

1 3.) The attorney for a defendant charged by complaint, indictment, or information
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
8 District Judge or Magistrate Judge after the interview of the juvenile whether he wishes to have
9 the person remain in custody as a material witness setting forth orally his reasons therefore.

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

16 5.) The deposition shall be conducted in accordance with Rule 15, Federal Rules of
17 Criminal Procedure and under the general supervision of a Magistrate Judge. A Magistrate
18 Judge shall stand by and be available during the deposition to rule on matters that are
19 impractical to reserve for the trial judge. In the discretion of the Magistrate Judge, he or she
20 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 camera, or an in camera 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.

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

7 DATED this 31st day of August, 2011.

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12 Roslyn O. Silver
13 Chief United States District Judge
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