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9 **JOHN WARBRITTON, III**

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **UNITED STATES OF AMERICA,**

13 **Plaintiff,**

14 **vs.**

15 **JOHN WARBRITTON, III,**

16 **Defendant.**

Case No. 3:16-cr-00423-CRB

**DEFENDANT JOHN WARBRITTON,
III'S MOTION TO REOPEN
DETENTION HEARING (18 U.S.C. §
3142(f))**

Date: June 6, 2017

Time: 11:00 a.m.

Judge: Hon. Elizabeth D. Laporte

17
18 **TO: THE HONORABLE ELIZABETH D. LAPORTE, THE UNITED STATES OF**
19 **AMERICA AND THE CLERK OF THE ABOVE-ENTITLED COURT:**

20
21 NOTICE IS HEREBY GIVEN that on June 6, 2017 at 11:00 a.m., defendant John
22 Warbritton, III, will move the Court to reopen the detention hearing in his matter pursuant to 18
23 U.S.C. § 3142(f). This motion is based on this notice of motion and motion, the attached
24 memorandum of points and authorities and attachments thereto, the pleadings and records on file
25 in this matter, all relevant statutory authority and case law, and such arguments and evidence as
26 the Court will entertain at the hearing on this motion.

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Dated: May 24, 2017.

Respectfully submitted,

/s/

SETH P. CHAZIN
Attorney for Defendant
JOHN WARBRITTON, III

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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO REOPEN DETENTION
HEARING (18 U.S.C. § 3142(f))**

INTRODUCTION

Defendant John Warbritton, III, M.D., is charged with one count of knowingly transporting child pornography in violation of 18 U.S.C. § 2252A (a)(1) and (b) on March 27, 2016.

Dr. Warbritton was initially released on an unsecured bond. *See Docket No. 5.* After the United States Pretrial Services officer reported a violation of his conditions of release (possessing child pornography images on a mobile phone), the Honorable Magistrate Judge Elizabeth D. Laporte held a bail review hearing on January 17, 2017, and detained Dr. Warbritton. *Docket No. 16.*

1 Dr. Warbritton hereby submits that grounds supporting a motion to reopen the detention
2 hearing have arisen since that time. *See 18 U.S.C. § 3142(f)* (detention hearing may be reopened
3 “if the judicial officer finds that information exists that was not known to the movant at the time
4 of the hearing and that has a material bearing on the issue whether there are conditions of release
5 that will reasonably assure the appearance of such person as required and the safety of any other
6 person and the community.”) There is good cause to reopen his detention hearing in that he
7 submits herein, and can further elaborate at a hearing in this matter, new evidence regarding his
8 addiction to prescription medications (opioids) and alcohol, which in turn fed his addiction to
9 pornography, and his subsequent rehabilitation since being incarcerated. This evidence,
10 combined with Dr. Warbritton’s commitment and plans for continued treatment, give rise to
11 sufficient grounds to allow the court to issue an order granting Dr. Warbritton’s release to The
12 Meadows residential treatment facility.

13 SUMMARY OF LAW

14 Pursuant to 18 U.S.C. § 3142(f)(2), a detention hearing “may be reopened, before or after
15 a determination by the judicial officer, at any time before trial if the judicial officer finds that
16 information exists that was not known to the movant at the time of the hearing and that has a
17 material bearing on the issue whether there are conditions of release that will reasonably assure
18 the appearance of such person as required and the safety of any other person and the
19 community.”

20 The Bail Reform Act of 1984, 18 U.S.C. §§ 3141, et seq., mandates the release of a
21 person facing trial unless no condition or combination of conditions will “reasonably assure” the
22 appearance of the person as required and the safety of the community. *18 U.S.C. § 3142(b) and*
23 *(c); United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991); *United States v. Motamedi*, 767
24 F.2d 1403, 1405 (9th Cir. 1985). Close cases should result in release: “Only in rare
25 circumstances should release be denied, and doubts regarding the propriety of release should be
26 resolved in the defendant’s favor.” *Gebro*, 948 F.2d at 1121, citing *Motamedi*, 767 F.2d at 1405;
27 *see also United States v. Chen*, 820 F.Supp. 1205, 1208 (N.D. Cal. 1992) (*Walker, J.*).

