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9 ESTEBAN LOAIZA

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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13  
14 UNITED STATES OF AMERICA, ) Case No. 18mj1062  
15 )  
16 Plaintiff, )  
17 )  
18 v. ) **APPEAL OF MAGISTRATE**  
19 ) **DECISION TO DISTRICT COURT**  
20 )  
21 ESTEBAN LOAIZA, )  
22 Defendant. )  
23 )

24 TO: ADAM BRAVERMAN, United States Attorney, and to JARAD HODES,  
25 Assistant United States Attorney:

26  
27 ESTEBAN LOAIZA, by and through his attorney, Janice Deaton,  
28 HEREBY APPEALS Magistrate Judge Storms' denial of Mr. Loaiza's motion  
29 to modify bond conditions. This appeal is based 18 U.S.C. § 3145(a)(2)); Local  
30 Rules, S.D. Ca., CrR 46.1(d).

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## INTRODUCTION

Mr. Loaiza appeals the decision of the magistrate judge denying the motion to modify his bond conditions. His current conditions include a cash or corporate surety bond in the amount of \$200,00.00, and he moves for a modification to a \$120,000.00 personal surety bond fully secured by property, GPS monitoring, home detention, and other usual conditions. Mr. Loaiza’s siblings are also willing to post a deposit if required by the Court.

Ms. Ashley Esposito is the owner of the proposed home. She and Mr. Loaiza lived together for eight years, and are the parents of Esteban Sage Loaiza. Ms. Esposito has owned her home since 2014. Its estimated value is between \$135,000.00 and \$170,000.00.<sup>1</sup> Ms. Esposito will pledge her home as collateral, because she is confident Mr. Loaiza will comply with all conditions of his supervision and will follow the Court’s orders. He will agree to GPS monitoring, home detention, and comply with any other conditions of release.

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<sup>1</sup> Mr. Loaiza proposes a bond in the amount of \$120,000.00, however the house is probably worth between \$150,00.00 and \$170,000.00. If the home is appraised at a higher value, Mr. Loaiza is willing to post a bond in a higher amount. Ms. Esposito has ordered an appraisal and expects to have it by April 2, 2018.

1 **II.**

2 **RELEVANT CASE HISTORY**

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4 Mr. Loaiza was arrested for possession of cocaine with intent to distribute,  
5 on a California state complaint on February 9, 2018. Bail was set at \$200,000.00  
6 according to the California bail schedule. Mr. Loaiza did not post bond. The  
7 bond was increased in State court to \$250,000 at Mr. Loaiza's arraignment on  
8 February 14, 2018, based on the change in charges. Additionally, the court  
9 imposed a detainer pursuant to Cal P.C. 1275.1.  
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13 On March 7, 2018, Mr. Loaiza appeared in California Superior Court  
14 County of San Diego South Bay Branch Dept. 12, for a hearing pursuant to Cal  
15 P.C. 1275. His family had contracted with a bail bondsman to bail Mr. Loaiza  
16 out, and he expected to be released that day. Instead his state case was dismissed  
17 and he was brought to federal court.<sup>2</sup>  
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21 A federal complaint was filed that same day charging Mr. Loaiza with  
22 violation of 21 U.S.C. § 841(a)(1), possession of cocaine with intent to distribute,  
23 and the government moved for detention based on risk of flight.  
24

25 Mr. Loaiza had a detention hearing on March 12, 2018. Pretrial services  
26 recommended a personal surety bond of \$40,000.00, secured by property, GPS  
27 monitoring, and other, usual conditions. Mr. Loaiza's mother, father, brother and  
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<sup>2</sup> The family had worked out a payment schedule with a bail bondsman.

1 his family, sister and her family were all present in court. Further, Mr. Loaiza's  
2 seventeen-year-old son Sage and his mother, Ashley Esposito, drove from Dallas  
3 Texas to be at the hearing, and they were present. Ms. Esposito and Mr. Loaiza  
4 were a couple and are still close and dear friends.  
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6  
7 Magistrate Judge Storms denied the government's motion to detain based  
8 on risk of flight, and set conditions of bail. The conditions of release are attached  
9 as Exhibit A. Judge Storms set bond in the amount of \$200,000.00 cash or  
10 corporate surety, which was the amount set originally in state court. The  
11 magistrate included electronic monitoring, home detention, and the other, usual  
12 conditions.<sup>3</sup>  
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16 After Judge Storms set bond in the amount of \$200,000.00 cash or  
17 corporate surety, counsel contacted three separate bondsmen in San Diego. One  
18 (Power Bail Bonds) that the Loaiza's had interviewed previously, indicated it did  
19 not handle Federal bail bonds. Another (Empire Bail Bonds) said they would  
20 guarantee the bond with a ten percent non-refundable deposit of \$20,000.00 and  
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25 <sup>3</sup> A transcript of the detention hearing and the bail modification hearing are  
26 attached as exhibits B and C to the motion. However, as discussed below, this  
27 Court's consideration of Mr. Loaiza's bail is plenary. Under Ninth Circuit law,  
28 the Court cannot give any deference to the Magistrate Judge's decision or  
29 analysis. *See United States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990).  
30 Accordingly, Mr. Loaiza does not include a lengthy discussion of the Magistrate  
Judge's analysis. Rather, he summarizes relevant factual information within the  
discussion below.

1 a trust deed securing the full amount of the bond; and a third (Acme) agreed to  
2 secure the bond for 12%, or \$24,000.00, with no collateral security. None would  
3 take payments. Neither Mr. Loaiza nor his family have \$24,000.00, and the only  
4 property owner Mr. Loaiza knows is Ashley Esposito.  
5

6  
7 On March 20, 2018, Mr. Loaiza moved for modification of the conditions  
8 of the bond. Counsel informed the court of the lack of progress with bail  
9 bondsmen, and proffered the home of Ashley Esposito, reminding the court this  
10 is also where Mr. Loaiza's seventeen-year-old son lives. The magistrate judge  
11 denied the proposed modification. She found no conditions had changed since  
12 the detention hearing, despite counsel's proffer that the three bail bonds  
13 companies she contacted either said they do not work with federal bail bonds,  
14 required the full \$24,000.00 up front, or required \$20,000.00 up front AND full  
15 collateral (\$200,000.00) as security.  
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21 Counsel indicated Mr. Loaiza could not meet any of those conditions, and  
22 proffered a bond package including a \$120,000.00 personal surety bond fully  
23 secured by property, GPS monitoring and home detention. The magistrate judge  
24 denied the motion for modification and suggested the family take out "some  
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1 equity” from the home to pay the non-refundable deposit for a cash or corporate  
2 surety bond. (RT 3.20 at p. 5)<sup>4</sup>  
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4 The Bail Reform Act requires that Mr. Loaiza be released on the least  
5 restrictive conditions (§3142(c)(1)(B).) Unless the court concluded that the home  
6 would not reasonably assure Mr. Loaiza’s appearance, but the cash or corporate  
7 surety bond would, it is a violation of §3142(c)(1)(B) to require Mr. Loaiza to  
8 pay a bondsman \$24,000.00 rather than post the home worth over \$120,000.00  
9 directly with the court.  
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### 12 13 III. 14 DISCUSSION

#### 15 A. The nature of the inquiry.

16  
17 Under 18 U.S.C. § 3145(b), this Court’s consideration of Mr. Loaiza’s bail  
18 request is “plenary.” *Koenig*, 912 F.2d at 1192. In other words, as to bail  
19 decisions, the relationship between the district court and the magistrate judge is  
20 unlike the relationship of an appellate court to a lower court. *See id.* (“the district  
21 court’s review should be of a more plenary nature than that of a court of  
22 appeals”). This Court is not reviewing the magistrate judge’s decision for error,  
23 but undertaking its own independent evaluation. *See id.* This is because only the  
24 district court judge has “original jurisdiction” over bail decisions, while  
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30 <sup>4</sup> RT 3.12 refers to the transcript of the detention hearing, and RT 3.20 refers to the bond modification hearing.

