

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

AHMED ABDEL SATTAR, ET AL.,

Defendants.

02 Cr. 395 (JGK)

MEMORANDUM OPINION
AND ORDER

JOHN G. KOELTL, District Judge:

The Court of Appeals for the Second Circuit "directed" the Court "to order [defendants] Stewart and Yousry to surrender forthwith to begin serving their terms of incarceration." United States v. Stewart, No. 06 5015 Cr., 2009 WL 3818860, at *52 (2d Cir. Nov. 17, 2009). However, the mandate has not yet issued from the clerk of the Court of Appeals. Even though the mandate has not issued, this Court "retains jurisdiction over the person of the defendant at least for the limited purposes of reviewing, altering or amending the conditions under which th[e] court released the defendant." United States v. Black, 543 F.2d 35, 37 (7th Cir. 1976); accord United States v. Catino, 562 F.2d 1, 4 (2d Cir. 1977); see also 18 U.S.C. § 3143(b). Indeed, as the Government points out, defendants Stewart and Yousry have in fact sought modification of the conditions of their release throughout the pendency of the appeal. While the Court of Appeals could have itself directed the defendants' surrender by ordering that the mandate issue "forthwith," United States v.

Ostrer, 584 F.2d 594, 598 (2d Cir. 1978), the fact that it has instead directed this Court to order their surrender does not mean this Court has no power to comply with that direction, as the defendants suggest. The cases on which the defendants rely relate to other actions that a district court should not take before jurisdiction has been returned to it by the issuance of the mandate. See, e.g., Doe v. Gonzales, 449 F.3d 415, 420 (2d Cir. 2006) (finding that district court could not entertain motions until mandate had been issued); United States v. Rivera, 844 F.2d 916 (2d Cir. 1988) (finding that Speedy Trial Act calculations did not resume until mandate had been issued). As a result, this Court has the authority to, and indeed must, comply with the Court of Appeals' direction that the defendants' bail be revoked and that this Court order the defendants to surrender to the United States Marshal to begin serving their sentences forthwith.

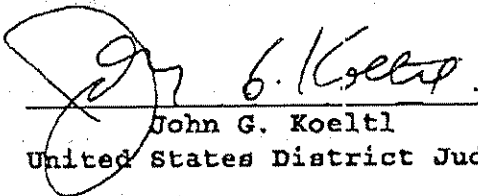
Defendant Stewart has indicated that she plans to file a motion for reconsideration with the Court of Appeals seeking a stay of the Court of Appeals' direction that this Court revoke Stewart's bail and order her immediate surrender. She represents that the motion will be filed today or tomorrow. Both defendants Stewart and Yousry have raised the issue whether the Court's order of their immediate surrender would unfairly preclude them from surrendering to a facility designated by the

Bureau of Prisons, which will affect their security classifications while confined, and whether this conflicts with the terms of the original Judgments, which allowed voluntary surrender. However, any objections to the direction of the Court of Appeals should be raised with that Court.

Therefore, the bail for defendants Stewart and Yousry is revoked and defendants Stewart and Yousry are ordered to surrender to the United States Marshal forthwith, but, in order to allow the Court of Appeals to consider any application for a stay, this Court stays this Order until Thursday, November 19, 2009 at 5:00 p.m. to allow the defendants to make an application for a further stay to the Court of Appeals.

SO ORDERED.

Dated: New York, New York
November 18, 2009



John G. Koeltl
United States District Judge