

1 MARY McNAMARA (SBN 147131)
2 SWANSON & McNAMARA LLP
3 300 Montgomery Street, Suite 1100
4 San Francisco, CA 94104
5 Telephone No. 415/477-3800
6 Facsimile No. 415/477-9010

7 Attorney for

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 and

15 Defendants.
16
17
18

Case No. CR-

EX PARTE APPLICATION AND
DECLARATION OF MARY
McNAMARA IN SUPPORT OF

FIRST REQUEST FOR
AUTHORIZATION OF COSTS
FOR NECESSARY DEFENSE
EXPENDITURES,
18 U.S.C. § 3006A

UNDER SEAL

19 Pursuant to the Criminal Justice Act, , hereby applies ex
20 parte for authorization of costs for necessary defense expenditures. In support of this
21 application, submits the declaration of his counsel, Mary McNamara, which is
22 attached hereto and incorporated herewith.

23 I, MARY McNAMARA make the following declaration under penalty of perjury:

24 1. I am an attorney at law duly admitted to practice in the State of California
25 and admitted to the bar of this Court. By appointment under the Criminal Justice Act, I
26 represent defendant in the above-captioned matter. Unless
27 otherwise noted, I make this declaration of my own personal knowledge, and if called as a
28

1 witness, I could and would testify competently to the contents hereof.

2 2. is charged with conspiracy to kidnap in violation of Title 18,
3 U.S.C. § 1201(c) and with the substantive offense of kidnapping, in violation of Title 18
4 U.S.C. § 1201(a). faces a possible life sentence in this case. In specific, if
5 convicted after trial, the United States Sentencing Guidelines provide that
6 base offense level is level 32. In addition, the indictment alleges enhancements that, if
7 proved at trial, add an additional four levels (two levels if the victim was not released
8 before thirty days had elapsed – U.S.S.G. § 2A4.1(b)(4)(a), and two levels if the defendant
9 knew or should have known that the victim was a vulnerable victim --U.S.S.G. §
10 3A1.1(b)(1)), for a total adjusted offense level of 36. criminal history
11 category appears to Category V. Accordingly, if convicted of the charged offenses plus
12 enhancements, faces a sentencing range of 292 to 365 months (24.33 to 30.4
13 years), or what is essentially a life sentence. is 55 years old.

14 3. is charged with co-defendant in this case.
15 It is the government's theory that and conspired to and did, kidnap
16 mother, 1. The government alleges that
17 transported to Mexico, and that maintained control over her in
18 Mexico.

19 4. The bulk of the government's case against concerns his actions
20 while in Mexico (also is affected by Mexico actions because of
21 the conspiracy charge, but discovery indicates that spent little time in Mexico
22 himself). Accordingly, effective assistance of counsel requires a thorough investigation of
23 the circumstances of stay in Mexico, including interviews of persons who
24 took care of there, persons who interacted with her and with and
25 persons who witnessed the events surrounding departure from Mexico.

26 5. Undersigned counsel has had a number of meetings with
27 counsel, Chief Assistant Federal Public Defender Geoffrey Hansen, concerning the
28

1 defense of this case. CAFPD Hansen has assigned an investigator from the Office of the
2 Federal Public Defender to _____'s defense and that investigator has commenced
3 investigation of various factual issues here in Northern California concerning
4 _____ conduct while she lived here near _____. The Defender's investigator has
5 not been to Mexico however.

6 6. While at this point _____ and _____ are operating in a cooperative
7 fashion with respect to the defense of this case, it is the firm opinion of undersigned
8 counsel that effective defense of _____ case requires an investigator dedicated to
9 _____ interests alone. This is because _____ and _____ interests may
10 diverge in that a possible course of defense open to both men is to disclaim knowledge of
11 the other's activities (_____ as ignorant of _____ conduct toward
12 in Mexico and _____ as ignorant of what steps _____ may have taken to cause
13 his mother to agree to be picked up from her home in Menlo Park to be transported to
14 Mexico).

15 7. This is _____ first request for authorization of funds for an
16 investigator. On August 31, 2004, _____ made his initial appearance before this
17 court. On September 10, undersigned counsel received the initial batch of discovery from
18 the government, which comprised over 1,000 pages. It was not until October 7 however,
19 that counsel received core discovery, i.e., witness interviews performed by the government
20 in Mexico. Counsel has been diligent in reviewing the discovery produced by the
21 government and in conducting almost weekly discovery review meetings with
22 at North County Jail in Oakland. At this time, it is counsel's opinion that she is prepared
23 enough to direct initial investigative work.

24 8. Undersigned counsel has contacted licensed private investigator
25 who has agreed to perform the investigative work on behalf of _____ in this case.
26 _____ is a lawyer by training (a graduate of Harvard Law School) and a fluent Spanish
27 speaker. I have personally worked with _____ on previous occasions and know him to
28

1 be an excellent investigator with highly developed case preparation skills. Before he
2 founded his own firm, he worked as an investigator at the Office of the Federal Public
3 Defender in Oakland, where he was very highly regarded. A true and correct copy of
4 ; curriculum vitae is attached hereto as Exhibit A.

