

1 JOSEPH P. RUSSONIELLO (CABN 44332)  
United States Attorney

2 BRIAN J. STRETCH (CABN 163973)  
3 Chief, Criminal Division

4 KESLIE STEWART (CABN 184090)  
Assistant United States Attorney  
5 1301 Clay Street, Suite 340S  
Oakland, CA 94612  
6 Telephone: (510) 637-3680  
7 Fax: (510) 637-3724  
E-Mail: Keslie.Stewart@usdoj.gov

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION  
12

13 UNITED STATES OF AMERICA,	)	No. CR 10-00395 PJH
14 Plaintiff,	)	UNITED STATES' REQUEST FOR
15 v.	)	CONTINUED DETENTION OF JAMES
16 JAMES DELBERT MCCONVILLE,	)	MCCONVILLE
17 Defendant.	)	
18	)	

19 **I. DETENTION ORDER FROM EDCA**

20 On Monday, June 21, 2010, the defendant was arraigned in Bakersfield, California – the  
21 nearest magistrate court to the place of his arrest on Friday night. He was interviewed by pretrial  
22 services and a detention hearing was held in Fresno, California, on Wednesday, June 23, 2010.  
23 The pretrial services officer recommended detention on the basis of flight risk, because the  
24 defendant has an unstable residence history, lack of verifiable income, and a history of non  
25 appearance. The pretrial services officer also noted that the defendant had no collateral for bail  
26 and no identifiable sureties. After a hearing, the Honorable Magistrate Judge Gary S. Austin  
27 agreed with the assessment of the pretrial services officer and ordered that the defendant be  
28 detained and removed to the Northern District of California. The defendant appeared in this

1 district before the Honorable Magistrate Judge Laurel Beeler on July 13, 2010. The matter was  
2 put over to July 20, 2010 for identification of counsel and detention hearing. The Court  
3 specifically indicated that the defendant could attempt to address the concerns raised in the  
4 pretrial services report. The defendant's Motion for Pretrial Release indicates that the defendant  
5 has failed to locate sureties with property to post or even sureties with income separate from the  
6 defendant's fraudulent schemes. As set forth more fully below, the preponderance of the  
7 evidence demonstrates that the defendant is a flight risk and his proposed sureties are inadequate  
8 to assure his appearance.

## 9 **II. BACKGROUND**

10 The defendant was indicted on May 13, 2010 on conspiracy and money laundering  
11 charges related to mortgage fraud. Federal agents attempted to arrest him at 31111 Palomares  
12 Road in Castro Valley the morning of May 14, 2010. This is the address where the defendant's  
13 wife, Clara, daughter, Nicole, and son, Justin, currently reside. The defendant was not there the  
14 morning of May 14, 2010. Both Clara and Nicole McConville, however, were apprised of the  
15 arrest warrant for the defendant. The defendant's attorney, Michael Thorman, was also informed  
16 of the outstanding arrest warrant. Phone records reveal that the defendant spoke with his  
17 attorney, Michael Thorman, the evening of May 14, 2010, and his counsel has admitted that he  
18 was aware of the arrest warrant. Although government counsel spoke with Mr. Thorman on a  
19 number of occasions about possible terms of release, the defendant never turned himself in and  
20 federal agents did not locate him until the evening of June 19, 2010, more than a month after the  
21 defendant learned that he was wanted on federal charges. When arrested on June 19, 2010, the  
22 defendant lied and stated he was not aware that an arrest warrant had been issued for him. The  
23 defendant had three large rolls of cash in his pockets; the money was returned to his son Justin  
24 who was with him at the time of the arrest in Valley Acres, California, a very small town outside  
25 of Taft, California, at least thirty miles west of Bakersfield.

## 26 **III. NATURE AND CIRCUMSTANCES OF THE OFFENSE**

27 The defendant is charged with conspiring to defraud institutional lenders of millions of  
28 dollars through fraudulent loans for real property. The government's investigation has been

1 ongoing for more than a year. As defense counsel concedes in its papers, the defendant has been  
2 aware of the government's investigation and consulting with defense counsel for at least a year.  
3 At least one government witnesses stated that the defendant knew she was speaking to the FBI.

