

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD HEMSLEY,

Defendant.

No. 2:13-CR-300-GEB

**ORDER DENYING DEFENDANT'S MOTION
FOR REVOCATION OF THE MAGISTRATE
JUDGE'S DETENTION ORDER**

Defendant Richard Hemsley moves for revocation of the Magistrate Judge's August 10, 2017 detention order, ECF No. 340, arguing "[t]he U.S. Magistrate Judge's finding that Mr. Hemsley should be detained as a risk of non-appearance was incorrect." Def.'s Mot. to Revoke ("Def.'s Mot.") 11:21-22, ECF No. 351. The United States of America (the "Government") opposes Defendant's motion arguing, inter alia, "[Hemsley] has expressed his contempt for this Court in writing, by refusing to obey its lawful orders, . . . by failing to appear for his violation hearing, and [by] failing to surrender when made aware of this Court's bench warrant for that failure to appear." Gov't Opp'n to Mot. ("Gov't Opp'n") 2:5-8, ECF No. 353. Defendant filed a reply and an amended reply. Reply, ECF No. 356; Am. Reply, ECF No. 357. The

1 motion was heard on November 3, 2017.

2 18 U.S.C. § 3145(b) prescribes: "If a [defendant] is
3 ordered detained by a magistrate judge, the [defendant] may file
4 . . . a motion for revocation . . . of the order" In the
5 context of the District Court reviewing the Magistrate Judge's
6 detention order, the Ninth Circuit explained the meaning of the
7 "de novo" standard in United States v. Koenig, 912 F.2d 1190,
8 1193 (9th Cir. 1990), stating:

9 Clearly, the district court is not required
10 to start over in every case, and proceed as
11 if the magistrate's decision and findings did
12 not exist. The district court . . . should
13 review the evidence before the magistrate and
14 make its own independent determination
15 whether the magistrate's findings are
16 correct, with no deference. If the
17 performance of that function makes it
18 necessary or desirable for the district judge
19 to hold additional evidentiary hearings, it
20 may do so, and its power to do so is not
21 limited to occasions when evidence is offered
22 that was not presented to the magistrate.

23 Id. (citation omitted).

24 18 U.S.C. § 3142(b) prescribes in pertinent part: "The
25 judicial officer shall order the pretrial release of the
26 [defendant], . . . unless the judicial officer determines that
27 such release will not reasonably assure the appearance of the
28 [defendant] as required" The Government has the "burden
of showing, by a preponderance of the evidence, that [the]
factors" in § 3142(g), which are required to be considered when
making the release determination, reveal "that no condition or
combination of conditions will reasonably assure that [Defendant]
will voluntarily appear." United States v. Santos-Flores, 794
F.3d 1088, 1093 (9th Cir. 2015) (citations omitted).

1 Defendant argues as follows that he should be released
2 on his own recognizance based on his history of appearing, and
3 that his failure to appear on April 5, 2017, was the result of
4 him "misplacing his [cellular] phone":

5 Mr. Hemsley made a number of court
6 appearances in this case, including
7 participation in an entire jury trial. He is
8 in custody because of a positive test for
9 Marijuana, for missing a court date due to
10 misplacing his phone for a few days during a
11 critical time, and for trying to have the
12 warrant recalled without going into custody
13 (as is the custom in many situations in state
14 court). By [the November 3, 2017 Hearing],
15 Mr. Hemsley will have been in custody for
16 more than [5] months. Mr. Hemsley realizes
17 the importance of complying with all of his
18 conditions of release, and, if released, he
19 will take the necessary steps to avoid this
20 situation in the future.

