

THE HONORABLE BRIAN A. TSUCHIDA

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

UNITED STATES OF AMERICA  
  
v.  
  
CHANGPENG ZHAO,  
  
Defendant.

No. CR23-179 (RAJ)(BAT)  
  
**DEFENDANT’S RESPONSE TO  
GOVERNMENT’S MOTION TO  
MODIFY BOND**

**INTRODUCTION**

More than three months have passed since Mr. Zhao self-surrendered from a non-extradition country and pleaded guilty. Since then, he has complied fully with his conditions of release. Neither the government nor Pretrial Services claim otherwise. Yet with no changed circumstance or even a hint at justification, the government now seeks to impose additional restrictions on Mr. Zhao and—most disappointingly—seeks to do so without providing the Court with a complete set of relevant facts. While these new conditions are unnecessary, his counsel has been clear with the government for weeks that, with limited exception, he is willing to accept these additional conditions—provided that the government accurately represent Mr. Zhao’s total compliance with his current release conditions and the additional and voluntary concessions he has offered to avoid unnecessary motion practice, so as not to give the misimpression to the Court or the public that some change of circumstances necessitates the government’s modifications.

1 As his past behavior confirms and as detailed below, Mr. Zhao is intent on appearing for  
2 his sentencing and continuing to accept responsibility for his offense.

### 3 BACKGROUND

4 Both Magistrate Judge Tsuchida and Judge Jones have already considered and ruled on the  
5 appropriate release conditions for Mr. Zhao. No changed circumstances warrant reconsideration.  
6 Moreover, the motion follows weeks of back-and-forth between the government and Mr. Zhao's  
7 counsel in which Mr. Zhao strove in good faith to reasonably accommodate the government's  
8 unwarranted modifications, given the Court's orders with regard to bail have both been docketed  
9 and fully complied with by Mr. Zhao. Instead of continuing those discussions, the government  
10 ignored defense counsel for nearly three weeks until suddenly filing its motion on the day Mr.  
11 Zhao's former company, Binance Holdings Limited, appeared for its sentencing hearing.

12 On November 20, 2023, Mr. Zhao voluntarily flew to the United States from the United  
13 Arab Emirates ("UAE") to appear before this Court, accept responsibility, and plead guilty  
14 pursuant to a written plea agreement. Dkt. 32. Before the plea hearing on November 21, 2023,  
15 Mr. Zhao submitted a Motion for Conditional Release Pending Sentence (Dkt. 21), arguing that he  
16 presents no flight risk and seeking the Court's approval of the proposed bail package and order for  
17 his release to the UAE. The government submitted no response to that motion.

18 At the plea hearing, the government did not seek detention, agreeing that Mr. Zhao poses  
19 no danger to the community and is not a flight risk if he remains in the United States. Dkt. 40, at  
20 ¶ 6(f). The government formally requested no other restrictions or conditions of release for Mr.  
21 Zhao. *Id.* at ¶ 6(a).<sup>1</sup>

22 After hearing from both parties, including from Mr. Zhao, Magistrate Judge Tsuchida  
23 ordered Mr. Zhao released and permitted him to return home to the UAE. *Id.* at ¶ 6(f); Dkt. 33.  
24 At the hearing, both parties were given the opportunity to review Magistrate Judge Tsuchida's  
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27 <sup>1</sup> The government's statements at the plea hearing mirrored its representations to defense counsel prior to the hearing; namely, that it would not seek detention and would not object to Mr. Zhao's ability to travel throughout the continental United States (subject, of course, to approval by the Court).

1 draft appearance bond and request any modifications at that time. The government asked only that  
2 Magistrate Judge Tsuchida’s order not go into effect until Monday, November 27, 2023, providing  
3 the government the opportunity to seek review from the District Court. *See* Dkt. 33; Dkt. 40, at  
4 ¶ 6(g).

5 On November 22, 2023, the government did seek review, filing a motion that was limited  
6 to challenging Magistrate Judge Tsuchida’s decision to allow Mr. Zhao to return to his home in  
7 the UAE. Dkt. 34. The government asked only that the Court order Mr. Zhao to remain in the  
8 United States pending sentencing; it did not request or seek modifications to any other presentence  
9 bond condition. *See id.* at 1, 6. Mr. Zhao responded on November 23, 2023. Dkt. 38. In its  
10 subsequent reply, the government reiterated that it was only asking for the Court to require Mr.  
11 Zhao to “remain in the U.S.” Dkt. 41, at 1. Again, the government did not request or seek  
12 modifications to any other presentence bond condition.

