

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

**ORDER OF DETENTION**

v.

Docket No. 10-mj-01058(M)

JAMES ALLEN HAMMER,

Defendant.

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Defendant is charged in a complaint with unlawfully shipping child pornography in interstate or foreign commerce and possessing a material containing an image of child pornography that was produced using materials transported in interstate or foreign commerce, in violation of 18 U.S.C. §§2252A(a)(1)(A) and 2252A(a)(5)(B). At defendant's initial appearance on July 9, 2010, the government moved for pretrial detention pursuant to 18 U.S.C. §3142(f) on the grounds that defendant poses a substantial risk of flight and a danger to other persons and the community, and defendant was ordered detained pending a detention hearing, which was scheduled for August 10, 2010. On the date of the hearing, defendant's attorney stated that defendant waives a hearing at the present time, without prejudice to his right to request a hearing at a later date.

Defendant is entitled to do so. See United States v. Coonan, 826 F.2d 1180, 1184 (2d Cir. 1987) ("Coonan . . . would have us hold that the statutory right to a detention hearing within, at most, five days of the initial appearance is not waivable. This we decline to do, since it

would . . . require meaningless, ritualistic hearings in situations where no one wants them”).


Accordingly, it is hereby

ORDERED that, pursuant to 18 U.S.C. §3142(i)(2), defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; and it is further

ORDERED that, pursuant to 18 U.S.C. §3142(i)(3), defendant be afforded reasonable opportunity for private consultation with counsel; and it is further

ORDERED that, pursuant to 18 U.S.C. §3142(i)(4), upon order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which defendant is confined, deliver defendant to United States Marshals for the purpose of an appearance in connection with a court proceeding; and it is further

ORDERED, that the foregoing is without prejudice to defendant's right to the presumption of innocence, or to his right to request a detention hearing at a later date.

  
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JEREMIAH J. MCCARTHY  
United States Magistrate Judge

DATED: August 10, 2010