UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Criminal No. 99-10299-REK**
	)	
LEO WEIKERT, JR.	)	
	)	
	)	
Defendant.	)	

GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT LEO WEIKERT'S MOTION FOR PRELIMINARY INJUNCTION AND GOVERNMENT'S REQUEST TO REVOKE SUPERVISED RELEASE

Defendant Leo Weikert, Jr., a convicted cocaine trafficker who is currently on supervised release as a result of an escape conviction, is now refusing to comply with a federal law - the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C §14135a). Essentially, defendant Weikert is defying his U.S. Probation Officer's request that he submit to a DNA sample as required by federal law. This failure to comply constitutes a Class A misdemeanor offense (see 42 U.S.C. §14135a(5)(A)) and, therefore, constitutes a violation of his terms of supervised release.

As set forth in his motion, defendant Weikert's refusal to provide a DNA sample is based upon his mistaken belief that an extraction of a DNA sample from him violates the Fourth Amendment's prohibition against unreasonable searches and seizures. There is **no** support in the case law for such a contention. Indeed, **all** of the cases decided to date have rejected the arguments now being made by Weikert. See, United

States v. Sczubelek, 402 F.3d 175, 184 (3rd Cir. 2005)(collecting and citing relevant cases) and United States v. Kincade, 379 F.3d 813, 830-31 (9th Cir. 2004)(en banc)(collecting and citing relevant cases). Thus, Weikert is refusing to comply with a federal law based upon arguments which have already been addressed and rejected by seven different appellate courts (Second Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Seventh Circuit, Ninth Circuit and Tenth Circuit).

Accordingly, Weikert's motion should be denied and the Court should schedule a hearing to show cause as to why Weikert's supervised release should not now be revoked based upon his conduct in this matter which constitutes a misdemeanor offense.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Dated: January 11, 2006 By: /s/ Brian T. Kelly
BRIAN T. KELLY
Assistant U.S. Attorney

Certificate of Service

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/s/ Brian T. Kelly
BRIAN T. KELLY
Assistant U.S. Attorney