

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ROMAN V. SELEZNEV,

Defendant.

NO. CR11-0070RAJ

**GOVERNMENT’S RESPONSE TO
DEFENDANT’S MOTION TO
DISMISS THE INDICTMENT**

I. INTRODUCTION AND SUMMARY ARGUMENT

This Court should summarily deny defendant’s motion without a hearing. The United States properly sought and obtained the assistance and cooperation of the Maldivian government to bring defendant into custody for purposes of prosecution. One hundred and thirty years of controlling case law forecloses any argument for dismissal because even a “forcible abduction . . . presents no valid objection” to criminal jurisdiction over a properly-charged defendant. *Ker v. Illinois*, 119 U.S. 436, 444 (1886). Furthermore, a district judge in Guam previously held an evidentiary hearing on this issue shortly after defendant’s apprehension. The district judge correctly held that defendant’s allegations, even if accepted as true, do not meet the “extremely high standard” required

1 for dismissal pursuant to an “outrageous conduct” defense. *United States v. Smith*, 924
2 F.2d 889, 897 (9th Cir. 1991).

3 The entire premise of defendant’s motion – that U.S. agents “abducted” or
4 “kidnapped” him without the consent or participation of Maldivian authorities – is flatly
5 contradicted by the record developed at the previous evidentiary hearing, and by a public
6 statement by the President of the Maldives making clear that his government fully
7 participated in the apprehension. The record shows beyond any doubt that defendant’s
8 apprehension and transfer to U.S. authorities was the result of a lawful Maldivian
9 government operation conducted at the request of the United States and in cooperation
10 with the U.S. Secret Service and the Diplomatic Security Service. Defendant was neither
11 abducted nor kidnapped. There was no misconduct on the part of U.S. authorities, let
12 alone misconduct of a “shocking and outrageous” nature. Further, defendant’s
13 suggestion that the United States somehow misled the Maldivian authorities is plainly
14 false: the diplomatic note and the Red Notice, which were provided to the Maldivians
15 prior to the operation, accurately disclosed all background relevant to defendant’s
16 apprehension, including the serious charges against him. This background justifiably
17 persuaded the Maldivian authorities that they should participate in bringing this
18 international cybercriminal to justice.

19 The Ninth Circuit has repeatedly held that only the most egregious misconduct on
20 behalf of the government can support dismissal, and has repeatedly rejected “outrageous
21 conduct” claims—even finding a forcible abduction involving a pre-dawn raid by U.S.
22 Marshals, in which the defendant was allegedly beaten and burned with a stun gun
23 applied to his feet and genitals, was not so shocking and outrageous as to require
24 dismissal. *United States v. Matta-Ballesteros*, 71 F.3d 754, 761-63 (9th Cir. 1995).
25 Indeed, no controlling decision has *ever* approved dismissal based on outrageous
26 government conduct. This case, in which Maldivian authorities mindful of their domestic
27 law chose to assist the United States in bringing this defendant into custody, does not
28 involve any serious allegations regarding use of excessive force and obviously does not

1 present facts that meet any articulated standard for dismissal. As Judge Tydingco-
2 Gatewood, the district judge in Guam found, Seleznev's allegations of "misconduct" do
3 not even approach "outrageous" conduct and, therefore, are insufficient to support
4 dismissal.

5 There is no reason to hold a second evidentiary hearing, which would require
6 witnesses, who spent weeks in Guam awaiting the last hearing, to travel to Seattle from
7 Honolulu, Washington DC, and Chicago. It is well established that an evidentiary
8 hearing is inappropriate where, as Judge Tydingco-Gatewood found to be the case here,
9 relief would be inappropriate even if the defendant's allegations were accepted as true.
10 This is doubly true in this case, because an evidentiary hearing has already been held.
11 For these reasons, and those stated in the government's separately filed response to
12 defendant's discovery motion, defendant is not entitled to any additional discovery on
13 this matter and, indeed, no additional discovery or hearing is necessary to support a
14 conclusion that defendant's motion is simply frivolous. Defendant's motion should be
15 denied without any further hearings.

16 **II. PROCEDURAL HISTORY**

17 Defendant Roman Seleznev is charged in a Second Superseding Indictment with
18 eleven counts of wire fraud, nine counts of causing intentional damage to protected
19 computers, nine counts of obtaining information from protected computers, nine counts
20 of possession of fifteen or more unauthorized access devices, and two counts of
21 aggravated identity theft. All of the charges stem from his involvement in a computer-
22 hacking scheme that targeted retail point-of-sale (POS) systems throughout the world.
23 The object of the scheme was to hack into the POS systems, steal credit card numbers,
24 and then sell the stolen credit card numbers with the intent that the numbers would in turn
25 be used for fraudulent transactions defrauding banks and merchants around the world.
26 The indictment alleges that defendant operated this scheme remotely using a complex
27 criminal infrastructure scattered around the world to attack his victims and traffic in the
28 fruits of his crimes.

1 Defendant was originally charged by indictment in this district with computer
2 crimes, bank fraud and aggravated identity theft in March 2011. Subsequent to the return
3 of the Western District of Washington indictment, on January 10, 2012, a grand jury in
4 the District of Nevada returned another Indictment charging defendant with RICO and
5 RICO conspiracy based on allegations similar to those outlined in the Seattle indictment.
6 Defendant's Nevada charges also remain pending.

7 Prior to his apprehension on July 5, 2014, U.S. authorities explored and pursued
8 multiple means to apprehend Seleznev and bring him into U.S. custody. Defendant, a
9 Russian national and the son of a member of the Russian parliament, maintained homes
10 in Vladivostok, Moscow, and Indonesia. Because neither Russia nor Indonesia has an
11 extradition treaty with the United States, and because the Russian constitution prohibits
12 the extradition of citizens to stand trial abroad, the government's efforts were geared
13 toward apprehending defendant while he was travelling outside of Russia.

14 Efforts to apprehend Seleznev were further complicated by the fact that defendant,
15 by design, rarely traveled to, or through, countries that had extradition treaties with the
16 United States. Indeed, the Russian government has issued multiple travel advisories to its
17 citizens warning that if they believe they may be wanted on criminal charges in the
18 United States, they should avoid travel to countries that might extradite them to the
19 United States.¹ Defendant, who is known to have conducted searches for indictments
20 against him on this Court's ECF system, carefully heeded this advice. Therefore, any
21 effort to apprehend this defendant necessarily required seeking cooperation and
22 assistance from a government that did *not* have an extradition treaty with the United
23 States.

24 The government engaged in discussions with several countries in furtherance of its
25 efforts to apprehend Seleznev. In April 2011, the government asked the Court's

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27 ¹ See David M. Herszenhorn, *Russia Issues Travel Warning to Its Citizens About United States and Extradition*,
28 N.Y. Times, Sept. 2, 2013, available at <http://www.nytimes.com/2013/09/03/world/europe/russia-issues-travel-warning-about-united-states.html>; *Foreign Ministry concerned over US 'hunt' for Russian citizens in foreign countries*, Russia Today, April 11, 2014, available at <http://rt.com/politics/russia-sanctions-foreign-travel-840/>

1 permission to share copies of the Superseding Indictment with the Korean Ministry of
2 Justice for the purpose of seeking Seleznev's provisional arrest and extradition based on
3 information that Seleznev had in the past traveled through Korea.² See Dkt. #11, 12. In
4 January 2012, the government asked the Court for permission to share the Superseding
5 Indictment with Thailand and Indonesia in hopes of supporting requests for his
6 apprehension in either of those countries.³ See Dkt. #19, 21. In October 2012, the
7 government returned to the Court for permission to share additional documents with
8 Korean officials who had expressed an interest in prosecuting Seleznev in Korea and then
9 extraditing him to the U.S. See Dkt. #22, 23. Representatives of the Secret Service and
10 the Department of Justice held meetings with officials in Korea to discuss the case. In
11 December 2012, the government notified the Court of meetings between the Secret
12 Service and Indonesian officials in furtherance a request for defendant's expulsion from
13 Indonesia and transport to another jurisdiction. See Dkt. #26, 27. Secret Service agents
14 and prosecutors also worked with Australian officials in an effort to obtain an Australian
15 arrest warrant, which may have allowed defendant to be extradited from Indonesia to
16 Australia, and possibly from there to the United States. None of these efforts were
17 successful.