13 On December 7, 2023, Judge Jones granted the government’s motion and ordered exactly  
14 what the government had requested: that Mr. Zhao “shall remain in the continental United States  
15 during the period between his plea and sentencing.” Dkt. 46, at 6. Notably, the Court further  
16 ordered that “[a]ll other conditions of [Mr. Zhao’s] release shall remain the same.” *Id.* at 2.

17 Only after that ruling did the government notify counsel for Mr. Zhao that it wished to see  
18 *multiple* additional conditions imposed. Despite the fact that Judge Jones’s December 7 order  
19 speaks for itself, and there is no justification to impose additional restrictions on Mr. Zhao, over  
20 the next two months Mr. Zhao sought to reach agreement with the government. Throughout that  
21 extensive dialogue, Mr. Zhao made every reasonable effort to reach consensus with the  
22 government while still protecting important interests of his own, including (among other things)  
23 ensuring that he retained personal identification on him at all times as required under U.S.  
24 immigration law. *See, e.g.*, 8 U.S.C. § 1304(d).

25 On December 27, 2023, Mr. Zhao requested that the Court permit him to return home for  
26 one week in early January 2024 to attend to a family medical matter. Dkt. 49. The government  
27 opposed the request and did not raise additions or modifications to the bond. In a hearing on

1 December 29, 2023, the Court denied Mr. Zhao’s request on the basis that the medical matter  
2 lacked the necessary urgency to warrant a modification to his conditions of release, but the Court  
3 made no changes to Mr. Zhao’s appearance bond—nor did it signal in any way that any additions  
4 or modifications were necessary. Dkt. 50; Dkt. 52.

5 For its part, the government failed to indicate to the Court at any point in this process that  
6 it believed modifications to the appearance bond were necessary. It could have requested such  
7 modifications at the November 21, 2023 plea hearing (Dkt. 29); in its motion for reconsideration  
8 of the Magistrate Judge’s Order (Dkt. 34); in opposing Mr. Zhao’s December 29 travel request  
9 (Dkt. 50; Dkt. 52); or at any other time in the past three months. It did not.

10 On February 7, 2024, counsel for Mr. Zhao explained to the government that—as excerpted  
11 below— Mr. Zhao did not object to the requested modifications as a whole, but did want to ensure  
12 that any joint or stipulated motion fairly represented the facts: that the modifications were  
13 unwarranted; that nothing has changed to justify the proposed new conditions; and that Mr. Zhao  
14 has complied with all current conditions of his bond. Specifically, counsel wrote to the  
15 government as follows:

16  
17 We can agree to the additional passport measure, provided the motion is revised as  
18 below. We do not believe the motion as currently drafted would provide the Court  
19 with an accurate picture of the proposal.

20 First, the draft motion states that the purpose of the motion is to make Mr. Zhao’s  
21 bail conditions consistent with the Court’s order. That isn’t the case. As we have  
22 discussed, the Court’s bail orders are clear and there is no need for any  
23 clarifications. And there has been no changed circumstance—indeed, Mr. Zhao has  
24 always been in full compliance with the ordered conditions. Rather, the  
25 government now wants additional conditions in place and (accordingly) this should  
26 be styled as the government’s motion to modify.

27 Second, the draft motion leaves the misleading impression that the reason for this  
28 motion is because Mr. Zhao has not been in compliance with the Court’s order. As  
29 you know, Mr. Zhao has been in full compliance and there is nothing to suggest he  
30 is a flight risk requiring additional conditions. We have been clear that there is no

1 need for anything more, but in order to not burden the Court with unnecessary  
2 motion practice—and to give the government additional (albeit unnecessary)  
3 reassurance—we have already voluntarily taken additional steps, including placing  
4 two of his three passports under the custody and control of his US-based attorneys,  
5 and having his security team retain custody and control of his Canadian passport,  
6 except for those instances when he must present identification related to travel  
7 within the United States (at an airport or at a hotel). We have also provided you  
8 the name and CV of the former British soldier who travels with Mr. Zhao and holds  
9 his passport. Thus, the government’s motion and preamble should make clear that  
10 we have voluntarily taken these steps, that those were deemed insufficient by the  
11 government, and so Mr. Zhao offered up an additional measure to provide the  
12 government further comfort regarding the custody of his Canadian passport: that it  
13 will [be] custodied by a third-party custodian employed and supervised by his  
14 counsel of record. The voluntary nature of these accommodations by Mr. Zhao  
15 should be set forth in the filing to the Court.