1 “magistrates traditionally play a preliminary role in these determinations.” *Id.*  
2 (internal quotations omitted).

3  
4 The Bail Reform Act reflects Congress’s “sensitiv[ity] to Article III values.  
5 It emphasized that ‘the magistrate acts subsidiary to and only in aid of the district  
6 court,’ and that ‘*the entire process takes place under the district court’s total*  
7 *control and jurisdiction.*’” *United States v. Gebro*, 948 F.2d 1118, 1120 (9th Cir.  
8 1991) (emphasis added) (quoting *United States v. Maull*, 773 F.2d 1479, 1486  
9 (8th Cir. 1985) (en banc)). As a result, regardless of any prior bail decisions, this  
10 Court has “unfettered” authority to hear and considered evidence related to  
11 pretrial release. *Id.* at 1191-93. And that consideration “is to be conducted  
12 without deference to the magistrate’s factual findings.” *Id.* at 1192.

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17 If a court orders that a defendant be released subject to conditions, it is  
18 prohibited from "impos[ing] a financial condition that results in the pretrial  
19 detention of the [defendant]." 18 U.S.C. § 3142(c)(2). "This provision is intended  
20 to prevent the practice of `preventative detention,' where a judge could in effect  
21 issue a detention order without a proper finding of risk of flight or danger to the  
22 community by granting bail but setting an exorbitant financial condition that the  
23 defendant could not meet." *United States v. Fidler*, 419 F.3d 1026, 1028 (9<sup>th</sup> Cir.  
24 2005), quoting *United States v. Westbrook*, 780 F.2d 1185, 1187 n.3 (5th Cir.  
25 1986). This does not mean, however, that every case where a the inability to  
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1 comply with a financial condition, resulting in de facto detention, is a violation of  
2 18 U.S.C. §3142 (c)(2). As the Ninth Circuit indicated in *Fidler*,

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4 the de facto detention of a defendant under these circumstances  
5 does not violate § 3142(c)(2) if the record shows that the detention  
6 is not based solely on the defendant's inability to meet the financial  
7 condition, but rather on the district court's determination that the  
8 amount of the bond is necessary to reasonably assure the  
9 defendant's attendance at trial or the safety of the community.  
*Id.* at 1028.

10  
11 Finally, in setting the condition of release under 18 U.S.C. § 3142(c), the  
12 court must release a defendant "on conditions that are determined to be the least  
13 restrictive conditions that will reasonably assure the Defendant's appearance and  
14 the safety of the community." *Fidler*, 419 F.3d at 1028.

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17 **B. A Personal Surety Bond Fully Secured by the Esposito Home Will**  
18 **Reasonably Assure Mr. Loaiza's Court Appearances and**  
19 **Compliance with the Conditions of Bond.**

20 Section 3142(g) provides the framework for determining whether there are  
21 conditions of release that will reasonably assure the defendant's appearance. The  
22 statute calls for a global approach, which accounts for all available information  
23 concerning: (1) the nature and circumstances of the offense charged; (2) the  
24 weight of the evidence against the person; (3) the history and characteristics of  
25 the person, including his character, physical and mental condition, family ties,  
26 employment, financial resources, length of residence in the community,  
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1 community ties, past conduct, history relating to drug and alcohol abuse, criminal  
2 history, record concerning appearance at court proceedings; and (4) the nature  
3 and seriousness of the danger to any person or the community that would be  
4 posed by the persons release. 18 U.S.C. § 3142(g).

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7 1. Offense Charged and Weight of the Evidence. As the Court knows  
8 this is the least important of the §3142(g) factors. “Although the statute [§ 3142]  
9 permits the court to consider the nature of the offense and the evidence of guilt,  
10 *the statute neither requires nor permits a pretrial determination that the person*  
11 *is guilty.” United States v. Motamedi, 767 F.2d 1043, 1408 (9<sup>th</sup> Cir. 1985).*  
12 (emphasis added). That is why “the weight of the evidence is the least important  
13 of the various [§ 3142(g)] factors.” *Id.*

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17 In looking at the offense charged and weight of the evidence, Mr. Loaiza  
18 is charged with violation of 21 U.S.C. §841(a)(1), possession of cocaine with  
19 intent to distribute. The charge carries a ten-year mandatory minimum, however  
20 Mr. Loaiza appears to be safety valve eligible.

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23 The complaint alleges that approximately twenty kilograms of cocaine  
24 were found in Mr. Loaiza’s townhome, within a Nissan minivan in the garage.  
25 Mr. Loaiza was observed entering the garage of the townhome in a vehicle that  
26 was under surveillance, and leaving ten minutes later.

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29 The underlying allegations and quantities of cocaine are somewhat typical  
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1 of cases in this district. Again, pretrial services recommended a personal surety  
2 bond secured by property in the amount of \$40,000.00, along with GPS  
3 monitoring.  
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5 2. Mr. Loaiza's History and Characteristics  
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7 Mr. Loaiza was born on December 31, 1971. He became a legal permanent  
8 resident in 1976, when he was 5 years old. Mr. Loaiza grew up in San Diego,  
9 and graduated from Mar Vista High School in 1990. He moved from San Diego  
10 when he began playing professional baseball, and returned to the area in 2006.  
11

12 Mr. Loaiza's two siblings continue to reside in San Diego. Mr. Loaiza is  
13 extremely intimate with his brother and sister. They have not missed a court  
14 appearance or the opportunity to visit Mr. Loaiza since his arrest.  
15

