

Judge Robert J. Bryan

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DIANA MARINA NEMES,

Petitioner,

NO. CV14-5276RJB
MJ14-5067KLS

v.

JACK FOX and ELOISA DEBRULER,
WARDENS, FEDERAL DETENTION
CENTER, SEATAC,

Respondents.

GOVERNMENT RESPONSE TO DIANA
NEMES' PETITION FOR HABEAS
CORPUS

I. INTRODUCTION

The government of Romania formally seeks the extradition of fugitive Diana Marina Nemes based on charges that she was involved in a tax evasion scheme orchestrated by her husband that resulted in over \$68 million in losses to the Romanian government. The Romanian extradition request and supplemental documents set forth extensive evidence demonstrating Ms. Nemes' support of her husband's tax evasion scheme including facts that show she set up and controlled some of the companies used to facilitate the scheme as well as facts that show she set up and controlled additional shell companies used to launder the proceeds of the scheme. The extradition request also describes evidence that Ms. Nemes was controlling offshore accounts in Dubai used to

1 remove the proceeds of the crimes from Romania. Ms. Nemes was arrested on March 17,
2 2014 pursuant to a complaint and warrant issued by U.S. Magistrate Judge Karen L.
3 Strombom. The complaint was filed pursuant to Title 18, United States Code, Section
4 3184 et seq., seeking her extradition to Romania pursuant to the extradition treaty
5 between Romania and the United States and a formal extradition request filed with the
6 complaint. On March 20, 2014, Judge Strombom detained Ms. Neme's motion for bail
7 after briefing and argument by the parties. An extradition hearing to determine, among
8 other things, whether there is probable cause to support the Romanian charges has been
9 set for May 22, 2014, at 1:30 PM before Magistrate Judge Karen L. Strombom.

10 In the instant petition for habeas relief, Ms. Nemes asks this Court to re-visit Judge
11 Strombom's well reasoned decision and asks this Court to release her on bail pending her
12 extradition hearing. Ms. Nemes' arguments in support of her petition are, in large part,
13 based on arguments that, pursuant to the extradition statute, 18 U.S.C. 3184, are properly
14 reserved for the extradition hearing proper. For example, Ms. Nemes argues at length
15 that there is insufficient probable cause to support the Romanian charges and, therefore,
16 she should be released pending the hearing. Diana Nemes' Emergency Petition for a
17 Writ of Habeas Corpus and Application for Release Pending Extradition (hereinafter
18 Petitioner's Motion) at 4-8, 13. The probable cause determination is the core finding to
19 be made at the extradition hearing. She also claims that the Romanian government has
20 failed to provide sufficient information to identify her as the person wanted in Romania.
21 *Id.* at 14. Each of these issues is properly reserved for the extradition hearing. *See*
22 Attachment 1, Government's Memorandum in Support of Extradition, Dkt. 5. Because
23 these are arguments for the Magistrate Judge's consideration at the extradition hearing,
24 they do not support her release at this juncture. Moreover, much of Ms. Nemes' claims
25 regarding the strength of the Romanian evidence are simply defenses to the charges that
26 should be raised and tried in Romania.

27 Ms. Nemes other bases for release are meritless. First, there is a strong
28 presumption against bail in an extradition case and Ms. Nemes may only overcome that

1 presumption by demonstrating both special circumstances and an absence of risk of
2 flight. Second, as Magistrate Judge Strombom found, Ms. Nemes cannot demonstrate
3 special circumstances and does present a substantial risk of flight. Finally, a parallel FBI
4 investigation, opened upon receipt of the initial Romanian request for extradition, has
5 established that Ms. Nemes continued her money laundering activity upon her arrival in
6 the United States in 2012, shortly before the Romanian charges were filed. This
7 additional criminal behavior in the United States reinforces that she is a particularly high
8 risk of flight and also presents a danger to this community. Therefore, the government
9 opposes her petition seeking release pending the extradition hearing. Should this Court
10 grant Ms. Nemes habeas petition, the government respectfully requests that the Court
11 notify the parties a reasonable time in advance of any contemplated release order so the
12 United States may evaluate whether to seek a stay pending possible appeal on the bail
13 issue.

14 **II. PROCEDURAL HISTORY**

15 Although bail is technically unavailable to international fugitives held for
16 extradition, Ms. Nemes requested a detention hearing be set for March 20, 2014, just two
17 days after her arrest. *See* Dkt. 10. The day before the hearing, Ms. Nemes filed a
18 Memorandum in Support of Release on Bail Pending Extradition. *See* Dkt. 13. The
19 government filed a response the morning of the hearing, *see* Attachment 2, Dkt. 14, and
20 Magistrate Judge Karen L. Strombom held a detention hearing that afternoon, *see* Exhibit
21 4 to Petitioner's Motion, Dkt. 15 (Transcript of Detention Hearing).

22 Magistrate Judge Strombom found that Ms. Nemes was a risk of flight based on
23 the substantial evidence that Ms. Nemes had access to undisclosed or undiscovered
24 financial resources and had been involved in the operation of various shell companies.
25 Her history of international travel and status as an illegal alien compounded her flight
26 risk. Ms. Nemes was also found to be a risk of danger to the community based on the
27 discovery of firearms at the Nemes' residence. Finally, Judge Strombom found that Ms.
28 Nemes had not demonstrated sufficient special circumstances to overcome the

1 presumption of detention in an extradition matter. *See* Petitioner's Exhibit 4 at 16-17.
2 Magistrate Judge Strombom issued a Detention Order the same day. *See* Petitioner's
3 Exhibit 2, Dkt. 16. Ms. Nemes is currently in the custody of the United States Marshals.
4 On April 3, 2014, Ms. Nemes filed the current Habeas Petition pursuant to Title 18,
5 United States Code, Section 2241 seeking her release and review of Magistrate Judge
6 Strombom's Detention Order.

7 **III. STATEMENT OF THE FACTS**

8 **A. Summary of the Case**

9 The following facts regarding the Nemes' Romanian tax evasion scheme are based
10 primarily on the Supplemental Extradition Request provided by the Romanian
11 government on October 31, 2013. *See* Exhibit B to Attachment 2, Supplemental
12 Information in Support of Extradition Request dated October 31, 2014. Additional facts
13 relevant to crimes committed by Ms. Nemes' since arriving in the United States, her risk
14 of flight, her access to financial resources and the danger she presents to this community
15 were developed as a result of a parallel FBI money laundering investigation opened upon
16 receipt of the initial Romanian request for extradition. *See* Attachment 3, Affidavit in
17 Support of Search Warrant Application, MJ14-5068; and Attachment 4, Affidavit in
18 Support of Search Warrant Application, MJ14-5081.

19 The Seattle Division of the Federal Bureau of Investigation is conducting a joint
20 investigation with assistance from the FBI Legal Attaché office in Bucharest, Romania
21 and the Romanian Directiei Nationale Anticoruptie (DNA) involving RADU and Diana
22 Nemes, husband and wife, and others who were involved in a tax fraud scheme that
23 defrauded the Romanian government of over \$68 million dollars. *See* Petitioner's
24 Exhibit 9 at 2. The Romanian investigation established that the Nemes and their co-
25 conspirators sold approximately 990,000 tons of diesel fuel and falsely reported to the
26 Romanian Government the sale of 990,000 tons of lower grade industrial and maritime
27 fuel. *Id.* at 1-2. The tax rate and price per ton for the sale of industrial and maritime fuel
28 was significantly less than that applied to diesel fuel and, by fraudulently concealing the

1 sale of the diesel fuel, the Nemes and their co-conspirators avoided a tax liability of
2 approximately 53 million Euro (\$68,900,000.00 at current exchange rates). *Id.*
3 Romanian investigators contacted the FBI for assistance after learning that the Nemes
4 had laundered millions of dollars in proceeds of this scheme through bank accounts in
5 Dubai, United Arab Emirates to the United States and after learning that the Nemes had
6 fled Romania and were living in Western Washington. *See* Attachment 3 at 4.

7 Upon receipt of the initial Romanian request for extradition, the FBI its own
8 international money laundering investigation that revealed that the Nemes were illegally
9 in the United States on expired visas and residing in the Western District of Washington.
10 *See* Attachment 3 at 3. The FBI investigation further revealed the Nemes had established
11 several complex business structures and dozens of U.S. bank accounts that they were
12 utilizing to launder the proceeds of their Romanian tax evasion scheme. *See* Attachment
13 3 at 15-20, 22-35. Records show the Nemes had transferred the proceeds of their
14 Romanian crimes from accounts identified by Romanian investigators in Dubai, to the
15 United States; and they were using these funds to purchase real estate, automobiles, at
16 least one yacht, construction equipment, precious metals including gold, and business
17 interests in the United States, and to fund their living expenses. *Id.* Unravelling Ms.
18 Nemes' web of shell companies has taken FBI forensic accountants and agents well over
19 a year and agents continue to discover additional shell companies and assets traceable to
20 the Nemes' Romanian tax evasion scheme as they review a large volume of documents
21 recovered during searches executed at the Nemes' properties the day of their arrest.

