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5 Attorney for Defendant
6 JANE DOE

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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11
12 **UNITED STATES OF AMERICA**

13 **Plaintiff,**

14 v.

15 **JANE DOE,**

16 **Defendant.**
17 _____

) Case No.
CR __ - _____ -

) **MOTION FOR BAIL ON**
) **APPEAL; DECLARATION**
) **OF FAY ARFA;**
) **DECLARATION OF JANE**
) **DOE; EXHIBITS**

) DATE:
TIME:
PLACE:

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19 **TO: THE HONORABLE UNITED STATES DISTRICT COURT FOR THE**
20 **CENTRAL DISTRICT OF CALIFORNIA AND COUNSEL FOR PLAINTIFF:**

21
22 Defendant, JANE DOE, by and through her attorney of record, Fay
23 Arfa, respectfully requests that the Court grant her bail on appeal from her
24 conviction and sentence following a jury trial.

25 This motion is made pursuant to 18 U.S.C. § 3143, the Federal Rules
26 of Criminal Procedure, Rules 46(c) and 47 and is based on the files and
27 records of the Court, the attached argument and memorandum of points
28 and authorities, the declaration of counsel, the declaration of Jane Doe,

1 the attached exhibits, and any further evidence that the Court may require.

2 DATED:

3 Respectfully submitted,
4 FAY ARFA, A LAW CORPORATION

5 */s/ Fay Arfa*

6 By: _____
7 Fay Arfa, Attorney at Law

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ARGUMENT

THIS COURT SHOULD GRANT MS. DOE BAIL ON APPEAL BECAUSE OF THE LENGTH OF HER SENTENCE, BECAUSE SHE PRESENTS NO FLIGHT RISK, HER FAMILY NEEDS HER AND BECAUSE SHE INTENDS TO RAISE SUBSTANTIAL AND MERITORIOUS ISSUES ON APPEAL.

A. Introduction

On November 16, 2007, the district court set an appearance bond of \$10,000. (Dkt. No. 3.) Ms. Doe’s husband posted the bond and Ms. Doe has been on bond throughout the proceedings. She always has complied with the conditions of her release. Ms. Doe’s appeal is not taken for purposes of delay. Exceptional circumstances, such as her family situation and the length of her sentence, justify bail on appeal. Therefore, bail on appeal should be granted.

B. The Law Permits a Court to Grant Bail on Appeal

18 U.S.C. § 3143(b) entitles a criminal defendant to bail pending appeal if the court finds the following: ¶ (1) by clear and convincing evidence, the defendant is not likely to flee or to pose a danger to the safety of any person or to the community if released; ¶ (2) that the appeal is not taken for purpose of delay; ¶ (3) that the appeal raises a substantial question of law or fact that, if determined favorably to defendant on appeal, is likely to result in (a) reversal (b) an order for a new trial (c) a sentence that does not include a term of imprisonment, or (d) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

The legal question on appeal need not be a slam dunk for the defense, because a “substantial question” and a clearly winning issue differ. Cases define “substantial question” a “fairly debatable” one or “a non frivolous issue.” *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir.

1 1985); See *United States v. Garcia*, 340 F.2d 1013, 1021 n. 5 (9th Cir.
2 1992)

3 **C. The Law Permits Exceptions Under Exceptional**
4 **Circumstances**

5 A person subject to detention pursuant to 18 U.S.C. § 3143 (b)(2),
6 and who meets the conditions of release set forth in 18 U.S.C. § 3143
7 b)(1), may be ordered released on appeal if exceptional reasons show that
8 such person's detention would not be appropriate. *Garcia*, at 1015-1016.

9 The district court has broad discretion to consider “all the particular
10 circumstances of the case before it and draw upon its broad ‘experience
11 with the mainsprings of human conduct.’ [Citation] No limit has been
12 placed on the range of matters the district court may consider. “ 18 U.S.C.
13 § 3145(c); *Garcia*, 340 F.3d at 1018.