16 Mr. Loaiza's relationship with his ex-partner and dear friend, Ashley  
17 Esposito, shows a lot about his character. Mr. Loaiza's seventeen-year-old son  
18 Esteban Sage Loaiza, lives with his mother Ashley Esposito, in a Dallas suburb  
19 in Mansfield Texas. Mr. Loaiza and Ms. Esposito lived together as a couple in  
20 Mr. Loaiza's home from approximately 1998 until 2014. Their son Sage was  
21 born in 2001, and Ms. Esposito became very ill. Mr. Loaiza was playing  
22 professional baseball during this time, but when he was home he was the primary  
23 caregiver for Sage and he also cared for Ms. Esposito until she got better.  
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1 After he and Ms. Esposito split up, Mr. Loazia continued to support her  
2 and their son Sage. Ms. Esposito and Sage continued to live in the family home,  
3 financially supported by Mr. Loaiza, until approximately 2014. Mr. Loaiza sold  
4 his home in 2014, and Ms. Esposito then purchased her own home in Mansfield,  
5 Texas, just outside of Dallas. Ms. Esposito and Sage live in their home, and this  
6 is the house proffered as collateral for the proposed bond.  
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10 Ms. Esposito considers Mr. Loaiza her best friend. Mr. Loaiza's  
11 relationship with his son Sage is very close as well. Mr. Loaiza was scheduled  
12 to go to Dallas in February 2018 for a family visit and also to work at a baseball  
13 clinic.  
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15 Mr. Loaiza has no history of mental conditions, or drug use.  
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17 3. Mr. Loaiza's Community Ties  
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19 Mr. Loaiza has extensive "community ties." 18 U.S.C. § 3142(g)(3)(A).  
20 As to this factor, the case law is clear that "'community' in this section of the  
21 statute embraces both the community in which the charges are brought and also  
22 a community in the United States to which the defendant has ties." *United States*  
23 *v. Townsend*, 897 F.2d 989, 995 (9th Cir. 1990).  
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27 Mr. Loaiza does have ties to Tijuana, but Mr. Loaiza's two siblings live  
28 in San Diego. His sister, Maria Luisa Nunez and her family, and his brother  
29 Sabino Loaiza and his family, have attended each court appearance and have been  
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1 a constant presence in this case since its inception.<sup>5</sup> If released on bail, Mr.  
2 Loaiza would live with his sister, her husband Jesus Nunez, and their two  
3 daughters, on Iris Ave. in San Diego.  
4

5           Additionally, Esteban Sage Loaiza and Ashley Esposito live in the Dallas  
6 Texas area. Mr. Loaiza lived in the Dallas area for about eight years. His son  
7 lives there in the home owned by his mother, and will graduate from High School  
8 in 2019. These are strong connections, relevant under section 3142 and Ninth  
9 Circuit law. *See Townsend*, 897 F.2d at 995.  
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13 4. Mr. Loaiza's Financial Condition

14           At the detention hearing, the government argued that no financial  
15 condition could assure Mr. Loaiza's presence due to his past earnings, which  
16 were reportedly over \$43,000,000.00. (R.T. 3.12, 4-5).  
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19           As counsel indicated in court, it is difficult to prove a negative or  
20 specifically, that Mr. Loaiza cannot post the corporate surety. It must be  
21 remembered Mr. Loaiza did not post bail when he could have in State Court, with  
22 a mere \$20,000. deposit in state court prior to being brought to federal custody.  
23 This is compelling evidence that Mr. Loaiza, like so many of his fellow retired  
24 athletes, is broke or close to it.  
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30 <sup>5</sup> In addition to his siblings and their partners, Mr. Loaiza's four nieces attended the detention hearing, as did his parents.

1           Regarding Mr. Loaiza’s past earnings and how they might relate to a  
 2 present indicator of wealth, all one need do to discover how common it is for  
 3 professional athletes to go bankrupt or lose all their earnings within a few years,  
 4 is get on the internet. See, e.g. Time Magazine, “*Ten Top Athletes Humbled by*  
 5 *Financial Ruin*” (August 13, 2015).<sup>6</sup> For example, Vin Baker earned over  
 6 \$100,000,000.00 in thirteen years in the NBA. He is broke and looking to work  
 7 at Starbucks. *Id.* The article continues, “According to a 2009 *Sports*  
 8 *Illustrated* article, 78% of former NFL players face bankruptcy or financial  
 9 stress within two years of retirement. That same article reported that the rate  
 10 of NBA retirees going broke within five years of leaving the court was as high  
 11 as 60%.” *Id.*<sup>7</sup>

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 19 <sup>6</sup> See <http://time.com/money/3983997/famous-athletes-bankruptcy/> Last visited  
 20 03/29/2018

21 <sup>7</sup> Other articles show other athletes have had similar issues:

22 **Vince Young:** Despite once signing a contract that guaranteed him \$26 million,  
 23 the former NFL quarterback filed for bankruptcy protection in 2014, after being  
 24 mired in financial difficulty that stemmed from two lawsuits connected to a \$1.8  
 25 million loan taken out during the 2011 NFL lockout.

26 **Boris Becker:** The three-time Wimbledon tennis champion and former World  
 27 No. 1 was declared bankrupt by a British court on June 21, 2017. He owed  
 28 Arbuthnot Latham & Co, a private bank, a large sum since October 2015, and  
 29 the court did not find credible evidence that Becker could pay. He was once  
 30 estimated to be worth upwards of \$126 million

**Antoine Walker:** After earning more than \$108 million during his 12-year  
 career, the ex-NBA star filed for bankruptcy in 2010, just two years after

1 Mr. Loaiza did not have the money to bail out in state court, and has not  
2 been able to pay a deposit for a bondsman in federal court either.

3  
4 Other considerations

5 Additionally, in determining whether there are conditions of release that  
6 will reasonably assure the defendant's appearance, a court is entitled to what one  
7 judge refers to as "moral suasion." Ms. Esposito's home, which is worth at least  
8 \$120,000.00, will reasonably assure Mr. Loaiza's appearance and, in fact, will do  
9 so MORE than any cash or corporate surety bond would. This is so because the  
10 bail bond package proposed by Mr. Loaiza provides both *moral* and financial  
11 assurance of Mr. Loaiza's compliance with the conditions, unlike any contract  
12 with a corporation. Sabino Loaiza, Maria Luisa Nunez, and Ms. Esposito all have  
13 moral suasion with Mr. Loaiza, and Ms. Esposito also has financial assets. Mr.  
14 Loaiza knows that if he violates the conditions of bond, his son and dear friend

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24 retirement. He suffered from bad investments in real estate and splurged on cars,  
25 jewelry and assisting relatives.

26 **Sheryl Swoops:** One of the most talented women's basketball player in the  
27 WNBA and three-time Olympic gold medalist, Sheryl Swoopes declared  
28 bankruptcy in 2004 after she lost tens of millions of dollars.

29 *See* Fox Sports News, September 20, 2011,  
30 <https://www.foxsports.com/nfl/gallery/athletes-who-went-bankrupt-092011>

1 could lose their home. If his siblings post a deposit, they would lose that money  
2 as well.

