

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

United States of America

v.

Aticha Jittaphol

No. 21-CR-10270-MLW

**DEFENDANT’S MOTION FOR RELEASE FROM CUSTODY, OR, IN THE
ALTERNATIVE, FOR WAIVER OF PRESENTENCE REPORT AND
IMMEDIATE IMPOSITION OF SENTENCE**
Assented-to by Government

Aticha Jittaphol hereby moves for release from custody. A similar motion was filed on June 9, 2022. The Court took no action on the motion, noting that it had not been accompanied by an affidavit. Circumstances have changed since the defendant’s earlier motion. Rather than modify the prior motion, defendant now submits another motion seeking release, or, in the alternative, immediate sentencing at the time of the June 23rd Rule 11 hearing, with a waiver of the Presentence Report, in accord with the parties “C Plea” agreement.

Ms. Jittaphol has opted to plead guilty. She has entered a “C Plea,” providing for a sentence of time-served and no supervised release. A Rule 11 hearing is scheduled for June 23rd. At that point, she will have been in custody for two months, in a case with a guideline range of 0-6 months. Probation is scheduled to disclose a Presentence report on July 29th.

Acceptance of the parties’ plea agreement would acknowledge that supervised release is not warranted. Such an acknowledgement would be inconsistent with continued incarceration based on a finding that there are no conditions which would enable Ms. Jittaphol to comply with release conditions,

since the sentence would not impose any supervised release conditions.

The Court is far more familiar with Ms. Jittaphol than would normally be the case when dealing with a defendant seeking a Rule 11 hearing. The Court may feel that a Presentence Report is not necessary to decide that the plea agreement is acceptable. If that is the case, Ms. Jittaphol urges the Court to allow her to waive the Presentence Report and proceed with immediate sentencing on June 23rd.

Ms. Jittaphol maintains that she has not used methamphetamine or any other illegal drug since she entered a detox program in December.¹ She challenges the accuracy of the sweat patch tests that came back positive. After her last probation hearing, two additional patch tests came back positive, while all urine tests continued to come back negative. The continued inconsistency lends further support to her position that the patch tests are wrong. With the Court crediting the accuracy of the patch tests, it seems inevitable that Ms. Jittaphol's release on conditions that included patch testing, or supervised release that included patch testing, would result in a never-ending cycle of positive patch tests coupled with negative urine tests. To the extent that this is a basis to avoid supervised release altogether, on the theory that Ms. Jittaphol will not be compliant, it also is a basis to release her from custody and terminate all drug testing immediately.

Holding Ms. Jittaphol in custody until a sentencing date no earlier than August would impose an unfair and unwarranted punishment, inconsistent with the purpose of the plea agreement, which is to resolve this case as soon as possible

¹ The government assents to this motion insofar as it seeks release from custody on June 23rd, and assents to the request that drug testing be terminated if Ms. Jittaphol is released pending sentencing later. but does not assent to Ms. Jittaphol's statements regarding patch testing.

with no further incarceration or supervision.

An affidavit from Ms. Jittaphol is provided at Attachment 1.

For these reasons, Ms. Jittaphol should be released upon the Court's acceptance of the plea agreement with drug testing terminated pending sentencing, or, in the alternative, the Court should permit Ms. Jittaphol to waive production of a Presentence Report and impose a sentence in accord with the plea agreement on June 23, 2022.

ATICHA JITTAPHOL

By her Attorney,

/s/ Keith Halpern

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 21, 2022.

/s/ Keith Halpern