18 As discussed in detail below, defendant was apprehended in the Maldives on July
19 5, 2014. Following his apprehension, Seleznev was transported directly to the nearest
20 U.S. District Court, which is in Guam, for his initial appearance. That appearance was
21 held on July 7, 2014, at which time Seleznev refused appointment of counsel from the
22 Federal Public Defender's Office and requested private counsel. (Dkt. 32 Rule 5(c)(3)
23 Documents, Attachment 1, Docket at 4, entry 4) (hereinafter Guam Dkt. [entry #]). The
24 Court continued the initial appearance and scheduled an identity hearing for July 22,
25 2014. *Id.* In anticipation of that hearing, the government flew three agents to Guam to
26 testify in support of the identity hearing.

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28 ² The U.S. and Korea have an extradition treaty that entered into force in 1999.

³ The U.S. and Thailand have an extradition treaty that entered into force in 1991.

1 On July 18, 2014, however, Seleznev filed a motion to continue the Rule 5 hearing
2 and requested a briefing schedule to address a motion to dismiss the indictment based on
3 lack of personal jurisdiction. Guam Dkt. #10. Defense counsel argued that the
4 circumstances of Seleznev's apprehension constituted "outrageous government
5 misconduct" and that the Guam court should dismiss the charges against him and/or
6 divest itself of jurisdiction over the case. *Id.* The government opposed the continuance
7 and argued that any motions to dismiss should be raised once Seleznev was before this
8 Court. Guam Dkt. #11. Seleznev, however, chose to pursue his motion to dismiss in
9 Guam. He argued that the motion "must be determined prior to conducting the Rule 5
10 hearing" and insisted that his arguments would be waived if not addressed in Guam.
11 Guam Dkt. #13 (Defendant's Motion to Discharge and Release Defendant at 7-9).

12 Over the following two weeks, while the Secret Service agents waited in Guam for
13 the evidentiary hearing, the court received briefing from both parties regarding the
14 District of Guam's jurisdiction over Seleznev, its jurisdiction to hear Seleznev's motion
15 to dismiss, as well as the merits of that dismissal motion. Guam Dkt. #12, 16. On July
16 31, 2014, Chief Judge Frances M. Tydingco-Gatewood held a hearing on defendant's
17 motion to dismiss and heard testimony from Special Agent Daniel Schwandner of the
18 United States Secret Service regarding the circumstances of defendant's apprehension.
19 Defense was provided a full opportunity to cross examine Special Agent Schwandner
20 (Attachment 1 - Transcript of Proceedings before the Honorable Frances Tydingco-
21 Gatewood, District of Guam, July 31, 2014 (hereinafter "Guam Transcript")). For
22 purposes of making her decision, Judge Tydingco-Gatewood accepted all of defendant's
23 allegations regarding the circumstances of the apprehension as true, and found that none
24 of them amounted to shocking or outrageous conduct that would support dismissal of the
25 indictment. (Guam Transcript at 56, 62-63, 68-69). Accordingly, the court denied
26 Seleznev's motion to dismiss and proceeded to conduct a Rule 5 identity hearing that
27 same day. At the conclusion of the Rule 5 hearing, the Court ordered Seleznev removed
28 to the Western District of Washington. Guam Dkt. #40. The court later entered a written

1 order summarizing her finding that, even assuming all of Seleznev's allegations are true,
 2 the government's conduct was "not shocking and outrageous." (Attachment 2 - Guam
 3 Dkt. #44).

4 **III. FACTS RELATED TO DEFENDANT'S APPREHENSION**

5 **A. Overview**

6 As Judge Tyndingco-Gatewood found, the facts defendant has alleged are
 7 insufficient to support a finding of shocking or outrageous conduct. Nonetheless, the
 8 government sets forth the following facts to correct the many inaccuracies and falsehoods
 9 in defendant's motion. The facts as set forth below demonstrate that defendant's
 10 apprehension and arrest were the result of a perfectly appropriate diplomatic request for
 11 assistance from a cooperative foreign government and that U.S. authorities acted
 12 appropriately and professionally in their coordination with Maldivian officials.

13 **B. Request to and Prior Consultation With Maldivian Authorities**

14 On July 1, 2014, the Secret Service received information that Seleznev was
 15 vacationing in the Maldives⁴ through July 5, 2014. (Guam Transcript at 86; Attachment
 16 3 – Report of Special Agent Mark Smith at 2; Attachment 4 - Report of Special Agent
 17 Daniel Schwandner at 2). The Service immediately began coordinating with the
 18 Department of State Regional Security Office in Colombo, Sri Lanka, which, they
 19 learned, had good relations with the Maldivian government. Because the United States
 20 has no formal extradition treaty with the Maldives, the Department of State, along with
 21 officials from the Department of Justice Office of International Affairs, in consultation
 22 with the Secret Service, decided to ask the Maldives via diplomatic note if it would use
 23 its domestic law to detain Seleznev based on the existence of, and information in, the
 24 U.S. indictment and arrest warrant, expel him from the Maldives, and turn him over to
 25 U.S. authorities. (Guam Transcript at 86, 111-114; Attachment 3 at 3; Attachment 4 at
 26 2). On July 2, 2014, Special Agent Mark Smith with the Department of State Diplomatic
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28 ⁴ The Maldives is an island nation in the Indian Ocean approximately 370 miles south-west of India and 470 miles south-west of Sri Lanka.

1 Security Service (DSS) presented this plan to the Maldives Police Commissioner, who
2 tentatively approved, but explained he would need the approval of the Attorney General
3 of the Maldives. (Attachment 3 at 3; Defendant's Exhibit 8 at 2).

4 The following day, July 3, 2014, the Department of State transmitted an official
5 diplomatic note requesting the assistance of the Maldives in the "removal of Russian
6 citizen ROMAN VALEREVICH SELEZNEV. . . to the United States by way of
7 deportation, expulsion, or other means available under the laws of the Maldives."
8 (Attachment 5 - Diplomatic Note at 1 (emphasis in original)). The diplomatic note
9 informed the Maldives government that Seleznev was wanted to stand trial in United
10 States District Court for the Western District of Washington based on the charges
11 contained in the March 2011 Superseding Indictment and summarized the charges and
12 penalties. *Id.* The diplomatic note also summarized the essential facts of the
13 investigation, provided a detailed history and description of Seleznev including his
14 Russian passport number and date of birth, and included copies of the indictment and
15 arrest warrant. *Id.* at 3-4. Finally, the diplomatic note indicated that if Maldivian
16 authorities were willing to assist the United States in this matter, U.S. agents were
17 available to escort Seleznev to the United States. *Id.* at 4.