4 The government's investigation to date has focused on the defendant's most recent  
5 scheme involving approximately 80 condominiums in Escondido and San Marcos, California.  
6 The defendant used straw buyers to obtain loans worth more than \$20 million. Of that \$20  
7 million, more than \$11 million dollars was paid in "marketing fees" to companies controlled by  
8 the defendant. The lenders unknowingly approved loans where roughly 40 percent of the value  
9 of the loan was going directly to the defendant rather than into the purchase price for the  
10 property. The companies were in the name of the defendant's daughter, Nicole McConville.  
11 Nicole has testified in bankruptcy proceedings that her father actually owned and controlled all of  
12 the corporations; she was merely listed as the officer and had signature authority on the bank  
13 accounts, sometimes along with her mother, Clara McConville.

14 The defendant obtained almost all of the fraudulent loans for Escondido and San Marcos  
15 in 2008. Thus, he received more than \$11 million dollars in 2008 alone. Interviews with straw  
16 buyers and coconspirators indicate that the defendant was committing mortgage fraud long  
17 before 2008 in condominium developments in Ridgecrest, Fresno, and San Diego, California.  
18 The IRS has traced the marketing fees from the Escondido/San Marcos loans and confirmed that  
19 in 2008 more than \$7.5 million was deposited into the accounts of six shell corporations  
20 controlled by the defendant. The IRS was unable to locate tax returns for any of the entities  
21 controlled by McConville after 2005. The defendant and his wife, Clara McConville, filed a  
22 joint return in 2008 declaring gross receipts of only \$25,000.

23 The FBI and the IRS have been investigating the defendant's businesses and have been  
24 unable to locate a single legitimate source of income. At least one codefendant has indicated that  
25 he acted as a straw buyer for McConville before 2004 when McConville was still wanted related  
26 to fraud charges out of Alameda County. It appears that the defendant was committing mortgage  
27 fraud while on probation for and a fugitive from those charges from 1999 to 2004.

28 **A. Overseas and Domestic Investments**

1           On May 14, 2010, federal agents searched the storage locker in Castro Valley where the  
2 defendant had moved his office after he could no longer make payments on his ranch. In the  
3 make-shift office, agents found newspaper articles about McConville's involvement in mortgage  
4 fraud demonstrating the defendant's awareness of the public scrutiny of his involvement in the  
5 fraud. They also found on the top of one of the desks several notes in the defendant's own  
6 handwriting outlining international and domestic investments. These handwritten notes were  
7 found on top of one of the desks suggesting that the notes had been created or reviewed recently.  
8 The notes suggest that the defendant has investments in offshore companies on Nevis, a small  
9 island in the Carribean. Internet searches related to Nevis corporations suggest that the island's  
10 laws protect investor privacy and do not recognize most requests from foreign jurisdictions  
11 unless related to international terrorism. The defendant's notes also suggest that he has money in  
12 Puerto Rico, Switzerland, Sweden (the "majority"), and Cypruss ("quick access"). *See*  
13 Declaration of Mary Williams in Support of United States' Request For Continued Detention of  
14 James McConville. The defendant was aware of currency reporting requirements and could have  
15 invested the money while overseas to prevent American authorities from tracing it. The  
16 defendant's notes also suggest he has purchased foreign currency: namely Iraqi dinars and  
17 significant amounts of Vietnamese Dong. Vietnam does not have an extradition treaty with the  
18 United States.

19           The defendant's handwritten notes also suggest significant investments in gold and silver.  
20 The government has reviewed checks totaling more than \$1,000,000 written in 2008 and/or 2009  
21 for investments the defendant made. A letter dated September 2008 found at the storage locker  
22 on May 14, 2010, suggests that the defendant had attempted to obtain a loan for more than \$38  
23 million. Given the size of these investments, the defendant's appearance is not secured by  
24 unsecured bonds worth \$800,000.

25           **B.     A Family Run Business**

26           Before 2008, the defendant was doing business using his daughter, Nicole's name. He  
27 listed her as the sole officer of the shell corporations he created and he put the corporate bank  
28 accounts in her name. The \$7.5 million dollars in 2008 was traced to accounts in Nicole's name.

