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MAR 12 2018

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Attorney for Robert A. Gibbs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SHASTA

THE PEOPLE OF THE STATE OF CALIFORNIA,)	Cases: 15F5736, 15F5464, 14F6355,
)	14F4854, 13M4757
Plaintiff,)	
)	NOTICE OF MOTION; MOTION TO
vs.)	REDUCE BAIL OR FOR PRETRIAL
)	RELEASE.
ROBERT A. GIBBS,)	
)	
Defendant.)	Date: March 19, 2018
)	Time: 9:30 a.m.
)	Dept: 2

TO: THE ABOVE ENTITLED COURT AND STEPHANIE S. BRIDGETT, DISTRICT ATTORNEY FOR THE COUNTY OF SHASTA:

PLEASE TAKE NOTICE that at the above listed date and time in the above department of the above entitled court, Mr. Robert A. Gibbs, the defendant, will move to reduce bail or for pretrial release. Said motion is made on the basis that Mr. Gibbs' continued detention, without a determination of his ability to pay, and whether alternatives to money bail are sufficient, is unlawful under the due process clauses of the state and federal constitutions.

Said motion will be based on this notice, attached points and authorities, the exhibits attached to this motion, the records, pleadings and papers on file in these actions, and on any other evidence presented at the hearing on this motion.

Dated: March 12, 2018

Respectfully submitted,

RECEIVED

MAR 12 2018

SHASTA COUNTY
DISTRICT ATTORNEY



Theodore P. Somers
Attorney for Defendant

1 STATEMENT OF FACTS AND BAIL CONSIDERATIONS

2 A. Pending Matters

3 The defendant, Robert A. Gibbs, is charged in four felony cases, and one misdemeanor, as
4 described below:

5 15F5736

6 With an incident date of September 11, 2015, and a Complaint filed on September 16, 2015,
7 Mr. Gibbs is now charged by Information with five felony violations of Pen. Code § 422 (criminal
8 threat). The complainants, listed individually per count, are Shasta County Sheriff's Office ("SCSO")
9 Sergeant Brian Jackson, SCSO Detective Chris Edwards, SCSO Sergeant Jose Gonzalez, Depart of
10 Fish and Wildlife ("DFW") Warden Brian Boyd, and DFW Warden Dwayne Little. The case is based
11 upon a phone call between Mr. Gibbs and Deputy Attorney General ("DAG") John Feser, who, at the
12 time, was representing DFW officers Boyd and Little in a civil lawsuit filed by Mr. Gibbs.

13 Per the reports in the case, during the phone call with DAG Feser, Mr. Gibbs threatened to kill
14 the listed complainants, and went on to articulate threats to shoot school children, and get his guns and
15 take shots at cars; Mr. Gibbs told DAG Feser had "one hour to call the cops and come and arrest him."
16 (See EXHIBIT A to this motion.) DAG Feser communicated the content of his conversation with Mr.
17 Gibbs to law enforcement, and the SCSO immediately responded to the area of Mr. Gibbs' residence,
18 stationing themselves on Highway 299 at the egress of the only road to and from Mr. Gibbs' home.
19 When Mr. Gibbs was observed turning onto Highway 299, his vehicle was followed until a car stop
20 was initiated. Mr. Gibbs was arrested without incident. There no were no firearms or other weapons
21 located in Mr. Gibbs' car. Mr. Gibbs was interviewed by SCSO personnel and stated that his
22 statements to DAG Feser were taken out of context. Mr. Gibbs disclaimed any intention of carrying
23 out any threats, asked why a welfare check could not have been conducted on him, and stated that he
24 needed help and not to be locked up.

1 15F5464

2 With an incident date of August 22, 2015, and a Complaint filed on September 16, 2015, Mr.
3 Gibbs is now charged by Information with two felony violations, Count One, Pen. Code § 236 (false
4 imprisonment by violence), and Count Two, Pen. Code § 273.5(a) (corporal injury of cohabitant). The
5 complainant in the case is C.D., the mother of Mr. Gibbs' daughter. Per the police report, C.D. called
6 911 and said that Mr. Gibbs was threatening to kill himself and other people (See EXHIBIT B to this
7 motion). After C.D. hung up the phone, and dispatch was not able to recontact her, SCSO deputies
8 responded to Mr. Gibbs' residence.