18 Secret Service Special Agent Daniel Schwandner and Honolulu Field Office
19 Special Agent in Charge (SAIC) David Iacovetti traveled to the Maldives on July 3rd,
20 and July 4th respectively to coordinate with DSS Special Agent Smith, who also arrived
21 on July 4, 2014. (Attachment 3 at 3; Attachment 4 at 2; Guam Transcript at 86, 111-
22 112). On July 4, 2014, the agents met with Maldivian officials who confirmed through
23 immigration records that Seleznev had been in the Maldives since June 21st and told the
24 agents Seleznev was expected to depart through the main airport in Male on July 5, 2014.
25 (Guam Transcript at 113-116; Attachment 6 - Photo of Immigration Record; Attachment
26 4 at 2). The Maldivian officials also indicated they were consulting with their attorney
27 general's office and other authorities regarding how to proceed and whether they could
28 expel Seleznev based on the U.S. indictment and arrest warrant. (Guam Transcript at

1 116-117). The U.S. agents did not participate in the Maldivian decision-making process
2 or advise the Maldivian authorities on how to effectuate Seleznev's detention, expulsion
3 or deportation. (Guam Transcript at 116-117, 121-122).

4 At approximately 4:00 p.m. local time on July 4, the Maldivian authorities
5 contacted DSS Special Agent Smith and told him they were waiting on a court order or
6 warrant. (Attachment 7 - E-mail 7-4-14 3:56 pm Maldives Local Time).⁵ Later that
7 evening, around 8:00 p.m. local time in the Maldives, the Maldivian authorities told
8 Special Agent Smith a warrant would be done at 9:00 p.m. (Attachment 8 - E-mail 7-4-
9 14 8:03 pm Maldives Local Time). However, at approximately 1:30 a.m. on the morning
10 of July 5, 2014, the Maldivian authorities contacted Special Agent Smith and told him
11 that they needed an Interpol Red Notice in order to turn over Seleznev. (Guam Transcript
12 at 117; Attachment 3 at 3). Secret Service in Washington D.C., contacted their Interpol
13 liaison and arranged for Interpol to issue a Red Notice at approximately 10:00 p.m.
14 eastern standard time July 4, 2014 (7:00 a.m. July 5, 2014 in the Maldives). (Guam
15 Transcript at 117-119; Attachment 3 at 3).

16 At approximately 8:30 a.m., Maldives local time on July 5, 2014, Special Agents
17 Smith, Schwandner and Iacovetti met again with Maldivian officials at the Male airport.
18 (Attachment 4 at 2). During that meeting, the Maldivian officials confirmed they would
19 expel Seleznev based on the Red Notice and turn him over to the U.S. agents and told the
20 agents that this decision was formally approved by their government officials. (Guam
21 Transcript at 121-123; Attachment 4 at 2). The Maldivian officials did not indicate
22 whether they had obtained a domestic warrant or whether they had sought authority from
23 any Maldivian court. (Guam Transcript at 117, 130-131). Maldivian officials indicated
24 they would detain Seleznev and turn him over based on the Red Notice provided they
25 could confirm his identity when he arrived at the airport. (Guam Transcript at 121-122).

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28 ⁵ The time stamp on the copies of the e-mails in attachments 7 and 8 reflect the twelve hour difference between
Maldives local time and Pacific Standard Time where the native file versions of these e-mails were converted to
Adobe .pdf copies for discovery.

1 **C. The Apprehension**

2 At approximately 10:00 a.m., Seleznev arrived via sea plane at the Male airport
3 and boarded a shuttle bus from the float plane terminal to the main airport terminal.
4 (Guam Transcript at 122-123; Attachment 4 at 2). Maldivian police officials and SAIC
5 Iacovetti maintained surveillance of Seleznev on the bus as it traveled to the terminal and
6 watched Seleznev get off the bus and approach the terminal. (Guam Transcript at 122-
7 123; Attachment 9 - Photographs of Seleznev).

8 As Seleznev entered the main terminal at approximately 10:30 a.m., Maldivian
9 police stopped him and asked for his identification. (Guam Transcript at 123;
10 Attachment 3 at 3, Attachment 4 at 2). After confirming his identity matched the Red
11 Notice, the Maldivian police detained him and escorted him to the airport police station.
12 (Guam Transcript at 123; Attachment 3 at 3; Attachment 4 at 2).

13 When they arrived in the airport police station, Seleznev was asked to sit on the
14 couch. Maldivian officials told the agents that they were confident Seleznev matched the
15 description in the Interpol Red Notice. (Guam Transcript at 91). They notified Seleznev
16 that he was being expelled from the Maldives based on the Red Notice, and presented
17 defendant to Special Agents Schwandner, Iacovetti and Smith. (Guam Transcript at 91-
18 92; 123-124; Attachment 4 at 3). After Seleznev acknowledged his name, Special Agent
19 Schwandner introduced himself, explained who he was and why he was there, and
20 showed Seleznev a copy of the U.S. indictment and arrest warrant. (Guam Transcript at
21 91-92; Attachment 4 at 3; Attachment 10 - Photograph of Seleznev in Police Station).
22 Special Agent Schwandner explained to Seleznev that he was going to be transported to
23 the U.S. to answer the charges in the indictment. (Attachment 4 at 3). The Maldivian
24 authorities also searched Seleznev's luggage and turned over various items of evidence
25 including Seleznev's laptop computer and his iPhone to the U.S. agents. (Attachment 4
26 at 3).

27 Maldivian authorities instructed the U.S. agents that they and Seleznev would be
28 escorted by four Maldivian police officers to the departure hall for immigration

1 processing, with Agents Schwandner and Smith handling Seleznev. (Guam Transcript at
2 124). Before they left the police station, Special Agent Schwandner asked the Maldivian
3 officials if he could handcuff Seleznev for officer safety. (Guam Transcript at 124-125).
4 Maldivian officials remained in control of the operation throughout the time the agents
5 and Seleznev were in the airport. (Guam Transcript at 124). The U.S. agents took no
6 actions without the consent or authorization of Maldivian officials. *Id.*

7 At approximately 10:50 a.m., the agents, Maldivian authorities and defendant left
8 the police station and proceeded to the VIP departure lounge for immigration processing
9 with Seleznev in handcuffs. (Guam Transcript at 131-132; Attachment 4 at 3). At the
10 VIP departure lounge, Maldivian officials stamped Seleznev's passport for departure and
11 then escorted the U.S. agents and Seleznev to a chartered jet that U.S. authorities had
12 arranged for the operation. (Guam Transcript at 131-132; Attachment 11 - Seleznev
13 Passport at 12; Attachment 4 at 3). The agents and Seleznev boarded the plane at
14 approximately 11:05 a.m. The flight left the ground at approximately 11:20 a.m. in route
15 for Guam. (Guam Transcript at 134; Attachment 4 at 3, Attachment 3 at 3).

16 The flight to Guam took approximately 11 hours. (Guam Transcript 134). During
17 the flight, Seleznev's handcuffs were removed and he was provided with a comfortable
18 leather seat similar to first class seating on commercial flights. (Attachment 12 -
19 Photograph of Seleznev on Charter Flight). The charter crew served Seleznev an in-flight
20 meal of filet mignon. Seleznev has not alleged any physical or mental abuse occurred
21 during any of the events described above. (Guam Dkt. #13-1, Attachment 13 -
22 Declaration of Roman Seleznev).