1 Section 3142(g) specifies the various factors that must be considered in determining
2 whether there are conditions of release that will reasonably assure the appearance of the person
3 and the safety of the community. *18 U.S.C. § 3142(g)*. These factors are: (1) the nature and
4 seriousness of the offense charged; (2) the weight of the evidence against the defendant; (3) the
5 defendant's character, physical and mental condition, family and community ties, past conduct,
6 history relating to drug and alcohol abuse, and criminal history; and (4) the nature and
7 seriousness of the danger to any person or the community that would be posed by the defendant's
8 release. *Id.; Motamedi, 767 F.2d at 1407*. Of these factors, the weight of the evidence is the least
9 important, and the statute neither requires nor permits a pretrial determination of guilt. *United*
10 *States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986); Motamedi, 767 F.2d at 1408*.

11 The government has the burden of establishing the defendant is a danger to the
12 community by clear and convincing evidence, and must show that the defendant is a flight risk
13 by a preponderance. *18 U.S.C. § 3142(f); Motamedi, 767 F.2d at 1406; United States v. Aitken,*
14 *898 F.2d 104, 107 (9th Cir. 1990)*. Because Dr. Warbritton is charged with an offense involving
15 a minor victim under *18 U.S.C. § 2252A(a)(1)*, there is also a rebuttable presumption of
16 detention in this case. *See 18 U.S.C. § 3142(e)(3)(E)*. This means that a defendant like Dr.
17 Warbritton must present "some credible evidence" that he will appear and that he does not pose a
18 danger to the community. *See United States v. Alatishe, 768 F.2d 364, 371 (D.C. Cir. 1985);*
19 *Chen, supra, 820 F.Supp. at 1207* (explaining that the burden placed on the defendant "to rebut
20 the presumption is small"). It is important to note that the presumption shifts only the burden of
21 *production* to the defendant; the ultimate burden of proof and persuasion remains on the
22 government. *United States v. Hir, 517 F.3d 1081, 1086 (9th Cir. 2008)*.

23 Based on the new evidence before the Court, defendant submits that the government
24 cannot meet this burden and that defendant has indeed rebutted the presumption of detention.
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ARGUMENT

I.

DR. WARBRITTON IS NOW SOBER AND IN A POSITION TO BE ABLE TO SUBSTANTIALLY BENEFIT FROM A RESIDENTIAL TREATMENT PROGRAM WHILE BEING NEITHER A FLIGHT RISK NOR A DANGER TO THE COMMUNITY.

At the time of the alleged offense conduct and the subsequent pretrial release violation in this matter, Dr. Warbritton was suffering from both opioid use disorder and sexual impulsivity disorder. *Exhibit A, letter from Carolyn Ann Schuman, MD, dated May 18, 2017.* In January 2017, just before he was detained by this court, Dr. Warbritton first began treatment under the care of Carolyn Ann Schuman, M.D. for his opioid addiction. While Dr. Warbritton argued against his detention at the time, his incarceration ultimately allowed him to “dry out” from the use of opioids and allowed the Suboxone treatment employed by Dr. Schuman to take effect. *Id.* Friends and family who have had contact with Dr. Warbritton since his detention have seen significant changes in his personality and demeanor. He is calmer, more rational, more able to focus on the task at hand and, overall, more stable. This is corroborated in the attached letters from family and friends of Dr. Warbritton, and is further confirmed in the attached letter from Carolyn Ann Schuman, M.D., as well as the report of the psychological evaluation performed by Jeremy Coles, Ph.D. Dr. Warbritton has made great strides towards rehabilitation and is now in a position to be able to benefit from a highly regarded treatment program for sexual compulsivity, including addiction to pornography, such as The Gentle Path Program for Men at The Meadows in Wickenburg, Arizona. Dr. Warbritton is very motivated to attend this program and receive the treatment that he needs.