9 Upon SCSO's arrival, C.D. and her child walked over to the SCSO, and Mr. Gibbs retreated
10 into his residence. C.D. stated that Mr. Gibbs grabbed her by the throat, took her keys, and threw her
11 down to prevent her from leaving the residence. C.D. had abrasions on her right elbow, as well as
12 raised red marks on her chest/ throat area. C.D. went on to explain that she had gone to Mr. Gibbs
13 residence because he was making suicidal statements to her on the phone. They argued upon her
14 arrival and he physically prevented her from leaving, as described above. C.D. stated that she was
15 fearful for her safety. C.D. did not need medical attention for her injuries, however. Not reflected in
16 the report is any allegation of a history of domestic violence by C.D.

17 Mr. Gibbs did not exit his residence for some time, before voluntarily doing so. When Mr.
18 Gibbs exited his residence, he was taken into custody without incident. A protective sweep of the
19 residence and property was conducted; no other subjects, weapons, or contraband were noted.

20 14F6355

21 With an incident date of July 22, 2014, and a Complaint filed on January 9, 2015, Mr. Gibbs is
22 now charged by Information with a felony violation in Count One of Pen. Code § 273a(a) (child abuse),
23 and a misdemeanor violation in Count Two of Veh. Code § 23103 (reckless driving). According to the
24 agency report, California Highway Patrol ("CHP) was dispatched to Highway 299 for a reckless driver.

1 (See EXHIBIT C to this motion.) Investigating Officer Heuer made a car stop on Mr. Gibbs in Old
2 Shasta. Mr. Gibbs' passengers included one adult male, Ms. Cheri Dubuque, and the infant daughter of
3 Ms. Dubuque and Mr. Gibbs.

4 When Officer Heuer told Mr. Gibbs why he had been pulled over, Mr. Gibbs apparently said
5 that everyone was driving too slowly and he was just trying to get around them. Officer Heuer then
6 memorialized the observations of one motorist that apparently said that "Gibbs was passing vehicles
7 over double yellow lines on blind curves, and driving to the left of double yellow lines next to vehicles
8 while swerving at them." Per Officer Heuer, two other motorists reiterated the statement of the first
9 motorist; Officer Heuer made no attempt to specifically memorialize the content of the two other
10 motorists' statements, however.

11 Officer Heuer did not interview Mr. Gibbs' adult passengers. A written statement by Cheri
12 Dubuque signed on February 19, 2015 is attached to this motion as EXHIBIT D for the Court's
13 consideration. Furthermore, with respect to Officer Heuer's report, no attempt to specify the stretch of
14 roadway where the alleged reckless driving occurred is provided. No collision occurred. No party was
15 injured. Mr. Gibbs was not suspected of driving under the influence. And there was no suggestion that
16 Mr. Gibbs' daughter was anything other than safely and lawfully restrained.

17 14F4854

18 With an incident date of July 2, 2014, and a Complaint filed on January 9, 2015, Mr. Gibbs is
19 now charged by Information with a felony violation of Pen. Code § 422 (criminal threat). The listed
20 complainant is CDCR Parole Agent Mitch Crofoot. The charges are based upon a text message sent by
21 Mr. Gibbs to the Mr. Crofoot, who at the time was supervising Cheri Dubuque. (See EXHIBIT E to
22 this motion). In the text, Mr. Gibbs conveys his anger at what he believes to be Mr. Crofoot's
23 disruption and endangerment of Ms. Dubuque and their daughter by way of his parole directives.
24 Moreover, Mr. Gibbs blames Mr. Crofoot for the loss of his dogs, and repeatedly insults Mr. Crofoot's

1 intelligence. In the course of the long text message, Mr. Gibbs states “do you remember I threatened to
2 kill you,” and “you’ll be lucky if I don’t kill you.” Mr. Crofoot reported the text to the Anderson Police
3 Department (“APD”), and APD Officer Catanio attempted to reach Mr. Gibbs by phone. No attempts
4 to make personal contact with Mr. Gibbs are documented. Mr. Gibbs emailed Officer Catanio on July
5 14, 2014, and wrote that he did not intend to threaten Mr. Crofoot, and that given Ms. Dubuque
6 discharged parole on July 12, 2014, Mr. Gibbs would have no further interaction with Mr. Crofoot.