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4 This moral suasion is important, as Magistrate Judge Zimmerman stated in  
5 *United States v. Thomas*, 615 F. Supp. 2d 1083 (N.D.CA 2009),

6  
7 “I have concluded that having these family members and friends  
8 make this significant commitment and take this risk will motivate  
9 the defendant to comply with the terms and conditions of release.  
10 *See United States v. Melville*, 309 F.Supp. 824, 826-27  
11 (S.D.N.Y.1970) ("The Court is entitled to have a moral as well as a  
12 financial assurance ... of the defendant's appearance in Court when  
13 required.... *The function of bail is not to purchase freedom* for the  
14 defendant but to provide assurance of his reappearance after release  
15 on bail....")  
*Id.* (*Emphasis added.*)

16 The magistrate judge’s suggestion that Ms. Esposito take out a home  
17 equity loan to pay the \$24,000.00 non-refundable deposit for a cash or corporate  
18 surety is tantamount to requiring Mr. Loaiza to “purchase his freedom,” which is  
19 prohibited by the Bail Reform Act. Mr. Loaiza will know that if he violates bond,  
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21 Ms. Esposito and Esteban Sage would lose their home.

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24 **IV.**  
25 **PROPOSED BOND**

26 Pretrial services recommended a secured bond of \$40,000.00, electronic  
27 monitoring and other, usual conditions at the detention hearing on March 12,  
28 2018. Mr. Loaiza proffers three times that amount, secured by the home where  
29 Mr. Loazia’s son and mother live. The court kept bail set at a \$200,000.00 cash  
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1 or corporate surety bond. Mr. Loaiza proffers the home of his dear friend and the  
2 mother of his son, Ashley Esposito. He believes the home is worth between  
3 \$120,000.00 and \$170,000.00. His brother Sabino Loaiza and sister Maria Luisa  
4 Nunez are also willing to sign the bond and post a ten percent deposit if the court  
5 grants the proposal here. Although neither Mr. Sabino Loaiza nor Maria Luisa  
6 Nunez earn anything close to the \$120,000-\$150,000.00 bond suggested, this  
7 significant commitment and risk of signing the bond and making a deposit,  
8 provides significant moral assurance that Mr. Loaiza will make his court  
9 appearances.  
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14 **Conclusion**

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16 Mr. Loaiza requests bond be granted in the amount of \$120,000.00, to be  
17 fully secured by property. All other conditions to remain the same.  
18

19 Respectfully Submitted,

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21 DATED: March 30, 2018

/s/ Janice Deaton

22 Attorney for Mr. Loaiza  
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**Proof of Service**

I, Janice Deaton, am not a party to the action. My business address is 444 West C Street, Suite 340, San Diego, CA 92101. I certify that on March 30, 2018, I served the above document on all parties via electronic delivery.

Dated: March 30, 2018

/s/ Janice Deaton  
Janice Deaton  
Attorney at Law

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Attorney for Defendant  
ESTEBAN LOAIZA

**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, ) Case No. 18mj1062  
)  
Plaintiff, )  
) **EXHIBITS A-C FOR**  
) **APPEAL OF MAGISTRATE**  
v. ) **DECISION TO DISTRICT COURT**  
)  
ESTEBAN LOAIZA, )  
)  
Defendant. )  
\_\_\_\_\_ )

**EXHIBIT A**

**UNITED STATES DISTRICT COURT**

for the  
Southern District of California

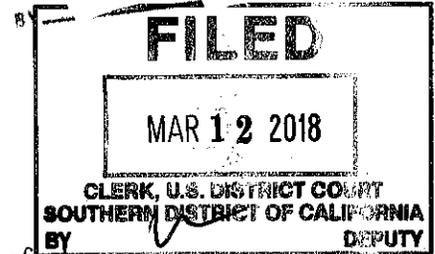
United States of America )

v. )

Esteban Antonio Loaiza )

Defendant )

Case No. 18 MJ 1067



**PRETRIAL RELEASE ORDER**

IT IS ORDERED that the defendant's release is subject to these conditions:

**Mandatory Conditions**

- (1) The defendant must not violate federal, state, or local law during the period of release.
- (2) The defendant must cooperate in the collection of a DNA sample as authorized by 42 U.S.C. § 14135a.

**Standard Conditions**

*(Each Standard Condition applies, unless stricken.)*

- (3) The defendant must appear in court as ordered and surrender as directed to serve any sentence.
- (4) The defendant must not possess a firearm, destructive device, or other dangerous weapon.
- (5) The defendant must not use or possess a narcotic drug or other controlled substance without a lawful medical prescription. The defendant must not use or possess marijuana under any circumstances.
- (6) The defendant must report to the U.S. Pretrial Services Office (telephone (619) 557-5738) on the day of the initial court appearance or within 24 hours of the defendant's release from custody, whichever is later. Throughout this case, the defendant must report as directed by the Pretrial Services Office and follow all directions of the Pretrial Services Office.
- (7) The defendant must advise the Court or the Pretrial Services Office in writing of: (1) the defendant's current residence address and phone number, when first reporting to Pretrial Services; and (2) any new contact information, before making any change of residence or phone number.
- (8) The defendant must read this Pretrial Release Order and the "Advice of Penalties and Sanctions" form, or have them read to the defendant in the defendant's native language. The defendant must acknowledge the defendant's understanding of all the pretrial release conditions and the penalties and sanctions for any violations, by signing the "Advice of Penalties and Sanctions" form.
- (9) Restrict travel to:
  - San Diego County     Imperial County     State of California
  - CDCA (L.A., Orange, Riverside, San Bernardino, S.L.O., Santa Barbara, Ventura)
  - Do not enter Mexico     Other Travel Restriction: \_\_\_\_\_

**Additional Conditions**

- (10)  (a) The defendant is released on personal recognizance.
- (b) The defendant must execute an appearance bond in the amount of \$ 200,000 that is:
  - Unsecured.
  - Secured, as set forth below. The Court finds that an unsecured bond will not reasonably assure the defendant's appearance as required and/or will endanger the safety of another person or the community.
    - Security:  The co-signatures of \_\_\_\_\_ financially responsible (and related) adults or \_\_\_\_\_.
    - A cash deposit with the Court of \$ \_\_\_\_\_.
    - A trust deed to the United States on real property approved by a federal judge.
    - A cash bond and/or a bail bond by an approved, solvent corporate surety. A corporate bail bond must cover all conditions of release, not just appearances.
    - Other: \_\_\_\_\_.
- Hearing:  Surety examination     Nebbia hearing (bail source hearing)
- (11)  18 U.S.C. § 3142(d) hold until \_\_\_\_\_; if no detainer is lodged by then, these conditions take effect.