1. Carolyn Ann Schuman, M.D.

In early January 2017, Dr. Warbritton consulted a medical doctor specializing in addiction, Carolyn Ann Schuman, M.D. Dr. Schuman placed him on Buprenorphine (Suboxone) for treatment of his opioid use disorder and saw him for two follow-up appointments before he

1 was detained. Dr. Warbritton has continued treatment with Suboxone during his incarceration at
2 the Santa Rita Jail. *See Exhibit A.*

3 According to Dr. Schuman, “Active opioid use may prevent patients from developing and
4 executing appropriate plans. Patients engaged in nonmedical opioid use often demonstrate
5 impaired judgment during periods of intoxication, which may be exacerbated during withdrawal,
6 with associated acute anxiety, severe physical and psychiatric discomfort, and drug seeking
7 behavior that is often impulsive and imprudent. Depression is also frequently associated with
8 opioid use disorders, and may cause apathy, inability to concentrate, and difficulty with
9 appropriate decision making. Interrupting the addictive process enables patients to develop
10 insight, exercise rational judgment, and return to stable behavioral patterns. The reasonable
11 expectation is that Dr. Warbritton’s impaired planning and decision making has improved with
12 treatment, which is highly likely to result in his ability to satisfactorily comply with his legal
13 responsibilities.” Exhibit A (citations omitted).

14 In addition, Dr. Schuman explains that “[i]nvestigation into executive function
15 impairments, the role of dopamine, and the potential efficacy of pharmacologic strategies
16 involving opioid blockade suggest there may be a significant interaction between the two
17 disorders. Therefore gaining control of an opioid use disorder is highly likely to be associated
18 with overcoming a sexual compulsion. Because Dr. Warbritton has now been abstinent from
19 illicit opioids for several months, it is probable that there has been a parallel improvement in his
20 ability to control sexual behaviors, which would add to the benefits and safety of discharge to a
21 treatment facility.” Exhibit A (citations omitted).

22 **2. Jeremy Coles, Ph.D., Clinical and Forensic Psychologist**

23 In addition, while at Santa Rita Jail, clinical and forensic psychologist, Jeremy Coles,
24 Ph.D., evaluated Dr. Warbritton to assess his general psychological and cognitive functioning, to
25 provide a risk assessment, and to provide treatment recommendations. *See Exhibit B,*
26 *Confidential Report of Psychological Evaluation by Jeremy Coles, Ph.D., dated May 19, 2017.*
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1 In his report, Dr. Coles concludes that “Dr. Warbritton is not suffering with significant
2 psychopathology and does not meet the diagnostic criteria for a major mood disorder nor a
3 personality disorder. Rather, he is an extremely high functioning, prosocial man who has lived a
4 productive life, free of significant impulsivity and free of destructive behavior up until the time
5 of the controlling offense.” *Exhibit B, p. 11*. “During that time period, he went off the rails so to
6 speak, and engaged in behavior that was harmful to himself and others. The antecedents to his
7 behavioral lapse appear to be his divorce, his daughter’s serious medical illness, and his
8 addiction to pain killers; the latter precipitated by a back condition that required opiate pain
9 medication to reduce his chronic pain. In turn, Dr. Warbritton became addicted to pain
10 medication, began drinking heavily, and became sexually compulsive. Initially, he acted out his
11 sexual compulsion by, essentially, buying a relationship with his favorite porn star for a couple
12 of years. He then turned to prostitutes in Thailand. He also viewed a significant amount of
13 pornography and, in the latter stages of this process, he began to view child pornography. While
14 his viewing of child pornography reveals some deviant trends to his underlying sexuality, he
15 does not meet the criteria for Pedophilic Disorder and there is no indication that his pedophilic
16 interests are dominant in his sexual functioning.” *Exhibit B, p. 11*.