7 13M4757

8 With an incident date of March 8, 2013, and a Complaint filed July 26, 2013, Mr. Gibbs is
9 charged in Count One with a violation of Fish and Game Code § 1602 (divert or obstruct the natural
10 flow of a river or stream), in Count Two with a violation of Fish and Game Code § 5652 (place
11 pollutant near state waters), in Count Three with a violation of Fish and Game Code § 5650(a)
12 (polluting water), and in Count 4 with a violation of Pen. Code § 602(n) (trespass by driving on private
13 property). For the factual circumstances underlying the case, see EXHIBIT F to this motion.

14 **B. Mr. Gibbs’ Criminal History**

15 Mr. Gibbs, who is now 46 years old, has a de minimis criminal history, as reflected by the
16 CLETS/ NCIC response discovered in his most recent pending matter, 15F5736. (See EXHIBIT G.)
17 Mr. Gibbs’ only prior convictions are misdemeanors from a single case in Humboldt County Superior
18 Court in 2002, for violations of Veh. Code § 12500(a) (driving without a license), Pen. Code §
19 12031(a)(1) (carrying a loaded firearm in a public place), and Pen. Code § 148(a)(1) (resist, obstruct,
20 delay office); Mr. Gibbs received 18 months of probation for those offenses. Mr. Gibbs has also been
21 convicted in an Arizona drug case in 1990, but that conviction was subsequently vacated, with Mr.
22 Gibbs’ civil rights restored. Similarly, Mr. Gibbs was convicted in a 2006 case in Humboldt County
23 Superior Court, but that conviction has also been expunged. Again, to reiterate, Mr. Gibbs, who was 43
24

1 years old when detained in September of 2015, has a grand total of three prior misdemeanors
2 convictions stemming from the same case, none of which involve violence.

3 **C. Mr. Gibbs' Faithful Out of Custody Court Appearances, and his Actual Days of Credit to**
4 **Date.**

5 A public safety assessment generated for Mr. Gibb's arraignment in 15F5736 and 15F5464
6 disclosed one prior failure to appear warrant issued. Based upon defense counsel's review of IJS,
7 Shasta County Superior Court's electronic case information system, this failure to appear is apparently
8 the result of Mr. Gibb's non-response to a cite letter issued upon the filing of 13M4757. After being
9 cited on the warrant in that case, and appearing for his arraignment on February 3, 2014, Mr. Gibbs
10 made numerous appearances out of custody – NINETEEN TO BE EXACT – without a failure to
11 appear. Those appearances included court dates in 13M4757, as well as numerous appearances in
12 Department 1 following his arraignment on his 14F cases in November 2014. Mr. Gibbs urges the
13 Court to take into consideration that at the time he was faithfully making those 19 out of custody
14 appearances, he was living in a remote part of Shasta County, and traveling approximately 25 miles to
15 Court, each time over a stretch of Highway 299 which was involved in a massive grade improvement
16 project.

17 Mr. Gibbs has been detained in Shasta County Jail, however, since his in-custody arraignment
18 on his 15F cases, on September 16, 2015. As a result, Mr. Gibbs has amassed roughly two and a half
19 years of actual custody time.

20 **D. Mr. Gibbs is Indigent.**

21 Mr. Gibbs has been appointed counsel in all of his matters based upon a finding of his
22 indigency. Mr. Gibbs, while out of custody, receives Supplemental Security Income (SSI) on a
23 monthly basis. His only asset is non-liquid, a parcel of land in remote Shasta County, improvements to
24 which have been devalued significantly while he has been in custody.

1 **E. Mr. Gibbs has Significant Ties to Shasta County, and is an Interested and Invested**
2 **Litigant.**

3 As mentioned above, Mr. Gibbs only asset is a piece of land, which is located approximately
4 two miles southeast of the Buckhorn summit in rural Shasta County. More significantly in terms of his
5 ties to Shasta County, are the child custody proceedings involving Mr. Gibbs' now four-year old
6 daughter, which are ongoing in Shasta County Superior Court. Mr. Gibbs is therefore wedded to this
7 community so long as litigation involving his criminal matters and custody of his daughter are ongoing,
8 and Mr. Gibbs has an immense interest in both sets of proceedings.