21 Def.'s Mot. 11:22-12:2. Defendant also argues:

22 On January 6, 2014, Mr. Hemsley made his
23 initial appearance in this case
24 [Following the] April 8, 2014 . . . violation
25 petition alleging that Mr. Hemsley tested
26 positive for Marijuana[,] . . . Mr. Hemsley
27 attended court during 2014 [in compliance
28 with] his condition of release to attend
Better Choices Mr. Hemsley returned
to court on May 19, 2015, June 16, 2015, July
21, 2015, August 18, 2015, September 15,
2015, October 13, 2015, November 17, 2015,
December 15, 2015, January 19, 2016, February
16, 2016, [and] March 15, 2016, with overall
positive reports concerning his release from
custody and his participation in the Better
Choices program On May 17, 2016, Mr.
Hemsley attended court, and graduated from
the Better Choices program. He attended the
program for a year, and made several court
appearances between May 2015, and May 2016,
in order to successfully graduate from this
program On July 15, 2016, the
defendant made an initial appearance at the
revocation of pretrial release
hearing On January 27, 2017, the
defendant appeared at his Trial Confirmation
Hearing (TCH) On May 31, 2017, Mr.
Hemsley was arrested without incident by the

1 United States Marshals Service as he was
2 picking up his mail from his mailing
3 address [At his Bail Review Hearing,
4 o]n August 10, 2017, the . . . Magistrate
5 Judge . . . did not find that he was a
6 danger, or a flight risk, but found that he
7 is a risk of non-appearance (8/10/2017 RT
8 6:23).

9 Def.'s Mot. 3:6, 3:11-15, 4:3-7, 4:14-15, 4:21-22, 5:2-3, 8:16-
10 17, 10:4-11.

11 The Government counters that Defendant's repeated
12 refusals to abide by the Court's orders and by Pretrial Services'
13 directives favor Defendant's continued detention. The Government
14 further argues:

15 On February 27, 2017, Hemsley again tested
16 positive for marijuana. (ECF No. 294).
17 Hemsley received [an email] notice of the
18 April 5[,2017] hearing [concerning his
19 violation of his conditions of pretrial
20 release. Hemsley] responded to the email[,]
21 (ECF No. 336, Exh. A)[on March 30, 2017,
22 and] Hemsley asserted that pretrial release
23 was an "unlawful form of probation," . . .
24 and concluded by explaining that "PTS [] in
25 conjunction with the Magistrates constitutes
26 a terrorist organization" and that he "will
27 NOT bargain [sic] with terrorists." (See
28 id.). Hemsley's [then-]standby counsel
indicated [counsel's] unavailability by phone
for 9:15 on April 5, but [that counsel] could
appear at 2 p.m. the same day or on April 7,
2017. (See id.) The hearing was re-set for
the same date (April 5) at 1 p.m., but . . .
Hemsley did not appear.

Hemsley claims he lost access to his
email in the days between April 3, 2017, and
the hearing on April 5. He knew that the
hearing was set for 9:15 on April 5, and that
there was some doubt as to whether it would
be rescheduled. But Hemsley never attempted
to call the Court, his standby counsel, the
U.S. Attorney's Office, or Pretrial Services.
Hemsley claims that he received notice by
mail—the same notice he received by email and
replied to—on the day of the hearing. But
again, he failed to call the Court, the U.S.
Attorney's Office, Pretrial Services, or

1 (apparently) even his standby counsel. When
2 Hemsley failed to appear, [the Magistrate]
3 Judge . . . issued a bench warrant for his
4 arrest. (ECF No. 299). In a letter to [the
5 District] Court, mailed April 5th and
6 apparently written before the 1 p.m. hearing
7 that day, Hemsley did not explain his absence
8 or state that he lost his phone. (ECF No.
9 301). Rather, he asserted that he needed
10 marijuana for medical purposes, and that he
11 began to "slowly immerse" himself in the same
12 "healing regimen" that he had previously
13 used—an obvious reference to marijuana. (ECF
14 No. 301 at 3)

15

16 . . . Hemsley[] failed to appear at the
17 Court-ordered April 5, 2017, hearing
18 scheduled to consider his continued
19 violations of his pretrial release conditions
20 by his use of marijuana products. While
21 Hemsley claims that he was not aware of his
22 obligation to appear at the April 5th hearing
23 date, the Court should reject this false
24 claim. Hemsley knew there was a court-ordered
25 hearing on April 5 (See ECF No. 336, Exh. A),
26 and though there was uncertainty as to
27 whether the hearing time or date might be
28 moved, he failed to take even the simples[t]
steps to ensure his appearance. Hemsley never
attempted to call the Court, his standby
counsel, the U.S. Attorney's Office, or
Pretrial Services, any of whom could have
informed the Court as to Hemsley's absence
and taken appropriate steps.