17 Dr. Coles noted that “[r]esearch addressing recidivism amongst child pornography
18 offenders suggests that most individuals who are caught in possession of child pornography are
19 not likely to commit further child pornography crimes and are even less likely to commit a future
20 hands on sex offense.” *Exhibit B, pp. 7-8*. “In addition to the low recidivism rates found in
21 individuals who have been charged and/or convicted of child pornography crimes and not other
22 sex crimes, research suggests that these individuals differ fundamentally from hands on sex
23 offenders and mixed (both child pornography and hands on sex offenses) offenders. Not only are
24 their recidivism rates significantly lower than the later two groups, but their psychological
25 profiles differ significantly. In a recent meta-analysis comparing psychological characteristics of
26 on-line versus offline sex offender, it was found that child pornography only offenders possessed
27 greater victim empathy, less cognitive distortions, and more psychological barriers to sex
28 offending than their hands-on sex offender counterparts.” *Id. at p. 8 (citations omitted)*.

1 After performing a thorough risk assessment, Dr. Coles concluded that “Dr. Warbritton is
2 at very low risk for committing another child pornography crime and at even lower risk for
3 committing a hands on sex offense in the future.” *Id. at p. 11.*

4 **3. Family and Friends Have Observed Significant Changes in Defendant’s**
5 **Behavior and Demeanor.**

6 Dr. Warbritton’s mother, daughter, and lifelong friend have submitted letters relevant to
7 the instant motion. His daughter Amanda notes that she had seen her father “slowly self destruct
8 and lose motivation.” Exhibit E, letter from Amanda Warbritton. She goes on to state, “My
9 family and I lived in constant fear thinking his poor choices would lead him to where he is today
10 or worse. After a loss in many friends, a decline in his business, interventions, and house arrest,
11 my father still didn’t seem to get it.” *Id.* However, since his incarceration in January, she has
12 seen “an incredible amount of progress.” *Id.* “He has become the father I once knew him to be.
13 I’m always happy to visit him because each time he seems much ... healthier, alert, and has
14 something new to share from his readings. My father has lost some weight and his face seems
15 much more filled with color and liveliness. He has expressed his dedication to staying sober and
16 seeking help when it comes to his addictions. I for one can tell when my father is being
17 manipulative and lying after living with him most of my life, and I can honestly say when he
18 speaks about sobriety now he is being genuine, but definitely needs professional support and
19 help. He has also shown an increasing interest in spirituality. I see nothing but progress and
20 someone who is dedicated in bettering themselves and making their wrong doings right. I’m
21 incredibly proud of my father and who [he] is becoming, which is something I never thought I’d
22 be able to say. He has shown through our phone calls and my visits that he is healing and coming
23 to terms with his addictions. I would like to see him gain the access of help he needs so that
24 when he is to be released, he is able to stay sober and healthy. I can assure you that from my
25 perspective my father is on the right track.” *Id.*

26 Dr. Warbritton’s mother writes that he stopped calling her regularly after his divorce and
27 after moving part-time to Thailand. *Exhibit F, letter from Nancy Strawn.* When she did hear from
28 him, “he didn’t make sense” and she felt “there was something terribly wrong.” *Id.* After

1 discovering that he had been charged with the instant offense, she was shocked. However, she
2 now sees a “ray of hope” for his future. *Id.* Since his incarceration, Dr. Warbritton has called his
3 mother approximately two times a week. At first, he “talked fast and jumped from one thing to
4 another but lately his speech is normal like it used to be and we have good discussions about
5 religion mostly, but all kinds of world and family things too. My prayer is for continued
6 improvement to heal the productive and loving man I know him to be.” *Id.*