1 More recently, the defendant has been using his son, Justin, to do business. The defendant's  
2 wife, Clara, was also a signatory on some of the corporate bank accounts. In 2008, checks were  
3 made out to Clara and Nicole McConville directly out of escrow on the fraudulent loans. Clara  
4 McConville admitted to the pretrial services officer in the Eastern District that she has little  
5 income and that the defendant supports her. Nicole McConville is a self-employed hair stylist.  
6 Her reported gross receipts for 2008 were less than \$35,000 and her reported net profit was  
7 approximately \$7,000.

8 At the beginning of this year, the defendant attempted to purchase two homes in Kern  
9 County in his son's name. The purchases were to be made in cash but neither was completed.  
10 Since 2008, the defendant has created at least two new shell corporations in Justin's name and  
11 opened at least one new bank account in Justin's name. The defendant's other son, James, has a  
12 long criminal history including drug related arrests and multiple convictions related to weapons,  
13 battery, and burglary charges.

14 **C. Rental Application For Palomares Address Full of Misrepresentations**

15 The home at 31111 Palomares Road is rented in the name of the defendant's son, Justin.  
16 The rental application along with notes handwritten by the defendant were found at the storage  
17 locker where the defendant maintained his office. Justin filled out the application according to  
18 his father's instructions. He listed as his employer his father's shell corporation 3 Mac Studios at  
19 an address that the family had already vacated because it was in foreclosure. Consistent with his  
20 father's instructions, Justin listed an alias of "Dell Sporrer" for his employer. "Del" is an alias  
21 used by the defendant whose middle name is Delbert. As part of the mortgage fraud scheme, the  
22 defendant would regularly list his corporations as employers for straw buyers. In his own  
23 handwriting he wrote that codefendant Laura Caton's mother had been employed for one of his  
24 shell corporations for ten years when in fact she was retired and had never worked for him. The  
25 defendant has continued to lie and obtain property in his children's names to avoid apprehension  
26 and to make it harder for the government to track his whereabouts and his money. On the rental  
27 application, Justin listed his "father" without name as an emergency contact and stated that his  
28 father lived in San Francisco. *See* Declaration of Mary Williams. The defendant provided many

1 different addresses to the pretrial services officer but none of them were in San Francisco. The  
2 defendant's family has actively helped the defendant commit fraud; his family has supported  
3 itself almost solely from the fraudulent proceeds; and the defendant's family has continued to  
4 help him hide from law enforcement after learning of the investigation, indictment, and arrest  
5 warrant. Justin McConville was with his father at the time of his arrest despite the fact that the  
6 family knew of the outstanding arrest warrant.

#### 7 **IV. HISTORY OF NON APPEARANCE**

8 The defendant was charged in Alameda County with insurance fraud related to real  
9 property that burned down. The original charges date back to 1995. He pled guilty in 1998 and  
10 was sentenced to probation. While out of custody on probation he failed to appear for  
11 proceedings related to restitution. In 1999, a felony bench warrant was issued. The defendant  
12 was finally arrested on that warrant by BART police in 2004. If the defendant is nonchalant  
13 about court appearances related solely to payment of restitution, there is little to suggest he would  
14 make court appearances where he faces significant prison time. The defendant was represented  
15 at that time by Michael Thorman.

#### 16 **V. COMMUNICATIONS WITH DEFENSE COUNSEL**

17 The government has reviewed the affidavit of Mr. Thorman in support of the defendant's  
18 motion for pretrial release. Although the government was willing to hear the defendant's side of  
19 the story prior to indictment, it is true that the government was unwilling to provide a preview of  
20 its evidence. Providing evidence to the defense in advance of indictment allows a defendant to  
21 tailor his version of events to fit the evidence.

22 It is telling that the defendant now admits that he was fully aware of the charges and  
23 arrest warrant yet claims he was not evading arrest. Moreover, at the time of his arrest, the  
24 defendant did deny knowledge of the arrest warrant. It was only when confronted with evidence  
25 of his knowledge (his communications with his attorney and his family members) that the  
26 defendant conceded he knew about the warrant but was not evading arrest.