9 As to his criminal matters, it should not be overlooked that Mr. Gibbs has -- for all practical
10 purposes -- served any prison term that he may face upon conviction. Given that he is facing no violent
11 felony charges, and yet all but one of his felony charges are state prison eligible offenses, even if Mr.
12 Gibbs is convicted as charged, following the amendment of the California Constitution per the passage
13 of Prop 57, Mr. Gibbs is likely to see no more than a paper commit to state prison.

14 The greatest possible principal term that Mr. Gibbs is facing is 6 years, should he be convicted
15 of Pen. Code § 273a(a). Given the facts as outlined above, a conviction of felony child abuse is most
16 certainly not assured at trial; moreover, it is a highly dubious proposition that Mr. Gibbs, upon a
17 conviction, would be sentenced to the upper term. In light of the facts, and his relative lack of criminal
18 history, it would be difficult to justify more than a low term in the case.

19 The child abuse charge aside, then, the highest upper term that Mr. Gibbs could be facing upon
20 conviction is 4 years, for a violation of Pen. Code § 273.5(a). But again, given his criminal history,
21 with no prior violence, and the de minimis injuries sustained by C.D., it would be hard for a sentencing
22 Court to justify the imposition of the upper term in that case. Mr. Gibbs could receive the middle-term
23 of three years in his domestic violence case upon conviction, or perhaps the low-term of two, which
24 also happens to be the most likely term chosen on any of the criminal threat violations that he is facing.

1 All cases considered, assuming, for the sake of argument, some conviction(s), and taking the
2 next step in projecting a principal term of three years in state prison, Mr. Gibbs will have likely served
3 it – IN ACTUAL DAYS – by the time of his sentencing. And while true that there is only anecdotal
4 evidence as the implementation of Prop 57 by the Department of Corrections and Rehabilitation, given
5 his minimal criminal history, it is highly unlikely that Mr. Gibbs would repeatedly be denied early
6 parole, no matter the efforts of the prosecution to paint him as a real threat to the safety of the
7 community – which, the defense submits, he is not.

8 POINTS AND AUTHORITIES

9 The due process and equal protection clauses of the Fourteenth Amendment require this Court
10 to make certain findings with a heightened evidentiary standard before conditioning pre-trial release on
11 the payment of money bail. A financial condition of release, which can only be ordered to address
12 flight risk concerns, requires the court to make findings about the defendant's ability to pay and
13 alternative, non-financial conditions of release.¹ Where the court's concern is public safety, the court
14 must either order the defendant detained after making the required findings, or require appropriate, non-
15 financial conditions of release.² This Court should find that the requirements for pretrial detention are
16 not met in this case and, as a result, order Mr. Gibbs either released on his own recognizance or on
17 appropriate, narrowly tailored conditions.

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22 ¹ *In re Humphrey* (Cal. Ct. App. Jan. 25, 2018) No. A152056, 2018 WL 550512, 2018 Cal.App. LEXIS
23 64, at *9.

24 ² *Id.* at *11.

1 I. WHEN SETTING MONEY BAIL, THE COURT MUST MAKE FINDINGS
2 REGARDING MR. GIBBS' ABILITY TO PAY, AND NON-FINANCIAL
3 ALTERNATIVE CONDITIONS OF RELEASE THAT FOCUS ON COURT
4 ATTENDANCE.

5 In determining whether a financial condition of release should be imposed to address flight risk
6 concerns, the court must make certain findings to ensure that the financial condition does not result in
7 detention solely on the basis of wealth status. "[A] court may not order pretrial detention unless it finds
8 either that the defendant has the financial ability but failed to pay the amount of bail the court finds
9 reasonably necessary to ensure his or her appearance at future court proceedings; or that the defendant
10 is unable to pay that amount and no less restrictive conditions of release would be sufficient to
11 reasonably assure such appearance; or that no less restrictive nonfinancial conditions of release would
12 be sufficient to protect the victim and community."³

13 Moreover, any money bail determination must be based on individualized criteria, and not the
14 County's bail schedule. In determining whether a financial condition of release is required, the Court
15 cannot simply apply the bail schedule to the charges. "[D]ecisions that may result in pretrial detention
16 must be based on factors related to the individual defendant's circumstances."⁴ Because bail schedules
17 "represent the antithesis of the individualized inquiry required before a court can order pretrial
18 detention,"⁵ this Court cannot exclusively rely on the bail schedule. Once this Court determines that
19 public safety and victim safety do not require pretrial detention and Mr. Gibbs should be released, "the
20 important financial inquiry is not the amount prescribed by the bail schedule but the amount necessary
21 to secure the defendant's appearance at trial or a court-ordered hearing."⁶ If this Court determines that

22 ³ *Humphrey, supra*, at *9.