22 **B. The Romanian Investigation**

23 The Nemes' and their co-conspirators imported diesel fuel through the Oil
24 Terminal at Constanta, Romania, using a company they controlled in the name of SC
25 Inkasso Jobs SRL. *See* Exhibit C to Attachment 2 at 2. Upon importing the diesel, the
26 Nemes had the diesel transported to a factory warehouse of a second company they
27 controlled, SC Excella Real Grup SRL, purportedly to be combined with brut oil for the
28

1 manufacture of inferior fuels that are subject to lower tax rates. *Id.* SC Excella Real
2 Grup was one of the key shell companies utilized in furtherance of the scheme and was
3 owned and controlled by Petitioner, Diana Nemes. *See Id.* at 5-6; *see also* Attachment 9.
4 Instead of combining the diesel with brut oil to produce inferior fuels, the Nemes sold the
5 diesel as is at full market rates without paying the proper taxes for the higher grade fuel.
6 In order to conceal their scheme, the Nemes utilized a series of shell companies and an
7 elaborate accounting fraud from approximately 2010 through June 2012.

8 The Nemes employed an accountant to produce false accounting records,
9 including invoices and payment records, to falsely document brut oil purchases and the
10 manufacturing and sales of inferior fuels. *Id.* at 2-3, 5-6. Surveillance by Romanian
11 authorities, intercepted telephone conversations between co-conspirators, interviews of
12 co-conspirators, and documents recovered pursuant to Romanian search warrants,
13 however, established that after transporting the raw diesel fuel to the SC Excella
14 warehouse facility, the trucks simply remained idle for several hours, and then
15 transported the diesel to clandestine locations, where it was transferred to trucks
16 belonging to Benz Oil and Ana Oil who paid full market value as if the proper taxes had
17 been paid. *Id.* at 6-7.

18 Records recovered during the execution of Romanian search warrants as well as
19 interviews with the Nemes' co-conspirators and intercepted telephone calls between co-
20 conspirators established that the companies purportedly supplying brut oil to SC Excella
21 Real Grup to be utilized in the manufacturing process were in reality shell companies that
22 never supplied any products. *See* Exhibit B to Attachment 2 at 2, 8-9. Rather than
23 producing and selling lower grade fuels, the Nemes were actually buying and selling
24 high-grade diesel fuel, while only paying the excise taxes for inferior grade fuels. *Id.* By
25 using false documents and shell companies to make it appear that they were
26 manufacturing and selling inferior fuels, the Nemes avoided massive tax liabilities to the
27 Romanian government. *Id.*

1 The proceeds of the tax evasion scheme were laundered through a series of these
2 shell companies controlled by the Nemes and their co-conspirators and ultimately
3 transferred offshore to bank accounts controlled by Radu and Diana Nemes in Dubai.
4 *See* Exhibit B to Attachment 2 at 2, 9-11, and Attachment 3 at 22-24. Romanian
5 investigators established how the proceeds were laundered through interviews with
6 individuals who were falsely named as managers of the shell companies, the review of
7 records seized during search warrants, and telephone intercepts and surveillance of the
8 individuals used to move the funds. *See* Exhibit B to Attachment 2 at 9-10.
9 Additionally, Romanian investigators reviewed documentation that showed Diana Nemes
10 was responsible for establishing a consulting contract between shell companies in
11 Romania and Dubai that was utilized to justify the transfer of approximately 600,000
12 Euros per month in proceeds of the scheme to the Nemes' accounts at Barclay Bank in
13 Dubai. *Id.* at 11. By siphoning off these excess profits, the Nemes organization created
14 the false appearance in their shell companies' accounting records that they were actually
15 selling the lower grade fuels the companies reported to Romanian authorities. *Id.* at 10.

16 A Barclays Bank statement discovered during the execution of Romanian search
17 warrants in July 2012, documented the Nemes' transfers of the tax schemes' proceeds to
18 Dubai. *See* Exhibit B to Attachment 2 at 11. Moreover, this account statement showed
19 the address on the account was an apartment owned by Diana Nemes in Bacau, Romania,
20 that Ms. Nemes also used as an address for the shell companies used to launder the funds.
21 *Id.* Finally, during the execution of a search warrant at Ms. Nemes' attorneys' office,
22 Romanian investigators intercepted a telephone call in which Ms. Nemes expressed
23 concern that investigators would discover documents regarding the transfers and accounts
24 held in Dubai. *Id.*

25 **C. The FBI Investigation**

26 Follow-up investigation by the FBI has shown that Diana Nemes has continued to
27 be heavily involved in laundering the proceeds of the Romanian tax evasion scheme since
28 arriving in the United States in 2012. That investigation has shown that Ms. Nemes has

1 opened and operated bank accounts at Key Bank, JP Morgan Chase, First Citizens Bank,
2 and Twin Star Credit Union – all of which have received substantial proceeds of the
3 Romanian tax evasion scheme from the Nemes’ accounts at Barclays Bank in Dubai and
4 have been further used to purchase real estate, gold and other assets. *See* Attachment 3 at
5 15-20. Many of the accounts are controlled by Diana Nemes, but held in the names of
6 various shell companies she has established since arriving in the United States and
7 utilized to hold assets including real estate and business interests. *See id.* at 24-28, 34-35.

8 The FBI conducted extensive research into the shell companies that the Nemes had
9 established since arriving in 2012. *See* Attachment 3 at 24-28. A review of these
10 companies showed they had been used to purchase property and business interests with
11 funds traced to the Romanian tax evasion scheme. *See id.* Diana Nemes is a managing
12 member of many of these companies. *Id.* More recently, the investigation revealed the
13 Nemes had been using their attorney’s client trust account to launder proceeds of their
14 scheme and that Diana Nemes had been opening additional shell companies and joint
15 bank accounts with an attorney who was assisting them with transactions that were being
16 used to conceal some of the Nemes’ assets. *Id.* at 28-35. Indeed, a review of the title
17 records for the Nemes’ two residences in Yelm, Washington showed they were both held
18 in the name of Andraz LLC, a company registered in Nevada with their attorney listed as
19 the manager and with no reference to the Nemes as beneficial owners.

20 The FBI investigation revealed the Nemes were laundering millions of dollars in
21 proceeds of their Romanian tax evasion scheme through the purchase of gold bullion
22 using funds on deposit in their Barclays accounts in Dubai and later selling some of the
23 gold to move the money into their U.S. based bank accounts. *See* Attachment 3 at 18-19,
24 23. A review of e-mail accounts controlled by Ms. Nemes pursuant to search warrants
25 obtained in this district has shown that Diana Nemes was controlling the Nemes bank
26 accounts in Dubai and directing the use of funds tied to the Romanian tax evasion scheme
27 including directing her account managers in Dubai to purchase gold bullion. *Id.* at 21-22.
28 Records from the Nemes’ U.S. based bank accounts also appear to show the receipt of

1 proceeds from the sales of gold. For example, records from a Key Bank branch in Yelm,
2 Washington documented over \$1 million in wire transfers from Northwest Territorial
3 Mint, a precious metals dealer in Federal Way, Washington, to an account in the name of
4 Radu Nemes, and another \$584,000.00 in transfers into an account in the name of Diana
5 Nemes. *Id.* at 18. Mr. Nemes' account had received an additional \$326,060.00 in August
6 2012, from another precious metals dealer in Fargo, North Dakota. *Id.* When FBI agents
7 obtained records from the Nemes' Barclays Bank accounts in Dubai, they learned the
8 Nemes had transferred over \$5 million from Dubai to Miles Franklin, a precious metals
9 dealer in Minnesota. *Id.* at 23. Additional records related to the sale of a yacht the
10 Nemes had purchased during the course of the Romanian tax evasion scheme, showed the
11 Nemes had purchased an additional \$1 million worth of gold from Northwest Territorial
12 Mint in April 2013.

13 On the day of the Nemes' arrest, March 18, 2014, FBI agents executed search
14 warrants at two residences owned by the Nemes that were purchased with funds traced to
15 their Romanian tax evasion scheme. *See* Exhibit B to Attachment 2 at 19-20. Although
16 88 gold coins were seized, 1,969 gold coins that the Nemes are known to have purchased
17 with proceeds of their tax evasion scheme remain unaccounted. *See* Attachment 10
18 Summary of Gold and Silver Transactions, FBI Forensic Accountant Bryan Snead.
19 Based on current gold prices, the value of these missing gold coins is approximately
20 \$2,622,018.85. *Id.* In addition, while agents seized 10,500 silver coins at the Nemes'
21 residence, another 6,000 silver coins that the Nemes purchased are still unaccounted for.
22 *Id.* These coins are worth an additional \$126,480.00 based on current silver prices.

23 During the searches, agents also interviewed two individuals who had previously
24 assisted the Nemes in concealing their gold and silver and who reported that the Nemes
25 had kept some of the gold buried on their property at times. *See* Attachment 4, Affidavit
26 in Support of Search Warrant, MJ14-5081 at 2-3. According to the witnesses, the Nemes
27 had kept the gold buried on their property for approximately six months, but later
28 removed the gold and were using their money for investments. *Id.* at 3. A follow-up

1 search of the Nemes property with the assistance of ground penetrating radar failed to
2 discover any additional quantities of gold or silver.

3 FBI agents also seized numerous records related to Diana Nemes' involvement in
4 the creation and operation of shell companies in the United States that have been used to
5 launder the proceeds of the Romanian tax evasion scheme. This evidence included a
6 handwritten flow chart with references to Andraz LLC, the shell company they used to
7 hide their real estate and the notation "100% D.N." as well as references to a new
8 company called Iconic Ventures that the FBI had not previously discovered. *See*
9 Attachment 5. The flow chart referenced "new company (1)," "new trust (1) and "new
10 company (2)" and "trust new 2" with Diana Nemes' attorney listed as the trustee for each
11 of the trusts. The FBI conducted follow-up research and discovered at least three
12 previously unknown Delaware LLCs that were all established on December 26, 2013, by
13 the Nemes attorney including Iconic Assets LLC, Machina LLC, and Veritas Assets
14 LLC. Full documentation for each of these new shell companies was also located during
15 the searches revealing the Nemes' ongoing creation of entities available to hide assets.

