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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CHERRY DIETZMANN, individually;  
MINOR J.A. II, by and through his mother  
and guardian, CHERRY DIETZMANN;  
and MINOR D.A. by and through her  
mother and guardian, CHERRY  
DIETZMANN,

Plaintiffs,  
vs.

CITY OF HOMER, the HOMER POLICE  
DEPARTMENT; SERGEANT WILLIAM  
HUTT, individually and as an agent or  
employee of the Homer Police  
Department; SERGEANT DAVID  
SHEALY, individually and as an agent or  
employee of the Homer Police  
Department; OFFICER STACY LUCK,  
individually and as an agent or employee  
of the Homer Police Department; UNITED  
STATES OF AMERICA; UNITED  
STATES MARSHAL'S SERVICE;  
KEVIN GUINN, in his official capacity as  
a United States Deputy Marshal, and in his  
individual capacity; and JOHN OLSON,  
JR., in his official capacity as a United  
States Deputy Marshal, and in his  
individual capacity,

Defendants.

Case No. 3:09-cv-00019-RJB

**ORDER ON UNITED STATES'  
OBJECTION TO MAGISTRATE  
JUDGE CREATURA'S DECEMBER 3,  
2010, ORDER**

This matter comes before the Court on the United States' Fed. R. Civ. P. 72 (a) Objection to Magistrate Judge Creatura's December 1, 2010, Order (Dkt. 226) and Motion for Expedited Review (Dkt. 227). The Court has considered the pleadings and the remainder of the record.

1 The facts and procedural history of this case are in the Court's Order on the Parties' Motions for  
2 Summary Judgment and Various Other Motions (Dkt. 216, at 1-15) and Magistrate Judge Creatura's  
3 Order Re: Settlement Conference (Dkt. 222, at 1-5), and are adopted here by reference.

4 The Order Re: Settlement Conference was filed December 3, 2010. Dkt. 222. On December 6,  
5 2010, the United States filed its objections to the December 3, 2010, Order. Dkt. 226. The United  
6 States also filed a Motion for Expedited Review of its objections. Dkt. 227. The parties' settlement  
7 conference is scheduled for this Friday, December 10, 2010. In light of the issues raised by the United  
8 States' objections, the Motion for Expedited Review (Dkt. 227) should be granted.

9 The United States argues that the Magistrate Judge's December 3, 2010, Order, which requires  
10 that "designated representatives of each party 'with FULL AUTHORITY to settle ALL CLAIMS' be  
11 physically present at an upcoming settlement conference" (Dkt. 226, at 2), be set aside pursuant to Fed.  
12 R. Civ. P. 72(a). Dkt. 226.

13 Fed. R. Civ. P. 72(a) provides:

14 Nondispositive Matters. A magistrate judge to whom a pretrial matter not  
15 dispositive of a claim or defense of a party is referred to hear and determine shall  
16 promptly conduct such proceedings as are required and when appropriate enter into the  
17 record a written order setting forth the disposition of the matter. Within 10 days after  
18 being served with a copy of the magistrate judge's order, a party may serve and file  
19 objections to the order; a party may not thereafter assign as error a defect in the  
20 magistrate judge's order to which objection was not timely made. The district judge to  
21 whom the case is assigned shall consider such objections and shall modify or set aside  
22 any portion of the magistrate judge's order found to be clearly erroneous or contrary to  
23 law.

24 The United States' objections should be overruled, and motion to set aside the December 3,  
25 2010, Order should be denied. The United States argues that forcing it to have "high ranking officials"  
26 with settlement authority at every settlement conference is unwise and not practical. Dkt. 226. Even if  
27 that were true, the United States has failed to show that in this case, the Order Re: Settlement  
28 Conference (Dkt. 222) was "clearly erroneous or contrary to law."

The Order at issue here applies only to this case. It does not require that officials with settlement  
authority attend every settlement conference involving the United States. Parties should recognize that  
this is a particularly difficult case involving multiple parties, claims, and defenses. The damages are

1 potentially large. The case involves travel for witnesses and lawyers, some for thousands of miles. This  
2 dispute has necessitated visiting judges. While the Court is sympathetic to the schedule of the officials  
3 in Washington D.C., in this unusual case, it is necessary that all involved be flexible. The parties may  
4 consider, with Magistrate Judge Creatura, alternatives to physical presence, such as teleconferencing or  
5 videoconferencing. Surely decisions makers can do their job better if they are parties to the discussions  
6 at a settlement conference, and do not get all of their information from a single partisan source.

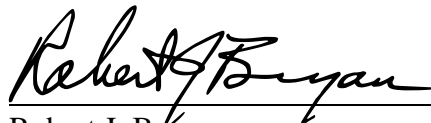
7 Moreover, parties sought and were given an opportunity to file extensive dispositive motions and  
8 to extend the date of the mediation to allow for the Court's ruling on those motions. The trial date is fast  
9 approaching. All parties should endeavor to make the settlement conference as successful as possible.

10 Therefore, it is hereby, **ORDERED** that:

- 11 • The United States' Motion for Expedited Review (Dkt. 227) is **GRANTED**;
- 12 • The United States' Fed. R. Civ. P. 72(a) Objection to Magistrate Judge Creatura's Order (Dkt.  
13 226) is **OVERRULED**;
- 14 • The Order RE: Settlement Conference (Dkt. 222) is **AFFIRMED**.

15 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
16 record and to any party appearing *pro se* at said party's last known address.

17 DATED this 7<sup>th</sup> day of December, 2010.

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20 Robert J. Bryan  
21 United States District Judge  
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