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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA, )  
 )  
11 Plaintiff, )  
 )  
12 vs. )  
 )  
13 POWER COMPANY, INC., dba, )  
THE CRAZY HORSE TOO, and )  
14 FREDERICK JOHN RIZZOLO, )  
Defendant. )  
15 \_\_\_\_\_ )

Case No. 2:06-cr-186-PMP-PAL

16 GOVERNMENT'S RESPONSE TO VICTIMS KIRK AND AMY HENRY'S MOTION UNDER  
17 18 U.S.C. 3663A TO REVOKE OR EXTEND RICK RIZZOLO'S TERM OF SUSPERSION  
18 (DOC. #357.)

19 Comes now the United States of America, by and through DANIEL G. BOGDEN, United  
20 States Attorney, and ERIC JOHNSON, Assistant United States Attorney, and responds to Kirk  
21 and Amy Henry's motion to revoke or extend defendant Rizzolo's term of supervision (Doc.  
22 #357).

23 Kirk and Amy Henry have moved the Court to revoke or extend defendant Rick Rizzolo's  
24 term of supervised release. The Henrys stand in the position of victims in this matter, entitled to  
25 restitution under the plea agreement and the Court's order of restitution.  
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1 No provisions of the United States Code directly confer standing on victims to petition  
2 the court for revocation or extension of a defendant's supervised release. Under federal statute,  
3 when a defendant's economic circumstances materially change, victims have standing to move  
4 the court to adjust the defendant's payment schedule or require immediate payment in full as the  
5 interests of justice require. 18 U.S.C. 3664(k). However, this section does not specifically  
6 provide that victims have the right to move for the revocation or extension of a defendant's  
7 supervised release. Consequently, the Henrys appear to lack standing to bring a motion to revoke  
8 or extend defendant Rizzolo's supervised release.

9 However, this Court has an ongoing relationship with defendant Rizzolo that is created by  
10 the imposition of the term of supervised release. *United States v. Berger*, 976 F.Supp. 947, 950  
11 (N.D.Cal. 1997). The Henrys have a right to inform the Court of information concerning  
12 defendant Rizzolo which they believe demonstrates violations of his terms of supervised release.

13 The Fifth Circuit in *United States v. Feinberg*, 631 F.2d 388, 391 (5th Cir.1980),  
14 explained:

15 [T]here is no requirement that revocation proceedings be initiated  
16 by a particular officer of the government, or by any officer.  
17 Whenever the district court having jurisdiction over a probationer  
18 acquires knowledge from any source that a violation of the  
19 conditions of probation may have occurred, the court may then on  
its own volition inquire into the matter, in a manner consistent with  
the requirements of notice and due process which have been held  
applicable.

20 Consequently, the Court may consider the information provided in the Henrys' documents  
21 and decide if it wants to act on its own to initiate an inquiry into whether defendant Rizzolo has  
22 violated any of his supervised release conditions.

23 Probation revocation proceedings are not criminal proceedings, see *Minnesota v. Murphy*,  
24 465 U.S. 420, 435-36 n. 7 (1984), and "there is no requirement that revocation proceedings be  
25 initiated by a particular officer of the government, or by any officer." *Feinberg*, 631 F.2d at  
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1 390-91; see Berger, 976 F.Supp. at 949-50; United States v. Wilson, 973 F.Supp. 1031, 1032-33  
2 (W.D. Okla. 1997). The sentencing court may initiate such proceedings sua sponte based on  
3 information acquired from any source. See Feinberg, 631 F.2d at 391. The Ninth Circuit has  
4 concluded that "a district court may sua sponte initiate revocation proceedings whenever it  
5 obtains information that a defendant has violated a condition of his release." United States v.  
6 Mejia-Sanchez, 172 F.3d 1172, 1175 (9th Cir. 1999). Consequently, the Court through its  
7 judicial sentencing responsibilities has the discretion to initiate a revocation proceeding without  
8 the concurrence of the U.S. Attorney. Berger, 976 F.Supp. at 950. The U.S. Attorney retains  
9 discretion to file new criminal charges against the defendant arising from the defendant's  
10 violation of conditions of release which are criminal in nature.

11 In the instant case, the Government has no opposition to the Court initiating supervised  
12 release revocation proceedings based on information and materials contained in the Henrys'  
13 filing. The Government is still reviewing these materials to determine what action it believes it  
14 should take in regard to this matter, in particular in light of the Henrys' August 2010 deposition  
15 of defendant Rizzolo. Based on information in the Henrys' filing, the Henrys' allegations, if  
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3 accurate, would appear to serve as a basis for revoking or extending defendant Rizzolo's  
4 supervised release.

5 DATED this 1<sup>st</sup> day of October 2010.

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Respectfully submitted,  
DANIEL G. BOGDEN  
United States Attorney

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-s-

ERIC JOHNSON  
Assistant United States Attorney

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