered with the DEA and approved by the Secretary of Health and  
19 Human Services, acting through the Food and Drug Administration  
20 ("FDA"). See 21 U.S.C. §§ 841(a)(1), 823(f).<sup>10</sup>

21  
22 growing, or harvesting of a controlled substance." Id. §  
23 802(22). For ease of reference, this memorandum refers to the  
"cultivation" of marijuana.

24 <sup>10</sup> For controlled substances in Schedule I, DEA may grant  
25 a registration to a practitioner to conduct research with a  
26 Schedule I controlled substance only in a research project that  
27 has been approved by the Secretary of Health and Human Services,  
28 acting through the FDA. 21 U.S.C. § 823(f). By contrast, for  
substances in Schedules II through V, DEA alone has the statutory  
authority to grant registrations to practitioners who are  
authorized to prescribe, administer, or dispense controlled  
substances. Id. § 823(f).

1 Nor can there be any doubt that Congress has the  
2 constitutional authority to prohibit the cultivation, distribution,  
3 or possession of marijuana. When it passed the Act, Congress made  
4 specific findings that the traffic in controlled substances [was]  
5 of paramount national concern, including that: "[a] major portion  
6 of the traffic in controlled substances flow[ed] through interstate  
7 and foreign commerce;" that the "[l]ocal distribution and  
8 possession of controlled substances contribute[d] to swelling the  
9 interstate traffic in such substances;" that "[c]ontrolled  
10 substances manufactured and distributed intrastate [could not] be  
11 differentiated from controlled substances manufactured and  
12 distributed interstate;" and that "[f]ederal control of the  
13 intrastate incidents of the traffic in controlled substances [was]  
14 essential to the effective control of the interstate incidents of  
15 such traffic." 21 U.S.C. §§ 801(3)-(6).

16 Based on these express congressional findings, the Ninth  
17 Circuit has uniformly rejected Commerce Clause challenges to the  
18 Act. See, e.g., United States v. Bramble, 103 F.3d 1475, 1479-80  
19 (9th Cir. 1996) ("The district court correctly held that the  
20 Controlled Substances Act, 21 U.S.C. §§ 841(a), 844(a), is  
21 constitutional under the Commerce Clause. We have so held."  
22 (internal citations omitted)); United States v. Tisor, 96 F.3d 370,  
23 373-75 (9th Cir. 1996) ("In adopting the Controlled Substances Act,  
24 Congress expressly found that intrastate drug trafficking has a  
25 'substantial effect' on interstate commerce."), cert. denied, 117 S.  
26 Ct. 1012 (1997); United States v. Kim, 94 F.3d 1247, 1249-50 (9th  
27 Cir. 1996) (rejecting Commerce Clause challenge to Act premised on  
28 United States v. Lopez, 115 S. Ct. 1624 (1995)); United States v.

1 Staples, 85 F.3d 461, 463 (9th Cir.) ("Unlike education, drug  
2 trafficking is a commercial activity which substantially affects  
3 interstate commerce."), cert. denied, 117 S.Ct. 318 (1996); United  
4 States v. Visman, 919 F.2d 1390, 1393 (9th Cir. 1990) ("Congress  
5 may constitutionally regulate intrastate criminal cultivation of  
6 marijuana plants found rooted in the soil."), cert. denied, 502  
7 U.S. 969 (1991).

8 In addition, the Ninth Circuit is not alone in this judgment.  
9 Every other court of appeals to consider the issue is in agreement.  
10 See, e.g., United States v. Edwards, 98 F.3d 1364, 1369 (D.C. Cir.  
11 1996), cert. denied, 117 S. Ct. 1437 (1997); United States v.  
12 Lerebours, 87 F.3d 582, 584-85 (1st Cir. 1996), cert. denied, 117  
13 S.Ct. 694 (1997); Provect v. United States, 101 F.3d 11, 13-14 (2d  
14 Cir. 1996); United States v. Leshuk, 65 F.3d 1105, 1112 (4th Cir.  
15 1995); United States v. Clark, 67 F.3d 1154, 1165-66 (5th Cir.  
16 1995), cert. denied, 116 S. Ct. 1432 (1996); United States v.  
17 Tucker, 90 F.3d 1135, 1139-41 (6th Cir. 1996); United States v.  
18 Rogers, 89 F.3d 1326, 1338 (7th Cir.), cert. denied, 117 S. Ct. 495  
19 (1996); United States v. Bell, 90 F.3d 318, 321 (8th Cir. 1996);  
20 United States v. Wacker, 72 F.3d 1453, 1475 (10th Cir. 1995), cert.  
21 denied, 117 S. Ct. 136 (1996); United States v. Jackson, 111 F.3d  
22 101, 102 (11th Cir.), cert. denied, 118 S. Ct. 200 (1997).

