

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Appellee

v.

No. 08-30170

VICTOR KOHRING,
Defendant-Appellant.

**GOVERNMENT’S CONSENTED MOTION FOR REMAND TO THE
DISTRICT COURT FOR FURTHER PROCEEDINGS AND FOR
APPELLANT’S RELEASE PENDING RESOLUTION OF THE CASE**

The United States of America, by and through its undersigned attorneys, respectfully submits this motion for remand to the district court for further proceedings and for Appellant’s release pending resolution of the case.

1. Appellant Victor Kohring appeals his conviction on bribery and extortion-related charges. He was sentenced on May 8, 2008, to 42 months of imprisonment and two years of supervised release, and he is currently in custody serving that sentence. Following the merits briefing in this Court, Appellant moved for release pending appeal [Doc. 24], which the government opposed on the ground that he had not raised a substantial question of fact or law that would warrant his release, 18 U.S.C. § 3143(b) [Doc. 29]. This Court denied Appellant’s motion on February 24, 2009 [Doc. 32].

2. On April 13, 2009, the day before oral argument, Appellant filed a

motion for miscellaneous relief seeking, among other things, disclosure of material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) [Doc. 36]. At oral argument on April 14, 2009, in response to a question by this Court, the government stated that it wanted an opportunity to respond to Appellant's motion in writing. Thereafter, this Court directed the government to file a written response [Doc. 37]. On April 28, 2009, the government filed a response, explaining that the Department of Justice had already initiated a review of the disclosures in this case and would (1) produce any *Brady* material it might find that had not already been produced in the event that such material was discovered, and (2) advise the Court and Appellant when the review was complete [Doc. 39].

3. The review process is not yet complete. The government files this motion, however, because the process has uncovered material that, at this stage, appears to be information that should have been, but was not, disclosed to Appellant before his trial. The government has consulted with counsel for Appellant and is making disclosures today. Nevertheless, in light of this development and the issues it raises, the government believes that the most appropriate course is for this Court to remand the case to the district court to address these matters as the court of first instance.

4. Moreover, in light of this development, the government respectfully asks

this Court, before remanding, to order Appellant's immediate release on personal recognizance pending resolution of this case.

Pursuant to 9th Cir. R. 27-1(2) and Circuit Advisory Committee Note to Rule 27-1(5), undersigned counsel for the government contacted John Henry Browne, counsel for Appellant, who indicated that he has no objection to this motion.

Respectfully submitted,

LANNY A. BREUER
Assistant Attorney General,
Criminal Division

/s/Kevin R. Gingras
KEVIN R. GINGRAS
Attorney
Appellate Section, Criminal Division
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
(202) 305-7983 - telephone
(202) 305-2121 - facsimile

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for the Appellant.

/s/Kevin R. Gingras
KEVIN R. GINGRAS
Attorney
Appellate Section, Criminal Division
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
(202) 305-7983 - telephone
(202) 305-2121 - facsimile