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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) NO. CR 16-00423 CRB (EDL)
14 Plaintiff,)
15 v.) OPPOSITION TO DEFENDANT’S MOTION TO
16 JOHN DAVID WARBRITTON, III,) REOPEN DETENTION HEARING
17 Defendant.)
18 _____)

19 **I. INTRODUCTION**

20 Defendant, John Warbritton, III, was charged by indictment with transporting child pornography,
21 in violation of Title 18 United States Code, Section 2252A(a)(1) and (b), after he flew to the United
22 States from Thailand. He was remanded to the custody of the U.S. Marshals after three months on
23 supervised release following numerous, documented violations of the terms of his release conditions. Of
24 greatest concern to the government and to defendant’s Pretrial Services Officer are the fact that the
25 defendant obtained an electronic device while he was on release, lied to his Pretrial services Officer by
26 saying that it was not internet-connected, and then used this device to access graphic and violent images
27 and videos depicting sexual assault of young girls by adults. The defendant’s proffers that he is now
28 receiving substance abuse treatment and that thus he should be released from custody to attend another

1 treatment facility. The government opposes his request for release. The defendant has shown that he
2 has recidivated, and he should not be permitted the opportunity to continue to victimize children. The
3 government cannot think of what conditions that can be fashioned by the Court that can reasonably
4 assure the safety of the community. Accordingly, the government concurs with the recommendation of
5 the Pretrial Services that the defendant remain in custody pending trial because there is clear and
6 convincing evidence that the defendant is a danger to the community. 18 U.S.C. § 2142(f).

7 **II. DEFENDANT'S REMAND TO CUSTODY IN JANUARY 2017 AND HIS NEW**
8 **VIOLATIONS OF CRIMINAL LAW**

9 The defendant spent three months of pretrial release, and the Court remanded defendant to
10 custody after a second bail violation hearing on January 17, 2017. During the first hearing before the
11 Court, defense counsel raised as a concern that he wanted his client to have access to email so that he
12 could communicate with counsel. (Dkt. 15). Defendant also showed the Court that he had a
13 smartphone, which he was advised that he was not permitted to have by the terms of his bond.
14 Defendant represented that his phone did not have a data plan and that he was only using the phone to
15 make calls and text messages.

16 The Court held a second bail hearing on January 17, 2017, after defendant's Pretrial Services
17 Officer inspected this smartphone and determined that the defendant had used it to access websites
18 hosting child pornography, including, as detailed in the Notice of Violation Report, websites that appear
19 to specialize in videos documenting rape of Asian girls.

20 The government submits under seal, in order to protect the victims, the Report of Investigation
21 ("ROI") that documents the review of this smartphone. See Exhibit A (filed under seal). The report
22 details that there were 220 images found on the cellphone. These images depict children, some as young
23 as 3-4 years of age, who are nude or dressed in lingerie. They describe children engaged in sexual acts
24 with adults, some depicting children being raped by multiple adults. Many of the girls depicted in these
25 photographs are Asian. This is of particular concern to the government in its concern that defendant has
26 been a hands-on offender because the defendant was arrested after returning to the United States from
27 Thailand, where he admitted to agents he has spent long periods of time for the last several years.

28 In addition, as set forth in the ROI, one photo collage depicted the defendant along with an Asian

1 female aged 8-10 years old. The girl in the photograph wore a pink, lacy top, and one image showed the
2 defendant's face positioned over the girl's shoulder and alongside her face. In one image, the defendant
3 shows his puckered lips to the camera. The government is not aware of the defendant having any
4 connection through family or friends to any 8-10 year old girls living in Thailand. This photograph
5 collage also raises concerns about whether the defendant may be a hands-on offender or someone who
6 was preparing to do so.

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8 **III. NO CONDITIONS COULD REASONABLY ASSURE THE SAFETY OF THE COMMUNITY**

9 The Court asked the parties to consider what conditions could be fashioned to ensure the safety
10 of the community. There are none that would allow the defendant to go to Gentle Path for evaluation.
11 Defendant already has shown by his conduct that he will not abide by conditions imposed upon him and
12 that he will lie to avoid detection. Contrary to the report of Dr. Coles, he actually has recidivated. The
13 government also is troubled that the defendant made numerous trips to countries known to be
14 destinations for child sex tourism over the last several years and that the photograph of the 8-10 year old
15 that appeared on his phone could be a photograph of someone whom he victimized. If defendant were
16 released to Gentle Path for evaluation: no one there would be checking his room to ensure he did not
17 bring a phone; Gentle Path cannot limit all wireless networks in the area; and there is no guarantee that
18 the defendant would not (as he already did once) obtain a smartphone or other internet-connected
19 device—like a watch, digital camera, or game console—to access child pornography. Moreover,
20 defendant faces a five-year mandatory minimum term of imprisonment for the charges pending in this
21 case. The Gentle Path program lasts only 45 days, and there is no clear plan for what treatment could be
22 provided afterward. To the extent that the defendant needs treatment, this can be provided in federal
23 facilities that house inmates like the defendant.

24 Defendant also proffers that his opioid addiction led him to perform poorly on pretrial release.
25 Yes the expert who stated this, Dr. Carolyn Schuman noted that the relationship between “opioid use
26 disorder and compulsive disorders . . . is poorly understood. . . .” Dkt 29-1 at 3. The research is merely
27 suggestive of a significant interaction between the two disorders. But it is not conclusive. What is clear
28 is that the defendant was trusted with a bond so that he could be released pretrial. He violated that trust