16 While searching the Nemes' property in Yelm, Washington, where they were
17 constructing a large log home, agents found and searched a fully equipped and furnished
18 underground bunker. The bunker entrance was controlled by steel doors which could be
19 sealed from the inside and the bunker itself contained multiple diesel generators, solar
20 power processing, a battery back-up system, water filtration and other basic life-support
21 systems that would make the bunker fully self-sufficient for an extended period of time.
22 The interior of the bunker was constructed much like a modern house with a full kitchen,
23 living room, bathroom and multiple bedrooms. The bunker could comfortably house an
24 entire family for many months given the massive supply of food and emergency supplies
25 stored under the subfloor and accessible through multiple trap doors. *See* Exhibit A to
26 Attachment 2, Photographs of Bunker.

27 The search of the Nemes' primary residence in Yelm, where they were arrested
28 revealed a surveillance system monitoring the entire property that allowed the Nemes to

1 | covertly observe agents as they arrived to execute the arrest and search warrants. Agents
2 | also discovered several firearms during a search of the Nemes' primary residence in
3 | Yelm where they were arrested. In a cabinet above the refrigerator in the Nemes' home,
4 | agents found a .22 caliber Sig Sauer pistol in its factory box together with a magazine
5 | loaded with ammunition. In a safe in the first floor water heater room in the residence,
6 | agents found several more handguns including a Smith & Wesson .357 revolver, a Taurus
7 | 1911 model .45 caliber semi-automatic, a Glock .40 caliber, semi-automatic, and several
8 | boxes of .45 caliber and .22 caliber ammunition. Loaded magazines for the .45 caliber
9 | and .22 caliber hand guns were also found in the safe. Finally, agents found two rifles in
10 | the detached garage including a .22 long rifle and a DPMS AR-15 .223 caliber assault
11 | rifle.

12 | Agents also seized Diana Nemes passport which revealed substantial international
13 | travel prior to her arrival in the United States. A review of her passport showed Ms.
14 | Nemes had traveled to the United Arab Emirates over twenty times between January
15 | 2009, and June 2012. Other stamps in her passport showed travel to Australia in June
16 | 2011, Malaysia and Singapore in January 2010, approximately nine trips to Turkey
17 | between June 2009, and April 2012, and three trips to Mauritius between December
18 | 2008, and January 2012. *See* Attachment 6.

19 | **IV. STANDARD OF REVIEW**

20 | The standard of review by a District Court of a decision by a Magistrate Judge to
21 | deny bail in an extradition matter is not settled. Some courts have found that the scope of
22 | habeas review for bond determinations is very limited, that the District Court will only
23 | inquire whether there were reasonable grounds for the Magistrate Judge's findings
24 | ordering no bail. *In re Extradition of Russell*, 647 F.Supp. 1044, 1047 (S.D. Tex. 1986)
25 | *aff'd*, 805 F.2d 1215, 1216-17 (5th Cir. 1986); *Koskotas v. Roche*, 740 F.Supp. 904, 918
26 | (D.Mass. 1990). *aff'd*, 931 F.2d 169 (1st Cir. 1991). Other courts have applied de novo
27 | review to habeas review of decisions by Magistrate Judges to deny bail in cases involving
28 | extradition requests by foreign governments to the United States. *Borodin v. Ashcroft*,

1 136 F.Supp.2d 125, 128 (E.D.N.Y. 2001); *United States v. Hills*, 765 F.Supp. 381, 383
2 n.3 (E.D. Mich 1991). Still other courts, while applying the “reasonable grounds”
3 standard to factual findings, have applied de novo review to the legal determinations of
4 the Magistrate Judge as mixed questions of fact and law. *See Kin-Hong v. United States*,
5 926 F.Supp. 1180, 1184 (D.Mass. 1996), *rev’d on other grounds*, 83 F.3d 523 (1st Cir.
6 1996); *see also, In re Extradition of Siegmund*, 887 F.Supp. 1383, 1385 (D. Nev. 1995)
7 (evaluating de novo magistrate judge’s finding that no special circumstances existed to
8 grant bail).

9 Because the nature of the question governs the standard of review, reference to
10 non-extradition caselaw is instructive. The Ninth Circuit reviews a district court’s factual
11 findings under a “deferential, clearly erroneous standard.” *United States v. Townsend*,
12 897 F.2d 989, 994 (9th Cir. 1990). The conclusions based on such factual findings,
13 however, present a mixed question of fact and law. *United States v. Hir*, 517 F.3d 1081,
14 1086 (9th Cir.2008). Thus, “the question of whether the district court’s factual
15 determinations justify the pretrial detention order is reviewed de novo.” *Id.* at 1086-87.

16 In this case the evidence of risk of flight and danger to the community is so
17 pronounced, that Diana Nemes should be denied bail by this Court upon the application
18 of any of the standards of review utilized in the cases cited above.

19 **V. APPLICABLE LAW**

20 The federal statute governing extradition procedures in the United States pursuant
21 to treaties with other nations, 18 U.S.C. §§ 3184 et seq., does not provide for bail.
22 Further, an extradition proceeding is not a criminal case. *See Kamrin v. United States*,
23 725 F.2d 1225, 1227-1228 (9th Cir. 1984); *Martin v. Warden, Atlanta Penitentiary*, 993
24 F.2d 824, 829 (11th Cir. 1993). Consequently, the Bail Reform Act, Title 18 U.S.C. §§
25 3141 et seq., and its criteria governing the allowance and the amount of bail in United
26 States criminal cases do not apply in extradition matters. The Bail Reform Act applies
27 only to “offenses” against the United States that are triable in United States courts. *See*
28 18 U.S.C. §§ 3141(a), 3142, 3156(a)(2). Diana Nemes is not charged with an “offense”

1 within the meaning of 18 U.S.C. § 3156. Instead, she is charged with offenses against the
2 Requesting State, Romania. *See Matter of Extradition of Rouvier*, 839 F. Supp. 537, 539
3 (N.D. Ill. 1993); *Matter of Extradition of Sutton*, 898 F. Supp. 691, 694 (E.D. Mo. 1995).

4 Similarly, neither the Federal Rules of Criminal Procedure nor the Federal Rules
5 of Evidence apply to international extradition proceedings. Fed R. Crim. P. 1(a)(5)(A);
6 Fed. R. Evid. 1101 (d)(3); *See also, Afanesjev v. Hurlburt*, 418 F.3d 1159, 1164-65 (11th
7 Cir. 2005); *Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981); *Bovio v. United*
8 *States*, 989 F.2d 255, 259 n.3 (7th Cir. 1993).

9 **A. A Strong Presumption Against Bail Governs In An International**
10 **Extradition Proceeding.**

11 The overwhelming weight of authority supports the strong presumption against the
12 granting of bail in international extradition cases. Both the United States Supreme Court
13 and the federal courts of appeals have long held that bail should be granted in only the
14 most unusual of circumstances. In the landmark case *Wright v. Henkel*, 190 U.S. 40
15 (1903), the Supreme Court affirmed the detention without bail of a fugitive sought by
16 Great Britain for defrauding a corporation of which he was a director. The United States
17 argued in *Wright* that extradition courts were without power to allow bail because no
18 statute provided for such power. *Id.* at 55. The Court stated that it was unwilling to hold
19 that the circuit courts do not possess power with respect to admitting fugitives to bail
20 other than as specifically vested by statute, but cautioned that “. . . bail should not
21 ordinarily be granted in cases of foreign extradition” *Id.* at 63.

22 In establishing this presumption against bail, the Supreme Court in *Wright*
23 explained that when a foreign government makes a proper request under a valid
24 extradition treaty, the United States is obligated to deliver the person sought after he or
25 she is apprehended:

26 The demanding government, when it has done all that the treaty and the law
27 require it to do, is entitled to the delivery of the accused on the issue of the
28 proper warrant, and the other government is under obligation to make the
surrender; an obligation which it might be impossible to fulfill if release on

1 bail were permitted. The enforcement of the bond, if forfeited, would
2 hardly meet the international demand; and the regaining of the custody of
3 the accused obviously would be surrounded with serious embarrassment.

4 *Id.* at 62.

5 The reasons for this presumption against bail in international extradition cases are
6 clear and compelling. First, it is necessary for the United States to meet its legal treaty
7 obligations. A person sought for extradition already is an international fugitive from
8 justice; it is reasonable to think that person would flee if alerted to the charges. Even if
9 the person were not in flight, the fact of an impending extradition to a foreign country to
10 face serious criminal charges, the outcome of which is uncertain, is itself a strong
11 incentive to flee.

12 Further, the ability of the United States to deliver fugitives pursuant to extradition
13 requests has significant international law implications. The international legal system
14 depends wholly upon the respect of its members for the obligations into which they freely
15 enter. When, as here, the Government of Romania meets the conditions of the treaty, the
16 United States is obliged to deliver the fugitive. It is important that the United States be
17 regarded in the international community as a country that honors its agreements in order
18 to be in a position to demand that other nations meet their reciprocal obligations to the
19 United States. Such reciprocity would be defeated if a fugitive flees after being released
20 on bond. *See Wright*, 190 U.S. at 62; *see also U.S. v. Leitner*, 784 F.2d 159, 160-61 (2d
21 Cir. 1986) (the Government has an overriding foreign relations interest in complying with
22 treaty obligations and producing extradited persons).