23 As such, the very passage of the Act is, in itself, an  
24 expression of the public interest by the branches of government  
25 entrusted by the Constitution with the responsibility to make such  
26 decisions. See Able v. United States, 44 F.3d 128, 132 (2d Cir.  
27 1995) (per curiam) (holding that "it would be inappropriate for  
28 this court to substitute its own determination of the public

1 interest for that arrived at by the political branches" where  
2 Congress had made specific findings in a statute which Congress  
3 believed justified a policy).

4 With respect to defendant's request for authorization to use  
5 and possess marijuana pending trial, there is no evidence defendant  
6 has ever registered with the DEA or been approved through the FDA  
7 to conduct research on the medicinal effectiveness of marijuana.  
8 Likewise, there is no evidence defendant has ever become a  
9 participant in any such approved research project. Consequently,  
10 defendant's use of marijuana would result in a blatant violation of  
11 the Controlled Substances Act and would constitute a direct affront  
12 to the laws passed by Congress and the President. See United  
13 States v. Odessa Union Warehouse Co-op, 833 F.2d 172, 175 (9th Cir.  
14 1987) ("Once Congress has decided the order of priorities in a  
15 given area, it is for the courts to enforce them when asked."). In  
16 addition, judicial authorization of defendant's proposed criminal  
17 conduct would require the court, in essence, to grant defendant  
18 transactional immunity from prosecution for future criminal  
19 conduct. The government respectfully submits that, under these  
20 circumstances, the court should reject defendant's request.

21 B. Defendant Is Precluded from Litigating in Federal Court the  
22 Medicinal Usefulness of Marijuana.

23 In 1970, Congress passed the Controlled Substances Act as part  
24 of the Comprehensive Drug Abuse Prevention and Control Act of 1970,  
25 Pub. L. No. 91-513, 84 Stat. 1236. While recognizing that many  
26 controlled substances "have a useful and legitimate medical purpose  
27 and are necessary to maintain the health and general welfare of the  
28 American people," 21 U.S.C. § 801(1), Congress found that "[t]he

1 illegal importation, manufacture, distribution, and possession and  
2 improper use of controlled substances have a substantial and  
3 detrimental effect on the health and general welfare of the  
4 American people." *Id.* § 801(2).<sup>11</sup>

5 As a result, Congress established a comprehensive regulatory  
6 scheme in which controlled substances are placed in one of five  
7 "Schedules" depending on their potential for abuse, the extent to  
8 which they may lead to psychological or physical dependence, and  
9 whether they have a currently accepted medical use in treatment in  
10 the United States. *Id.* § 812(b). Controlled substances in  
11 "Schedule I" have been determined to have a "high potential for  
12 abuse," "no currently accepted medical use in treatment in the  
13 United States," and a "lack of accepted safety for use under  
14 medical supervision." *Id.* § 812(b)(1). Given these  
15 characteristics, Congress has mandated that substances in Schedule  
16 I be subject to the most stringent regulation. In particular, no  
17 physician may dispense any Schedule I controlled substance to any  
18 patient outside of a strictly controlled research project  
19 registered with the DEA, and approved by the Secretary of Health  
20 and Human Services, acting through the FDA. *Id.* § 823(f).<sup>12</sup> When  
21 it passed the Act in 1970, Congress placed marijuana in Schedule I,  
22

23 <sup>11</sup> Congress defined a controlled substance as "a drug or  
24 other substance, or immediate precursor, included in schedule I,  
25 II, III, IV, or V of part B of this subchapter." *Id.* § 802(6).