23 ⁴ *Id.* at *19.

24 ⁵ *Id.* at *20.

⁶ *Ibid.*

1 a financial condition of release is necessary to ensure court appearance, the individualized
2 circumstances of this case require that money bail be set in a minimal amount.

3 **a. Mr. Gibbs Does Not Have the Ability to Pay \$405,000 – the Money Bail Amount**
4 **Currently Set.**

5 When requiring a financial condition of pretrial release, the Court must determine whether that
6 condition of release will result in Mr. Gibbs’ detention because of inability to pay. This finding is
7 “critical” in order to “guard against improper detention based only on financial resources.”⁷ “[A] court
8 which has not followed the procedure and made the findings required for an order of detention must, in
9 setting money bail, consider the defendant’s ability to pay and refrain from setting an amount so
10 beyond the defendant’s means as to result in detention.”⁸

11 Mr. Gibbs is indigent. Prior to his detention, Mr. Gibbs subsisted on monthly earnings from
12 SSI. Mr. Gibbs had no other source of income, and his only remaining assets are a non-liquid interest
13 in a piece of land in rural Shasta County that he was developing as his home. As such, even a relatively
14 small secured financial condition of release will result in Mr. Gibbs’ continued detention. Accordingly,
15 the Court should release Mr. Gibbs on non-financial conditions that will ensure his appearance in court.

16 **b. Less Restrictive Conditions of Release are Adequate to Serve the Government’s**
17 **Interests.**

18 “If the court concludes that an amount of bail the defendant is unable to pay is required to
19 ensure his or her future court appearances, it may impose that amount only upon a determination by
20 *clear and convincing evidence* that no less restrictive alternative will satisfy that purpose.”⁹ The clear
21 and convincing standard of proof is required because an arrestee’s pretrial liberty interest, protected

22 ⁷ *Id.* at *16.

23 ⁸ *Id.* at *17 (citing *Bearden v. Georgia* (1983) 461 U.S. 660; *United States v. Salerno* (1987) 481 U.S.
24 739; *Turner v. Rogers* (2011) 564 U.S. 431).

⁹ *Humphrey, supra*, 2018 WL 550512, at *17 (emphasis added).

1 under the due process clause, is “a fundamental interest second only to life itself in terms of
2 constitutional importance.”¹⁰

3 A financial condition of release is not required in this case. Based on Mr. Gibbs’ ties to this
4 community, his objectively impressive record of following the orders of the Court to appear while out
5 of custody, and a lack of evidence that he would disobey any order restricting his contact with Ms.
6 Dubuque or any of the various listed complainants, this court should release Mr. Gibbs on his own
7 recognizance.

8 Furthermore, there are numerous non-financial conditions of release that are adequate to serve
9 the government’s interests in court appearance. This Court can order weekly court check-ins, ankle
10 monitoring, and travel restrictions. This Court could also require that Mr. Gibbs make and keep an
11 appointment with a local mental health care provider for any support deemed necessary. These less-
12 restrictive alternatives would be effective and narrowly tailored to secure Mr. Gibbs’ court appearance.

13 **II. PUBLIC SAFETY: THIS COURT SHOULD ADDRESS PUBLIC SAFETY CONCERNS**
14 **BY REQUIRING APPROPRIATE NON-MONETARY CONDITIONS OF RELEASE.**

15 Where a court’s concern is public safety, it can order a defendant detained after making the
16 required findings under California Constitution article I, section 12(b) or (c), or it can order appropriate
17 non-financial conditions of release. A court cannot, however, set a financial condition of release to
18 address public safety concerns. Because the findings required for an order of detention cannot be made
19 in this case, the Court should address any public safety concerns through non-monetary conditions of
20 release.

