

1 PHILLIP A. TALBERT  
United States Attorney  
2 JASON HITT  
Assistant United States Attorney  
3 501 I Street, Suite 10-100  
Sacramento, CA 95814  
4 Telephone: (916) 554-2700  
Facsimile: (916) 554-2900  
5  
6 Attorneys for Plaintiff  
United States of America

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 TAD E. CUMMINS,  
14 Defendant.

CASE NO. 2:17-MJ-00067-KJN

NOTICE OF MOTION AND MOTION OF THE  
UNITED STATES IN SUPPORT OF DETENTION  
PENDING TRIAL FOR  
DEFENDANT TAD CUMMINS

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17 The United States of America, by and through its attorney, Assistant United States Attorney  
18 Jason Hitt, moves pursuant to 18 U.S.C. § 3142 for detention pending trial for defendant Tad  
19 CUMMINS (“defendant”).  
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1 This motion is based upon the attached Memorandum of Points and Authorities and any evidence  
2 and argument which may be presented at a hearing on this matter.

3  
4 Dated: April 24, 2017

PHILLIP A. TALBERT  
United States Attorney

5  
6 By: /s/ JASON HITT  
7 JASON HITT  
Assistant United States Attorney

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United States Attorney  
2 JASON HITT  
Assistant United States Attorney  
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10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 TAD E. CUMMINS,  
14 Defendant.

CASE NO. 2:17-MJ-00067-KJN

UNITED STATES'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF MOTION  
FOR DETENTION PENDING TRIAL FOR  
DEFENDANT TAD CUMMINS

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17 **INTRODUCTION**

18 Pursuant to 18 U.S.C. § 3142, the United States, by and through Assistant United States Attorney  
19 Jason Hitt, moves for an Order detaining defendant Tad E. CUMMINS before trial in the Middle District  
20 of Tennessee. As detailed below, the defendant planned and executed an audacious scheme to take a  
21 juvenile victim across the United States while evading law enforcement for the purpose of engaging in  
22 criminal sexual conduct and, ultimately, he wanted to take the victim south of the border to Mexico and  
23 beyond for his own purposes. For these reasons, the United States seeks an Order finding that the  
24 defendant cannot overcome the statutory presumption that he is a flight risk and danger to the  
25 community, and, therefore, he should remain detained pending trial. The United States respectfully  
26 requests that the defendant be ordered transported in custody forthwith to the Middle District of  
27 Tennessee.  
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ANALYSIS

**Applicable Detention Statutes and Presumption of Detention**

Congress empowered judicial officers to release or detain defendants pending trial. 18 U.S.C. § 3141(a). Detention determinations proceed pursuant to the terms of 18 U.S.C. § 3142. Within § 3142, Congress determined that certain crimes carry a presumption that the defendants should be detained pending trial. See 18 U.S.C. § 3142(e) (imposing a presumption of detention for defendants facing certain drug trafficking crimes, crimes of violence, and terrorism charges).

Where, as here, probable cause exists to believe that the defendant has committed a “a crime of violence . . . for which a maximum term of imprisonment of 10 years or more is prescribed,” or “any felony that is not otherwise a crime of violence that involves a minor victim,” there is a rebuttable presumption that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” 18 U.S.C. § 3142(e).<sup>1</sup> United States v. Hir, 517 F.3d 1081, 1086 (9th Cir. 2008).

**Flight Risk Standard - Preponderance of the Evidence**

Whether to detain a defendant as a flight risk pending trial is made by a preponderance of the evidence. United States v. Motamedi, 767 F.2d 1403, 1407 (9th Cir. 1985).

**Danger to the Community Standard - Clear and Convincing Evidence**

“A finding that a defendant is a danger to any other person or the community must be supported by ‘clear and convincing evidence.’” Hir, 517 F.3d at 1086.

**The Presumption’s Interplay with the Statutory Detention Factors - 18 U.S.C. § 3142(g)**

“If a defendant proffers evidence to rebut the presumption of [flight risk and] dangerousness, the court considers four factors in determining whether the pretrial detention standard is met: (1) the nature and circumstances of the offense charged, including whether the offense is a federal crime of terrorism; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including the person’s character, physical and mental condition, family and community ties,

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<sup>1</sup> The defendant is charged with transporting a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a). This offense qualifies for the presumption on two grounds. It is either as an offense which is a “a crime of violence . . . for which a maximum term of imprisonment of 10 years or more is prescribed” or it is a “felony that is not otherwise a crime of violence that involves a minor victim” within the meaning of 18 U.S.C. §§ 3142(f)(1)(A), (E).