26 <sup>12</sup> In contrast, controlled substances in Schedules II  
27 through V are subject to decreasing levels of controls because  
28 they have been determined to have some currently accepted medical  
29 uses in treatment in the United States. *Id.* §§ 812(b)(2)-(5).  
30 Nonetheless, given their potential for abuse, the Act requires  
31 all persons involved in the distribution of a substance in  
32 Schedules II through V to be registered with the DEA and to keep  
33 records of all transfers of controlled substances. *Id.* § 823.

1 where it remains today. *Id.* § 812 Schedule I(c)(10).

2 Congress recognized, however, that the schedules may sometimes  
3 need to be modified to reflect changes in scientific knowledge and  
4 patterns of abuse of particular drugs. A controlled substance that  
5 has been placed in Schedule I (or any other schedule) therefore may  
6 be rescheduled, or removed from the five schedules, in one of two  
7 ways. First, Congress itself may add or delete drugs from, or  
8 transfer drugs between, the five schedules. Second, Congress  
9 authorized the Attorney General to promulgate rules to add or  
10 delete drugs from, or transfer drugs between, the five schedules,  
11 pursuant to the rulemaking procedures of the Administrative  
12 Procedures Act, 5 U.S.C. § 552.<sup>13</sup> See 21 U.S.C. § 811(a). Such  
13 proceedings may be initiated by the Attorney General, acting  
14 through the DEA Administrator: "(1) on his own motion, (2) at the  
15 request of the Secretary [of Health and Human Services], or (3) at  
16 the petition of any interested party." *Id.* The implementing  
17 regulations to the Act thus allow "[a]ny interested person to  
18 submit a petition" asking the DEA Administrator to initiate a  
19 rulemaking proceeding to reschedule a controlled substance. 21  
20 C.F.R. §§ 1308.44(b), (c).<sup>14</sup>

21 Several groups and individuals who believe that marijuana

22  
23 <sup>13</sup> The Attorney General has delegated this authority to  
24 the Administrator of the DEA. See 28 C.F.R. § 0.100(b).

25 <sup>14</sup> For example, in 1986, the DEA Administrator rescheduled  
26 "Marinol," or synthetic dronabinol in sesame oil and encapsulated  
27 in soft gelatin capsules, a substance which is the synthetic  
28 equivalent of the isomer of delta-9-tetrahydrocannabinol ("THC"),  
the principal psychoactive substance in marijuana, from Schedule  
I to Schedule II. 51 Fed. Reg. 17,476 (May 13, 1986). Marinol  
currently is approved in treatment for nausea and anorexia  
associated with cancer and AIDS patients.

1 should be permissible for therapeutic purposes have petitioned the  
2 Administrator to move marijuana from Schedule I (where Congress  
3 placed it) to Schedule II. In 1992, the Administrator declined to  
4 reschedule marijuana, finding that the record demonstrated that  
5 marijuana had "no currently accepted medical use in treatment in  
6 the United States," and thus had to remain in Schedule I. 57 Fed.  
7 Reg. 10,499 (Mar. 26, 1992). This decision was upheld by a  
8 unanimous panel of the D.C. Circuit, which held that the  
9 Administrator's findings were "consistent with the view that only  
10 rigorous scientific proof can satisfy the [Controlled Substances  
11 Act's] "currently accepted medical use requirement." Alliance for  
12 Cannabis Therapeutics v. Drug Enforcement Admin., 15 F.3d 1131,  
13 1137 (D.C. Cir. 1994).<sup>15</sup>

14 Thus, to the extent defendant believes he is subject to a  
15 hardship as a result of Congress's placement of marijuana in  
16 Schedule I, he is entitled to petition the Administrator of the DEA  
17 to conduct another rulemaking and, if appropriate, reschedule  
18 marijuana. As described above, Congress has established an  
19 administrative process to determine whether a controlled substance  
20 should be rescheduled so that it may be used for medical purposes.  
21 In thereby ensuring that drugs may be used for medical purposes  
22 only after they have been proven safe, effective, and reliable  
23 through a rigorous system of research and testing, this federal  
24 drug approval process has protected the American public from

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<sup>15</sup> Petitioners did not seek Supreme Court review.