14 The district court “should examine the totality of the circumstances
15 and, on the basis of that examination, determine whether, due to any truly
16 unusual factors or combination of factors. . . . it would be unreasonable to
17 incarcerate the defendant prior to the appellate court's resolution of his
18 appeal.” *Garcia*, 340 F.3d at 1018; See *United States v. McManus*, 651
19 F. Supp. 382, 384 (D. Md. 1987) (exception circumstances included
20 community support, contributions and service to charitable causes, family’s
21 health and well-being and “if detained pending appeal, defendant will likely
22 serve the better portion of his two-year term of incarceration before his
23 case is resolved.”)

24 **D. The Length of the Sentence Constitutes an Exceptional**
25 **Circumstance**

26 The length of the prison sentence constitutes a relevant exceptional
27 circumstance. “First, the length of the sentence may be a proxy for the
28 seriousness of the crime. Second, the primary purpose of the Mandatory

1 Detention Act -- to incapacitate violent people -- is only weakly implicated
2 where the sentence imposed is very short, because regardless of whether
3 the defendant is released pending appeal, he will soon be free. *Third, in*
4 *such circumstance, the defendant could be forced to serve most or all of*
5 *his sentence before his appeal has been decided. Incarcerating such a*
6 *defendant immediately upon conviction could substantially diminish the*
7 *benefit he would ordinarily receive from an appeal.” Garcia, 340 Fed.3d*
8 *at 1019; (italics added); see also McManus, at 384 (“There seems little*
9 *point to an appeal if the defendant will serve his time before a decision is*
10 *rendered.”)*

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E. Ms. Doe’s Family Situation Qualifies as an Exceptional Circumstance

The District Court may consider Ms. Doe’s family circumstances. See *Garcia*, at 1018. Ms. Doe has four children. Gabrielle, 12 years old (DOB: _____); John, 11 years old (DOB: _____); Patricia, two years old (DOB: _____); and Alexander, eight months old (DOB: _____). Two of the children require medical services for their special needs.

The family simply cannot care for her children in her absence. All of the local day care centers are too expensive for her family. (Decl. of Jane Doe; Exh. A.) Ms. Doe’s husband’s paycheck barely covers their current living expenses which total \$3373. (Exh. B). If her husband works overtime, his paycheck nets \$3387.54 per month. Otherwise, she has to borrow money from her parents for support. (Decl. of Jane Doe)

Ms. Doe’s youngest child, _____ age eight months, has ongoing medical problems. He is currently seeing a neurologist, an ophthalmologist and a retina specialist doctor. (See, Exh. C.) Her oldest daughter, Gabrielle Doe suffers from severe asthma. Recently, Ms. Doe

1 has had to pick her up from school because of her allergies and her
2 asthma. Gabrielle has big bumps on her wrists that required x-rays and
3 she will require an MRI. (Exh. D.)

4
5 **E. Ms. Doe May Have Served Her Sentence Before Her Appeal
is Completed**

6 The District Court sentenced Ms. Doe to 36 months in prison. (Dkt.
7 No. 74.) By the time her appeal is completed, she may have already
8 served her sentence. Accordingly, incarcerating Ms. Doe could
9 substantially diminish the benefit she would ordinarily receive from an
10 appeal. See, *Garcia* 340 Fed. 1019; *McManus*, at 384.

11
12 **F. The District Court Allowed Ms. Doe to Be Released
Pending Sentencing and Pending Surrender**

13 The District Court released Ms. Doe on a \$10,000 bond posted by
14 her husband. She remained on bond pre-trial, during trial, after conviction
15 and post-sentence. (Dkt. Nos. 8, 56, 73, 74)

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17 **G. Ms. Doe Presents No Flight Risk Nor any Danger to the
Community**

18 Ms. Doe poses no light risk nor any danger to the community. She
19 has been in full compliance with the conditions of her release.