(12) The defendant must:

- (a) actively seek or continue full-time employment, or schooling, or a combination of both.
- (b) reside with  a family member, surety, or \_\_\_\_\_, or  at a residence approved by the Pretrial Services Office.
- (c) surrender any valid passport to the Pretrial Services Office and not obtain a passport or other international travel document.
- (d) clear all warrants/FTAs and pay all fines within 90 days of release or as directed by the Pretrial Services Office.
- (e) submit to psychological/psychiatric treatment at Pretrial Services' discretion.
- (f) submit to testing for drugs/alcohol if required by the Pretrial Services Office, no more than \_\_\_ times per month. Testing may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. Pretrial Services need not notify the Court of test results attributed to residual elimination.
- (g) not use alcohol at all.
- (h) not have a blood alcohol content (BAC) of .08% or more.
- (i) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the Pretrial Services Office or supervising officer.
- (j) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: \_\_\_\_\_
- (k) participate in the Location Monitoring Program and comply with its requirements as directed under the following component and technology:
  - (i) **Curfew.** You are restricted to your residence  every day from \_\_\_\_\_ to \_\_\_\_\_, or  as directed by the pretrial services office or supervising officer.
  - (ii) **Home Detention.** You are restricted to your residence at all times except for Pretrial Services-approved absences for: employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; Court-ordered obligations; or other activities.
  - (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for Court-approved absences for medical necessities, court appearances, or other activities.
- Technology:  Global Positioning System (GPS)  Radio Frequency  Voice Recognition
- You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services officer.
- Defense counsel must notify Pretrial Services upon submission of bond paperwork; defendant to be released from custody to Pretrial Services the following business day by 10:00 a.m. and Pretrial Services to transport if needed.
- (l) return to custody each \_\_\_\_\_ at \_\_\_\_\_ AM/PM after being released at \_\_\_\_\_ AM/PM for employment, schooling, or the following purposes: \_\_\_\_\_
- (m) maintain residence at a halfway house, community corrections center, or residential facility, as the Pretrial Services Office or supervising officer considers necessary.
- (n) remain in the custody of \_\_\_\_\_, who will supervise the defendant and notify the Court immediately if the defendant violates any conditions of release.
- (o) **Adam Walsh Act:** See attached Addendum for additional conditions.
- (p) Other conditions: Released to PTS the following

(13)  All conditions previously set will remain the same.

Date: 3/12/18

  
 \_\_\_\_\_  
 Hon. Nita L. Stormes  
 U.S. Magistrate Judge

UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) No. 18-mj-1062  
 )  
 v. ) March 12, 2018  
 )  
 ESTEBAN ANTONIO LOIAZA, ) 10:51 a.m.  
 )  
 Defendant. ) San Diego, California  
 )

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TRANSCRIPT OF DETENTION HEARING  
 BEFORE THE HONORABLE NITA L. STORMES  
 UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEYS OFFICE  
 By: JARAD E. HODES, ESQ.  
 880 Front Street  
 San Diego, California 92101

For the Defendant: LAW OFFICES OF JANICE M. DEATON  
 By: JANICE M. DEATON, ESQ.  
 444 West C Street, Suite 340  
 San Diego, California 92101

Court Transcriber: CYNTHIA R. OTT, RDR, CRR  
 District Court Clerk's Office  
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 San Diego, California, 92101  
 cynthia\_ott@casd.uscourts.gov

Recorded by Electronic Sound Recording, Transcribed by Computer

1 SAN DIEGO, CALIFORNIA, MARCH 12, 2018, 10:51 A.M.

2 \* \* \* \*

3 THE CLERK: Calling matter number 6, 18-mj-1062-NLS,  
4 United States of America versus Esteban Antonio Loaiza.

5 MR. HODES: Good morning, Your Honor, Jarad Hodes on  
6 behalf of the United States.

7 THE COURT: Good morning.

8 MS. DEATON: Good morning, Your Honor, Janice Deaton  
9 on behalf of Mr. Loaiza, he's in custody.

10 THE COURT: Good morning.

11 MS. DEATON: Your Honor, Mr. Loaiza is now present and  
12 in custody.

13 THE COURT: All right. Good morning, sir. This  
14 matter is set this morning for a detention hearing based on  
15 risk of flight.

16 Is the United States prepared to proceed?

17 MR. HODES: Yes, Your Honor.

18 THE COURT: All right. You may proceed by way of  
19 proffer.

20 MR. HODES: We believe that detention is necessary in  
21 this case due to the risk of flight. As to the nature and  
22 circumstances of the offense, Mr. Loaiza is charged in a  
23 presumption case with a 10-year mandatory minimum and maximum  
24 of life with possession with intent to distribute approximately  
25 20 kilograms of cocaine. It does appear that he is likely and

1 safety valve eligible with probably one criminal history point.

2 Preliminarily, his sentencing guideline range appears  
3 to be 151 to 188 months. There is a concern in this case that  
4 the stash house that was being operated by Mr. Loaiza is  
5 directly adjacent to a preschool elementary school. And I  
6 would note as to the circumstances of the offense he was not a  
7 cross border courier.

8 It did not appear that he brought the cocaine across  
9 the border in this case as in the prior case, rather, he  
10 received the cocaine after it had already crossed the border,  
11 after someone else already bore the risk of crossing it.

12 He then transferred it within a stash house location  
13 that was represented in his name into another vehicle. As to  
14 the weight of the evidence, it's the least important factor,  
15 the complaint sets forth the circumstances of the arrest, but  
16 I'll note it was his townhouse rented in his name. It was  
17 devoid of any furniture, personal belongings, clearly  
18 indicating that it was being used as a stash house location.

19 The cocaine was stored underneath several baseball  
20 bags in this minivan with the defendant's name on them. As the  
21 Court is aware, the defendant was formerly a professional  
22 baseball player.

23 And he was under surveillance the whole time from  
24 before he went into the townhouse garage until after he left  
25 when the search warrant was obtained and the drugs were found.

1           As to the defendant's charges, he is a citizen of  
2 Mexico. He was residing in Mexico at the time of this offense.  
3 He's had a green card. He's had lawful permanent resident  
4 status and he's had that for a long time. But his residence in  
5 Mexico is a violation of the conditions of having a green card.  
6 And at any rate, the green card was due to expire within the  
7 next month. And, obviously, this case would have an impact on  
8 his ability to keep it or renew it.

9           As to his financial status, so what we do know is  
10 this, through his baseball career he made over 43 million  
11 dollars in salary. That does not count other income from other  
12 businesses, it appears he's been running baseball clinics and  
13 things like that. It does not count endorsements. It does not  
14 count any income he received from being on a popular reality  
15 television show.

16           There's been some speculation in the press as to how  
17 much of that money remains, and the United States frankly  
18 doesn't know, but, however much of it remains is likely in  
19 Mexico outside the reach of the U.S. Government.

20           We do know that he is the registered owner of four  
21 fairly high end vehicles. At least according to DMV records he  
22 remains the registered owner of a Ferrari and he acknowledged  
23 to pretrial that he does own real property in Mexico which is  
24 my understanding fairly common for wealthy individuals in  
25 Mexico to tie up a good amount of their wealth in the purchase

1 of real property.

2           So we have real conditions that any sort of financial  
3 condition that the Court were to set on bond would not be an  
4 effective deterrent, especially if it were in the range of 40  
5 or 50 or even a hundred thousand dollars as is common in this  
6 court.

7           He has the one prior DUI arrest which was pled to a  
8 reckless driving, that was over 10 years ago. It caused a  
9 degree of hardship for him at the time because he was playing  
10 baseball, but other than that, he does not have criminal  
11 history here in the United States.

12           So in summary, the government's concerns are the very  
13 high sentencing exposure, the extensive ties to Mexico and the  
14 big question mark about the large degree of wealth that could  
15 be available in Mexico to mitigate the effectiveness of any  
16 kind of financial condition on bond.