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18 Third, as to the special conditions, No. 1 should simply read that Defendant will  
19 give Pretrial notice of any travel; the three-day ask presumes there is a reason for  
20 this notice window – and the rest is surplusage. No. 2 does not account for the fact  
21 that Mr. Zhao has voluntarily provided his other passports to counsel and has never  
22 made any applications for any new passports. Absent that context, the request for  
23 that new condition leaves the reader with the misimpression that [there] has been  
24 some changed circumstance requiring this directive. If you feel that additional ask  
25 is required, the motion should make clear that he has not made any new passport  
26 applications. No. 3 seems unnecessary.

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29 As to the footnotes regarding Pretrial Services: these recommendations were not  
30 included in the Pretrial Report. It is unclear how they are coming up now. The  
31 lack of context for these footnotes (again) leaves the reader with the misimpression  
32 that Mr. Zhao has violated his bail conditions and there is some reason that Pretrial  
33 now wants to restrict his travel to Seattle and require location monitoring. They  
34 should be omitted. Happy to discuss and look forward to reviewing your next turn  
35 of the motion.

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38 The government never responded to that email. Instead, it waited 16 days until suddenly  
39 filing its motion, without notification to defense counsel, on a day when there would be press  
40 coverage of the Company’s sentencing.

## ARGUMENT

The only basis for modification of bail conditions is a showing of materially changed circumstances. Here, the government's motion does not even contend that circumstances have changed. Nor could it: Mr. Zhao has complied in all aspects with his appearance bond and the Court's orders for over three months. And there have been no allegations of noncompliance or heightened risk by anyone, including the government or Pretrial Services.

Aware that the requests it seeks are without justification, the government attempts to circumvent that requirement by claiming its proposed modifications are necessary to "effectuate" Judge Jones's orders. Dkt. 63. Not so. The Court's order is self-effectuating; no modifications are necessary or justified. Even so, Mr. Zhao sought in good faith to accommodate the additional requirements upon which the government insisted in order to avoid burdening the Court with this exercise. In fact, he is already in compliance with most of these requirements. As detailed below and in the Proposed Order, Mr. Zhao objects only insofar as the motion attempts to mischaracterize his compliance with the Court's order and impose unnecessary restrictions without any legal or rational basis. It is regrettable that the government omitted all of this context from its motion and withheld from the Court an accurate picture of the facts.

### **A. The Government Has Not Identified Any Materially Changed Circumstances Sufficient to Modify Mr. Zhao's Appearance Bond.**

The law is clear that, absent a showing of materially changed circumstances after an appearance bond has been set, a court should not modify a defendant's release conditions. *See, e.g., United States v. Martin*, No. 1:21-CR-00228-ADA-BAM-1, 2022 WL 17343865, at \*2-3 (E.D. Cal. Nov. 30, 2022); *United States v. Carson*, No. SACR 09-0077, 2009 WL 10793874, at \*1-2 (C.D. Cal. May 11, 2009) (denying the government's motion to modify defendant's release conditions because the government failed to provide new information material to defendant's risk

1 of flight/danger to the community).<sup>2</sup> This Court has observed that “[n]ew and material information  
 2 consists of . . . truly changed circumstances, something unexpected, or a significant event.” *United*  
 3 *States v. Gale*, No. CR20-04 RAJ, 2020 WL 2098200, at \*1 (W.D. Wash. May 1, 2020) (Jones,  
 4 J); *see also* Dkt. 52. The government fails to point to any change at all, let alone a change sufficient  
 5 to require modification of Mr. Zhao’s release conditions.

6 The government does not, and cannot, identify any material change that suggests Mr.  
 7 Zhao’s risk of flight has increased. *Cf., e.g., United States v. Stewart*, No. CRIM. A. 96-583, 1997  
 8 WL 325784, at \*3 (E.D. Pa. June 6, 1997) (granting the government’s motion to modify release  
 9 conditions based on defendant’s “intense interest in a second passport, the efforts to establish an  
 10 off-shore captive insurance company with easy access to its assets, the purchase of gold which is  
 11 portable, and the movement of \$3 million to [defendant’s] personal account, all at a time when  
 12 [defendant] knew an indictment for racketeering and related charges was imminent”). Quite the  
 13 opposite: as set forth below, Mr. Zhao’s actions affirm his willingness to comply with the Court’s  
 14 orders, as well as the majority of the government’s requests. Further restrictions on Mr. Zhao—  
 15 beyond those to which he has already agreed—are unnecessary and unwarranted.