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21 **H. This Appeal is Not Taken For the Purpose of Delay**

22 Ms. Doe has not taken her appeal is not taken for the purpose of
23 delay. She has taken her appeal because she truly believes that she has
24 been wrongly convicted. She has taken her appeal to vindicate her
25 constitutional rights, not for any delay. See 18 U.S.C. § 3143(b)(1)(B).

26
27 **I. The Appeal Raises Substantial Questions of Law or Fact
That, If Determined Favorably to Ms. Doe on Appeal, Are
Likely to Result in Reversal or an Order for a New Trial**
28 The docket reveals several contested issues including constitutional

1 issues, evidentiary issues, instructional issues, and sentencing issues (Dkt.
2 Nos. 42-45, 56, 64-66) There may also be issues of ineffective assistance
3 of counsel, jury misconduct and/or prosecutorial misconduct. For this
4 reason, Ms. Doe's appeal raises substantial questions of law and fact likely
5 to result in reversal.

6 **CONCLUSION**

7 Ms. Doe presents exceptional circumstances. Her children,
8 particularly her two children with special needs, require her to be with
9 them. If she goes to prison immediately, she would lose the benefit of her
10 appeal. Ms. Doe poses neither a flight risk nor a danger to the community.
11 She is appealing her convictions because several errors in the trial court
12 may have deprived her of her rights under the Fifth and Sixth
13 Amendments.

14 Therefore, this Court should allow Ms. Doe to remain on bond,
15 pending appeal, on the same terms and conditions as previously imposed.

16 DATED: April 3, 2009

17 Respectfully submitted,
18 FAY ARFA, A LAW CORPORATION

19 /s/ Fay Arfa

20 By: _____
21 Fay Arfa, Attorney at Law
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DECLARATION OF FAY ARFA

I declare under penalty of perjury that, to the best of my knowledge,
this is true:

1. I am an attorney licensed to practice law in the Central District Court and the State of California.
2. I have been retained to represent Ms. Doe in her appeal and for purposes of a motion for bail on appeal.
3. I have reviewed the docket in this case. However, I have not yet had access to the trial transcripts.
4. Ms. Doe is scheduled to self-surrender, on May 1, 2009, to serve a 36 month prison sentence.
5. I am submitting this declaration in support of Ms. Doe's motion for bail pending appeal.

[ADD UNDER PENALTY OF PERJURY]

DATED: March 6, 2011

Respectfully submitted,
FAY ARFA, A LAW CORPORATION

/s/ Fay Arfa

By: _____
Fay Arfa, Attorney at Law

1 (DOB: _____) and Alexander is eight months old (DOB:
2 _____).

3 5. I have been looking into day care centers and after school care
4 centers to place my children in my absence. However, all the local
5 day care centers are too expensive for my family. (Exh. A.)

6 6. My husband's paycheck barely covers our current living expenses.
7 (Exh. B). If my husband works overtime, his paycheck nets \$3387.54
8 per month. Otherwise, we borrow money from our parents for
9 support.

10 7. Our expenses are:

EXPENSE	MONTHLY AMOUNT
House	\$1310
Utilities	\$ 250
Groceries	\$ 600
Cell phone	\$100
Gasoline	\$180
Education loans	\$ 385
Car insurance	\$ 198
Credit card	\$ 350
TOTAL	\$3373

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20 8. My youngest child, Alexander Doe age eight months, has ongoing
21 medical problems. He is currently seeing a neurologist, an
22 ophthalmologist and a retina specialist doctor. (See, Exh. C.)

23 9. My oldest daughter, Gabrielle Doe suffers from severe asthma.
24 Recently, I have had to pick her up from school because of her
25 allergies and her asthma. (Exh. D.)

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27 [ADD UNDER PENALTY OF PERJURY]

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DATED: March 6, 2011

Respectfully submitted,

By: _____