27 During the month of June, Mr. Thorman informed the undersigned that he did not know  
28 where the defendant was but that the defendant had said he was out of state. In fact, phone

1 records indicate that the defendant traveled all over California and into Nevada during the month  
2 of June while he was a fugitive. Although the government discussed with Mr. Thorman possible  
3 terms of release that would be agreeable to the government, it was always understood that the  
4 defendant should turn himself in immediately and that Mr. Thorman had advised the defendant to  
5 turn himself in. The defendant instead chose to move about in remote locations paying in cash  
6 and relying on family members to help him hide. The government spent an enormous amount of  
7 time and energy during the months of May and June following the defendant's family members  
8 and tracking the defendant's cell phone use before finally obtaining an order authorizing  
9 disclosure of the precise location of his cell phone.

10 Nothing about the defendant's communications with Mr. Thorman or Mr. Thorman's  
11 communications with the government suggest that the defendant is not a flight risk. On the  
12 contrary, they suggest that despite the advice of respected defense counsel and despite knowledge  
13 of the arrest warrant, the defendant made every effort to avoid arrest. Mr. Thorman was unable  
14 to prevail upon the defendant to appear in court back in 1999 and he was unable to prevail upon  
15 the defendant to turn himself in to authorities a decade later in 2010. Mr. Thorman's opinion that  
16 the defendant has no desire or intent to flee the jurisdiction is carefully worded. Mr. Thorman  
17 does not state an opinion that the defendant is not a flight risk. Given the defendant's age, he  
18 cannot argue that his non appearance in 1999 was a youthful mistake or that he has matured  
19 significantly in the interim.

## 20 **VI. TIES TO FAMILY AND COMMUNITY**

21 This defendant is not a man who goes home to his family at the same house every night.  
22 By his own admission to pretrial services, he has lived in multiple locations the past year and at  
23 different multiple locations before that. He and his wife are separated even though he continues  
24 to support her and they continue to file joint tax returns. The defendant has not hesitated to use  
25 his son and daughter's name to commit fraud and he has laundered his fraudulent proceeds  
26 through accounts in the names of all three: Clara, Nicole, and Justin. His oldest son James has an  
27 extensive criminal history or the defendant would likely have used his name as well. The family  
28 dynamics are such that the defendant controls all financial matters and is the sole supporter of the

1 family. Yet by their own admission they rarely see him. Clara told the pretrial services officer  
2 that before his arrest she saw him approximately once a month. Nicole testified in bankruptcy  
3 proceedings that she saw her father about that often as well. The defendant's willingness to live  
4 transiently and his lack of concern for his family's financial and criminal exposure in the past  
5 suggest that they do not have sufficient influence over him to ensure his appearance – especially  
6 given that the proposed bonds are unsecured and in amounts much less than the defendant  
7 obtained from the fraud in 2008 alone.

#### 8 **VII. THE PROPOSED SURETIES ARE WHOLLY INADEQUATE**

9 Four of the eight proposed sureties are part of the defendant's immediate family: Clara,  
10 Nicole, James, and Justin. Another three are closely associated with the family: Lori Hewes  
11 dates one of his sons and has drug and weapons related convictions; Art Gonzales is his brother-  
12 in-law and has multiple convictions for drug dealing and burglary; and Karishma Singh is his  
13 daughter's best friend and a former employee. Ms. Singh is a potential subject of this  
14 investigation because she was employed by the defendant in 2008 during the mortgage fraud. At  
15 least one witness observed Ms. Singh shredding documents at the defendant's ranch in late 2008  
16 after the fraudulently obtained loans began going into default and the straw buyers began  
17 complaining to the defendant, the media, and the FBI. The only other proposed surety is Gary  
18 Crown. According to statements Mr. Crown made to the FBI when the FBI was searching for the  
19 defendant in June of this year, Mr. Crown had been unaware of the charges against the defendant  
20 and had not been in contact with him for many years before 2010.

21 None of the proposed sureties has property to secure the bonds, and the total amount of  
22 the unsecured bonds – \$800,000 – pales in comparison to the \$11 million that the defendant  
23 received in 2008 alone.

#### 24 **VIII. CONCLUSION**

25 The government has demonstrated by a preponderance of the evidence that the defendant  
26 is a flight risk. The defendant has a history of non appearance and evading arrest. He has  
27 received millions of dollars in fraudulent proceeds and may have significant investments outside  
28 of the United States. He has a passport but claims he does not know where it is. Bank records