16 **B. While No Modifications Are Necessary to Effectuate the Court’s Orders, Mr. Zhao**  
 17 **Remains Willing to Agree to Reasonable Restrictions.**

18 Because it cannot anchor its requests in the law, the government asserts that “revisions”  
 19 are necessary to ensure Mr. Zhao’s “compliance” with the Court’s release orders and to “effectuate  
 20 Judge Jones’s orders.” Dkt. 63. But Judge Jones’s orders require no such “effectuat[ion].” *Id.*  
 21 Nevertheless, Mr. Zhao’s counsel spent over two months communicating with the government in  
 22 a good faith effort to obviate the need for motion practice and arrive at an agreed-upon set of  
 23 conditions. It is disappointing that the government cut off those discussions prematurely and  
 24 instead chose to take only half the story directly to the Court—and to do so now, three months into  
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26  
 27 <sup>2</sup> District Courts in this Circuit apply the requirements of Section 3142(f) when considering whether to modify  
 conditions of release under Section 3142(c). *See, e.g., United States v. Smith*, No. CR-12-1298-PHX-GMS, 2012 WL  
 3776868, at \*3-4 (D. Ariz. Aug. 31, 2012).

1 this case and with only two months until sentencing. Still, Mr. Zhao is already complying with  
2 the majority of the requested modifications even though the government does not, and cannot,  
3 point to any basis for those changes.

4 Taking the government's proposed conditions in turn:

5 *First*, the government requests that "Defendant must remain in the continental United  
6 States through the imposition of sentence." Dkt. 63, at 2. Although the appearance bond has  
7 already been modified by Judge Jones's orders, *see* Dkt. 46, 50, Mr. Zhao does not oppose  
8 inclusion of this restriction. Mr. Zhao voluntarily flew to the United States to appear in this case.  
9 He has remained here since November 21, 2023, pursuant to the Court's orders and will continue  
10 to do so. The government presents no reason—because there is none—to suggest otherwise.

11 *Second*, the government requests that "Defendant must notify Pretrial Services and the  
12 government of any travel within the continental United States at least three days before the travel  
13 so that Pretrial Services and the government may raise objections, if any, with the Court." Dkt.  
14 63, at 2. Mr. Zhao is not opposed to notifying Pretrial Services before any travel within the  
15 continental United States. The three-day requirement to also notify the government so that it "may  
16 raise objections," however, is entirely unwarranted. Mr. Zhao is, and should remain, permitted to  
17 travel freely within the continental United States. This has not been an issue to date. The  
18 government has no reasonable basis to object to any such travel, and it has not presented any  
19 evidence, or cogent argument or concern, otherwise. Mr. Zhao opposes this condition only to the  
20 extent it requires notice to the government.

21 *Third*, the government requests that "Defendant must surrender his current Canadian  
22 passport to a third-party custodian employed and supervised by his counsel of record. The third-  
23 party custodian must retain control over that Canadian passport and must accompany Defendant  
24 on any travel that requires identification documents. Defendant must surrender all other current  
25 and expired passports and travel documents to his counsel of record, who may return those  
26 documents to defendant only with authorization from Pretrial Services or the Court. Defendant  
27 may not apply for or obtain a new passport or travel document from any country without the



1 Court's permission." Dkt. 63, at 2. As the government knows, Mr. Zhao not only agreed to this  
 2 condition, but he has already taken steps to provide the government with reasonable assurances.  
 3 Although not required by the terms of his release, as an indication of his good faith and as the  
 4 government is aware, on December 31, 2023, Mr. Zhao voluntarily placed two of his three  
 5 passports in the custody of his U.S.-based defense counsel. He has also voluntarily placed his third  
 6 passport in the control of his security professional, and when the government deemed that measure  
 7 insufficient, Mr. Zhao further offered to take the additional step of retaining a separate third-party  
 8 security service to perform this function under the supervision of counsel. It is odd that the  
 9 government burdened the Court with a motion for this relief rather than simply coordinating with  
 10 counsel for Mr. Zhao to implement it. And Mr. Zhao has never applied for any new travel or  
 11 identification documents. Of course, the government's motion makes no mention of Mr. Zhao's  
 12 good faith actions here or perfect compliance with his bail terms.