23 The U.S. Court of Appeals for the Ninth Circuit has underscored the principle that
24 there exists a presumption against bail, and that fugitives arrested in connection with
25 foreign extradition requests should be denied bail absent “special circumstances.” *United*
26 *States v. Smyth*, 976 F.2d 1535, 1535-36 (9th Cir. 1992); *Salerno v. United States* 878
27 F.2d 317, 317 (9th Cir. 1989) (“There is a presumption against bail in an extradition case
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1 and only ‘special circumstances’ will justify bail.”) (quoting *Wright v. Henkel*, 190 U.S.
2 at 63); *see also In re Kirby*, 106 F.3d 855, 858 (9th Cir. 1996).

3 **B. The Fugitive Must Establish “Special Circumstances” and Must Not**
4 **Pose a Risk of Flight for the Court to Consider the Question of Bail.**

5 In light of the strong presumption against bail established in *Wright*, the federal
6 courts have uniformly held that bail shall not be granted except under “special
7 circumstances.” *See Leitner*, 784 F.2d at 160 (bail in extradition cases should be granted
8 "only in the most pressing circumstances, and when the requirements of justice are
9 absolutely peremptory"), (quoting *In re Mitchell*, 171 F. 289 (S.D.N.Y. 1909)(Hand, J.);
10 *Salerno v. United States*, 878 F.2d 317, 318 (9th Cir. 1989) (“only ‘special
11 circumstances’ will justify bail”); *Koskotas v. Roche*, 931 F.2d 169, 175 (1st Cir. 1991)
12 (“in a case involving foreign extradition, bail should not be granted absent special
13 circumstances”). Moreover, the burden is on the fugitive to establish the existence of
14 special circumstances warranting the granting of bail. *See Salerno*, 878 F.2d at 317-18;
15 *Leitner*, 784 F.2d at 160.

16 This standard of “special circumstances” for release on bail for persons involved
17 in a foreign extradition proceeding “is a more demanding standard that for ordinary
18 accused criminals awaiting trial.” *Yau–Leung v. Soscia*, 649 F.2d 914, 920 (2d Cir.)
19 (citations omitted). Special circumstances must be extraordinary and not factors
20 applicable to all defendants facing extradition. *In re Extradition of Smyth*, 976 F.2d 1535,
21 1535–36 (9th Cir.1992) (citations omitted). “Under the special circumstances standard,
22 admission to bail ‘should be an unusual and extraordinary thing,’ and courts should
23 exercise the power sparingly .” *Lo Duca v. United States*, No. CV–95–713 (DGT), 1995
24 WL 428636, *15 (E.D.N.Y. July 7, 1995) (quoting *United States ex rel. McNamara v.*
25 *Henkel*, 46 F.2d 84, 84 (S.D.N.Y.1912) (other citation omitted)).

26 Notably, the courts have determined that certain circumstances are not “special”
27 and do not justify the release of a fugitive during extradition proceedings. Foremost, the
28 absence of flight risk is consistently held not to constitute a special circumstance. Rather,

1 the absence of a risk of flight and a finding of special circumstances are each independent
2 requirements for bail in an extradition case. Therefore, to qualify for bail, a fugitive is
3 required to make a two-part showing that: (1) she is not a flight risk and (2) that “special
4 circumstances” exist warranting the granting of bail. *See e.g., United States v. Ramnath*,
5 533 F. Supp. 2d 662, 665 (E.D. Tex. 2008); *In re Extradition of Molnar*, 182 F. Supp. 2d
6 682, 687 (N.D. Ill. 2002); *In re Extradition of Nacif-Borge*, 829 F.Supp. 1210, 1215 (D.
7 Nev. 1993); *In re Extradition of Chapman*, 459 F.Supp.2d 1024, 1026-27 (D. Haw.
8 2006); *In re Extradition of Santos*, 473 F. Supp. 2d 1030, 1035-36 (C.D. Cal. 2006). The
9 absence of flight risk is consistently held to be a requirement separate from the special
10 circumstances test.

11 Similarly, findings regarding danger to a community both here and abroad would
12 preclude bail, even in the face of arguably special circumstances. *See In re Extradition of*
13 *Gonzalez*, 52 F.Supp.2d 725, 735 (W.D. La. 1999); *Ramnath*, 533 F. Supp. 2d at 665;
14 *Extradition of Molnar*, 182 F. Supp. 2d at 687; *Extradition of Nacif-Borge*, 829 F.Supp.
15 at 1215; *Extradition of Santos*, 473 F. Supp. 2d at 1035-36.

16 Courts have declined to find “special circumstances” based on: (1) the need to
17 consult with one’s attorney and/or participate in pending litigation; (2) the complexity of
18 the pending litigation; (3) health issues including discomfort, dietary needs, or associated
19 health concerns while incarcerated; (4) United States citizenship or pendency of
20 naturalization proceedings; (5) political or professional status; (6) the availability of
21 electronic monitoring; and (7) the fugitive’s character, past conduct, and/or ties to the
22 community; (8) ordinary delay or delay occasioned by the fugitive in the course of
23 extradition proceedings; (9) substantial likelihood of success against extradition or action
24 in requesting country; and, (10) availability of bail for the same offense in the requesting
25 country.

26 While in certain exceptional cases some of the above may have been deemed a
27 special circumstance, for the most part, where a court determines special circumstances to
28 exist it is generally based on a significant confluence of factors, as opposed to any single

1 consideration. Such findings are very case specific and are made by the court, mindful of
2 the strong presumption against bail and future reciprocity of other countries at stake.

3 **VI. ARGUMENT**

4 **A. Ms. Nemes Cannot Meet Her Burden Of Proving She Is**
5 **Neither A Risk Of Flight Nor Danger To The Community.**

6 Magistrate Judge Strombom, after reviewing the briefs and attached documents
7 submitted by counsel and hearing oral argument on March 20, 2014, denied bail based
8 first on a finding that Diana Nemes was a risk of flight. Specifically, Judge Strombom
9 found that the information before her showed “Ms. Nemes having access to funds and
10 being involved in various companies,” and, based on that information, she concluded, “I
11 am not confident that she does not have access to additional funds to leave this country
12 along with her two boys.” Transcript of March 20, 2014, Exhibit 4 to Diana Nemes’
13 Emergency Petition Seeking Writ of Habeas Corpus, at 17 – 18 (hereinafter, “Emergency
14 Petition”); Detention Order, Exhibit 2 to Emergency Petition.

15 The record before Judge Strombom and available to Ms. Nemes prior to the
16 hearing fully supported this finding. In response to Ms. Nemes’ motion for bail, the
17 government attached a copy of the Verified Complaint for Forfeiture *in Rem*, signed as a
18 declaration under penalty of perjury by FBI Special Agent Kyle McNeal, seeking
19 forfeiture of various properties owned by Diana and Radu Nemes, and filed on March 18,
20 2014. *See* Exhibit C to Attachment 2, *United States v. Real Property Located at 9144*
21 *Burnett Rd. SE, Yelm, Washington*, Case No. C14-5231-RBL, Dkt No. 1. The complaint
22 set forth in some detail the money laundering activities engaged in by Diana Nemes and
23 Radu Nemes, first, in transmitting revenues from the sale of diesel oil in Romania to shell
24 company accounts in Dubai controlled by Diana Nemes; then wiring those funds to the
25 United States; and finally using a portion of the funds to acquire properties in the United
26 States, utilizing a number of accounts and companies incorporated here in the US to
27 move the money and to acquire property in the names of persons or entities other than
28 Diana or Radu Nemes.

1 The Verified Complaint alleged that between June 16, 2011, and July 9, 2012,
2 \$11,234,000.00 was wired from one of the Nemes' Romanian companies central to the
3 Romanian tax evasion scheme, Inkasso Jobs SRL, to an account in the name of Corralys
4 Investments Limited at Barclays Bank in Dubai, United Arab Emirates. Corralys was a
5 company listed with Barclays Bank as a Romanian corporation using the address of an
6 apartment owned by Diana Nemes, and was one of the parties, together with Inkasso, to a
7 consulting contract set up by a Romanian lawyer working for Diana Nemes to justify the
8 large volume of funds transferred between companies. Verified Complaint, ¶¶ 15 – 16.

9 The funds were distributed among a number of additional accounts at Barclays
10 controlled by Diana Nemes, including a Webner Sales Ltd. account, a Diana Nemes
11 account and an account in the name of Premier Holdings Ltd. Funds were then wire
12 transferred into the United States and deposited into a number of accounts, including the
13 deposit of over three million dollars into the trust account of an attorney for the Nemes'
14 in the United States. Verified Complaint, ¶ 20. A large portion of these funds were
15 wired out to various accounts controlled by the Nemes' including Radu Nemes' personal
16 account at Key Bank, a precious metals dealer and two companies in which the Nemes'
17 appeared to have a controlling interest, Magdalena Properties LLC and New Haven
18 Development LLC. Verified Complaint, ¶¶ 21 – 23. Magdalena Properties was then
19 utilized to purchase real property in Yelm, Washington located at 9144 Burnett Road Se,
20 Yelm. Verified Complaint, ¶¶ 29 – 31. Barclays Bank closed all of the accounts
21 controlled by Diana Nemes based upon suspicion of their use in money laundering.
22 Verified Complaint, ¶ 17.