7 Finally, Dr. Warbritton’s lifelong friend, Dan McDonald, attests to Dr. Warbritton’s
8 “absolute commitment and dedication to permanent sobriety” based on the many phone
9 conversations and letters they have shared since Dr. Warbritton’s incarceration. *Exhibit G, letter*
10 *from Dan McDonald.* “In recent years, John’s struggle with substance abuse had become
11 painfully evident to his family and friends. In fact, I and another close friend of his had planned
12 to spend a weekend with him in November of 2016, to conduct an intervention. Events unfolded
13 differently however, culminating in John’s confinement to SRCJ in January 2017.” Since that
14 time, Mr. McDonald has witnessed a “transformation” as Dr. Warbritton has “embraced sobriety
15 at SRCJ and worked in his confinement to build a solid foundation for living a sober life.” *Id.*
16 “John’s recovery of focus, mental clarity and positive attitude point not only to his sincerity and
17 genuine desire to rehabilitate himself—but also to the wisdom of giving him all available support
18 and resources to achieve his goal.” *Id.*

19 II.

20 **THERE IS GOOD CAUSE TO GRANT DR. WARBRITTON’S MOTION TO**
21 **REOPEN HIS DETENTION HEARING AND ORDER HIS RELEASE TO THE**
22 **GENTLE PATH PROGRAM FOR MEN AT THE MEADOWS AS DR. WARBRITTON**
23 **IS IN NEED OF SUCH A PROGRAM, HAS BEEN ACCEPTED INTO THIS PROGRAM**
24 **AND HE DOES NOT POSE A FLIGHT RISK NOR A RISK TO THE SAFETY OF THE**
25 **COMMUNITY.**

26 **A. THE NATIONALLY RECOGNIZED GENTLE PATH PROGRAM AT THE** 27 **MEADOWS OFFERS THE TREATMENT THAT DR. WARBRITTON** 28 **NEEDS.**

The Meadows is a nationally recognized residential treatment center offering a unique
program, The Gentle Path Program for Men, which is specifically targeted to patients with sexual

1 addiction disorders, while at the same time able to support Dr. Warbritton's sobriety and
2 recovery with regard to opioids and alcohol. The Gentle Path program offers a robust treatment
3 regimen utilizing multiple therapeutic strategies and a highly sophisticated professionalized staff
4 including medical physicians, psychiatrists, and therapists with doctorate and masters level
5 degrees. According to Dr. Schuman, "[a]lthough sexual addiction is a complex and challenging
6 disorder, the program offered through The Meadows will provide Dr. Warbritton with the most
7 promising pathway to overcoming this condition." *See Exhibit A; see also Exhibit C, description*
8 *of Gentle Path program at The Meadows, Sex Addiction Treatment for Men.*

9 On April 26, 2017, The Meadows approved Dr. Warbritton to participate in The Gentle
10 Path Program for Men. *See Exhibit D.* As described in the acceptance letter from The Meadows,
11 "Gentle Path is a 45 day, inpatient dual diagnosis treatment program focusing on the issues men
12 struggle with related to sexual compulsivity. Additionally, the Gentle Path clinical team does a
13 great deal of work with the [patient] to uncover ... the underlying, unresolved issues that are
14 triggering the acting out behavior." *Id.*

15 **B. TWO DOCTORS SUPPORT RELEASING DR. WARBRITTON TO THE**
16 **GENTLE PATH PROGRAM FOR MEN AT THE MEADOWS.**

17 Dr. Schuman believes that "this is an ideal time to release Dr. Warbritton to treatment at
18 The Meadows. Because he is in remission from illicit opioids and supported by Buprenorphine
19 (Suboxone) he is capable of maintaining his sobriety, which will enable him to engage in and
20 fully benefit from the treatment process. Abstinence from illicit opioids is also likely to increase
21 his ability to comply with court mandated requirements and reduce his compulsive sexual
22 behaviors, thereby helping to ensure public safety." Exhibit A. "In my opinion, both Dr.
23 Warbritton and society at large would be most appropriately and safely served by transfer to a
24 residential program focused on treatment of compulsive hypersexuality disorders." *Id.*

25 Similarly, Dr. Coles concluded that Dr. Warbritton "can be safely and effectively treated
26 in the community and that he is an appropriate candidate for a residential treatment program that
27 is designed to deal with sexual compulsivity and any accompanying deviant sexuality
28 difficulties. I called the treatment program, GentlePath at the Meadows, the program that Dr.