13 The remaining portions of the government's motion, including the fourth special condition  
 14 and accompanying footnotes, should be disregarded. The fourth special condition is unnecessary;  
 15 Mr. Zhao has been complying with the terms of his appearance bond. *See* Dkt. 33, at 1. He is in  
 16 near-daily contact with defense counsel, who keep him apprised of all court hearings and  
 17 developments in the case. And the government's footnotes reiterating Pretrial Services' default  
 18 recommendations for a foreign defendant are unnecessary and misleading, as both Magistrate  
 19 Judge Tsuchida and Judge Jones declined to incorporate those recommendations when imposing  
 20 release conditions. *See* Dkt. 29; Dkt. 40, at ¶ 6(f); Dkt. 46.

21 **C. Mr. Zhao's Actions Support Less Restrictive, Not Additional, Modifications.**

22 If anything, Mr. Zhao's actions should alleviate concerns of a risk of flight. Since the  
 23 November 21, 2023 plea hearing to today—a period of more than twelve weeks—Mr. Zhao has  
 24 fully complied with the Court's orders, remaining within the continental United States. Despite  
 25 the government's apparent insistence that access to his travel documents and resources render Mr.  
 26 Zhao a risk of flight, Mr. Zhao has proved the opposite to be true: he has abided by the orders of  
 27 the Magistrate and District Judges, remained in the country, kept in close contact with his

1 attorneys, [REDACTED].<sup>3</sup> His conduct presents no evidence  
2 of any intention to stray from that course.

3 Full compliance with his conditions of release, [REDACTED]  
4 [REDACTED], demonstrate that if the Court allowed him to return to the UAE, Mr. Zhao  
5 could be trusted to return to the United States for sentencing. *See generally United States v.*  
6 *Zucker*, No. 2:13-CR-0024-TOR-5, 2015 WL 10381701, at \*1 (E.D. Wash. July 24, 2015)  
7 (granting defendant’s motion for release pending appeal in part because defendant had “complied  
8 with the terms of his pre-sentencing release and continue[d] to positively contribute to his  
9 community”). Indeed, he voluntarily traveled to the United States from the UAE to plead guilty.  
10 He is fully committed to accepting responsibility. There is no reason why he would abandon that  
11 course less than two months before sentencing. At present, Mr. Zhao has already spent more than  
12 three months in the United States and away from his family.

13 Contrary to what the government’s motion would have the Court believe, the facts at this  
14 stage justify not *additional* conditions but *less restrictive* conditions. Particularly in light of the  
15 fact that Mr. Zhao’s sentencing hearing was recently continued for two months, one justified  
16 modification would be to permit him to return home briefly to see his partner and young children  
17 in the intervening weeks before April 30, 2024. Mr. Zhao has not made such a request here because  
18 he respects that the Court has already determined in its orders on December 8 and December 29  
19 that he must remain in the United States. He respects, and has abided by, every aspect of those  
20 rulings.

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23 \_\_\_\_\_

24 <sup>3</sup> [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

1 **CONCLUSION**

2 The government’s motion to modify bond is unnecessary in light of the Court’s  
3 straightforward orders and Mr. Zhao’s compliance with those orders. No new circumstances  
4 warrant more restrictive conditions at this time. Even so, Mr. Zhao will agree to the new conditions  
5 to the extent described herein and as set forth in the attached Proposed Order Modifying Bond.

6 Dated: February 27, 2024

7  
8 By /s/ Benjamin Naftalis  
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22 *I certify that this memorandum contains*  
23 *3683 words, in compliance with the Local*  
24 *Criminal Rules.*

25 /s/ William Burck  
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*Attorneys for Changpeng Zhao*

CERTIFICATE OF SERVICE

1  
2  
3 I, Benjamin Naftalis, certify that on February 27, 2024, I electronically filed the foregoing  
4 with the Clerk of the Court using the CM/ECF system, which will notify such filing to all  
5 participants in this case.

6 /s/ Benjamin Naftalis  
7 Benjamin Naftalis  
8 Latham & Watkins LLP  
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