In addition, Hemsley's intent to avoid
the court appearance is reflected in his
refusal to self-surrender to the United
States Marshals Service despite receiving
warnings from both Pretrial Services Officer
and the Assistant U.S. Attorney. (See ECF No
336, Exhs. B-D). Hemsley[] has previously
admitted that he ignored the order to appear,
explaining that he was "looking for a little
more time" to attend to his business
interests. (ECF No. 323 at 9:15-17).
Moreover, Hemsley has produced nothing in
support of his claim that he was locked out
of his email, and did not raise this issue in
his letter to this Court on the date of the
hearing. (ECF No. 301). Instead, he decried
the perceived injustice of this prosecution.
In view of Hemsley's past willingness to say

1 virtually anything to avoid custody, and in
2 view of the lack of any admissible evidence
3 in support of his claim, the Court should not
4 credit Hemsley's claim that he lost his
5 phone. Either way, a defendant should not be
6 permitted to flout this Court's orders and
7 procedures, and avoid the consequences
8 thereof.

9 Finally, Hemsley is facing significant
10 jail time if convicted and admitted the
11 offense conduct in a recorded interview. He
12 thus has a strong motivation to avoid
13 incarceration, and has recently acted on that
14 motivation by ignoring [the Magistrate]
15 Judge['s] bench warrant and refusing to
16 surrender himself. This is part of a
17 disturbing trend of contumacy—Hemsley has
18 grown more and more bold in his rejection of
19 this Court's legitimacy and in the assertion
20 of what he believes are his "God-given right
21 to use cannabis" and his "human right" to use
22 marijuana. The Court should not encourage his
23 escalating confrontation, but should order
24 him detained to ensure that he appears at
25 trial

26 Gov't Opp'n 4:11-5:5, 12:14-13:11 (footnote omitted).

27 The Magistrate Judge stated at Defendant's Bail Review
28 Hearing on August 10, 2017, as follows: the detainment issue is
"to determine whether or not [Defendant i]s a risk of non-
appearance[; whether] he's a risk of flight . . . [i]s not the
inquiry at this point." Tr. Bail Review Hearing, Aug. 10, 2017
("Aug. 10 Tr.") 7:21-25, ECF No. 350. The Magistrate Judge made
the following observations and findings after hearing oral
arguments and reviewing the record, which included "multiple
Pretrial Services['] reports":

It appears to me that Mr. Hemsley has
appeared in front of [almost] every
magistrate judge in this courthouse and what
[i]s interesting is that I have not been
alone in trying to figure out a way to get
Mr. Hemsley to recognize that he . . . was in
control of his destiny because a number of
the magistrate judges released him after

1 finding him in violation, keeping him in
2 [custody] for a while.

3 Mr. Hemsley would then have a change of
4 heart about whatever caused the violation. He
5 would apologize for, for example, use of MDMA
6 or use of marijuana, apologize for lying
7 about it to [the Pretrial Services Officer],
8 apologize for lying about it to the Court. He
9 would express his regret and willingness to
10 follow the conditions of the Pretrial
11 Services [O]fficer.

12
13 And then, like me, other magistrate
14 judges thought [Mr. Hemsley] now understands
15 the seriousness of the situation, let's try
16 this again and each and every one of us has
17 been wrong. Each and every one of us thought
18 that Mr. Hemsley at that time understood that
19 he had to comport himself with the [release]
20 conditions of Pretrial Services . . . and the
21 Court's orders and he didn't.

