

KRIS A. MCLEAN
ZENO B. BAUCUS
Assistant U.S. Attorneys
P.O. Box 8329
Missoula, MT 59807
105 E. Pine, 2nd Floor
Missoula, MT 59802
Phone: (406) 542-8851
Fax: (406) 542-1476
Email: kris.mclean@usdoj.gov
zeno.baucus@usdoj.gov

ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JORDAN LINN GRAHAM, Defendant	MJ 13-59-M-JCL <u>MOTION FOR STAY OF</u> <u>RELEASE ORDER</u>
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The United States moves for a stay of the United States District Court (District of Montana) Magistrate Judge's order releasing the defendant, Jordan Graham, on her own recognizance, subject to special conditions. On

September 13, 2013, the United States will file a motion under 18 U.S.C. § 3145 to revoke the order releasing the defendant based upon the risk that she presents to the community, the seriousness of the charged offense, her repeated false statements, and her mental health. The Magistrate Judge's order releasing the defendant should be stayed pending a decision by this Court on the government's motion to revoke that same order. *See United States v. Petersen*, 557 F. Supp. 2d 1124, 1126 (E.D. Cal. 2008).

This Court has the authority to authorize the stay pursuant to 18 U.S.C. § 3142(f), which provides that a defendant may be detained "pending completion of the [detention] hearing." As § 3145 expresses the clear public interest that Congress identified in permitting review of a magistrate judge's release order, the detention hearing should not be considered complete until the limited period contemplated for the prompt review of the magistrate's release order under § 3145(a) has passed. *United States v. Huckabay*, 707 F. Supp. 35, 37 (D. Me. 1989).

Requiring release pending review by the district court would frustrate the very purpose of such review and "could render the district court's review power illusory." *United States v. Brigham*, 569 F.3d 220, 230 (5th Cir. 2009). For that reason, numerous district courts have stayed release orders "in the

context of pre-trial detention” pursuant to § 3142(f) and § 3145. *Id.* (collecting cases). As § 3145(a) mandates a prompt review of the motion to revoke, it provides a reasonable safeguard against unduly extended detention during review. *Id.*

As the *Huckabay* court explained, there is nothing in the statute or in its legislative history to suggest that Congress intended to deny the district court a reasonable opportunity to inform and exercise its discretion, which necessarily contemplates a hearing and/or *de novo* consideration of the record presented before the magistrate. *Id.* at 37; *see also Petersen*, 557 F. Supp. 2d at 1127.

The government respectfully requests that this Court now stay the Magistrate Judge’s order of release to allow the government to meaningfully exercise its right to a *de novo* review of the Magistrate Judge’s release order.

Defendant’s counsel, Michael Donahoe was contacted and opposes this motion.

DATED this 12th day of September, 2013.

MICHAEL W. COTTER
United States Attorney

/s/ Zeno B. Baucus
Assistant U.S. Attorney
Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to D. Mont. LR 7.1(d)(2) and CR 12.1(e), the attached Motion for Stay of Release Order is proportionately spaced, has a typeface of 14 points or more, and the body contains 400 words.

/s/ Zeno B. Baucus
Assistant U.S. Attorney
Attorney for Plaintiff