17           So for those reasons we do request detention.

18           THE COURT: All right. Thank you.

19           MS. DEATON: Thank you, Your Honor. Your Honor, I do  
20 believe that Mr. Loaiza can rebut the presumption and that  
21 there are conditions that can be set to reasonably assure his  
22 appearance in court.

23           Your Honor, Mr. Loaiza is 46 years old. He's a  
24 lifelong resident of the Tijuana/San Diego region. He went to  
25 Mar Vista High School, he graduated in 1990. Your Honor,

1 present in court are his family, his nieces, his nephews, his  
2 brothers, his sisters and his parents.

3 Starting, Your Honor, present in court are  
4 Mr. Loaiza's parents, if you could please raise your hand,  
5 Senora Loaiza and Mr. Loaiza. Present in court are  
6 Mr. Loaiza's sister, Mary Nunez, and her husband, Jesus Nunez,  
7 and their two daughters.

8 Present in court are Mr. Loaiza's brother, Seville  
9 Loaiza, excuse me, and his wife, Cynthia Loaiza, she's  
10 not -- she is here, yes, thank you.

11 And then, Your Honor, finally present in court, Your  
12 Honor, is Esteban Sage, Mr. Loaiza's 16, almost 17-year-old son  
13 and the mother of Sage, Ashley Esposito who considers  
14 Mr. Loaiza her best friend.

15 Mr. Esteban Sage and Ashley Esposito drove out here  
16 from Texas, from Mansfield, Texas, Saturday to be here for this  
17 morning's hearing, Your Honor, and Ms. Ashley Esposito is  
18 offering to be a surety in this case.

19 Your Honor, I will address the concern regarding  
20 Mr. Loaiza's financial situation as best I can. As the Court  
21 knows, it's hard to prove a negative. It's hard to prove that  
22 Mr. Loaiza does not have the money that the government is  
23 concerned that he might have. I would point out to the Court  
24 anecdotally that Mr. Loaiza, bail was set in his case on the  
25 state side at \$200,000 on February 9th.

1           Had Mr. Loaiza been able to come up with just \$20,000,  
2 Your Honor, he would have been released between the dates of  
3 February 9th and February 14th, which was his first court  
4 appearance on the state case.

5           He did not post bail, Your Honor. He remained in  
6 custody because the \$20,000 was not available for Mr. Loaiza to  
7 post bail. On February 14th, Your Honor, his bail was -- I'm  
8 talking about the state court case, Your Honor. His bail was  
9 raised to \$250,000.

10           He could have posted bail with \$25,000 or even less.  
11 He still did not post bail, Your Honor, and that, of course, is  
12 strong anecdotal and circumstantial evidence that Mr. Loaiza  
13 does not have any kind of the finances that the government is  
14 concerned that he might have.

15           Your Honor, Mr. Loaiza -- I also was curious in  
16 speaking to government counsel on Friday about our proposal  
17 this morning. The government did indicate its concern  
18 regarding Mr. Loaiza's past earnings.

19           All the Court has to do, all we have to do is Google  
20 famous athletes or star athletes who have gone bankrupt, famous  
21 athletes who have gone broke, and I could recite 10 or 12 off  
22 the top of my head, including our own Tony Gwynn who went  
23 bankrupt, Your Honor.

24           But I'm happy to mention Antoine Walker earned over  
25 108 million dollars in his 12-year career. This ex-NBA star

1 filed for bankruptcy only two years after retirement suffering  
2 from bad investments in real estates, cars and assisting  
3 relatives.

4 Vince Young earned 26 million dollars, former NFL  
5 quarterback, went bankrupt in 2014. Boris Becker earned  
6 126 -- excuse me, 126 million dollars and he also went  
7 bankrupt.

8 Mr. Lopez -- excuse me, Mr. Loaiza is not and has not  
9 filed for bankruptcy, but my point is, Your Honor, that it's  
10 very common for star athletes to get bad financial advice, have  
11 bad agents, have bad spending decisions, and because of that,  
12 Your Honor, Mr. Loaiza did not post bail in the state case.

13 Your Honor, Mr. Loaiza as the government pointed out,  
14 he has one prior contact with the law and that's for the DUI  
15 that was pled down to a, what, reckless. Mr. Loaiza has lived  
16 in this community his whole life.

17 He is currently engaged in doing baseball clinics and  
18 attending events with the White Sox in Chicago. He was  
19 supposed to go to Dallas a couple of weeks ago, two weeks  
20 following his arrest, all to promote baseball and following  
21 through with school, finishing high school, things like that,  
22 Your Honor.

23 Your Honor, Mr. Loaiza -- I'm sorry, I just finished a  
24 sentencing with Mr. Lopez, and so I apologize for using that  
25 name. That's the source of my confusion though.

1           Mr. Loaiza would be living with his sister, Maria  
2 Nunez, her husband, Jesus Nunez, and they would be living at  
3 the address that Mr. Loaiza provided on Iris. He has stayed  
4 there and has a place that is what he considers to be his San  
5 Diego residence. He does agree to the conditions set forth by  
6 pretrial services of electronic monitoring.

7           He also, Your Honor, would be answering not only to  
8 the Court, not only to the United States Government, but also  
9 to the people that are here in court, Your Honor. Mr. Loaiza  
10 has every intention, every reason of seeing this case to its  
11 final resolution. His green card has not expired, by the way,  
12 Your Honor, I would like to clarify and this is important.

13           Mr. Loaiza's legal permanent residency does not expire  
14 when a green card expires. The green card is simply renewed to  
15 obtain his biometric records and Mr. Loaiza does have an  
16 appointment to go and have his biometric records taken and he  
17 will, if he is released, absolutely go for that meeting with  
18 immigration, Your Honor.

19           So his immigration status is not changing. It's not  
20 correct that if an immigration card expires that you lose your  
21 legal residence. They are two separate things. The card is  
22 simply evidence of the legal permanent residency. So that will  
23 not expire.

24           Finally, Your Honor, I would recommend a bail in the  
25 amount of \$40,000 secured by one financially responsible adult,

1 and that would be Ashley Esposito, Your Honor. Ms. Esposito is  
2 a homeowner, she owns a home in Texas. The home, however, as I  
3 indicated, Sage is also present in court, Your Honor, and Sage  
4 is about to start university.

5 So the home, we would prefer to not post the home as  
6 property because Ms. Esposito is hoping to use the home to pay  
7 her son's college tuition and I know the Court and we're all  
8 very aware of what that can be like.

9 But Ms. Esposito does have other assets that she is  
10 willing to post in the area of jewelry, Your Honor, that would  
11 satisfy and cover the full [inaudible] amount recommended by  
12 pretrial services.

13 So, Your Honor, my recommendation and request would be  
14 a \$40,000 secure bond with one financially responsible  
15 signature, that would be Ms. Esposito.