23 Radu and Diana Nemes, bought additional property in Yelm, including a residence
24 on Deer Ridge Lane, and two adjacent parcels, on Vail Road, one of which they used to
25 build a large log house and construct a bunker, which, on the day of the search, appeared
26 to be fully furnished and equipped with a large food supply. These properties were then
27 transferred to Andraz LLC, a Nevada Limited Liability Company, whose manager is
28

1 listed as Li Yew Heah (aka “Tiffany Heah”), an attorney who was retained by Diana and
2 Radu Nemes. Ms. Heah’s name also appears associated as Chief Financial Officer for
3 Washington Investments LLC, another company associated with the Nemes’. Verified
4 Complaint, ¶¶ 33-42.

5 There was thus more than sufficient information before the Magistrate Judge,
6 attached to the Government’s Memorandum in Opposition to Bail Request, to enable her
7 to conclude that Diana Nemes had access to over ten million dollars in accounts at
8 Barclays Bank in Dubai, that significant sums were wired to the United States, run
9 through multiple bank accounts and used to acquire assets including real property and
10 precious metals, and that the real property was held by shell companies controlled by
11 Diana and Radu Nemes. Further, given the number of accounts and companies and the
12 assets known to have been acquired by the Nemes, it was also reasonable for Judge
13 Strombom to conclude that there remain significant assets to which Diana Nemes has
14 access, to enable her to leave the country with her children.

15 Ms. Nemes’ claim that the Magistrate Judge improperly relied upon Ex Parte
16 submissions in support of her detention order is belied by the record outlined above.
17 While the Magistrate Judge had previously reviewed and authorized multiple search
18 warrants in support of the FBI investigation, the evidence in support of her findings at the
19 detention hearing were independently supported by the evidence submitted and discussed
20 in open court. Moreover, there is nothing inappropriate or unusual in a jurisdiction of
21 this size for a Magistrate Judge who has previously reviewed ex parte search warrant
22 applications or arrest warrant complaints to later hear a detention hearing related to the
23 same case and facts. This happens nearly every week, if not most days. Therefore, Ms.
24 Nemes’ claim that her detention hearing violated due process is wholly without merit. In
25 addition, should the Court conclude that Ms. Nemes has not had an opportunity to
26 properly respond to any particular evidence, the Court should remand this matter for an
27 additional hearing before Magistrate Judge Strombom. Had Ms. Nemes’ not insisted on
28 proceeding to a detention hearing only two days after her arrest, she would have had a

1 | much better opportunity to address all of the government's evidence. Moreover, if she
2 | believed she needed additional time to respond to arguments raised in the government's
3 | response or at the hearing, she could have asked Magistrate Judge Strombom to continue
4 | the hearing. Nonetheless, to the extent this Court conducts a de novo review of the
5 | Magistrate Judge's Detention Order, these points are moot as Ms. Nemes has now clearly
6 | had full access to all of the materials potentially relevant to detention and a full
7 | opportunity to address them before this Court.

8 | Significantly further evidence found in the search of the Nemes' residence on Deer
9 | Ridge Lane in Yelm, on March 18, 2014, reinforces the conclusion that there are millions
10 | of dollars in unaccounted for assets, specifically at least \$2.75 million in gold and silver
11 | coins that have not been located or accounted for, remain available to Diana Nemes. In
12 | addition records found in the search of the residence establish conclusively the existence
13 | of at least three more recently incorporated out of state shell companies available for
14 | Diana Nemes to use to continue to hide assets and launder the proceeds of the illegal oil
15 | scheme were she to be released.

16 | As discussed above and detailed in Attachment 3, the search warrant affidavit of
17 | FBI Special Agent Kyle McNeal, millions of dollars were wired from the Nemes' Dubai
18 | accounts at Barclays Bank to Miles Franklin in Minnesota and to Northwest Territorial
19 | Mint, a local gold dealer, to purchase gold and silver. Since the execution of the search
20 | and arrest warrants, agents have obtained records from Miles Franklin detailing these
21 | purchases of gold and silver coins, as well as the sale of some of those coins. Receipts
22 | showing both the purchase and sale of gold coins at NW Territorial Mint were located in
23 | the search of the Nemes' residence at Deer Ridge Lane on March 18, 2014. Also found
24 | during the search were a number of gold and silver coins. These transactions have been
25 | detailed in an excel spreadsheet prepared by FBI Forensic Accountant Bryan Snead, a
26 | copy of which is attached as Attachment 10, together with a report prepared by Snead
27 | which further describes and summarizes the transactions.

1 In addition on the day of the execution of the search warrants, Agent McNeal
2 interviewed Elena Licxandru, who lives at the property at 16545 Vail Road Southeast,
3 Yelm, Washington, with her husband Marian Licxandru. Elana Licxandru told Agent
4 McNeal that she was aware the Nemes' had purchased approximately \$2-3 million worth
5 of gold, that the gold originally was stored in their home in the form of coins stored in
6 plastic containers, and that she and her husband subsequently buried the gold
7 underground under the dog kennel on the property. After storing the gold for six months,
8 Radu Nemes and Marian Licxandru dug up the gold, which Radu Nemes took with him.
9 Elena Licxandru told Agent McNeal that she did not know what happened to the gold.

10 The government obtained subsequent search warrants specifically to search for the
11 gold coins and other precious metals on the Nemes' properties, and undertook those
12 searches utilizing ground detection radar. *See* Attachment 4. However, the results of the
13 searches for the gold and silver were negative. The gold coins were not located.

14 The analysis done by FBI Accountant Snead confirms that there remains
15 approximately \$2.75 million¹ worth of gold and silver coins which were documented as
16 being purchased by the Nemes' but are currently unaccounted for. *See* Attachment 10.
17 He arrived at this figure based on the records of purchases and sales of gold coins
18 obtained from Miles Franklin and those from Northwest Territorial Mint found in the
19 search of the Nemes' residence. By adding up all of the coins purchased at both
20 locations, then subtracting those recorded as having been sold and those found and seized
21 during the searches executed on March 18th, Mr. Snead was able to arrive at the total
22 numbers of missing coins. He multiplied those figures by the current price of gold and
23 silver to calculate the total value of unaccounted for gold and silver coins, the location of
24 which are unknown to all but the Nemes'.

27 ¹ The precise total value of the coins that are unaccounted for as of April 10, 2014 is
28 \$2,748,498.85.

1 Based upon the interview with Elena Licxandru, who lives on property owned by
2 one of Diana and Radu Nemes' shell companies, and the analysis of the records obtained
3 from Miles Franklin and those found in the search of the Nemes' residence, it is clear that
4 Diana Nemes' counsel's contention in her habeas petition that the government seized
5 every penny that the Nemes' have is plainly untrue. They have at least \$2.75 million
6 worth of gold and silver available for Diana to flee the United States. The evidence just
7 outlined overwhelmingly supports Magistrate Judge Strombom's conclusion that there
8 remains significant assets, not seized and not located by the government, to which Diana
9 Nemes has access and which she could use to flee the United States with her two boys.

10 The existence of significant hidden assets available to a defendant is a major factor
11 justifying denial of bail in US criminal prosecutions, based on the risk of flight. It is, if
12 anything, more significant in extradition cases, in which the fugitive is already fleeing a
13 foreign jurisdiction. It is more significant in this case as well, given Diana Nemes'
14 history of widespread world travel as evidenced from the entries on her passport, and her
15 extensive efforts to engage in international money laundering. Not only has Ms. Nemes
16 failed to meet her burden of showing that she is not a flight risk, the government has
17 established conclusively that she is a significant flight risk.

18 The existence of at least \$2.5 million in hidden assets is enough by itself to
19 establish that Diana Nemes is a significant flight risk. However, the Magistrate Judge
20 also focused on Diana Nemes' money laundering activities, her involvement in a number
21 of companies to support her conclusion the Diana Nemes was a flight risk. However, in
22 addition to the shell companies previously identified that Diana Nemes used to hide the
23 proceeds of her and her husband's tax evasion scheme relied upon by Judge Strombom in
24 her decision to deny bail, FBI agents have recently discovered records documenting the
25 recent incorporation of multiple Delaware limited liability companies for which Diana
26 Nemes is the beneficial owner that are available for her to use to continue to hide assets
27 and launder tax fraud proceeds were she to be released by this Court.

1 The corporate records located in the search of the residence are similar for each of
2 the three companies recently incorporated in Delaware. The names of the companies are
3 Veritas Assets LLC, Iconic Assets LLC and Machina LLC. An open source records
4 check of websites associated with Tiffany Heah, confirmed that each of these LLCs was
5 incorporated in the state of Delaware on December 26, 2013. Records for the first two
6 companies, Veritas Assets LLC and Iconic Assets LLC each contain an undated
7 agreement between the company and Mark Bauman listed as manager signed by Bauman,
8 with a signature line for Tiffany Heah for and on behalf of the company as sole member.
9 This document is followed by a one page letter of resignation as manager, also undated,
10 to the members of the company and signed by Mark Bauman, who lists his address in
11 Norwalk, California. This document is then followed by an undated trust agreement in
12 the name of the company, as the Veritas 2014 Trust, and the Iconic 2014 Trust, which
13 lists Diana Nemes as the Settlor and Heah Li Yew as the initial Trustee during the
14 lifetime of the Settlor.

