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March 25, 2014

BY E-MAIL AND EXPRESS MAIL
(CORRECTED)

The Honorable Edward J. Davila
United States District Court
Northern District of California
280 S. 1st St.
San Jose, California 95113

Re: *United States v. David Foley*, No. Dist. Nos. CR- 09-00670 EJD,
CR-11-00554 EJD; Ninth Cir. Nos. 14-10055, 14-10056

Dear Judge Davila,

Under your order filed on January 21, 2014 (ECF 249), defendant David Russell Foley is required to surrender to begin serving his sentence in this matter on Thursday, March 27, 2014. A motion for bail pending appeal has been filed in the Ninth Circuit Court of Appeals. (A copy of the first page of the motion with the electronic stamp indicating its receipt by the Court of Appeals is enclosed.) On today's date, the Ninth Circuit remanded the case to this court for further findings to assist the Ninth Circuit in ruling on the pending bail motion. (A copy of today's Ninth Circuit order is also enclosed.)

Under Ninth Circuit Rule 9-1.2(e), by operation of the submission of the bail motion to the Circuit, Mr. Foley's bail "will remain in effect until the (Ninth Circuit) rules on the motion." *Ibid*; see also *United States v. Fuentes*, 946 F.2d 621, 622 (9th Cir. 1991) (Intent of rule "is to provide for an automatic stay of an appellant's surrender date if he or she is on bail at the time the motion for bail pending appeal is filed in [the Ninth Circuit].") Should the bail motion pending in the Court of Appeals be denied, Mr. Foley will be immediately available to honor a new surrender date.

I thank you for your consideration in this matter.

Sincerely,



Dennis P. Riordan

Enclosures
cc w/ enc.:

Mark Harwell, Supervisory Deputy U.S. Marshal (via facsimile)
FCI Lompoc (via facsimile)
Pretrial Services Officer Carol Mendoza (via facsimile)
AUSA Susan Knight (via facsimile)

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Attorneys for Defendant-Appellant
DAVID FOLEY

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	Ninth Cir. Nos. 14-10055, 14-10056
)	[N. Dist. Nos. CR 09-00670 EJD,
Plaintiff-Appellee,)	CR 11-00554 EJD]
)	
v.)	
)	
DAVID FOLEY,)	
)	
Defendant-Appellant.)	
_____)	

**MOTION FOR RELEASE PENDING APPEAL OR FOR
REVERSAL AND REMAND TO DISTRICT COURT
FOR REQUIRED FINDINGS**

FILED

UNITED STATES COURT OF APPEALS

MAR 25 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>DAVID RUSSELL FOLEY,</p> <p style="text-align: center;">Defendant - Appellant.</p>

Nos. 14-10055, 14-10056

D.C. Nos. 5:09-cr-00670-EJD-1
5:11-cr-00554-EJD-1

Northern District of California,
San Jose

ORDER

Before: M. SMITH and CHRISTEN, Circuit Judges.

These consolidated appeals are remanded to the district court for the limited purpose of enabling that court to state, orally or in writing, the reasons for its order denying appellant’s motion for bail pending appeal. *See* 18 U.S.C. § 3143(b); Fed. R. App. P. 9(b); *United States v. Wheeler*, 795 F.2d 839, 841 (9th Cir. 1986) (order).

The district court shall provide the oral or written statement within 10 days after the date of this order. *See Wheeler*, 795 F.2d at 841. Appellant may file a supplemental memorandum in support of the motion for bail pending appeal within 10 days after the filing date of the district court’s statement. Appellee may file its response within 10 days after service of appellant’s supplemental memorandum.

RJ/MOATT

Appellant's optional reply is due within 7 days after service of the government's response.

The previously established briefing schedule shall remain in effect.

The Clerk shall serve this order on the district court.