16 Mr. Loaiza's sister, Maria Nunez, is also willing to  
17 sign the bond, Your Honor. I'm just concerned that she might  
18 not have \$40,000 in assets. Ms. Nunez, though, the sister  
19 would be posting the 10 percent deposit should the Court  
20 request that.

21 THE COURT: All right. Thank you. Let me ask the  
22 Assistant U.S. Attorney, what is the status of the state case?

23 MR. HODES: The state case has been dismissed in light  
24 of our prosecution.

25 THE COURT: So he's only going on the federal side at

1 this point?

2 MR. HODES: Yes.

3 THE COURT: Okay. All right.

4 Is there anything further from the United States?

5 MR. HODES: I will just note, while Mr. Loaiza was in  
6 state custody, the San Diego sheriffs were monitoring his jail  
7 conversations. And there was one conversation with a bail  
8 bondsman where it appeared he had the deposit necessary or the  
9 payment necessary to a bondsman but the bondsman given the size  
10 of the bond wanted an explanation from Mr. Loaiza as to what  
11 happened in this case.

12 And he provided an explanation that really made no  
13 sense such that the bondsman said I don't believe you and,  
14 therefore I'm not going to issue this bond for you. So there  
15 may have been factors other than availability of that 10  
16 percent fee at play in the fact that he remained in custody on  
17 the state side before he was brought over.

18 MS. DEATON: May I respond, Your Honor?

19 THE COURT: Yes you may.

20 MS. DEATON: Thank you. Your Honor, the day that  
21 Mr. Loaiza was set to be released, we went to court in state  
22 court on March 7th for the 1275.1 hearing, that's the hearing  
23 for Judge Katz to remove the detainer on Mr. -- on -- let me  
24 back up, Your Honor.

25 On February 14th, Judge Katz imposed a 1275 detainer.

1 That means that Mr. Loaiza had to show that the 10 percent for  
2 the bond is legitimate -- comes from legitimate sources. We  
3 did that. We went to court. He was supposed to be released  
4 that day, and that was the day that he was brought to federal  
5 court.

6 I can represent to the Court that there were many bail  
7 bondsmen fighting over the opportunity to post bail for  
8 Mr. Loaiza. But we did have bail set. It was signed. The  
9 contract was signed, he was ready to be released that day and  
10 he was brought over to federal court instead.

11 THE COURT: All right. Thank you very much.

12 Mr. Loaiza is charged by way of criminal complaint  
13 with possession of cocaine with intent to distribute and  
14 specifically the amount of cocaine is approximately at 20  
15 kilograms. According to the probable cause statement,  
16 Mr. Loaiza was a tenant or rented a townhouse located at 1044  
17 Fern Avenue in Imperial Beach, California, which the government  
18 contends was a stash house.

19 Sheriff's deputies followed him, at the time he was  
20 driving a Mercedes automobile, he was contacted and a canine  
21 was used to search the vehicle, there was an alert. Sheriff's  
22 deputies then got a search warrant for the -- the residence at  
23 1044 Fern Avenue.

24 Mr. Loaiza also had a garage door remote that  
25 indicated the address of the residence. Although they did not

1 find any drugs in the stash house, it was empty of furniture  
2 and there was a Nissan automobile in the garage of the stash  
3 house and that's where the 20 kilograms of cocaine were  
4 discovered.

5 Mr. Loaiza is a former professional baseball player.  
6 He's 46 years old. He lives in the Tijuana -- in Tijuana. He  
7 has family in the United States, specifically he does have  
8 family in Texas who've driven here to be in court today and are  
9 offering to be sureties.

10 He was originally charged on the state side and bail  
11 was set in the state case at \$200,000. The government  
12 proffered that while he was incarcerated on the state case,  
13 there was a telephone call with a bail bondsman and the -- the  
14 facts of the offense as related by Mr. Loaiza to the bail  
15 bondsman were confusing and the bail bondsman apparently  
16 refused to post the bail for Mr. Loaiza.

17 Now the state case is dismissed and he's on the  
18 federal side and his defense counsel is suggesting that the  
19 Court set a bond in the amount of \$40,000 with home detention.

20 Mr. Loaiza at least from the pretrial services report  
21 has one prior offense which was a DUI from 2006. So he really  
22 has no significant criminal history. He has significant  
23 contacts here to the United States. And he does have contacts,  
24 presumably significant contacts in Mexico as well.

25 The government has proffered that he made 43 million

1 dollars playing baseball and, therefore, it's their contention  
2 that he's got the means certainly to flee should he care to do  
3 so. The defense has rebutted that with evidence that he was  
4 unable to make his \$200,000 bond on the state side.

5           The Court has no way of knowing what his actual assets  
6 may be in Mexico. I have no evidence in front of me other than  
7 what the government contends were his wages and the defense has  
8 proffered that many professional athletes have lost most or all  
9 of their -- their wages, presumably from making poor decisions  
10 as to how to spend the money.

11           In any event, he's a legal permanent resident. He  
12 stands to lose that status if he's convicted of this offense.  
13 I do think that although this is a presumption case, I can set  
14 a manageable bond and the Court is going to set a -- a \$200,000  
15 cash or corporate surety bond.

16           There will be a travel restriction to the Southern  
17 District. He is to reside with a family member or other  
18 residents approved by pretrial. And I will require GPS  
19 monitoring with home detention.

20           He is to actively seek or continue full-time  
21 employment. Any other conditions that are recommended either  
22 by the United States or by pretrial services?

23           MR. HODES: Just as to the amount of the bond, Your  
24 Honor, Ms. Deaton I think told the Court it was 200, that was  
25 the initial bond in state court set by schedule. The judge

1 actually then increased the bond to \$250,000 given all the  
2 circumstances that we've been talking about. So to the  
3 extent --

4 THE COURT: Here's my thinking on that. It doesn't  
5 really matter whether it's 200 or 250,000. I mean, between  
6 those two I don't think it matters. I have required a cash or  
7 corporate surety bond, so a bail bondsman is going to have to  
8 be involved and take the risk on this individual.

9 I think that's more significant than whether it's 200  
10 or 250. So that's my thinking.

11 MR. HODES: Okay.

12 THE COURT: All right. Ma'am.

13 PRETRIAL OFFICER: Yes, Your Honor, if he can be  
14 released to pretrial services the following business day.

15 THE COURT: Yes. Yes. He will be released to  
16 pretrial services the following business day and that is for  
17 the purpose of setting up the GPS.

18 PRETRIAL OFFICER: Correct, Your Honor.

19 THE COURT: And I will also require that he -- he pay  
20 all or part of the cost of that GPS monitoring.

21 PRETRIAL OFFICER: Yes, Your Honor, thank you.

22 THE COURT: Okay. The next court appearance for  
23 Mr. Loaiza is presently set for March 20 before Judge Block.

24 MS. DEATON: Your Honor, I've discussed continuing the  
25 preliminary exam to the arraignment date, which I believe is

1 April 5th in front of Your Honor.

2 THE COURT: Correct.

3 MS. DEATON: Is that correct?

4 THE COURT: Yes.

5 MS. DEATON: We'd like to do that, Your Honor.

6 THE COURT: All right. Mr. Loaiza, you are presently  
7 set for a preliminary hearing on March 20. Your attorneys  
8 indicated you're willing to continue that hearing to April 5,  
9 that would be for the purpose of her reviewing the government's  
10 evidence against you and discussing a possible resolution of  
11 your case.