15 These trust agreements provide that upon the death of the Settlor the trustee shall
16 distribute the Trust Estate to A.N. Nemes, R.G. Nemes and M.T. Nemes in equal
17 proportions. Following documents for Veritas include two Limited Liability Agreements,
18 one for Veritas Assets LLC, with Exhibit B Manager listed as Mark Bauman, and one for
19 Veritas Ventures LLC with Exhibit B Manager, Tiffany Heah. Similar such LLC
20 agreements were found, with the same management division for Iconic Assets LLC
21 (Bauman as manager) and Iconic Ventures LLC (Tiffany Heah as manager). For both
22 Veritas and for Iconic each of the Limited Liability Company Agreements was undated.
23 The final company, Machina LLC is listed on a Limited Liability Company Agreement
24 with a blank signature line to be signed by Tiffany Heah, Trustee, for the Delaware 2013
25 Trust. Exhibit B to the agreement lists Tiffany Heah as Manager.

26 Also found was a Delaware 2014 Trust Agreement, with Diana Nemes listed as
27 Settlor and Heah Li Yew as initial Trustee. Not only were the records of these companies
28 found in Diana's residence, but agents also found a flow chart with the name of her

1 current Nevada shell company, Andraz LLC, with the notation 100% and the initials D.N.
2 and an arrow pointing to two new companies, one unnamed and one named Iconic
3 Ventures, and includes a trust, with arrows from there pointing to the initials DN, and
4 Trustee-Tiffany. *See* Attachment 5. This flow chart appears to be a one page road map
5 of Diana Nemes' projected future money laundering plans, which she could surely put
6 into operation were she to be released. This additional evidence conclusively proves that
7 Judge Strombom was justified in her concern about Diana Nemes' involvement with shell
8 companies to hide her assets.

9 Ms. Nemes' prior money laundering activities in the United States, her use of shell
10 companies to conceal all of her properties, and these new records found in the search
11 suggesting she plans to continue business as usual were she to be released, completely
12 undercut Ms. Nemes' arguments in the emergency habeas petition that she has lived an
13 open and transparent existence since she came to the United States. The great weight of
14 the evidence suggests just the opposite; Diana Nemes has taken extraordinary steps to
15 hide her wealth and launder the proceeds of her illegal activity, and would be in position
16 to continue to do that were she to be released. This makes her not only a significant
17 flight risk but also a danger to the community.

18 In addition to her access to substantial unaccounted funds, Ms. Nemes status as an
19 illegal alien with an immigration detainer further demonstrates her risk of flight.
20 Although Ms. Nemes entered this country under a valid visitor's visa, she has overstayed,
21 and is now illegally in this country. US immigration authorities have issued immigration
22 detainers on both Diana and Radu Nemes.

23 The evidence also demonstrates Ms. Nemes' release would present a danger to the
24 community. As aliens originally admitted to this country under a non-immigrant visa,
25 who have remained in this country illegally, neither Diana nor Radu Nemes could legally
26 possess a firearm or ammunition. 18 U.S.C. §§ 922(g)(5)(A) and (B). Yet, upon
27 execution of the search warrant on March 18, 2014, at the Nemes' residence where they
28 were living, agents discovered several firearms including an AR-15 assault rifle and

1 multiple handguns throughout the home. Knowing possession of these weapons by an
2 alien here on a visitor's visa or here illegally constitutes a felony under 18 U.S.C. §
3 924(a)(2). The Nemes' illegal possession of multiple firearms coupled with their access
4 to a fully stocked doomsday bunker suggests they were prepared for an extended standoff
5 with law enforcement. Indeed, Ms. Nemes has conceded that she and her husband
6 expected law enforcement to eventually arrive and the sophisticated surveillance system
7 at their home suggests they were watching carefully for signs of law enforcement. Thus
8 the potential for a violent and prolonged standoff cannot be ignored when considering
9 whether Ms. Nemes release could present a danger to the community.

10 These facts establish conclusively that Diana Nemes has been a danger to the
11 community during her time here and would continue to be such a danger if she were
12 released. This is particularly true with respect to the financial transactions, constituting
13 money laundering under United States laws, the crime for which she was primarily
14 responsible during their time here. There is no reason to believe that criminal activity
15 would cease were she to be released, particularly given the millions of dollars generated
16 by the Romanian tax fraud scheme that remain unaccounted for. Couple these
17 considerations with the fact that Ms. Nemes still has access to the secure bunker on her
18 property, which could present a major danger to both her family and to law enforcement,
19 Diana Nemes' contention that she poses no threat of danger to the community is also
20 without merit.

21 **B. Ms. Nemes Cannot Meet Her Burden Of Proving Special**
22 **Circumstances Justifying Release.**

23 The risk of flight and danger posed by her release, are in and of themselves
24 sufficient for this Court to affirm the Magistrate Judge's decision to deny bail. But Diana
25 Nemes also has failed to establish the existence of special circumstances required to
26 justify release under Supreme Court and Ninth Circuit precedent even if she were not a
27 risk of flight or a danger to the community. A fugitive charged with crimes in another
28 country is already by definition a flight risk by fleeing and by continuing to remain

1 | deliberately absent from the jurisdiction seeking extradition. In the instant case, Ms.
2 | Nemes has conceded that she was aware of the charges pending against her in Romania
3 | yet chose to remain a fugitive in the United States. *See* Petitioner’s Writ at 17, Point 3.
4 | The strong presumption against bail is supported by this fact as well as the serious nature
5 | of the charges Ms. Nemes faces in Romania, the lack of special circumstances supporting
6 | release, and the extraordinary risk of flight and danger to the community she represents.

7 | **1. Ms. Nemes Pregnancy and Role as a Caretaker for her**
8 | **Children Are Not Special Circumstances that Justify Release.**

9 | Ms. Nemes’ primary arguments for release are that her pregnancy and role as
10 | caretaker for her two other children are special circumstances that require her release.
11 | She claims, among other things, that her pregnancy would be jeopardized by a lengthy
12 | incarceration and argues that the United States has treated pregnant prisoners in a
13 | degrading fashion. Petitioner’s Writ at 10. For Ms. Nemes pregnancy to qualify as a
14 | special circumstance, Ms. Nemes must prove by clear and convincing evidence that she
15 | has experienced a “serious deterioration in health” occurring during incarceration.
16 | *Salerno*, 878 F.2d at 317 (“serious deterioration of health while incarcerated”); *Morales*,
17 | 906 F. Supp. at 1374 (“serious deterioration of the accused’s health while incarcerated”);
18 | *In Matter of Extradition of Rouvier*, 839 F. Supp. 537, 542 n.9 (N.D. Ill. 1993) (fugitive
19 | who did not show condition “deteriorated” while in custody failed to show special
20 | circumstance); *In Re Extradition of Nacif–Borge*, 829 F.Supp. 1210, 1217 (D.Nev.1993)
21 | (“Nacif failed to prove by clear and convincing evidence a serious deterioration of
22 | health”). Conditions that are “not debilitating” or “apparently easily controlled” are not
23 | sufficient. *Nacif-Borge*, 829 F. Supp. at 1217.

24 | In *Rouvier*, the fugitive was “diagnosed with a potentially serious heart condition,”
25 | was “under the care of a physician,” and was “prescribed with the heart medication
26 | Viskin, which he must take on a daily basis.” 839 F. Supp. at 541. Noting that the
27 | condition was “potentially serious” but that it could be controlled with medicine, it held
28 | that “the condition is not serious enough to constitute a special circumstance.” *Id.* at 542

1 (citing *United States v. Kidder*, 869 F.2d 1328, 1330-31 (9th Cir. 1989) (defendant “must
2 show that no constitutionally acceptable treatment can be provided while he is
3 imprisoned”). The court noted that it could “enter an order, if necessary, to insure” that
4 proper treatment would be received while he remained in custody. *Id.* at 542 n.9.
5 Likewise, in *Nacif-Borge*, the fugitive raised health concerns related to his having only
6 one kidney. As stated by that court: “This court has the authority to order Nacif’s jailers
7 to attend to his needs on these matters. Perfect health has never been a requirement of
8 institutional incarceration.” *Id.*

9 In this case, there is absolutely no evidence whatsoever to suggest Ms. Nemes is
10 not receiving proper medical care for her pregnancy or that that Ms. Nemes’ pregnancy is
11 in the nature of a serious health condition establishing special circumstances. Moreover,
12 Ms. Nemes reference to problems at other facilities operated by state governments totally
13 unrelated to the Bureau of Prisons is irrelevant to this case. She has submitted absolutely
14 zero evidence to indicate that the Federal Detention Center at SeaTac, where Ms. Nemes
15 is currently held, treats pregnant prisoners inappropriately. On the contrary, the Federal
16 Detention Center at SeaTac is perfectly capable of meeting her medical needs during her
17 pregnancy and provides a level of care greater than that available to many citizens of
18 Romania or the United States. According to the FDC SeaTac clinical director, caring for
19 pregnant inmates is a standard part of the medical care provided at the Detention Center.
20 Pregnant inmates are seen for an initial prenatal check by FDC medical staff within 7 to
21 10 days, including blood-work. At that time they are typically scheduled for a prenatal
22 visit with an outside OB/GYN specialist. They are given prenatal vitamins and are
23 monitored by FDC medical staff as part of their Chronic Care Clinic, which means they
24 are automatically scheduled for follow-up appointments so on-going medical issues may
25 be monitored. They are housed at the FDC until they are ready to deliver the baby, at
26 which time the US Marshals take the inmate to an outside hospital for delivery of the
27 child.
28

1 A normal pregnancy absent some evidence of mistreatment or a seriously
2 deteriorating condition is simply not a special circumstance. Pre-trial defendants in U.S.
3 cases are often detained despite their pregnancy even under the Bail Reform Act which
4 has a presumption of release absent the government's showing of risk of flight or danger
5 to the community. A foreign fugitive in an extradition case where the presumption is
6 heavily in support of detention should not receive more lenient treatment. Likewise,
7 many pre-trial inmates are also in the same position as Ms. Nemes in terms of the loss of
8 custody of their children. This too is simply not a special circumstance. Criminals with
9 children are arrested every day and as a result of their arrest lose some of the rights they
10 previously enjoyed as parents. Ms. Nemes' claim that her children are not being
11 appropriately cared for is not supported by any evidence. Ms. Nemes' argument that her
12 pregnancy and children are special circumstances is without merit and should be rejected
13 outright. Moreover, because neither constitutes a special circumstance in the first
14 instance, they should not be considered in conjunction with her other claims of special
15 circumstances.