22

23 . . . I'm very reluctant to overrule
24 [the Pretrial Services Officer] who's
25 obviously spent hundreds of hours working on
26 this and order his release.

27

28 Probably the root of the problem is that
[Mr. Hemsley has] not been honest with
himself, but it manifests with his lack of
honesty with the Court, the lack of honesty
with Pretrial Services and apparently the
lack of honesty with people that are willing
to help him

. . . .

I completely understand and I accept his
sincerity at this moment. But I've accepted
his sincerity in the past, as had the other
magistrate judges, and whether or not he's
sincere at the moment he's sitting in the
custody of the Sacramento County Jail or
Nevada County Jail doesn't seem to translate
to when he has to do what the Court has
ordered him to do.

[The Pretrial Services Officer] has done
absolutely everything I can imagine. Mr.
Hemsley has rejected help. Mr. Hemsley has

1 avoided help

2 So there are no conditions that appear
3 to be able to be set that Mr. Hemsley will
4 respect enough to stay out of trouble and in
5 compliance with the Court's directives. I
6 candidly think that's a shame, and obviously
7 the other magistrate judges have thought
8 that's a shame too because Mr. Hemsley may
9 indeed have much to offer his community when
10 he decides that he's going to comport with
11 societal norms, and more specifically with
12 the norms that are being set for him by this
13 Court.

14 But my obligation is to determine
15 whether or not he's a risk of non-appearance.
16 He's shown himself to be a risk of non-
17 appearance. The marshals had to go get him. I
18 don't think he's a risk of flight, but that's
19 not the inquiry at this point. He is a risk
20 of non-appearance because he decides when and
21 where he wants to be unless he is brought
22 somewhere when he is needed.

23

24 [The Pretrial Services Officer] remains
25 willing, if ordered by the Court, to
26 supervise Mr. Hemsley which is a great
27 testament to [the Pretrial Services
28 Officer]'s professionalism. But in two weeks
29 I haven't been able to think of anything that
30 I can impose that will reasonably assure the
31 Court of Mr. Hemsley's appearance at future
32 court proceedings.

33 Monetary sanctions haven't worked -- or
34 monetary promises haven't worked. Counseling
35 hasn't worked. Medication hasn't worked.
36 Lawyers haven't worked. It just -- you've
37 used every tool in our toolbox, Mr. Hemsley.
38 There's nothing left that I can think of.

39

40 All right. I believe you, Mr. Hemsley,
41 that you are absolutely sincere at this
42 moment that you are willing to abide by any
43 conditions I set, but history has shown us
44 that your sincerity fades dramatically once
45 you are released from custody.

46 So I do find at this time that there are
47 no conditions or combinations of conditions

1 that can reasonably assure your appearance at
2 future court proceedings. I deny your motion
3 for bail review and remand you to the custody
4 of the marshals.

5 Aug. 10 Tr. at 3:1-23, 4:5-7, 6:1-5, 6:24-8:18, 9:4-13.

6 The Pretrial Services Officer recommends that Defendant
7 remains in custody. The Pretrial Services Officer states in the
8 Pretrial Services Report, dated October 20, 2017 ("PTS Report"):
9 Defendant has "an unwillingness or inability to comply with
10 pretrial services['] directives, the Court's orders, and the
11 imposed conditions of release Pretrial Services continues
12 to believe the defendant has demonstrated he is not amendable to
13 supervision[and he is] a risk of non-appearance." PTS Report,
14 Mem. July 27, 2017, at 3-4. The Pretrial Services Officer
15 supports his concerns with the following information in the PTS
16 Report:

17 Following the February 27, 2017,
18 positive drug test for Cannabinoids/Marijuana
19 (THC), . . . Pretrial Services was
20 unsuccessful in reaching Mr. Hemsley by
21 telephone[.] On [March 20, 2017] . . . , Mr.
22 Hemsley emailed the [Pretrial Services
23 O]fficer and noted he was at a cellular
24 telephone repair shop to fix his cellular
25 telephone's "microphone."