23 Upon arrival in Guam, SAIC Iacovetti executed the arrest warrant and noted that
24 defendant was detained in the Maldives by Maldivian authorities and turned over to U.S.
25 agents for transport to Guam. (Attachment 14 – Warrant for Arrest). Agent Iacovetti
26 then allowed Seleznev to call his father using his cellular telephone. Seleznev told his
27 father he had been taken into custody in the Maldives, that he had been taken to the
28 United States, he was safe and he had his medications. The same day defendant was

1 taken into custody, the Secret Service provided the Russian Consulate with a Consular
2 Notification of the apprehension. Attachment 16.

3 IV. ARGUMENT

4 A. The Circumstances of Apprehension Do Not Affect the Court's Jurisdiction.

5 Seleznev argues that this Court lacks personal jurisdiction over him because of the
6 manner in which he was brought to the United States. But “[i]t is well-established that
7 jurisdiction over a defendant is not impaired by the fact that he was brought within the
8 jurisdictional territory of the court against his will.” *United States v. Shi*, 525 F.3d 709,
9 724 (9th Cir. 2008). This rule, known as the *Ker-Frisbie* doctrine, provides that even
10 “forcible abduction is no sufficient reason why the party should not answer when brought
11 within the jurisdiction of the court which has the right to try him for such an offense, and
12 presents no valid objection to his trial in such court.” *Ker v. Illinois*, 119 U.S. 436, 444
13 (1886); *see also Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (“the power of a court to try
14 a person for crime is not impaired by the fact that he had been brought within the court’s
15 jurisdiction by reason of a ‘forcible abduction’”). Thus while defendant’s
16 characterization of his apprehension as a “kidnapping” or “abduction” is belied by the
17 facts, the *Ker-Frisbie* doctrine provides that even if his allegations were true, his motion
18 must be denied.

19 The Ninth Circuit has also made clear that, in application, the *Ker-Frisbie* doctrine
20 precludes a personal jurisdiction challenge when a foreign national is abducted from a
21 foreign nation at the encouragement of United States officials, *United States v. Lovato*,
22 520 F.2d 1270, 1271 (9th Cir. 1975); *see also United States v. Alvarez-Machain*, 504
23 U.S. 657, 669-70 (1992), or even when United States law enforcement directly
24 participates in the forcible abduction of a foreign national on foreign soil. *Matta-*
25 *Ballesteros*, 71 F.3d at 761-63; *United States v. Cotten*, 471 F.2d 744, 746-48 & n.4 (9th
26 Cir. 1973). The *Ker-Frisbie* doctrine thus makes clear that, subject to the two exceptions
27 discussed below, the circumstances surrounding defendant’s apprehension cannot support
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1 dismissal of the indictment regardless of the level of U.S. participation in defendant's
2 apprehension.

3 **B. No Exceptions to the *Ker-Frisbie* Doctrine Apply to this Case.**

4 The *Ker-Frisbie* doctrine has only two exceptions. See *United States v.*
5 *Struckman*, 611 F.3d 560 (9th Cir. 2010). The first exception applies when the transfer of
6 the defendant violates an express provision of an extradition treaty. *Alvarez-Machain*,
7 504 U.S. at 664. This exception, however, is available only when an applicable
8 “extradition treaty contains an explicit provision making the treaty the exclusive means
9 by which a defendant’s presence may be secured.” *Id.* The second exception to the *Ker-*
10 *Frisbie* doctrine applies when the government’s conduct in securing the defendant’s
11 presence “is so shocking and outrageous ‘as to violate the universal sense of justice’”
12 and, therefore, amounts to a due process violation requiring dismissal. *Struckman*, 611
13 F.3d at 573 (quoting *United States v. Barrera-Moreno*, 951 F.2d 1089, 1092 (9th Cir.
14 1991)); see also *United States v. Anderson*, 472 F.3d 662, 667 (9th Cir. 2006)). Neither
15 exception applies here.

16 **1. No Extradition Treaty Applies in this Case**

17 The first exception to the *Ker-Frisbie* doctrine applies only to extraditions from
18 countries with which the United States has entered into extradition treaties explicitly
19 providing the exclusive means of removal from those countries. See *Alvarez-Machain*,
20 504 U.S. at 662 (where no treaty expressly prohibits abduction from a country, “the rule
21 in *Ker* applies and the court need not inquire as to how the defendant came before it”).
22 There is no extradition treaty between the United States and the Maldives—much less
23 one that provides an exclusive means of removal. Accordingly, this exception is not
24 applicable.

25 Because defendant was in the Maldives at the time of his apprehension, the
26 existence of an extradition treaty between Russia and the United States is irrelevant.
27 However, because defendant complains at length in his brief about the government’s
28 failure to extradite him from Russia, several points need to be made. First, Article 61 of

1 the Russian Constitution *forbids* extradition from Russia of Russian citizens, so
2 extradition from Russia was plainly not an option here. Second, even setting the Russian
3 Constitution aside, there is no extradition treaty between the United States and Russia.
4 While the Russian government and the United States have entered into a Mutual Legal
5 Assistance Treaty (MLAT), the MLAT does not provide for extradition. *See* Treaty with
6 Russia on Mutual Legal Assistance in Criminal Matters, Article 21.⁶ MLATs, including
7 the Russian MLAT, are mechanisms for obtaining evidence, not for extradition. *See id* at
8 Article 1, Section 4 (the treaty “is intended solely for cooperation and legal assistance
9 between the parties”); *In re Premises Located at 840 140th Ave. NE, Bellevue, Wash.*, 634
10 F.3d 557, 564 (9th Cir. 2011). Moreover, the Russian MLAT is, by its own terms, not
11 mandatory. *See* Treaty with Russia on Mutual Legal Assistance in Criminal Matters,
12 Article 1; *In re Grand Jury Subpoena*, 646 F.3d 159, 165 (4th Cir. 2011) (finding that
13 MLAT was “not the exclusive means for the government to obtain documents from a
14 party located in [a foreign] country”).

15 Finally, the United States *did* in fact seek Russian assistance in its investigation of
16 Seleznev. That experience caused US officials to believe that further coordination with
17 the Russian government would jeopardize efforts to prosecute this case. On May 19,
18 2009, agents with the Secret Service met with representatives of the Russian Federal
19 Security Service (FSB) in Moscow, and presented substantial evidence of defendant’s
20 computer hacking activities. Agents provided the FSB with defendant’s online alias
21 names, including his primary alias at that time (nCuX), and information that they
22 believed nCuX’s true name was Roman Seleznev of Vladivostok, Russia. Just one month
23 later, on June 21, 2009, nCuX notified his co-conspirators on multiple online criminal
24 forums that he was going out of business. Shortly after that, nCuX completely
25 disappeared from the Internet. Defendant then began establishing new online identities

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27 ⁶ Although the U.S.-Russia MLAT has provisions for the transfer of persons already in custody for testimony or
28 other purposes, such transfers may only occur if the person to be transferred consents. MLAT Article 12. Because
Seleznev was not in custody in Russia and never would have consented to his own transfer to the United States the
treaty could not have been used to secure his appearance here.

1 including Track2 and Bulba around September 2009. The close relation in time between
2 the disclosure to the Russian government that nCuX was Roman Seleznev, and
3 Seleznev's subsequent decision to abandon that nickname, along with defendant's
4 father's known ties to the Russian government, caused authorities to conclude that further
5 efforts to coordinate with Russian officials presented too much risk to the investigation.