16 **2. Whether Bail is Available in the Requesting State Is Not a**
17 **Special Circumstance.**

18 The availability of bail in Romania does not justify release in light of Ms. Nemes'
19 status as a fugitive in the United States. Contrary to Ms. Nemes' assertion that the
20 availability of bail is an appropriate special circumstance, no Ninth Circuit case has
21 endorsed this view. Indeed, the clear weight of authority holds that bail availability in the
22 requesting state does *not* constitute a special circumstance. Notably, the only case
23 squarely to hold that bail availability may constitute a special circumstance is *In Re*
24 *Extradition of Nacif-Borge*, 829 F.Supp. 1210, 1214 (D.Nev.1993). The better reasoned
25 cases have uniformly rejected the analysis of *Nacif-Borge*. *In Matter of Extradition of*
26 *Rouvier*, 839 F. Supp. 537, 540 (N.D. Ill. 1993), the district court granted an emergency
27 motion to reconsider a bail decision, stating as follows:
28

1 This court concludes that the “bail availability” special circumstance
2 formulated by the *Nacif-Borge* court is improper, and thus unavailable to
3 Rouvier. This court first notes that the *Nacif-Borge* court based its decision
4 on the case *In re Gannon*, 27 F.2d 362 (E.D. Pa. 1928)... [T]his court
5 concludes that the *Gannon* court's rule conflicts with current federal law.
6 Under the *Gannon* rule, most extraditees would be entitled to bail. This
7 directly contradicts Supreme Court and federal appellate court decisions
8 which conclude bail is the exception rather than the rule. The *Gannon* rule
would also force courts to make searching reviews of foreign laws to
determine whether bail is appropriate for a given defendant in a given
country for a given offense.

9 *Id.* at 540-41 (emphasis original). The *Rouvier* court then stated, “[i]t is hardly reasonable
10 to expect courts of [a foreign country] (or the United States) to constantly alter the
11 procedures under which it conducts extradition proceedings depending upon the
12 citizenship of the person sought to be extradited” and rejected the view that availability of
13 bail in the requesting state constitutes a special circumstance. *Id.* at 541 (citations
14 omitted). Importantly, the logic underlying the majority caselaw is unassailable. A
15 person facing extradition who has left or refuses to return to a jurisdiction when aware of
16 criminal charges and against whom a treaty power must be exercised is unlike a person
17 present in and facing charges in the foreign jurisdiction. This Court should reject the
18 availability of bail as a special circumstance for similar reasons.

19 Additionally, while Ms. Nemes may be released soon after her return to Romania,
20 her failure to return in light of her knowledge of the charges outweighs the consideration
21 of this factor even if the Court finds it is an appropriate consideration. Ms. Nemes failure
22 to return to face charges of which she was aware demonstrates she should be detained
23 pending her extradition. Ms. Nemes’ reliance on the availability of bail in Romania
24 belies her claim that returning her to Romania in the first instance would be such an
25 unreasonable action. If she wishes to avail herself of bail in Romania, she should waive
26 extradition and return to face the charges pending against her. For now, however, she has
27 demonstrated her unwillingness to face these charges which shows she must be detained
28 until these proceedings are finished.

1 **3. The Nature of Ms. Nemes Crimes in Romania and the United**
2 **States Establish that Ms. Nemes' Lack of a Prior Criminal**
3 **Record is Irrelevant.**

4 Ms. Nemes lack of prior criminal record is insufficient to show special
5 circumstances when considered in light of the serious nature of the charges, the scope of
6 the scheme in which she was involved and her continuing involvement in criminal
7 activity while in the United States. This is not a case involving a single criminal act that
8 occurred spontaneously. Ms. Nemes is charged with engaging in a complex tax evasion
9 and money laundering scheme that took place over several months and involved repeated,
10 calculated, criminal acts. Such behavior can hardly be characterized as aberrational.
11 Moreover, the FBI investigation has shown that Ms. Nemes has not missed a beat since
12 fleeing to the United States and has continued to engage in the same fraudulent money
13 laundering activity that she orchestrated in Romania. In light of the ongoing nature of her
14 criminal activity, the lack of a prior record is irrelevant.

15 **4. Ms. Nemes' Argument that the Extradition Request Lacks**
16 **Probable Cause is Premature and Contradicted by the Evidence**
17 **Already Submitted in Support of the Complaint for Extradition.**

18 Ms. Nemes devotes a considerable portion of her Habeas Petition to an argument
19 that there is no probable cause to support her extradition and a related claim that the
20 Magistrate Judge's arrest warrants were unsupported by probable cause. Petitioner's
21 Motion at 4-8, 13. As an initial matter, Ms. Nemes' claim that the Magistrate Judge
22 detained her without a finding of probable cause is without merit. The Magistrate Judge
23 was presented with the government's complaint and supporting evidence submitted by
24 the Government of Romania and signed the arrest warrants in this case. There was more
25 than sufficient cause presented in the complaint to bring her before the court for the
26 purposes of the more extensive hearing anticipated under Section 3184. More
27 importantly, the very purpose of the extradition hearing currently set for May 22, 2014, is
28 to conduct a probable cause hearing. *See* Attachment 1 at 4-5. As both the Supreme

1 Court and the Ninth Circuit have noted, an extradition hearing is similar to a preliminary
2 hearing. *See Benson v. McMahon*, 127 U.S. 457, 463 (1888); *Mirchandani v. United*
3 *States*, 836 F.2d 1223, 1226 (9th Cir. 1988). Therefore, the question of whether probable
4 cause supports the request is yet to be decided and consideration of that issue at this
5 juncture is premature. Should the Magistrate Judge find probable cause at the extradition
6 hearing, Ms. Nemes may challenge the legality of her detention subsequent to that
7 finding in a later habeas petition.

8 Ms. Nemes' reliance on cases such as *In the Matter of Extradition of Russell*, 647
9 F.Supp. 1044 (S.D. Tex. 1986) for the proposition that this Court should address probable
10 cause now is misplaced. First, the *Russell* case involved an arrest on a "provisional"
11 arrest, made in advance of the requesting country submitting its formal extradition
12 request and the entirety of the evidence in support of such request, and in *Russell*, an
13 extradition hearing had yet to be scheduled. *Id.* at 1045-1046. In the instant case, the
14 Romanian government has already submitted its formal extradition request and that
15 request is filed with the court and set for an extradition hearing in a little over one month.
16 Similarly, in *Parretti v. United States*, 122 F.3d 758 (9th Cir. 1997), the fugitive also had
17 been arrested on a provisional arrest warrant. In *Parretti*, however, the sole basis for the
18 allegations in the Complaint for arrest were the AUSA's reference to a French arrest
19 warrant. *Id.* at 761. The court noted that "[t]he French arrest warrant itself was not
20 attached to the Complaint, nor were any affidavits or other competent evidence." *Id.* In
21 stark contrast to the *Parretti* matter, Ms. Nemes' arrest was pursuant to a formal
22 extradition request supported by attached certified documentation. Moreover, the
23 *Parretti* case was withdrawn after Mr. Parretti was released by the Ninth Circuit and fled
24 the United States and therefore is of no precedential value. *See Parretti v. United States*,
25 143 F.3d 508, 509 (9th Cir. 1998); Ninth Circuit Rule 36-3. Again, more than sufficient
26 evidence supported the complaint in this matter, and there is no legal reason to look at the
27 evidence submitted by the requesting country until the upcoming extradition hearing.