26 In light of the difficulty in reaching
27 the defendant via his cellular telephone,
28 Pretrial Services primarily maintained
communication with Mr. Hemsley via email.

29 In an email exchange between the
30 [Pretrial Services O]fficer and the
31 defendant, Mr. Hemsley was advised he tested
32 positive for Cannabinoids/Marijuana (THC) and
33 that a bail violation hearing would likely be
34 calendared to address his marijuana use on
35 March 24, 2017.

36 Mr. Hemsley's email reply to this
37 notification was, "I am Not available on the
38 specified date. I am available as stated

1 previously on the 31st. . . .”

2 As reflected in the . . . Fourth Bail
3 Violation Memorandum, dated April 5, 2017,
4 Mr. Hemsley emailed the [Pretrial Services
5 Officer] an admission of marijuana/THC use
6 and stated he would not be present for a
7 scheduled bail violation hearing.

8 On March 27, 2017, Mr. Hemsley again
9 tested positive for Cannabinoids/Marijuana
10 (THC). On March 30, 2017, Pretrial Services
11 received an email from . . . defense
12 counsel . . ., advising [counsel] had a
13 schedule conflict and request[ing]
14 consideration of another date or time for the
15 bail violation hearing.

16 According to the Notice of Motion and
17 Motion for Bail Review and Release on
18 Conditions, filed with the Court on June 19,
19 2017, Mr. Hemsley claims his cellular
20 telephone was temporarily misplaced on April
21 3, 2017. He reportedly did not have access to
22 his email service, and he was “unaware” of
23 the April 5, 2017, Bail Violation Hearing
24 held before [the] Magistrate Judge

25 Pretrial Services would note that Mr.
26 Hemsley was directed in writing to report via
27 telephone every Monday, and he was instructed
28 to “notify your pretrial services officer
immediately of any change in address,
telephone or employment.” Mr. Hemsley failed
to report by telephone on Monday, April 3,
2017, and he failed to report he “misplaced”
his cellular telephone.

When [Mr. Hemsley] initially provided
[his] reported explanation for his failure to
appear at the April 5, 2017, hearing,
Pretrial Services responded by noting the
defendant was previously advised to expect a
violation hearing and that Mr. Hemsley made
no effort to notify counsel or Pretrial
Services of his lost phone, reported lack of
access to an email, or enquire as to the date
of the bail violation hearing.

Given Mr. Hemsley’s statements via email
when advised of the pending bail violation
hearing, and the lack of response to Pretrial
Services’ efforts to communicate via
telephone, Mr. Hemsley’s excuses do not
appear to be a reasonable explanation for his

1 failure to appear at the April 5, 2017, court
2 proceeding.

3 Most disturbing to Pretrial Service is
4 the defendant's refusal to surrender on the
5 bench warrant or follow the directives of the
6 [Pretrial Services Officer] following his
7 failure to appear at the April 5, 2017, court
8 proceeding. On April 6, 2017, the [Pretrial
9 Services Officer] had an email exchange with
10 Mr. Hemsley, in which the defendant was told
11 he had previously acknowledged an email from
12 defense counsel which included the bail
13 violation hearing date.

14 In this April 6, 2017, email exchange
15 with Mr. Hemsley, he was directed to
16 surrender himself either to Pretrial Services
17 or directly to the U.S. Marshals Service in
18 Sacramento, California the morning of April
19 7, 2017, and that he would appear on the duty
20 Magistrate['s] calendar at 2:00 p.m. that
21 same day.

22 Pretrial Services would also note the
23 defendant reported he moved as of April 1,
24 2017, but failed to request permission to
25 move in advance of his relocation to a new
26 residence and failed to provide the new
27 address to Pretrial Services in a timely
28 manner.

29 On April 6, 2017, the defendant
30 responded to the email stating, "You're
31 asking me to submit myself to harm? I have
32 written a letter to [the District Judge] on
33 this case. I can not [sic] of good conscious
34 allow harm to my family."