6 Unable to argue that the government violated any extradition treaty, Seleznev
7 invites this Court to craft an entirely new exception to the *Ker-Frisbie* doctrine.
8 Defendant proposes that this Court be the first to recognize a *Ker-Frisbie* exception that
9 would effectively prohibit the apprehension of fugitives in every country that has *not*
10 entered into an extradition treaty with the United States. See Defendant's Motion to
11 Dismiss at 14 - 18 (arguing that in the absence of an extradition treaty silent on the
12 question of abduction, the United States must comply with local laws addressing
13 kidnapping offenses). Defendant's novel proposal need not detain the Court long. This
14 Court is bound by decades of settled Supreme Court and Ninth Circuit precedent defining
15 the bounds of the *Ker-Frisbie* doctrine, and the Ninth Circuit has squarely held that a
16 forcible abduction from a non-extradition country falls squarely within the doctrine's
17 ambit. *Cotton*, 471 F.2d at 746-48 & n.4; *accord United States v. Shubin*, 722 F.3d 233,
18 243-44 (4th Cir. 2013) (expressly rejecting the argument that *Ker-Frisbie* is limited to
19 countries with extradition treaties with the United States). Defendant's invitation to
20 rewrite this settled precedent should be rejected. Regardless, the Maldives exercised its
21 authority under its domestic law, with the United States operating only under Maldivian
22 control.

23 **2. The Alleged Circumstances Of Seleznev's Apprehension Were Neither**
24 **Shocking Nor Outrageous.**

25 As discussed above, the second potential exception to the *Ker-Frisbie* doctrine
26 concerns "shocking and outrageous" conduct so extreme as to violate the "universal sense
27 of justice," therefore requiring dismissal under due process principles. *Struckman*, 611
28 F.3d at 573. In a close variation of this analysis, the Ninth Circuit has held that courts

1 may order dismissal of an indictment under their inherent supervisory powers in certain
2 cases where the defendant can “demonstrate governmental misconduct ‘of the most
3 shocking and outrageous kind’ so as to warrant dismissal.” *Id.* (citing *United States v.*
4 *Valot*, 625 F.2d 308, 310 (9th Cir. 1980). Therefore, the inquiry under a due process
5 analysis or under the court’s supervisory powers turns on the same “extremely high”
6 standard of shocking and outrageous government conduct. *Struckman*, 611 F.3d at 573.
7 The conduct at issue here does not meet that standard because it involved no physical
8 abuse or mistreatment, it was based on full disclosure and cooperation with local
9 authorities, and there was no effort by government agents to circumvent local process.

10 ***a. Defendant’s apprehension was not an abduction or kidnapping***
11 ***and did not involve any physical or mental mistreatment.***

12 The allegations in Seleznev’s declaration fail to describe behavior on the part of
13 U.S. authorities (or any other authorities for that matter) that would constitute an
14 abduction, kidnapping, inappropriate behavior, or mistreatment of any kind necessary to
15 support a finding of misconduct, let alone “shocking and outrageous” misconduct.
16 Indeed, in *Matta-Ballesteros*, the Ninth Circuit found a forcible abduction with very
17 concerning and entirely different facts than those alleged by Seleznev was not so
18 shocking and outrageous as to require dismissal under the court’s supervisory powers or
19 as a due process violation. *Matta-Ballesteros*, 71 F.3d at 762-64.

20 In *Matta-Ballesteros*, Honduran special forces aided by four U.S. Marshals
21 abducted the defendant from his home in a pre-dawn raid in which they placed a hood
22 over his head, bound his hands, and thrust him to the floor of a car operated by the
23 Marshals before driving him to a U.S. Air Force Base and secreting him out of the
24 country. *Id.* at 761. During the ride to the air force base and later on the flight to the
25 U.S., *Matta-Ballesteros* was also allegedly beaten and burned with a stun gun applied to
26 various parts of his body including his feet and genitals. *Id.* The Ninth Circuit, while
27 “deeply concerned by the actions” of the arresting agents, found that “it is clear in light of
28

1 recent Supreme Court precedent that the circumstances surrounding Matta-Ballesteros’
2 abduction do not divest this court of jurisdiction.” *Id.* at 763.

3 The facts of this case do not even approach those that the *Matta-Ballesteros* court
4 found insufficient to justify dismissal. Maldivian authorities exercising their domestic
5 law enforcement authority initially directed Seleznev without force to an airport police
6 office. (Guam Transcript at 123; Attachment 3 at 3, Attachment 4 at 2). After detaining
7 Seleznev based on the Interpol Red Notice and confirming he matched the description in
8 the notice, Maldivian authorities presented Seleznev to U.S. agents. The U.S. agents then
9 notified Seleznev of the charges against him. Only then did Maldivian officials turn him
10 over to the U.S. agents’ custody. (Guam Transcript at 91-92; 123-124; Attachment 4 at
11 3). The agents are not alleged to have engaged in any physical or mental abuse of the
12 defendant. The most severe behavior described in Seleznev’s own description of the
13 apprehension involved pushing him to a couch, yelling, and an allegation that agents
14 “aggressively dangled” the indictment in front of his face. (Guam Dkt. #13-1
15 [Declaration of Roman Seleznev]). Instead of the physical abuse that *Matta-Ballesteros*
16 allegedly endured on his flight to the U.S., Seleznev’s flight involved a steak dinner on a
17 luxury private jet while he comfortably lounged in a large leather seat. (See Attachment
18 12).

19 ***b. Defendant’s apprehension was undertaken under the authority***
20 ***and direction of and with full participation of Maldivian officials***

21 Throughout his motion, defendant falsely claims that the Secret Service agents
22 acted on their own, outside the authority of, and without the participation of, Maldivian
23 officials. (Defendant’s Motion to Dismiss at 7, 20-22). The evidence, however, shows
24 that Maldivian authorities were actively engaged throughout and that U.S. special agents
25 acted only under the Maldives’ authority and with their permission. Special Agent
26 Schwandner testified that Maldivian officials were in full control of the entire operation,
27 and that the U.S. agents acted only at the direction of the Maldivian police until the
28 moment their airplane left the ground. (Guam Transcript at 91, 124-126). This is

1 corroborated by a photograph of Seleznev in the Maldivian airport police station, which
 2 clearly shows two Maldivian police officers with the word “Police” on their blue
 3 uniforms guarding Seleznev as Agent Schwandner speaks to him. (See Attachment 10).⁷

4 The falsity of defendant’s claim is further demonstrated by the evidence he
 5 himself submitted in support of his motion in Guam, which includes statements from the
 6 President of the Maldives immediately after Seleznev’s apprehension. The statement by
 7 the Maldivian President explains that U.S. authorities were operating solely under
 8 Maldivian authority and quotes the President saying that “[t]he arrest was made
 9 according to due procedure, upon Interpol’s notice, with their assistance . . . [and the
 10 operation] was not done on the instructions of the US or any other party.” (Attachment 17
 11 (Guam Dkt#20) at 9). Even defendant’s witness, whom he claims provides support for
 12 his motion, acknowledged the presence of “Maldives law enforcement officers” during
 13 the operation. (Defendant’s Exhibit 11). The witness’s declaration totally fails to
 14 support defendant’s claim that Maldivian agents “did not participate in his abduction in
 15 any way,” (Defendant’s Motion to Dismiss at 22) (Guam Transcript at 124-127). The
 16 fact that Maldivian officials voluntarily cooperated in delivering Seleznev to United
 17 States law enforcement is further proof that no “shocking” or “outrageous” conduct
 18 occurred. *See, e.g., United States v. Valot*, 625 F.2d 308, 309-10 (9th Cir. 1980). Thus,
 19 defendant’s contrary arguments are without merit and should be rejected.