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24 ¹⁰ *Id.* (quoting *Van Atta v. Scott* (1980) 27 Cal.3d 424, 435).

1 **a. The Government's Interest in Public Safety Does Not Require Pre-Trial Detention**
2 **in Mr. Gibbs' Case.**

3 The Court can only detain a felony defendant based on public safety if it makes the findings
4 required by article I, section 12 of the California Constitution. Before bail is set or denied under
5 section 12(b) or (c)¹¹, the detainee is entitled to a full evidentiary hearing, and the court must make
6 several substantive findings.¹² First, the court must determine whether the defendant is charged with an
7 offense that fits into the category of "felony offenses involving acts of violence on another person"
8 under section 12(b) or 12(c), and whether the defendant is alleged to have threatened another person
9 with "great bodily harm." Second, the court must make an individualized determination that the proof
10 against the arrestee is substantial.¹³ And third, the State must prove by "clear and convincing evidence"
11 that anything short of complete pretrial incapacitation would create a substantial likelihood the person's
12 release would result in great bodily harm.¹⁴ Only if these findings are made can this Court order Mr.
13 Gibbs' detention on the basis of public safety.

14 While Mr. Gibbs' charges fall within the scope of article I, section 12, this Court should not
15 detain Mr. Gibbs. First, with respect to the criminal threats charges, the proof against Mr. Gibbs is not
16 substantial. The prosecution will have to prove that Mr. Gibbs actually intended his rants as threats,
17 and the circumstances under which the threats were articulated conveyed a serious intention and an
18 immediate prospect that the threat would be carried out. The alleged threats in this case were not

19 _____
20 ¹¹ Article I, section 12(a) applies only to capital crimes and is thus not applicable to Defendant's case.

21 ¹² See *Humphrey, supra*, at *8

22 ¹³ *In re Nordin* (1983) 143 Cal.App.3d 538, 543 (stating standard for "when the facts are evident or the
23 presumption great" is met when there is substantial evidence to sustain a verdict or the "quantum of
evidence is that necessary to sustain a conviction on appeal").

24 ¹⁴ This standard requires that evidence be "so clear as to leave no substantial doubt" or, put differently,
"sufficiently strong to command the unhesitating assent of every reasonable mind." *Ibid.*

1 conveyed in the presence of the alleged victims, and in 15F5736, there is no evidence that Mr. Gibbs
2 intended that his words would ever be conveyed to the alleged victims.

3 Secondly, and more importantly, the state cannot prove by clear and convincing evidence that
4 defendant's release would result in great bodily harm. There is no evidence that Mr. Gibbs has in his
5 life been violent, apart from the domestic violence allegations in 15F5464. And in that case, the
6 injuries alleged to have been inflicted by Mr. Gibbs were nowhere near great bodily harm, despite that
7 the alleged confrontation between Mr. Gibbs and Ms. Dubuque occurred at a place where Ms. Dubuque
8 was particularly vulnerable, and Mr. Gibbs was feeling a strong sense of personal desperation.
9 Furthermore, and importantly, Ms. Dubuque did not disclose any history of domestic violence in her
10 relationship with Mr. Gibbs.

11 As for the threats cases, the alleged threats against law enforcement in 15F5736 are better
12 characterized as an exceedingly obnoxious and offensive plea for help; if Mr. Gibbs seriously intended
13 to carry out his alleged threats, he would not have suggested to DAG Feser that law enforcement
14 respond to his residence, and he would not have then left his residence without arming himself. As for
15 the alleged criminal threat in 14F4854, it is illuminating that the offense was not filed by the District
16 Attorney's Office for over six months, and that Mr. Gibbs remained out of custody for another nine
17 months, and just as his email suggested, made no attempt to contact Agent Crofoot.

18 In none of his pending matters has law enforcement found Mr. Gibbs to be personally armed,
19 and in 13M4757 and 15F5464, no weapons were located at his residence. Upon arrest in his various
20 matters, Mr. Gibbs has never physically resisted. As mentioned several times above, he has no criminal
21 history for violence, and Ms. Dubuque has never stated a history of physically abusive behavior by Mr.
22 Gibbs.