1 dangerous drugs and unproven treatments for more than 50 years.<sup>16</sup>

2 Defendant, however, cannot challenge Congress's placement of  
3 marijuana in Schedule I in this case before this court. Every  
4 court of appeals to have considered the issue has held that the  
5 decision as to whether or not marijuana should be reclassified must  
6 be presented first to the Administrator of the DEA in the context  
7 of a rescheduling petition under 21 U.S.C. § 811(a). See, e.g.,  
8 United States v. Burton, 894 F.2d 188, 192 (6th Cir. 1990); cert.  
9 denied, 498 U.S. 857 (1990); United States v. Greene, 892 F.2d 453,  
10 455-45 (6th Cir. 1989), cert. denied, 495 U.S. 935 (1990); United  
11 States v. Fry, 787 F.2d 903, 905 (4th Cir.), cert. denied, 479 U.S.  
12 861 (1986); United States v. Wables, 731 F.2d 440, 450 (7th Cir.  
13 1984); United States v. Fogarty, 692 F.2d 542, 548 & n.4 (8th Cir.  
14 1982), cert. denied, 460 U.S. 1040 (1983); United States v.  
15 Middleton, 690 F.2d 820, 823 (11th Cir. 1982), cert. denied, 460  
16 U.S. 1051 (1983); United States v. Kiffer, 477 F.2d 349, 356-57 (2d  
17 Cir. 1972), cert. denied, 414 U.S. 831 (1973). As the Sixth  
18 Circuit held in Greene, a section 811 petition, "and not the  
19 judiciary, is the appropriate means by which defendant should  
20 challenge Congress's classification of marijuana as a Schedule I  
21 drug." 892 F.2d at 456. See also United States v. LaFrancia, 354  
22 F. Supp. 1338, 1341 (S.D.N.Y. 1973) ("[I]f the defendant were to be  
23

24 <sup>16</sup> Even if marijuana were taken out of Schedule I and  
25 placed in Schedule II, it could not legally be marketed or made  
26 available for prescription use unless it were reviewed and  
27 approved by the FDA under the Food, Drug and Cosmetic Act, 21  
28 U.S.C. § 301, et. seq. For a drug to obtain approval under this  
Food, Drug and Cosmetic Act, appropriate tests in well-controlled  
studies must be conducted to show substantial evidence that the  
drug is effective for its intended use and that it is safe. To  
date, marijuana has not been approved by the FDA to treat any  
disease or condition.

1 permitted to seek court review of the placement of marihuana in  
2 Schedule I without first applying to the Attorney General for such  
3 relief under 21 U.S.C. § 811, Congress' statutory scheme would be  
4 thwarted.").

5 C. Under Federal Law, Proposition 215 Does Not Authorize  
6 Defendant's Proposed Use of Marijuana.

7 Lastly, defendant cannot justify his proposed use of marijuana  
8 by relying upon Proposition 215. Proposition 215, enacted in  
9 November 1996,<sup>17</sup> which decriminalized the possession and cultivation  
10 of marijuana for patients and "caregivers" for purported medical  
11 purposes under state law, provides no defense to defendant's  
12 unlawful activities under federal law. It is well established that  
13 the determination of whether the Controlled Substances Act has been  
14 violated is "a federal issue to be determined in federal courts,"  
15 and is not dependent on state law. United States v. Rosenberg, 515  
16 F.2d 190, 198 (9th Cir.), cert. denied, 423 U.S. 1031 (1975).

17 Thus, in United States v. Kim, the Ninth Circuit expressly  
18 rejected an argument that the Act is an impermissible intrusion  
19 "into an area traditionally regulated by the states." In no  
20 uncertain terms, the court held that "Congress had authority under  
21 the Commerce Clause to criminalize the conduct under § 841(a)(1),"  
22 and that "the Supreme Court has recognized Congress' power to  
23 regulate illegal drugs." 94 F.3d at 1250 n.4. Indeed, to the  
24 extent "a state law purported to eliminate" a duty imposed by the  
25 federal Controlled Substances Act, "it would be void under the  
26 Supremacy Clause." United States v. Leal, 75 F.3d 219, 227 (6th  
27 Cir. 1996). See also United States v. Curtis, 965 F.2d 610, 616

28 <sup>17</sup> See Cal. Health & Safety Code § 11362.5.

1 (8th Cir. 1992) ("It is a basic principle of constitutional law  
2 that, under the Supremacy Clause of Article VI of the Constitution,  
3 federal law supersedes state law where there is an outright  
4 conflict between such laws.").