20 ***c. US officials provided accurate information to the Maldivian***
 21 ***authorities.***

22 There is no evidence that U.S. officials made any misrepresentations to secure the
 23 cooperation of Maldivian officials in defendant’s expulsion. Rather, the evidence shows
 24 that the U.S. government presented a proper diplomatic request for assistance from the
 25 Maldives in which it carefully described the charges and evidence against Seleznev and
 26 requested his removal to the United States via whatever means available under the laws
 27

28 ⁷ The government is submitting a copy of this exhibit in native (JPEG) format to provide the clearest possible image.
 Attachment 18.

1 of the Maldives. (*See* Attachment 5). Notably, defendant does not contend the request
2 was incomplete or inaccurate in any way.

3 In light of the lack of an extradition treaty between the two governments, there
4 could be no more appropriate mechanism for securing defendant's custody than to
5 specifically ask Maldivian officials to act under their domestic authority and to provide
6 their cooperation exactly as occurred. *See, e.g., Cotton*, 471 F.2d at 745-48. Moreover,
7 given Russia's constitutional prohibition on extraditing its own citizens and this
8 defendant's history of avoiding travel to countries that have extradition treaties with the
9 United States, this type of apprehension operation was likely the only way Seleznev
10 could have been brought to justice.

11 Nonetheless, even had the agents engaged in some level of misrepresentations to
12 Maldivian officials, this too would be insufficient to support dismissal of the indictment
13 under binding Ninth Circuit precedent. *See Struckman*, 611 F.3d at 573-576; *Anderson*,
14 472 F.3d at 667. In *Struckman*, U.S. agents affirmatively lied to the Panamanian
15 government to secure that government's cooperation in expelling Struckman from
16 Panama and transfer to the United States. Among other things, the U.S. agent
17 coordinating with the Panamanian officials falsely claimed Struckman had already been
18 tried, and falsely claimed Struckman was orchestrating a fraud scheme in Panama. *See*
19 *Struckman*, 611 F.3d at 573-574. The Ninth Circuit held that those allegations failed to
20 rise to the level of outrageous conduct necessary to support dismissal of the indictment.
21 *Id.* Likewise, in *Anderson*, the Ninth Circuit found defendant's allegations that U.S.
22 agents had misled Costa Rican authorities regarding a purportedly unexecuted prison
23 sentence were insufficient to justify dismissal. *Anderson*, 472 F.3d at 667.

24 ***d. U.S. authorities did not engage in any efforts to circumvent the***
25 ***Maldivian judicial process.***

26 Similarly, there is no evidence that U.S. authorities engaged in any effort to
27 circumvent the Maldivian judicial process. The Maldives' authorization and participation
28 in apprehending Seleznev began with a diplomatic request by the United States for

1 assistance from that country's domestic authorities. As Agent Schwandner testified at the
2 hearing in Guam, the Maldivian law enforcement authorities did not involve U.S. agents
3 in the Maldives' decision making, the U.S. agents took no part in that process and those
4 agents had no knowledge of whether any Maldivian court or judicial official denied a
5 request for a warrant or court order. (Guam Transcript at 117, 121-122, 130-131).
6 Therefore, the record simply fails to support defendant's claim that U.S. government
7 agents participated in any efforts to circumvent Maldivian process or ignore a judicial
8 order denying any purported arrest warrant request. Indeed, there is not even any reliable
9 evidence supporting defendant's speculation that Maldivian officials were refused a
10 warrant. On the contrary, while Maldivian officials may have discussed amongst
11 themselves the relative merits of obtaining a warrant or court order, and they may have
12 even met with a judge on this subject, they ultimately instructed the U.S. agents that the
13 proper method for securing Seleznev's custody was to present the Interpol Red Notice.
14 (Guam Transcript at 117, 121-122). As Seleznev notes in his motion, a Red Notice is
15 "the closest instrument to an international arrest warrant in use today" and, as such, in the
16 absence of an extradition treaty that would support a formal provisional arrest warrant in
17 the host country, represents the most appropriate method of securing defendant's
18 detention in the Maldives. (Defendant's Motion to Dismiss at 28).

19 Yet, just as allegations that U.S. agents engaged in deception of a foreign
20 government fail to support dismissal, allegations that U.S. agents circumvented foreign
21 judicial process also fail to support dismissal. In *Anderson*, the defendant was attempting
22 to appeal an extradition order and an order depriving him of Costa Rican citizenship
23 through the Costa Rican judiciary. *See Anderson*, 472 F.3d at 667. While that process
24 was ongoing, the United States removed him "in the dead of the night" while his appeals
25 were still pending. *Id.* The Ninth Circuit rejected defendant's argument that the
26 government's circumvention of the Costa Rican judicial process constituted shocking and
27 outrageous conduct, finding that "nothing in this case amounts to outrageous conduct for
28 the purpose of obtaining personal jurisdiction over Anderson in the United States district

1 court.” *Id.* Thus, as Judge Tydingco-Gatewood already found, defendant’s motion fails
2 even if his allegations regarding the purported denial of an arrest warrant by a Maldivian
3 judge were true.

4 **C. The Apprehension Did Not Violate Domestic or Foreign Law or International**
5 **Treaties**

6 The *Ker-Frisbie* doctrine permits dismissal only under the two specific exceptions
7 discussed above, that is, when there is an exclusive extradition treaty or the government
8 engages in shocking and outrageous conduct of an extreme degree. Defendant’s
9 arguments that the apprehension violated various treaties, guidelines and laws therefore
10 are insufficient to support his release, and are therefore irrelevant to this motion. As
11 discussed below, they are also unsupported by fact and law.

12 **1. Agents Acted Within Their Authority in Executing the Arrest Warrant**

13 Defendant incorrectly argues that agents exceeded their authority by arresting him
14 on foreign soil. However, Special Agent Schwandner testified at the evidentiary hearing
15 that he did not execute the arrest warrant until defendant’s arrival in Guam. (Guam
16 Transcript at 120). As he explained under cross examination, Maldivian Police
17 authorities controlled the entire operation in the Maldives and he acted solely with their
18 consent and at their direction. (Guam Transcript at 121-125). Regardless, the exact
19 “when” and “where” of the execution of the U.S. warrant is not dispositive in any way
20 here.

21 Special Agent Schwandner’s testimony is supported by the record. The statement
22 of the Maldivian President submitted by defendant maintains that “[t]he arrest was made
23 according to due procedure, upon Interpol’s notice, with their assistance . . . [and the
24 operation] was not done on the instructions of the US or any other party.” (Attachment 17
25 at 9). Thus, to the extent defendant’s detention in the Maldives constituted an arrest, it
26 was solely the responsibility of Maldivian officials until the moment they left the
27 Maldives. This is consistent with the executed arrest warrant, which states that it was
28 executed in Guam at 0241 hours on July 6, 2014. (*See* Attachment 14). Finally, SAIC

1 Iacovetti's notation clearly states that defendant was "detained in Maldives on 7/5/14 by
2 police authorities pursuant to a Red Notice (Interpol) and released to the custody of US
3 enforcement agents for transport back to Guam." *Id.* Thus, defendant's claim that his
4 arrest violated the law governing the execution of arrest warrants and the Secret Service's
5 enabling statute is unsupported by the facts.