1 Warbritton has been accepted in, and this appears to be an appropriate placement for him as it
2 deals with sexual difficulties as well as substance abuse issues.” *Exhibit B, p. 11.*

3
4 **C. DR. WARBRITTON IS NEITHER A FLIGHT RISK NOR A DANGER TO THE**
5 **COMMUNITY AT THIS TIME.**

6 First, there was nothing on the record at the time of the initial detention hearing, nor is
7 there anything on the record at this time, to support a finding that Dr. Warbritton is a flight risk.

8 With regard to any risk of safety to the community, it has been written that, “[T]here is a
9 small but identifiable group of *particularly dangerous* defendants as to whom neither the
10 imposition of stringent release conditions or the prospect of revocation of release can reasonably
11 assure the safety of the community or other persons. It is with respect to this *limited group of*
12 *offenders* that the courts must be given the power to deny release pending trial.” 1994
13 U.S.C.C.A.N. 3182, 3189 (emphasis added).

14 A defendant cannot be detained as dangerous under 18 U.S.C. § 3142(e) even if the
15 presumption is not rebutted unless a finding is made that no release condition “will reasonably
16 assure ... the safety of the community” Such a finding cannot be based on evidence that the
17 defendant has been a danger in the past except insofar as the past suggests future misconduct.
18 *United States v. Dominguez*, 783 F.2d 702 (7th Cir. 1986); *United States v. Leibowitz*, 652 F.
19 Supp. 591 (N.D. Ind. 1987). If the government alleges that the defendant is a danger to the
20 community, the danger it claims the defendant poses must relate to the federal case; unrelated
21 allegations of danger to others is insufficient to justify an order of detention. *United States v.*
22 *Ploof*, 851 F.2d 7, 11 (1st Cir. 1988). Consequently, any evidence favorable to a defendant can
23 affect the operation of the presumption, including evidence of family support, post-offense
24 rehabilitation, and ties to the community.

25 Here, Dr. Warbritton successfully sought medical care to treat his opioid addiction and he
26 now exhibits many positive personality changes and much greater stability. He has also
27 committed himself to addressing his sexual addiction, and family and friends alike attest to his
28 complete transformation since being incarcerated in January. Indeed, both his treating physician

1 and the forensic psychologist that evaluated him are recommending his release to the residential
 2 treatment program at The Meadows. Both doctors have approved his participation in the
 3 program, and conclude that he has a very low risk of recidivism and does not present a danger to
 4 the community.

5 Thus, for all the reasons stated above, it is respectfully submitted that there is good cause
 6 to grant Dr. Warbritton’s motion to reopen his detention hearing and to release him to The
 7 Gentle Path Program for Men at The Meadows.

8 **CONCLUSION**

9 Since being detained in January of this year, Dr. Warbritton has achieved sobriety from
 10 opioids and alcohol and is now highly motivated to receive treatment for his sexual compulsivity
 11 disorder. Family and friends describe what they have witnessed in their loved one as a
 12 “transformation,” and everyone agrees he is committed to his sobriety and to achieving full
 13 redemption for his past wrongs. The Gentle Path Program for Men residential treatment program
 14 offers a unique and excellent opportunity for Dr. Warbritton to obtain the high quality and
 15 intensive treatment that he needs. This will, in turn, provide him with the necessary insight and
 16 awareness about his addiction to pornography to once again allow him to become a law-abiding
 17 and highly productive member of society.

18 Based on the foregoing changed circumstances, defendant respectfully requests this Court
 19 reopen his detention hearing pursuant to 18 U.S.C. § 3142(f) and order his release to The Gentle
 20 Path residential treatment program at The Meadows, under whatever additional conditions of
 21 release that the Court deems appropriate.
 22

23 **Dated: May 24, 2017.**

Respectfully submitted,

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 26 _____ /s/_____
SETH P. CHAZIN
Attorney for Defendant
JOHN WARBRITTON, III