5 Just as before the passage of Proposition 215, federal law  
6 continues to prohibit the manufacture, distribution, and possession  
7 of marijuana, and every court to have considered the issue has  
8 upheld Congress's Commerce Clause authority to prohibit these  
9 illegal activities. Given the supremacy of federal over state law,  
10 Proposition 215 provides no authorization for defendant's use of  
11 marijuana. Consequently, Proposition 215 is not directly relevant  
12 to this proceeding as Congress has made it unlawful to manufacture,  
13 distribute and possess marijuana, except as otherwise authorized by  
14 the Act, for any purpose, for any condition, and under any  
15 circumstances. See 21 U.S.C. §§ 841(a)(1), 844.

16 V.

17 CONCLUSION

18 For the foregoing reasons, the government respectfully submits  
19 that the court should deny defendant's motion and affirm Judge  
20 Hatter's bond determination and conditions of release.

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 6 Todd Patrick McCormick

7  
 8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	CASE NO. CR-97-1724M
12 Plaintiff,	)	STIPULATION AND ORDER MODIFY-
13 vs.	)	ING BAIL
14 TODD PATRICK MCCORMICK,	)	
15 Defendant.	)	

16  
 17 It is hereby stipulated between the Plaintiff, the United  
 18 States of America, through its counsel, Assistant United States  
 19 Attorney Fernando L. Aenlle-Rocha, and Defendant Todd Patrick  
 20 McCormick, through his counsel, Joel R. Isaacson, as follows:

- 21 1. The appearance bond set by the Court on August 1, 1997,  
 22 concerning the terms and conditions of release of Defendant may be  
 23 satisfied by the posting of a cashier's check in the amount of Five  
 24 Hundred Thousand Dollars (\$500,000), drawn on the City National  
 25 Bank, Beverly Hills, California or other acceptable bank, and  
 26 payable to the Clerk of the United States District Court;  
 27 2. An affidavit of surety shall be signed by the third party  
 28 surety in the presence of counsel for the Government.

MCCORMICK.2

EXHIBIT

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3. The surety shall answer all inquiries regarding the source of funds..

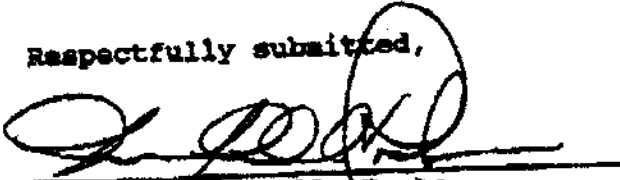
4. The attached promissory note and letters signed by Ms. Tracy Harshman and Mr. Woody Harralson are hereby incorporated into this stipulation.

5. The Defendant shall be tested prior to his release from custody for purposes of determining the presence and specific levels of any controlled substances in his body, which shall be used as a control to determine his compliance with the conditions of his release.

6. The Defendant shall file the original notarized letter executed by Mr. Harralson immediately upon receipt thereof but no later than August 21, 1997.

7. All other terms and conditions of pretrial release shall remain in effect.

Respectfully submitted,



Fernando L. Aenlle-Rocha  
Assistant United States Attorney  
Attorney for Plaintiff

Dated: 8/12/97



JOEL R. ISAACSON  
Attorney for Defendant

Dated: 8/11/97

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**ORDER**

Based upon the stipulation of counsel and good cause appearing  
therefore, it is so ordered.

Dated: Aug 12, 1997

**TERRY J. HATTER**  

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**TERRY J. HATTER, JR.**  
United States District Judge

August 8, 1997

VIA FACSIMILE AND MAIL

Fernando Aenlle-Rocha, AUSA  
United States Attorney's Office

Re: United States v. Todd Patrick McCormick:  
Case No. 97-1724 M

Dear Mr. Aenlle-Rocha:

This letter will confirm that I have been advised as to all of the conditions of release of Todd McCormick in connection with the \$500,000.00 I am posting as part of the appearance bond for Mr. McCormick in the above-titled case.

I have been advised that the money I post is subject to forfeiture in the event Mr. McCormick does not appear as required, or in the event Mr. McCormick violates any other condition of his release, including the condition that he avoid the use of any controlled substance, including but not limited to marijuana.

