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2	AUGUST 31, 2011
3	CLERK US DISTRICT COURT DISTRICT OF ARIZONA
4	BY <u>/s/ M. Everette</u> DEPUTY
5	
6	IN THE UNITED STATES DISTRICT COURT
7	FOR THE DISTRICT OF ARIZONA
8	
9	In the matter of
10) GENERAL ORDER 11-16 MATERIAL WITNESSES
11	IN PHOENIX DIVISION
12	SUPERSEDES GENERAL ORDER 05-34
13	/
14	In reference to a material witness in a Phoenix Division case, IT IS HEREBY
15	ORDERED::
16	1.) When an individual who is an undocumented alien is in custody and a
17	determination has been made that such individual is to be a material witness in a criminal case,
18	it is the responsibility of the arresting agency and of the United States Marshal to promptly
19	notify the District Judge or Magistrate Judge of such detention as soon after the arrest as is
20	practicable. This notification should specify the number of material witnesses arrested in
21	situations where there has been more than one arrest. The District Judge or Magistrate Judge
22	should be further advised of any material witness who is a juvenile. A federal investigative
23	agent should promptly file an affidavit showing reasonable grounds to detain the witness.
24	2.) The District Judge or Magistrate Judge shall cause the detained material witness
25	to promptly be brought before him and shall consider the witness for possible release pursuant
26	
20	to 18 U.S.C. § 3144. Counsel shall be appointed pursuant to the Criminal Justice Act for a

28 his own attorney.

The attorney for a defendant charged by complaint, indictment, or information 3.) 1 2 shall have three working days, after notification orally or in writing by the District Judge or 3 Magistrate Judge that a witness is being detained in the case, within which to interview a 4 detained material witness who is an adult. In the case of a detained material witness who is a 5 juvenile under the age of eighteen years, the attorney shall have 24 hours within which to 6 conduct the interview. The specified time limits may be extended by the District Judge or 7 Magistrate Judge for good cause. The attorney for the defendant shall promptly notify the District Judge or Magistrate Judge after the interview of the juvenile whether he wishes to have 8 9 the person remain in custody as a material witness setting forth orally his reasons therefore.

4.) Following the three-day working period referred to in Paragraph 3 of these
procedures, all parties shall appear before the District Judge or Magistrate Judge. At such time
counsel shall advise the Court of such material witness they wish to be detained for video tape
deposition pursuant to 18 U.S.C. § 3144. Such deposition(s) shall be scheduled within the next
five working days. As to witnesses for which detention is not requested, they shall be released
to the U.S. Immigration and Customs Enforcement for further proceedings.

5.) The deposition shall be conducted in accordance with Rule 15, Federal Rules of
Criminal Procedure and under the general supervision of a Magistrate Judge. A Magistrate
Judge shall stand by and be available during the deposition to rule on matters that are
impractical to reserve for the trial judge. In the discretion of the Magistrate Judge, he or she
may, but need not, attend and preside over all or part of the deposition.

21 6.) Following the deposition(s), the District Judge or Magistrate Judge shall release 22 the material witness(es) from custody absent a showing that further detention is necessary to 23 prevent a failure of justice. Such a showing may be made by counsel for the defendant ex parte 24 by an affidavit submitted in <u>camera</u>, or an <u>in camera</u> hearing. Such affidavit and any hearing 25 conducted thereon shall be kept under seal unless otherwise ordered by a District Judge. In 26 considering whether to discharge a witness, the nature of the proposed testimony of the detained 27 person, the number of persons the United States Attorney and the defendant(s) seek to have 28 remain in custody, and the cumulative nature of the testimony expected to be given, shall be

1 considered by the District Judge or Magistrate Judge.

7.) The material witnesses so discharged shall be remanded to the custody of the
District Director of the United States Immigration and Customs Enforcement agency. No
deportation or voluntary return shall be effectuated by the District Director of the United States
Immigration and Customs Enforcement for any alien who has not been finally discharged as a
material witness without concurrence of the District Judge or Magistrate Judge.

DATED this 31st day of August, 2011.

Roskyh

Chief United States District Judge