1 employment, financial resources, past criminal conduct, and history relating to drug or alcohol abuse;  
2 and (4) the nature and seriousness of the danger to any person or the community that would be posed by  
3 the defendant's release.” Id. (citing 18 U.S.C. § 3142(g)). “The presumption is not erased when a  
4 defendant proffers evidence to rebut it; rather the presumption ‘remains in the case as an evidentiary  
5 finding militating against release, to be weighed along with other evidence relevant to factors listed in  
6 § 3142(g).’” Id. (quoting United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986)). As  
7 discussed, each statutory factor favors detention.

8 **Nature and Circumstances of the Offense Charged – 18 U.S.C. § 3142(g)(1)**

9 This factor supports detention. The Criminal Complaint from the Middle District of Tennessee  
10 charges the defendant with transporting a minor with intent to engage in criminal sexual activity in  
11 violation of 18 U.S.C. § 2423(a). As detailed in the affidavit in support of the Criminal Complaint, the  
12 defendant engaged in a persistent effort to take the juvenile victim from Tennessee, across the United  
13 States in disguise and using various techniques to avoid law enforcement detection, for the purpose of  
14 engaging in criminal sexual conduct in violation of the law. Indeed, from the moment the defendant was  
15 suspected of his improper relationship in early 2017, he began plotting his escape with the juvenile  
16 victim. In furtherance of his plot, he lied to school officials when they asked about a 30-minute visit  
17 with the victim in his office at school. He then obtained a loan of \$4,500 and lied to his wife about its  
18 purpose. He lied to his wife by providing a fake note claiming that he was heading to Virginia Beach or  
19 Washington, D.C. when, in fact, he planned to steal her 2015 Nissan Rogue and leave the area with the  
20 juvenile victim. Most significantly, once the defendant embarked on his audacious plan, he ultimately  
21 was a fugitive from justice for a total of 38 days and had planned to leave the United States with the  
22 victim. During his time on the run, the defendant traveled through nine states, sometimes in disguise  
23 and using stolen vehicle plates, until he was ultimately captured in a remote cabin in Northern  
24 California. While a fugitive, the defendant committed multiple criminal acts. Most problematic, the  
25 defendant made a number of damaging admissions to law enforcement that provide alarming insight into  
26 his mentality. Those admissions are detailed in the next section.

1 The defendant admitted to the following facts:

- 2 - The defendant left Tennessee at a time when he knew he was the subject of an  
3 investigation about engaging in improper sexual behavior with the juvenile victim  
4 because he had been interviewed multiple times by officials about his involvement  
5 with the victim. The logical inference is that the defendant fled in early March 2017  
6 because he did not want to await the outcome of the investigation since it was likely  
7 to lead to criminal charges against him and, therefore, he fled to avoid criminal  
8 charges.
- 9 - The defendant intentionally employed measures to elude capture by law enforcement  
10 after fleeing Tennessee. Such measures included switching vehicle license plates  
11 twice, disabling the vehicle's GPS system, using aliases for both himself and the  
12 victim, altering the appearance of his vehicle, altering his appearance, using back  
13 road routes, conducting cash only transactions, intentionally discarding known  
14 cellular telephones, leaving a deliberately misleading note with his wife regarding his  
15 direction of travel, monitoring news media outlets from a device procured during  
16 fugitive status for current information regarding the investigation, and staying at low  
17 profile locations, including hotels with relaxed check-in requirements and commu-  
18 nity-type communities.
- 19 - The defendant had plans to attempt to escape across the United States border to  
20 Mexico. He then planned to seek passage to countries further south of Mexico. In  
21 furtherance of this plan, the defendant procured a small watercraft and conducted a  
22 test run to cross into Mexico across the water from San Diego. The defendant also  
23 considered the feasibility of a land crossing into Mexico.