I also understand that in the event that the bail is forfeited for any reason, my rights with respect to the bond posted for Mr. McCormick's bail are set forth in Rule 46 of the Federal Rules of Criminal Procedure and in the Bail Reform Act of 1986.

Sincerely,



Tracy Harshman

August 8, 1997

VIA FACSIMILE AND MAIL

Fernando Aenlle-Rocha, ANSA  
United States Attorney's Office

Re: United States v. Todd Patrick McCormick;  
Case No. 97-1724 M

Dear Mr. Aenlle-Rocha:

This letter will confirm that I have been advised that the \$500,000.00 I am lending to Tracy Harshman will be posted by Tracy Harshman as part of the appearance bond for Todd McCormick in the above-titled case.

I have been advised that the money Ms. Harshman posts is subject to forfeiture in the event Mr. McCormick does not appear as required, or in the event Mr. McCormick violates any other condition of his release; including the condition that he avoid the use of any controlled substance, including but not limited to marijuana.

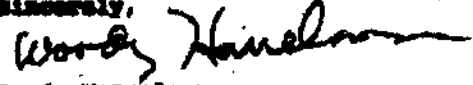
I understand that in the event that the bail is forfeited for any reason, I will have no claim against the United States government or the United States District Court for the return of all or any portion of the bail money. In other words, I understand that if the bail is forfeited, the only person who will be able to seek to set aside the forfeiture would be Ms. Harshman or her representative, or Mr. McCormick or his representative. However, I will have no standing to bring a claim on my behalf with respect to the forfeiture. Also, I fully understand that Ms. Harshman will have no standing to bring a claim on my behalf.

Fernando Anillo-Rocha, AUSA  
Page 3

Lastly, I understand and acknowledge that any promissory agreement entered into by me, Mr. Harshman, and/or any other person is expressly not a term or condition of the loan for Mr. McQuinn. Accordingly, I understand and agree that such promissory note does not provide me any rights, entitlement, obligations or standing in any claim against the United States government, with regard to the posting and/or forfeiture of said bond. I further acknowledge that the United States is neither an express nor implied party to any such promissory agreement.

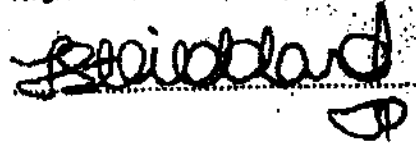
I also certify that the \$200,000.00 I am lending Mr. Harshman for purposes of Mr. McQuinn's bond was not earned or derived from any unlawful activity.

Sincerely,



Woody Harshman

I, Local Stuckland, Justice of the Peace, of Sydney, NSW, Australia, hereby certify that this is a true signature of Woody Harshman who signed this statement before me on August 12th, 1997.



**PROMISSORY NOTE**

For value received, I, TRACY HARSEMAN, hereby promise to pay to the order of WOODY HARRELSON on demand the sum of \$500,000 (Five-Hundred Thousand Dollars and no/100) at any time after the return of said funds which I am posting with the United States District Court as part of the appearance bond for Todd Patrick McCormick in case number 97-1724 N. I also promise that any monies returned to me by the United States District Court in addition to the principal returned to me (e.g., interest earned on the bond while being held by the District Court) I shall pay to the order of WOODY HARRELSON on demand at any time after said additional monies are released by the District Court.

DATED: August 8, 1997

By: 

TRACY HARSEMAN

Beverly Hills, California

CERTIFICATE OF SERVICE BY MAIL

I, Bonnie T. Vuong, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on March 2, 1998, I deposited in the United States mails in the United States Courthouse at 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a

copy of: **GOVERNMENT'S OPPOSITION TO DEFENDANT McCORMICK'S MOTION FOR REVIEW OF BOND AND MODIFICATION OF CONDITIONS OF RELEASE**

addressed to:


David M. Michael, Esq.  
Serra, Lichter, Daar, Bustamante, Michael & Wilson  
Pier 5 North  
The Embarcadero  
San Francisco, CA 94111

James D. Perez  
Pretrial Services  
312 North Spring Street, 7th Floor  
Los Angeles, CA 90012

at their last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on March 2, 1998, at Los Angeles, California.

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

  
\_\_\_\_\_  
BONNIE T. VUONG