28

1 Without inviting this Court to make a premature probable cause finding in advance
2 of that to be determined at the extradition hearing, this Court can take note of the
3 substantial and supported evidence submitted in the extradition request. Ms. Nemes is
4 unable to support an argument even that it is unlikely that there would be a probable
5 cause finding. Ms. Nemes' claim that the allegations in support of her arrest and
6 extradition are bare and conclusory, - ignores the extensive evidence submitted by the
7 Romanian government and incorporated by reference into the Government's Complaint
8 for Extradition. *See* Attachment 8 at 4 (incorporating the Exhibits 1 and 2, the formal
9 extradition requests submitted by the government of Romanian for Radu and Diana
10 Nemes).² Within the hundreds of pages of documentation submitted in support of the
11 Nemes' extradition requests, the Government directs the Court to the English translation
12 of the Supplementary Information in support of the extradition request, dated October 31,
13 2013, which summarizes the voluminous evidence that establishes probable cause in
14 support of the charges against Ms. Nemes. This supplemental request which is contained
15 in Attachment 2, Exhibit B, to the government's response to Petitioner's Motion, sets
16 forth in detail the nature and reliability of the evidence supporting the charges against
17 Ms. Nemes. Much like a probable cause affidavit submitted in support of a complaint for
18 arrest warrant charging crimes in the United States, this document contains a thorough
19 description of the evidence supporting the allegations and a complete summary of the
20 Romanian investigation. As shown in the Government's Memorandum in support of
21 Extradition, such written submissions are exactly the type of evidence that courts rely
22 upon in an extradition hearing to find probable cause in support of an extradition request.
23 *See* Attachment 1 at 12 ("A certification of extradition may be and typically is based
24 entirely on the authenticated documentary evidence and information provided by the
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27 ² The clerk's office appears to have split Government's Exhibits 1 and 2 to the Complaint into multiple documents
28 for purposes of scanning to accommodate the court's electronic case filing system. Radu Nemes' formal extradition
request is docketed at docket entry 4, Attachments 1-10. Diana Nemes' formal extradition request is docketed as
docket entry 5, Attachments 1-10.

1 requesting government. *See, e.g., Manta v. Chertoff*, 518 F.2d 1134, 1145-46 (9th Cir.
2 2008) (investigation report by public prosecutor that summarized witness statements and
3 other evidence held to constitute competent evidence)).

4 The Romanian supplemental request establishes Diana Nemes' integral
5 involvement in hiding the excess profits generated by the sale of the higher priced diesel
6 fuel, via an account in Dubai in the name of Corralys Investments Limited. *See*
7 Attachment 2, Exhibit B at 10-11. The supplemental request explains how Ms. Nemes
8 retained an attorney to create a consulting contract between Corralys, a United Arab
9 Emirates Company controlled by the Nemes, and Inkasso Jobs SRL, the oil company
10 created as part of the scheme to justify the transfer of millions of dollars from Romania to
11 Dubai. *Id.* The supplemental request also describes an intercepted telephone
12 conversation between Diana Nemes and her attorney at the time Romanian law
13 enforcement authorities searched the attorney's office, in which Ms. Nemes' expressed
14 her concern that Romanian authorities would discover financial documents regarding
15 accounts held in Dubai, UAE. *Id.* Together with the discovery of a bank statement from
16 Barclays Bank in Dubai, this evidence clearly constitutes probable cause to establish Ms.
17 Nemes knowing involvement in the tax fraud scheme and her support of the criminal
18 organization carrying out the scheme. The Corralys accounts and others at Barclays
19 Bank in Dubai were subsequently utilized by Diana Nemes to transfer the proceeds of the
20 illegal scheme to the United States to support the Nemes' lavish lifestyle and the
21 accumulation of assets in this country.

22 The Romanian evidence would easily meet the familiar probable cause standard
23 applicable in this matter. In *Illinois v Gates*, 462 U.S. 213 (1983), the Supreme Court
24 explained that the probable cause standard is a practical, nontechnical concept which
25 deals in probabilities – not hard certainties – derived from the totality of the
26 circumstances in a factual situation. The Court explained in *Gates* that probable cause is
27 less demanding than the evidentiary standards of beyond a reasonable doubt,
28 preponderance of the evidence or even a prima facie case – all that is required to establish

1 probable cause is a “fair probability” that the asserted contention is true. *Gates*, 462 U.S.
2 at 235. The Ninth Circuit applying *Gates* has held that a Magistrate Judge’s
3 determination of probable cause should be paid great deference by reviewing courts. See
4 *United States v. Kelly*, 482 F.3d 1047, 1050 (9th Cir. 2007). In *Kelley*, the court
5 explained that “[w]hether there is a fair probability depends upon the totality of the
6 circumstances, including reasonable inferences, and is a ‘commonsense, practical
7 question,’ ” for which “[n]either certainty nor a preponderance of the evidence is
8 required.” *Kelly*, 482 F.3d at 1050 (quoting *Gates*, 462 U.S. at 246, 103 S.Ct. 2317).
9 Because the Romanian evidence and the reasonable inferences that may be drawn from
10 that evidence establishes more than a fair probability that Ms. Nemes committed the
11 crimes for which she is charged in Romania, her assertion that she has a substantial
12 likelihood of success in opposing her extradition is without merit and fails to support her
13 request for release.

14 **5. The Projected Length of the Extradition Proceedings Does Not**
15 **Constitute a Special Circumstance.**

16 Ms. Nemes next argues that special circumstances exist because there is “a
17 substantial likelihood of lengthy delays before a final decision” on her extradition
18 request. Petitioner’s Motion at 13-14. Delay constituting a special circumstance has
19 inevitably been the result primarily of unreasonable past delays. See *Kirby*, 106 F.3d at
20 862 (fugitive in custody for “almost two years” to “three and one-half years”); *Salerno*,
21 878 F.2d at 317 (“unusual delay in the appeal process”). If there has been no such delay,
22 no special circumstances exist. See *United States v. Lui Kin-Hong*, 83 F.3d 523, 525 (1st
23 Cir. 1996) (no special circumstance where fugitive argued that complexity of legal issues
24 involving change in sovereignty over Hong Kong would “result in protracted extradition
25 proceedings” but where proceedings had not “yet been unduly delayed”); *Nacif-Borge*,
26 829 F. Supp. at 1217 (where “there [was] no indication that Nacif’s extradition hearing
27 has been delayed,” stating that “a finding of unusual delay at this stage of the proceedings
28 would be premature”). To the extent there may be some later delays, it appears Ms.

1 Nemes herself plans to cause these delays. *See* Petitioner's Motion at 13-14. Should she
2 wish to expedite this matter, Ms. Nemes is free to waive extradition and return to
3 Romania to raise many of the arguments she presents in this motion.

4 There is no reason to believe that the extradition hearing itself will be unusually
5 long. Romania's formal extradition request has already been submitted to the court and
6 the hearing is currently set for May 22, 2014. The government anticipates this hearing
7 will last approximately one hour. The rules pertaining to extradition hearings do not
8 require live witnesses and may be conducted entirely on the written record. *See*
9 Attachment 1 at 12-14. Moreover, since Ms. Nemes has very limited rights to challenge
10 the evidence, *see* Attachment 1 at 15-18, this hearing should take less time than a typical
11 preliminary hearing. Because Ms. Nemes has failed to show why the hearing should take
12 longer, she cannot meet her burden of proving this factor establishes a special
13 circumstance in support of her release on bail.

14 **6. Ms. Nemes' Identity is Not Reasonably in Dispute and the**
15 **Romanian Government Has Submitted Sufficient Information**
16 **to Establish Ms. Nemes is the Person Wanted in Romania.**

17 Ms. Nemes did not challenge the assertion that she is the person wanted in
18 Romania at the time of her arrest or at her detention hearing before the Magistrate Judge.
19 It is only that narrow question -- was the person arrested the actual person sought -- that
20 arguably could be considered prior to resolving the question of identity in the probable
21 cause hearing. Indeed, she has admitted both in her Memorandum in Support of Release
22 on Bail Pending Extradition and in her current Petition for Habeas relief that she was
23 aware of the Romanian charges and the fact that Romanian authorities would pursue her
24 in the United States. Nonetheless, on April 10, 2014, the Romanian government
25 provided the United States with supplemental information in the form of a witness
26 statement from co-defendant Guliu George in which Mr. George identified Ms. Nemes
27 from a photographic montage as the person with whom he jointly controlled SC Excella
28 Real Grup, SRL until June 2012. This statement was provided to the National

1 Anticorruption Directorate within the Prosecutors Office attached to the High Court of
2 Cassation and Justice in the presence of Mr. George's attorneys on April 10, 2014. *See*
3 Attachment 9. The identification of the fugitive as the perpetrator of the crime for which
4 extradition is sought is, again, a part of the probable cause finding and properly deferred
5 until the hearing.

6 **VII. CONCLUSION**

7 In short, based on the above, Judge Strombom's factual findings as to Ms. Nemes'
8 risk of flight, danger to the community and lack of special circumstances are due
9 deference, and this Court should reach the same decision as Judge Strombom when
10 addressing de novo any mixed question of law and fact presented. Ms. Nemes' continued
11 criminal activity in the United States and access millions of dollars' worth of
12 unaccounted gold and silver show conclusively that she is a risk of flight and danger to
13 the community. Coupled with the serious nature of the crimes for which she is charged,
14 the international scope of her crimes, and her frequent international travel, Ms. Nemes'
15 release would present a risk of flight not often seen in U.S. prosecutions, let alone a
16 foreign extradition request. Her possession of firearms and access to an underground
17 bunker also shows that her release could present a substantial danger to the community.

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1 Even absent the overwhelming evidence of risk of flight and danger to the community,
2 Ms. Nemes has failed to establish special circumstances justifying her release. Finally,
3 Ms. Nemes' release on bail would have negative implications for favorable reciprocal
4 treatment regarding the release of fugitives by Romania when the United States seeks the
5 extradition of its serious offenders from Romania. Based on the foregoing, the United
6 States respectfully requests that Diana Nemes' request for bail be denied.

7 DATED this 11th day of April, 2014.

8 Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is of such age and discretion as to be competent to serve papers;

It is further certified that on April 11, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

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