24 In short, the defendant has demonstrated a willingness to evade law enforcement while  
25 disregarding the safety, physical, and mental health of a juvenile victim. Such facts support the  
26 presumption of flight risk and danger because they demonstrate the defendant's willingness to engage in  
27 criminal behavior in order to evade detection by law enforcement and give great concern about an  
28 individual who is willing to endanger the life and well being of a juvenile victim.

**Weight of the Evidence Against the Person – 18 U.S.C. § 3142(g)(2)<sup>2</sup>**

29 This factor favors detention. The evidence against the defendant is difficult to overcome because  
30 it consists of the video evidence from various places he visited while on the run, documentary evidence  
31 of the items he purchased while fleeing with the victim, items recovered by law enforcement during and  
32 after the defendant's arrest, and the defendant's post-arrest confession.

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29 <sup>2</sup> The United States recognizes the unique Ninth Circuit holding that the weight of the  
30 evidence is the least important factor to the detention analysis, but the Court should certainly consider  
31 the evidence factor in reaching its decision. Motamedi, 767 F.2d at 1405; but see United States v. Ward,  
32 63 F. Supp. 2d 1203, 1208 n.6 (C.D. Cal. 1999) (explaining origin of Motamedi rule is an unsupported  
33 statement in pre-1984 Bail Reform Act case, United States v. Honeyman, 470 F.2d 473, 474 (9th Cir.  
34 1972)).

1 **Nature and Circumstances of Offense Charged, including whether Offense Involves a**  
2 **Minor Victim – 18 U.S.C. § 3142(g)(1)**

3 This factor supports detention. The crime alleged is heinous. The Criminal Complaint details a  
4 person who abused a sacred position of public trust as a school teacher so that he could pursue an  
5 improper sexual relationship with a juvenile victim who was legally unable to consent to such a  
6 relationship. Such a severe breach of the public trust was exacerbated by the defendant's bold scheme to  
7 flee Tennessee when officials became aware of his behavior. During his flight, the defendant engaged in  
8 a daring cat-and-mouse run from law enforcement in order to further his own prurient desires while  
9 engaging in a number of sophisticated maneuvers to avoid being caught. His actions in evasion were  
10 criminal. This level of sophistication demonstrates that he cannot be trusted with conditions, or any  
11 combination of conditions, of release while awaiting trial in the Middle District of Tennessee. He was a  
12 flight risk before he was caught; he remains a flight risk if he is released.

13 **History and Characteristics of the Person – 18 U.S.C. § 3142(g)(3)<sup>3</sup>**  
14 **Nature and Seriousness of the Danger to any Person or the Community – 18 U.S.C.**  
15 **§ 3142(g)(4)**

16 Each of these factors emphatically support detention. As detailed above, each fact of the  
17 defendant's effort to execute his plan of concealment is disturbing. Specifically, he knowingly procured  
18 money (a loan of \$4,500) and a vehicle (his wife's 2015 Nissan Rogue) while lying to his wife about the  
19 purpose of obtaining the money and the car before embarking on a daring, and ultimately unsuccessful,  
20 effort to steal a juvenile child for his own sexual gratification. These facts provide evidence that the  
21 defendant has threatened or poses a danger to a specific, identifiable individual under 18 U.S.C.  
22 § 3142(e). Moreover, the defendant found his victim through his employment and abused her for a  
23 period of multiple months while attempting to conceal the relationship to his employer. As a result, he  
24 cannot be trusted to find gainful employment if released because he presents a danger to other juveniles  
25 he may meet during any such new employment.

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27 <sup>3</sup> This category includes consideration of the defendant's character, physical and mental  
28 condition, family and community ties, employment, financial resources, past criminal conduct, and  
history relating to drug or alcohol abuse. 18 U.S.C. § 3142(g)(3).

**CONCLUSION**

For the reasons set forth in this motion and any evidence or argument presented at a hearing on this motion, the United States respectfully requests that the Court find that the defendant cannot overcome the statutory presumption that he is a flight risk and danger to the community and, therefore, he should remain detained pending trial and he should be transported forthwith to the Middle District of Tennessee.

Dated: April 24, 2017

PHILLIP A. TALBERT  
United States Attorney

By: /s/ JASON HITT  
JASON HITT  
Assistant United States Attorney