

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

**UNITED STATES OF AMERICA,**  
Appellee

v.

No. 07-30496

**PETER KOTT,**  
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 Peter Kott appeals his conviction and sentence on bribery and extortion-related charges. He was sentenced on December 7, 2007, to 72 months of imprisonment and three 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. 27], 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. 38]. This Court denied Appellant’s motion on March 3, 2009 [Doc. 44].

On April 16, 2009, following oral argument before this Court, Appellant

again moved for release pending appeal [Doc. 52], which the government again opposed [Doc. 54]. That motion remains pending before this Court.

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. 48]. 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. 49]. On April 27, 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 produce any *Brady* material it might find that had not already been produced in the event that such material was discovered [Doc. 53].

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 hereby withdraws its opposition to Appellant's pending motion for bail pending appeal, and respectfully asks this Court, before remanding, to grant that motion and order Appellant's immediate release on personal recognizance pending resolution of this case.

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

Respectfully submitted,

LANNY A. BREUER  
Assistant Attorney General

/s/Peter M. Koski  
PETER M. KOSKI  
Trial Attorney,  
Public Integrity Section, 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/Peter M. Koski  
PETER M. Koski  
Trial Attorney  
United States Department of Justice