6 Even had the United States executed its warrant on foreign soil, the only potential
7 negative result would be offending the sovereignty of the relevant foreign country.
8 However, the agents' conduct in taking custody of Seleznev in the Maldives was done
9 with the full knowledge and approval of the Maldivian government, as reflected in the
10 statement of the Maldivian President after the operation. If defendant was correct that
11 federal law enforcement officers have no power to effect extraterritorial arrests even with
12 the consent of the host country, this would mean that agents are effecting unlawful arrests
13 every time they take custody of defendants following foreign extradition proceedings.
14 This cannot be the law.⁸

15 **2. The Apprehension Did Not Violate DOJ Internal Guidance.**

16 Seleznev also argues that his apprehension in the Maldives violated Department of
17 Justice Guidelines contained in the United States Attorney's Criminal Resources Manual.
18 (Defendant's Motion to Dismiss at 25-26). As an initial matter, the Criminal Resource
19 Manual "does not create any substantive or procedural rights" that defendant may seek to
20 enforce. *United States v. Fernandez*, 231 F.3d 1240, 1246 (9th Cir. 2000). The Criminal
21 Resource Manual is part of the United States Attorney's Manual which is designed as
22 reference manual for federal prosecutors. USAM § 1-1.100. The manual expressly states
23 that it "provides only *internal* Department of Justice guidance. It is not intended to, does
24 not, and may not be relied upon to create any rights, substantive or procedural,

25
26 ⁸ Seleznev cites *Alvarez-Machain v. United States*, 331 F.3d 604, 641 (9th Cir. 2003 (en banc) *rev'd on other*
27 *grounds sub nom, Sosa v. United States*, 542 692 (2004), as support for his claim that Rule 4(c)(2) prohibits
28 executing arrest warrants outside the United States, but this citation is inapt. *Alvarez-Machain* involved a prior
version of Rule 4(c)(2) that expressly limited service of arrest warrants to "any place in the United States."
However, in 2002, Rule 4(c)(2) was amended to include its current language, which allows service of an arrest
warrant "anywhere within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest.

1 enforceable at law by any party in any matter civil or criminal.” *Id.* (emphasis added).
2 Therefore, even if defendant’s allegation that agents violated the manual were true, this
3 fact standing alone would fail to rise to the level of a recognized statutory or
4 constitutional violation. *United States v. Montoya*, 45 F.3d 1286, 1295 (9th Cir. 1995).

5 In any case, the government did not violate any policy or provision of the Criminal
6 Resource Manual. While the government has no obligation to produce documentation of
7 its internal consultations and deliberations, representatives of the Secret Service, the
8 United States Attorney’s Office, and the other appropriate components of the Department
9 of Justice fully discussed the plan to apprehend Mr. Seleznev, and all necessary approvals
10 were obtained.

11 **3. Agents Did Not Violate Maldivian Law**

12 There is absolutely no evidence to support defendant’s claim that the agents
13 knowingly violated the law of the Maldives. On the contrary, the agents had every
14 reason to believe that the Maldivian authorities were acting well within their own laws
15 and directed the U.S. agents accordingly.

16 As demonstrated by Agent Schwandner’s testimony and the agents’ after-action
17 reports, the Maldivian authorities’ actions showed a careful and deliberate process of
18 deciding whether to expel Seleznev. (Guam Transcript at 91-92, 113-117, 121-125).
19 Among other things, the record shows that in response to the United States request to the
20 Maldives to use its domestic law and provide cooperation and assistance in the
21 apprehension of Seleznev, the Maldivian authorities: 1) consulted with their attorney
22 general; 2) consulted with a Maldivian judge; 3) consulted with the Maldivian President,
23 and; 4) decided and provided specific advice to the United States that an Interpol Red
24 Notice was a proper legal basis for expelling Seleznev from the Maldives. Upon receipt
25 of the Red Notice, Maldivian officials notified the agents that they were satisfied this
26 would support Seleznev’s expulsion as long as they confirmed he matched the description
27 in the warrant. (Guam Transcript at 121-122).
28

1 Additionally, the Maldivian officials told the agents that this decision had been
2 approved by their Attorney General and the President of the Maldives. (Guam Transcript
3 at 122; Attachments 3 & 4). Before turning Seleznev over, the Maldivian officials
4 carefully reviewed the description in the Red Notice before confirming Seleznev was the
5 defendant described in the warrant. (Guam Transcript at 123-124, 131). It would be
6 absurd to find that U.S. agents acting under assurances that the Maldivian President and
7 Attorney General had approved the operation somehow “knowingly violated the law of
8 the Maldives”—let alone engaged in shocking and outrageous misconduct.

9 Insofar as Seleznev alleges the Maldivian authorities violated their own domestic
10 law by transferring him into United States custody, he has no remedy in this Court for
11 any violation of Maldivian law. *See United States v. Covington*, 783 F.2d 1052, 1056
12 (9th Cir. 1985); *United States v. Maher*, 645 F.2d 780, 782 (9th Cir. 1981). United States
13 law enforcement agents should not be required to second-guess the decision-making
14 process of a foreign government – especially when that process appears to have involved
15 such a careful analysis at the highest levels of the host nation. When viewed in light of
16 the many other cases that have approved truly forcible abductions conducted over the
17 objection of the host nation, the facts of this case simply cannot support a finding of
18 misconduct. *See e.g., Alvarez-Machain*, 504 U.S. at 664-67.

19 **4. Defendant Was Lawfully Expelled Consistent with the Interpol Red**
20 **Notice.**

21 The Interpol Red Notice requested the assistance of any foreign government that
22 located Seleznev in effecting a lawful removal to the United States to face trial. That is
23 exactly what happened in this case. *See* Defendant’s Exhibit 19. As shown above, the
24 U.S. agents were fully justified in their belief that the Maldivian authorities had done
25 everything in their power to comply with local and international law during the course of
26 their assistance. Maldivian officials’ actions reflected a careful consideration of the U.S.
27 request and their consultation with multiple levels and branches of their government
28 demonstrated they were acting deliberately and within the bounds of their domestic

1 authority. Nonetheless, even if the Government did violate the Red Notice, defendant has
2 no standing to personally enforce the terms of a Red Notice agreement. *See United States*
3 *v. Yousef*, No. S3 08 Cr. 1213, 2011 WL 2899244 (S.D.N.Y. June 30, 2011) (defendant
4 lacked standing to argue that the government’s alleged violation of the terms of a Red
5 Notice and Agreement to Extradite warranted dismissal of the indictment). Once again,
6 in light of the numerous cases that have found no violation under much more severe
7 circumstances, defendant’s allegations are clearly insufficient to support a finding of
8 misconduct.

9 **5. The Secret Service Did Not Violate the International Covenant on Civil**
10 **and Political Rights**

11 The International Covenant on Civil and Political Rights also fails to support
12 dismissal of the indictment. Defendant argues that the agents violated the ICCPR when
13 they “arrested him without authority under either United States law or the law of the
14 Maldives. . . .” (Defendant’s Motion to Dismiss at 31). The record shows, however, that
15 U.S. agents were acting solely at the direction and discretion of Maldivian authorities.
16 Therefore, it is only the Maldivian authorities’ actions in expelling Seleznev and turning
17 him over to the custody of U.S. agents based on the Interpol Red Notice that could
18 possibly have violated the terms of the ICCPR. Such a violation could not constitute
19 shocking or outrageous conduct on the part of the U.S. agents, as they had no part in the
20 Maldivian process or decision making. (Guam Transcript at 121-122). Importantly,
21 there is no suggestion by any facts in the record that any government action by the United
22 States or the Maldives offended the ICCPR. Therefore, this allegation is contradicted by
23 the record already developed in Guam.