35 Mr. Hemsley wrote a number of emails in
36 April 2017 noting his personal view of
37 pretrial services supervision and stating
38 such beliefs as "This is a direct threat
39 against my life," "You threaten me with
40 bodily harm," and accused the [Pretrial
41 Services Officer] of making "death threats"
42 against him.

43 The defendant failed to surrender on the
44 outstanding bench warrant as directed by
45 Pretrial Services. Mr. Hemsley subsequently
46 discontinued reporting to Pretrial Services.

47 In the June 9, 2017, Notice of Motion
48 and Motion for Bail Review and Release on

1 Conditions, the defendant stated he will
2 "absolutely appear in Court at times when he
3 is ordered to do so," he will abstain from
4 marijuana use, and, "he will follow all
5 conditions of release."

6 However, in an April 21, 2017, email to
7 Pretrial Services and defense counsel, Mr.
8 Hemsley stated his belief that pretrial
9 services supervision is "probation before
10 conviction" and a direct violation of his
11 basic human rights. In his email, Mr. Hemsley
12 accused the [Pretrial Services Officer] of
13 committing "perjury" and noted he wanted to
14 serve "notice of cancellation of the
15 unconscionable contract," that being pretrial
16 services supervision and the Court imposed
17 conditions of release.

18 Furthermore, for the reasons outlined in
19 this [Pretrial Services Report] and the
20 [Pretrial Services Officer's]
21 reports/memorandums, Mr. Hemsley has
22 demonstrated either an unwillingness or
23 inability to comply with pretrial services
24 directives, the Court's orders, and the
25 imposed conditions of release.

26

27 Pretrial Services does not believe the
28 defendant is amendable to supervision given
his statements regarding pretrial services
supervision, his stated intentions of
continuing marijuana use while on pretrial
supervision, and his refusal to respond to
directives to surrender himself on the bench
warrant from his supervising pretrial
services officer following his failure to
appear at the April 5, 2017, hearing.

Pretrial Services does not believe Mr.
Hemsley will abide by the orders of the Court
or will comply with any imposed release
conditions in the future. As such, Pretrial
Service respectfully recommends Mr. Hemsley
remain in the custody of the U.S. Marshals
pending further proceedings.

PTS Report, Mem. June 22, 2017, at 2-4. Further, Defendant
emailed Pretrial Services Officer on March 30, 2017, stating,
inter alia:

1 [The District] Judge . . . has shown his
2 allegiance in the conspiracy to criminalize
3 and reap the financial rewards of unjust
4 prosecution and imprisonment.

5 Your "Pre-trial" department is over
6 stepping the lawful bounds of a functional
7 agreement. (Congress acdeptable [sic] terms
8 are further proof of the deception and lies
9 purported to be truth for the interest of the
10 public's safety- German Nationalist Congress
11 agreed with the elimination of the "Jewish
12 Problem" this is no more Lawful than the
13 actions of a lowly burglar)

14

15 Pre-trial is nothing short of a
16 grotesque human rights violation.

17 PTS Report, Mem. Apr. 5, 2017, at 4. The PTS Report also
18 contains an email sent from Defendant to his appointed standby
19 counsel, the Government, and Pretrial Services, stating:

20 The unlawful demands of PTS [are] no
21 different that [sic] being physically
22 violated by a sexual predator

23 This matter can be quickly and easily
24 resolved [by] using intelligent means of
25 written documentation and does NOT require my
26 physical presence in any potentially harmful
27 situations.

28

. . . .The PTS . . . in conjunction with
the Magistrates constitute a terrorist
organization.

I[] will NOT bargain [sic] with
terrorists. My rights will be observed.

R;D-Hemsley
UCC1-308 All rights reserved w/o prejudice
(all paperwork for PTS signed under durress
[sic] constituting a faulty contractual
agreement)
Sui Juris

PTS Report, Mem. Apr. 5, 2017, at 5-6 (emphasis in original).