5 9. Based on review of the discovery material produced thus far, the
6 investigative priority is to interview persons who witnessed
7 circumstances while she lived in Mexico with . This is a time-consuming task
8 because stayed with in at least three different geographic locations
9 in Mexico, i.e., Tijuana, Guadalajara and Puerto Vallarta. While in the Guadalajara area,
10 ; and stayed in three different houses. The maids and other persons
11 who assisted in ; care in both Guadalajara and Puerto Vallarata live in remote
12 ranches and houses, often located in unnumbered streets or unnamed roads. In addition,
13 we do not yet have names for some of these persons, or have only incomplete names. It
14 will take time and effort to track these witnesses down and interview them, but we expect
15 that we will have the cooperation of wife, , who
16 lives outside Guadalajara on a remote ranch. The witnesses who must be contacted are as
17 follows: ¹

18 (a) In the Guadalajara area:

19 a: wife who cared for ;
20 : Maid and friend of ; who cared for
21 .
22 : Friend of who witnessed
23 ; interactions with
24 LNU: Person who administered foot massages to
25

26 ¹ At this time, the defense does not request funds for a separate trip to Tijuana, but
27 reserves the right to request such funds should investigation reveal that a trip to Tijuana is
28 necessary.

1
2 LNU

Maid who cared for

3 **(b) In the Puerto Vallarta area:**

4 :

Handyman who worked for and
observed his interaction with

5
6 LNU:

Medical doctor who attended when
she fell out of bed during December 2003 while
staying in house

7
8
9 :

Medical doctor who attended when
she went into the custody of the U.S. Consulate
after the alleged kidnapping

10
11
12 :

Friend of who witnessed
interactions with

13
14 LNU:

Maids who took care of
Business associate of who may have
observed him after the alleged kidnapping
Mexican police officer to whom went
on the night that the Mexican police raided
house and took into the
custody of the U.S. Consulate

15
16
17
18
19
20
21 10. These witnesses are widely dispersed throughout the Guadalajara and
22 Puerto Vallarta areas. Puerto Vallarta is some five hours by car from Guadalajara. Much
23 of time will be spent traveling from village to village and from the Guadalajara
24 area to the Puerto Vallarta area. It is estimated that may need to spend two weeks
25 in Mexico in order thoroughly to perform this investigation. In addition, because of the
26 cultural differences between rural Guadalajara and the area surrounding Puerto Vallarta
27 and the United States, it also will be necessary to employ the services of a local liaison to
28

1 assist in locating witnesses and in interviewing them. Undersigned counsel is in
2 the process of locating such a person and estimates that the sum of \$500 will be necessary
3 to allocate to this expense.

4 11. I am aware that the CJA standard hourly rate for investigators is \$55 an hour,
5 but that for investigators who speak a foreign language, it is \$65 an hour. I hereby request
6 the rate of \$65 an hour in case due to his fluency in the Spanish language
7 (which will be necessary to conduct all of the witness interviews in Mexico) and his legal
8 training (which will assist the preparation of the case through an understanding of the
9 elements of the offenses which are vulnerable to attack in case).
10 fluency in the Spanish language will obviate the need to employ an interpreter and will
11 therefore save money in the long term. ; legal training also will render case
12 preparation more efficient and focused and likewise will save money in counsel fees.
13 Accordingly, even at an hourly rate of \$65 an hour, undersigned counsel believes that the
14 costs will be less in this case than they would be if counsel had to employ a Spanish
15 interpreter or an investigator not trained in the law.

16 11. For the foregoing reasons, I respectfully request the following orders:

- 17 (a) authorization for the amount of \$10,000, at the rate of \$65 an hour,
18 for the services of as an investigator for to
19 perform investigation in Mexico;
- 20 (b) authorization for the amount of \$500, at the rate of \$55 an hour, for
21 the services of a local liaison to assist in Mexico;
- 22 (c) the filing under seal of court of this Ex Parte Application and
23 Declaration of Mary McNamara in Support of
24 First Request for Authorization of Costs for Necessary Defense
25 Expenditures, 18 U.S.C. § 3006a, and the [Proposed] First Order
26 Authorizing Costs for Necessary Defense Expenditures for
27 , 18 U.S.C. § 3006a.

1
2 Executed under penalty of perjury of the laws of the United States, at San
3 Francisco, California, this 20th day of October 2004.
4

5
6 Mary McNamara
Attorney for
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 . and
15 ,

16 Defendants.
17

Case No. CR-

[PROPOSED] FIRST ORDER
AUTHORIZING COSTS FOR
NECESSARY DEFENSE
EXPENDITURES FOR
3006A, 18 U.S.C. §

3006A

UNDER SEAL

18 GOOD CAUSE APPEARING THERFOR

19 IT IS HEREBY ORDERED that is authorized to incur
20 up to \$10,000 in the above-entitled matter pursuant to 18 U.S.C. § 3006A in order to perform
21 investigation services in Mexico on behalf of .

22 IT IS FURTHER ORDERED that because of fluency in the Spanish language
23 and his training as a lawyer, he shall be compensated at a rate of \$65 per hour, rather than the
24 standard \$55 an hour rate for investigators appointed under the CJA.

25 It IS FURTHER ORDERED that because of the need for local knowledge of witnesses'
26 whereabouts, an additional sum of \$500 at the rate of \$55 an hour shall be authorized for a local
27 liaison to assist while he is in Mexico. Counsel for is directed to provide the
28 name of the liaison to the CJA unit once counsel has contracted that person for his or her

ORDER FOR INVESTIGATIVE COSTS

--CR.

1 services.

2 IT IS FURTHER ORDERED that the clerk file under seal of court this First Order
3 Authorizing Costs for Necessary Defense Expenditures for _____, 18 U.S.C. §
4 3006a and the Ex Parte Application and Declaration of Mary McNamara in Support of
5 First Request for Authorization of Costs for Necessary Defense Expenditures,
6 18 U.S.C. § 3006a.

7
8 Dated: October ____, 2004

9 _____
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28