24 Moreover, the Supreme Court has clearly held that only a violation of the express
25 terms of an extradition treaty establishing it as the exclusive means for the return of
26 fugitives may constitute an exception to the *Ker-Frisbie* doctrine. *See Alvarez---*
27 *Machain*, 542 U.S. at 667-668. Any other alleged violation of international law will not
28 suffice as an exception to *Ker-Frisbie*. *Id.* Therefore, even assuming defendant’s

1 | expulsion from the Maldives constituted a violation of the ICCPR (which the United
2 | States denies), such a violation would not support dismissal of the indictment and does
3 | not constitute either shocking or outrageous conduct.

4 | Finally, as a general principle of international law, individuals do not have
5 | standing to challenge violations of international treaties in the absence of a protest by a
6 | sovereign treaty signatory. *See Matta-Ballesteros v. Henman*, 896 F.2d 255, 263 (7th
7 | Cir. 1990); *United States v. Rosenthal*, 793 F.2d 1214, 1232 (11th Cir. 1986); *United*
8 | *States v. Hensel*, 699 F.2d 18, 30 (1st Cir. 1983). A treaty will be construed as creating
9 | enforceable private rights only if the treaty expressly or impliedly provides a private right
10 | of action. *Edye v. Robertson*, 112 U.S. 580, 598-99 (1884). Multilateral treaties do not
11 | confer such rights on private individuals. *See Committee of U.S. Citizens Living in*
12 | *Nicaragua v. Reagan*, 859 F.2d 929, 937 (D.C. Cir. 1988) (United Nations Charter does
13 | not confer rights on private individuals). The ICCPR is such a treaty, and it was ratified
14 | by the United States “on the express understanding that it was not self-executing and so
15 | did not itself create obligations enforceable in federal courts.” *Sosa v. Alvarez-Machain*,
16 | 542 U.S. 692, 735 (2004). Thus, Seleznev has no recourse under the ICCPR and it may
17 | not ground any argument for dismissal of his indictment.

18 | **D. Defendant’s Apprehension is a Model of Effective International Law**
19 | **Enforcement Cooperation.**

20 | Far from weakening the United States’ image on the global stage, Seleznev’s
21 | apprehension shows that cybercriminals will be brought to face justice and cannot hide
22 | behind keyboards in distant countries. Defendant’s apprehension and prosecution is the
23 | result of excellent investigative work and sends a clear message to cybercriminals that
24 | those who deliberately target U.S. citizens and businesses from overseas are not immune
25 | from prosecution in the United States. The recent growth in international cybercrime
26 | requires a concerted effort to identify, arrest, and prosecute those like Seleznev who are
27 |
28 |

1 imposing massive costs upon the economy of the United States.⁹ The Department of
2 Justice has identified cybercrime as one of the key priority areas and noted that
3 cybercrime is one of the greatest threats facing our country with enormous implications
4 for our economic prosperity and public safety.¹⁰ Aggressively pursuing the apprehension
5 of major cybercriminals like Seleznev in coordination with our international law
6 enforcement partners does not weaken the United States' image. Quite to the contrary,
7 acting with speed and decisiveness in close cooperation with foreign officials as the
8 Secret Service did in this case, strengthens that image and shows the world that the
9 United States will not stand by while criminals like Seleznev leave a trail of victims in
10 the United States and around the world.

11 Because Seleznev's apprehension and transfer to U.S. custody was a lawful
12 operation that does not even resemble a kidnapping, nothing the U.S. agents did would
13 justify the behavior defendant suggests other countries may engage in as retribution.
14 Particularly important are the clear request to the Maldives that it use its domestic law to
15 assist with the apprehension of defendant and the Maldives' decision that the
16 presentation of the Interpol Red Notice would lawfully ground their delivery of defendant
17 to U.S. authorities for the ensuing U.S. arrest. Defendant's suggestion that this operation
18 puts U.S. citizens "at increasingly greater risk of retribution or similar action" is based on
19 the same false premise that he was kidnapped which undermines every argument he
20 makes. (Defendant's Motion to Dismiss at 32). There was no kidnapping or abduction.
21 Defendant's apprehension was executed with the cooperation of Maldivian officials
22 based on an official diplomatic request and proper Interpol Red Notice. Nothing
23 inappropriate or unlawful took place. Therefore, Seleznev's hyperbolic fears of foreign
24 retribution should be dismissed.

25
26
27 ⁹ See Chris Strohm, *Cybercrime Remains Growth Industry With \$445 Billion Lost*, BloombergBusiness, June 9,
28 2014, available at <http://www.bloomberg.com/news/articles/2014-06-09/cybercrime-remains-growth-industry-with-445-billion-lost>

¹⁰ See Department of Justice Priority Areas, available at <http://www.justice.gov/usao/priority-areas/cyber-crime>.

**V. THE COURT SHOULD DECLINE
TO HOLD AN EVIDENTIARY HEARING.**

The Court should not hold a second evidentiary hearing because defendant has not alleged facts sufficient to support his claim for dismissal. An evidentiary hearing is necessary only where a defendant's motion identifies disputed material facts which, if proven, would support the defendant's claim for relief. *United States v. Howell*, 231 F.3d 615, 520 (9th Cir. 2000); *United States v. Irwin*, 612 F.2d 1182, 1187 (9th Cir. 1980) (evidentiary hearing required only where "the moving papers allege facts" that would "enable the court to conclude that relief should be granted if the facts alleged are proved"). Where relief would be inappropriate even under the facts alleged by the defendant, the court should deny the request for a hearing. *Howell*, 231 F.3d at 520. In addition, holding multiple hearings to repeatedly address the same issue is inconsistent with basic notions of judicial economy. *United States v. Lummi Tribe*, 235 F.3d 443, 453 (9th Cir. 2000) (law of the case doctrine promotes "efficient operation of court affairs").

A second hearing would be waste of judicial and party resources. While the parties may dispute certain issues related to the apprehension (such as whether defendant was pushed to the couch or asked to sit down) relief would not be appropriate even under defendant's view of the facts. Those facts have been properly developed in the evidentiary hearing and in the parties' written submissions. Defendant had a full opportunity to cross examine SAIC Iacovetti at the evidentiary hearing in Guam. A second evidentiary hearing would require Special Agents Iacovetti, Smith and Schwandner to travel to Seattle at public expense. Because the motion is clearly legally insufficient, even under the facts advanced by defendant, such a hearing would serve no purpose.

For these reasons, the government respectfully requests that the Court deny defendant's motion without argument or an evidentiary hearing. To the extent the Court is considering an evidentiary hearing, the government respectfully requests that the Court hold a hearing to address whether such a hearing is truly necessary.

VI. CONCLUSION

1
2 Defendant is inviting this Court to become the first in the nation to invalidate a
3 prosecution based on the circumstances of an overseas apprehension. The record,
4 however, shows that defendant's apprehension and transfer to the United States was a
5 lawful and appropriate operation that did not involve misconduct, let alone shocking and
6 outrageous misconduct. The circumstances of defendant's apprehension simply pale in
7 comparison to the circumstances the Ninth Circuit has repeatedly found insufficient to
8 support dismissal of an indictment. With such a total absence of shocking or outrageous
9 conduct, this case cannot be the first in the nation to be dismissed in contravention of the
10 Supreme Court's long-established *Ker-Frisbie* doctrine. Because the record was fully
11 developed during the hearings in Guam, and defendant's allegations are so clearly
12 insufficient to merit dismissal of the indictment, defendant's motion should be denied
13 without further hearings.

14 DATED this 13th day of April, 2015.

15 Respectfully submitted,

16 ANNETTE L. HAYES
17 Acting United States Attorney

18 *s/ Norman Barbosa*
19 NORMAN BARBOSA

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

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