

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AVERY MACCRACKEN,

Defendant.

Case No. 22-cr-00010 (RJL)

EMERGENCY MOTION FOR TRANSFER BACK  
TO THE DISTRICT OF COLORADO

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### Introduction

Avery Carter MacCracken was arrested on December 10, 2021, in the District of Colorado. Mr. MacCracken appeared (virtually) before Hon. Magistrate Judge Zia on December 22, 2021. After presentment, during which the defense detailed Mr. MacCracken's poor health, age, and chronic ailments, with the consent of the government, on December 29, 2021, Magistrate Judge Zia Faruqui issued an Order directing the United States Marshal Service to allow Mr. MacCracken to remain in the District of Colorado. See, Exhibit A. The Order read in pertinent part:

It is hereby

ORDERED that the United States Marshals Service STAY defendant's removal to the District of Columbia. Defendant must remain at the detention facility he is currently housed. It is further

ORDERED that if the Government believes it is in the interest of justice to transfer Defendant to the District of Columbia, the Government must file a motion requesting Defendant's transfer and explaining the basis for the request.

See, Exhibit A.

The government filed no such motion, and despite the issuance and service of the Order (exhibit A), the United States Marshal Service, on or about February 24, 2022, transported Mr. MacCracken out of the District of Colorado and moved him to the District of Columbia. With no notice to the Court, the government or the defense, Mr. MacCracken lodged at the Central Virginia Regional Jail, where he remains. This transport violated the Court's December 29, 2021 Order. Despite the efforts of the United States, Mr. MacCracken remains in Virginia.

On March 18, 2022, the Court heard from the parties. Despite assurances from the United States, no representative of the United States Marshal Service appeared in Court and the government had no explanation for Mr. MacCracken's transfer in violation of Judge Faruqui's December 29, 2021 Order, other than to state that the position of the United States Marshal was that it was unaware of Judge Faruqui's Order.

Since the March 18, 2022, appearance before this Honorable Court, defense counsel reached out to the government about Mr. MacCracken's transfer back to Colorado. The government responded that it had "been in touch with the Marshals to see what needs to be done to have Mr. MacCracken transported back" and then asked defense counsel if we had "any information on a federal facility in Colorado that can accept Mr. MacCracken," and that the government would be "happy to provide that information to the Marshals."

Defense counsel promptly informed the government that the USMS have contracts with several local jails around Colorado, that the GEO immigration detention center in Aurora, the Federal Detention Center in Engelwood (next to FCI Englewood) or the downtown Denver Detention Center were available options. The government has not responded to the defense's missive and provided no other updates.

To facilitate transfer back to Colorado, counsel for Mr. MacCracken (David Kraut) has reached out to the United States Marshal Service in Colorado, namely United States Marshal Mel-Jovan Sanchez. USM Sanchez has agreed to request

Mr. MacCracken's transfer back to Colorado upon receipt of confirmation from this Court that it agrees with and re-affirms the Judge Faruqi's intention that Mr. MacCracken be returned to District of Colorado.

For the reasons previously stated and discussed above, we ask the Court to grant the relief sought endorse Judge Faruqi's Order dated December 29, 2021, and Order Mr. MacCracken's transfer to Colorado.

Respectfully submitted,

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