1 The record shows Defendant's blatant and persistent
2 failure to comply with appearance directives of Pretrial Services
3 and the Court. The Ninth Circuit has explained, "the risk of
4 nonappearance referenced in 18 U.S.C. § 3142 must involve an
5 element of volition." Santos-Flores, 794 F.3d at 1091 (citing
6 United States v. Trujillo-Alvarez, 900 F.Supp.2d 1167, 1176-78
7 (D.Or. 2012)). Defendant's recalcitrant attitude evincing his
8 past refusals to abide by appearance directives is made apparent
9 through his following statements: "I[] will NOT bargain [sic]
10 with terrorists" and "[t]his matter['s] . . . resol[ution] . . .
11 does NOT require my physical presence in any potentially harmful
12 situations" in response to Pretrial Services' notice of a court-
13 ordered appearance date for his hearing for violating pretrial
14 release conditions; and "[y]ou're asking me to submit myself to
15 harm? . . . I can not [sic] of good conscious [sic] allow harm to
16 my family" in response to Pretrial Services' directive to self-
17 surrender based on the court-ordered warrant for his arrest.
18 These statements evince Defendant's vehement volition to not
19 comply with such appearance directives, unless compliance is
20 convenient for him.

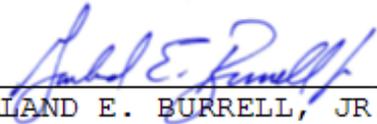
21 Furthermore, the record evinces the Court's waning
22 trust in Defendant's willingness to comply with Court appearance
23 directives. Defendant's strong language of comparing the Court's
24 and Pretrial Services' exercise of pretrial release supervisory
25 authority over him to cause him to feel like he is "being
26 physically violated by a sexual predator" conveys a lack of
27 respect for judicial officials, which is further illustrated by
28 his characterization that "PTS . . . in conjunction with the

1 Magistrates constitute a terrorist organization." Further,
2 Defendant's signature block at the end of an email that he sent
3 to his appointed standby counsel, the Government, and Pretrial
4 Services, which stated: "all paperwork for PTS . . .
5 constitute[e] a faulty contractual agreement . . . Sui Juris,"
6 illustrates a denouncement of judicial authority with respect to
7 imposing appearance requirements. The Ninth Circuit has
8 explained that conditions of release "depend on [Defendant]'s
9 good faith compliance." United States v. Hir, 517 F.3d 1081,
10 1092 (9th Cir. 2008) (citing United States v. Tortora, 922 F.2d
11 880, 886 (1st Cir. 1990)). When conditions are "too easily
12 circumvented or manipulated" and Defendant fails to uphold the
13 inherent "good faith compliance" of the release conditions and
14 the trust of the Court, the conditions become ineffective.
15 Defendant has been "given a lot of opportunities" to comply with
16 judicial appearance directives, and notwithstanding his in-court
17 assurances that he will comply, his actions and communications
18 with the Court and Pretrial Services demonstrate his lack of
19 respect for judicial authority and that his in-court assurances
20 "fade[] dramatically once [he is] released from custody." Tr.
21 Initial Appearance June 1, 2017, 11:11-12, ECF No. 346; Aug. 10
22 Tr. at 9:7-8.

23 Based on review of the evidence that was before the
24 Magistrate Judge and in light of Pretrial Services'
25 recommendation that Defendant remain in custody, the Magistrate
26 Judge's finding that Defendant is at risk of non-appearance is
27 correct. Since Defendant has refused to comply with appearance
28 directives of this Court and Pretrial Services, the Court finds

1 by a preponderance of the evidence that the Court is not
2 reasonably assured Defendant will appear as directed if he is
3 released. Therefore, Defendant's motion for revocation of his
4 detention order is denied.

5 Dated: November 8, 2017

6
7
8 
9 _____
10 GARIAND E. BURRELL, JR.
11 Senior United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28