23 In a psychological assessment focused on the assessment of competency for trial, filed on May
24 6, 2016, by Dr. Aravind K. Pai, the assessor writes: "[Mr. Gibbs] strongly believes that he deserves to

1 be served better by the community, law enforcement officers and the legal system. There is some
2 attention seeking behavior in him due to these beliefs. I do not see him as being dangerous to self or
3 others.” In another competency assessment, filed on July 20, 2015, by Dr. Ray H. Carlson, the assessor
4 writes: “While [Mr. Gibbs] came across as volatile, over the course of the interview, one got the
5 impression that he was never on the verge of aggression, but that he was well-practiced at being
6 vehement without physically acting out his hostility.” In none of the several other assessments of Mr.
7 Gibbs conducted over the pendency of his cases, has an examiner stated that Mr. Gibbs show any
8 predilection or predisposition to violent behavior.

9 The prosecution is not in any kind of position to prove by clear and convincing evidence that
10 the release of Mr. Gibbs would actually result in great bodily harm to others. The evidence, in fact,
11 easily preponderates to the contrary.

12 **b. This Court Cannot Set Money Bail Based on Public Safety Concerns But Can**
13 **Address Any Legitimate Concerns by Requiring Appropriate Non-Monetary**
14 **Conditions.**

15 If the Court does not order Mr. Gibbs’ detention under article I, section 12, it cannot set money
16 bail in response to public safety concerns. Money bail cannot be imposed in response to concerns
17 about public safety.¹⁵ Money bail can have no deterrent effect on new criminal activity as a matter of
18 law because committing a crime while out on money bail does not result in forfeiture of bail.¹⁶ Money

19
20 ¹⁵ *Humphrey, supra*, at *11 (“Money bail, however, has no logical connection to protection of the
21 public, as bail is not forfeited upon commission of additional crimes. . . . Accordingly, when the court’s
22 concern is protection of the public rather than flight, imposition of money bail in an amount exceeding
23 the defendant’s ability to pay unjustifiably relieves the court of the obligation to inquire whether less
24 restrictive alternatives to detention could adequately protect public or victim safety and, if necessary,
25 explain the reasons detention is required.” [italics added.]).

¹⁶ Pen. Code §§ 1269b(h), 1305(a); see also *People v. Nat’l Auto. & Cas. Ins. Co.* (2002) 98 Cal. App.
4th 277, 285 (“‘Forfeiture of bail’ can only occur in one circumstance—when a defendant fails to appear
at a scheduled court appearance without sufficient excuse.”).

1 bail thus cannot create a financial deterrence against new crimes. Accordingly, as a matter of law, the
2 Court's only valid interest in imposing money bail is reasonably assuring appearance at trial.

3 Again, upon a finding by the Court that the government cannot demonstrate by clear and
4 convincing evidence the necessity of Mr. Gibbs' pre-trial detention, any public safety concerns should
5 be addressed by non-monetary conditions of release. The Court can impose stay-away orders, a no-
6 weapons condition, GPS monitoring, counseling, etc. These alternatives are not only constitutional, but
7 they are cheaper, more effective, and far less intrusive than pretrial detention.

8 CONCLUSION

9 Robert Gibbs is in fact a peace-loving man. Mr. Gibbs, unfortunately, has been marginalized by
10 the government over the course of his life, and has more recently responded to perceived provocations
11 by the government with words that may be inflammatory and full of invective, but are really cries for
12 help and understanding. Objectively misguided as his conduct in making the alleged threats may have
13 been, Mr. Gibbs' words do not reflect any intent to physically harm anybody. In his mid-forties, his
14 minimal criminal history demonstrates that he is not a violent man. Mr. Gibbs may yet suffer a penal
15 consequence for his alleged conduct, but he has already served that time in principal. He has been
16 detained for years now because he is poor. Following the change in law occasioned by *Humphrey*, this
17 Court should address any concerns about public safety through non-monetary conditions of release, and
18 should address concerns about flight risk either with non-monetary conditions or with a financial
19 condition of release that is not a de facto detention order because of Mr. Gibbs' indigency. Mr. Gibbs
20 should be released pending trial.

21 Dated: March 12, 2018

Respectfully submitted,

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23 _____
24 Theodore P. Somers
Attorney for Defendant