

**INITIAL APPEARANCE: GRAND JURY MATERIAL WITNESS
(with order setting conditions of release)**

I. ANNOUNCE CASE

[Assistant U.S. Attorney announces case.]

II. COPIES OF ARREST DOCUMENTS TO DEFENDANT/COUNSEL

Court to Wit. Counsel: Mr./Ms. _____, have you received and reviewed with your client a copy of the application for a material witness warrant and affidavit submitted in support of that application?

III. MATERIAL WITNESSES' UNDERSTANDING OF ENGLISH

Court to Wit. Counsel: Mr./Ms. _____, are you satisfied that this individual is sufficiently conversant in English that you have been able to adequately communicate with him/her and that he/she is able to understand the proceedings in this court conducted in English today?

[ALTERNATIVELY, if there is an interpreter, have him/her sworn.]

IV. CONSULAR NOTIFICATION

Court to AUSA: Mr./Ms. _____, has consular notification been given regarding this individual?

V. NOTIFICATION OF REASON FOR ARREST

Court to Witness: Please stand. Mr./Ms. _____, you are in court at this time because you have been arrested pursuant to a warrant issued by this court, a so-called material witness warrant. There is a provision of United States federal law that permits the issuance of an arrest warrant to secure the appearance of individuals who are deemed to be material

witnesses in connection with an investigation or a proceeding. The government has made the showing required of it that your testimony is material in a criminal proceeding and that it may become impracticable to secure your presence to testify in a court proceeding by subpoena. You are, as I understand it, represented by attorney _____, as retained counsel. Is that correct?

Court to Wit. Counsel: Is that correct, Mr./Ms. _____?

Court to Witness: And, Mr./Ms. _____, you have had an adequate amount of time to talk with your counsel about what this matter is all about?

VI. ENTRY OF ORDER SETTING CONDITIONS OF RELEASE

Court to All Counsel: I understand that the parties have reached agreement on the terms of bail orders regarding this individual. Are these in fact agreed-upon orders setting conditions of release?

Court to Wit. Counsel: Mr./Ms. _____, have you reviewed the release orders with your client, and is that order acceptable to him/her?

Court to Witness: Mr./Ms. _____, do you have any questions about the meaning or effect of any of the provisions contained in this bail order?

And do you understand that, among other things, this bail order contains a number of conditions, some of which require you to do certain things and others of which prohibit you from doing certain things?

The third page of each of these orders has at the top the caption "Advice of Penalties and Sanctions." It is explained on that page that, should you fail to appear in this court whenever required to do so in connection with this matter, you will expose yourself

to possible prosecution for bail jumping. Bail jumping is a serious offense, separate from what it is that causes you to be here in the first place, and it carries with it a significant penalty exposure. Do you understand that?

Although the language on page 3 says that you are acknowledging that you are a “defendant” in this case, please substitute the words “material witness” for “defendant.” By signing this bail order on page 3, you will be acknowledging that you are a material witness in this case, that you are aware of the conditions of release, that you promise to obey all of them, to appear as directed, and [to surrender for service of any sentence imposed.] In addition, by signing this, you are acknowledging your awareness of the penalties and sanctions set forth above on this page. Do you understand all of that?

OPTIONAL

Court to All Counsel: Mr./Ms.____, is it the government’s position, or it yours, Mr./Ms. _____, that notwithstanding the status of this individual as a material witness rather than a defendant, he/she is entitled to rights conferred on defendants in criminal cases pursuant to Rule 5 – that is, to all of the explanations attending an initial appearance, including the right to remain silent?

[If Wit. Counsel wishes rights read, do so.]

Court to Witness: The court officer will bring you this bail order so that it may be executed.

Court to All: I have executed the order setting forth conditions of release. Is there anything else to come before the court at this time?