12 Do you agree to a continuance to April 5 for those  
13 reasons?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Then the Court will continue  
16 the preliminary hearing date to April 5 at 9:30 in the morning.  
17 And that will be in my court.

18 MS. DEATON: Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 (The proceedings concluded at 11:19 a.m., March 12, 2018.)

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TRANSCRIBER'S CERTIFICATE

I, CYNTHIA R. OTT, Official Court Transcriber, United States District Court, Southern District of California, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a true, complete and correct transcript from the electronic sound recording of the proceedings had in connection with the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at San Diego, California, March 24, 2018.

\_\_\_\_\_/s/ CYNTHIA R. OTT\_\_\_\_\_  
CYNTHIA R. OTT, RDR, CRR

MR. HODES: Thank you, Your Honor.

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. 18-mj-1062
	)	
v.	)	March 20, 2018
	)	
ESTEBAN ANTONIO LOIAZA,	)	9:52 a.m.
	)	
Defendant.	)	San Diego, California
	)	

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TRANSCRIPT OF BOND MODIFICATION HEARING  
BEFORE THE HONORABLE NITA L. STORMES  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEYS OFFICE  
By: JARAD E. HODES, ESQ.  
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Recorded by Electronic Sound Recording, Transcribed by Computer

1 SAN DIEGO, CALIFORNIA, MARCH 20, 2018, 9:52 A.M.

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3 THE CLERK: Calling matter number one, 18-1062-NLS,  
4 United States of America versus Esteban Antonio Loaiza.

5 MS. DEATON: Good morning, Your Honor. Janice Deaton  
6 on behalf of Mr. Loaiza. He is present in custody.

7 MR. HODES: Good morning, Your Honor, Jarad Hodes on  
8 behalf of the United States.

9 THE COURT: Good morning. Mr. Loaiza, good morning.

10 THE DEFENDANT: Good morning.

11 MS. DEATON: Thank you, Your Honor, I called, placed  
12 this matter on for a bond modification hearing. Last week the  
13 Court set a bond at \$200,000 cash or corporate surety bond.

14 We did attempt to fulfill that bond. I called ACME  
15 bail bonds, I called the bail bond company that we were working  
16 with in state court and one other company whose name is  
17 escaping me, and, unfortunately, cash or corporate surety  
18 companies, bail bondsmen don't really work in federal court.

19 We got -- I'll just tell the Court, none of them would  
20 work with us.

21 THE COURT: I've done quite a few of them, so I think  
22 that's a little bit inaccurate.

23 MS. DEATON: Yes, I'll tell the Court, we received a  
24 12 percent offer, in other words, one company said that they  
25 would do it for 12 percent down all at once and the family does

1 not have \$24,000 in cash to post a 12 percent down payment for  
2 the \$200,000 bond.

3           Everybody else required the same collateral that the  
4 Court would require in a property bond. And so that's what I'm  
5 coming to the Court this morning to offer. Your Honor, last  
6 week in court was Mr. Loaiza's son, Esteban Sage who's 16,  
7 he'll be 17 in three days, and Sage's mother who was present.

8           And they had driven out from Mansville, Texas which is  
9 right by Dallas, Texas, to be here for the bail hearing.  
10 Sage's mother, Ashley Esposito, I told the Court with  
11 Ms. Esposito present in court that Mr. Loaiza and she remain  
12 very close and, in fact, Ms. Esposito considers Mr. Loaiza to  
13 be her very best friend.

14           Ms. Esposito has a home that has at least \$120,000 in  
15 equity. That is the home that we are offering in this case,  
16 Your Honor. I can give the Court the address, but  
17 Ms. -- Ms. Esposito purchased the home in 2014. It  
18 has -- according to the tax statements, we haven't gotten an  
19 appraisal yet because that costs about \$500, 4 or \$500 and  
20 we're waiting to see the results of this morning. But  
21 according to her tax payment, they have it appraised at  
22 \$135,000, Your Honor, and it is fully paid for.

23           So, Your Honor, I would request that the Court leave  
24 all the other conditions that the Court set last week, that  
25 included electronic monitoring. I believe the Court also

1 included home detention, of course, seek and work full time or  
2 study full time, all of the other conditions are absolutely  
3 fine with Mr. Loaiza, of course, Your Honor.

4 But instead of the \$200,000 cash or corporate surety  
5 bond we would request that the Court impose a \$120,000 property  
6 bond fully secured by property, Your Honor.

7 THE COURT: What's the government's position?

8 MR. HODES: We would oppose the modification, Your  
9 Honor. The 3142 factors have not changed and as the Court  
10 recalls from last time, the government sought detention in this  
11 case. The Court indicated that if a corporate surety was  
12 willing to put the money up for Mr. Loaiza that he could get  
13 out on a \$200,000 bond. That hasn't happened.

14 The factors haven't changed. And so given all the  
15 arguments that we raised in favor of detention, we think the  
16 bond should remain as is.

17 THE COURT: All right. Thank you.

18 MS. DEATON: Your Honor, if I may just briefly  
19 respond. I'm not going to go over the basic law because I know  
20 that you -- you know that. But, Your Honor, in this case we  
21 did attempt to comply with the Court's initial bond. The bond  
22 in state court that the Loaiza family had arranged was over  
23 payments. We found nothing even close to that that anybody  
24 would work with us on.

25 So we're offering a house. We're offering the house

1 of Mr. Loaiza's son, where his son resides full time. He's a  
2 junior in high school, soon to be a senior. I believe it is  
3 absolutely adequate to reasonably assure Mr. Loaiza's  
4 appearance in all of his court appearances, his next one being  
5 April 5th.

6 And especially coupled with all of the other  
7 conditions that the Court imposed last week, I believe that  
8 this will -- this will reasonably assure his presence.

9 THE COURT: All right. Thank you.

10 I mean, the fact -- the only fact that has changed  
11 since the bond hearing initially is that you've been unable to  
12 assemble the cash to get the corporate surety bond. Other than  
13 that, there have been no factors that have changed and I am  
14 going to leave the bond as is.

15 If the family wants to get equity out of the house and  
16 use that as a down payment for the bail bond, they can do that.  
17 I will leave that up to you. But I'm not going to change the  
18 bond.

19 MS. DEATON: Thank you, Your Honor.

20 THE COURT: All right. You're welcome.

21 (The proceedings concluded at 9:58 a.m., March 20, 2018.)  
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TRANSCRIBER'S CERTIFICATE

I, CYNTHIA R. OTT, Official Court Transcriber, United States District Court, Southern District of California, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a true, complete and correct transcript from the electronic sound recording of the proceedings had in connection with the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at San Diego, California, March 24, 2018.

\_\_\_\_\_/s/ CYNTHIA R. OTT\_\_\_\_\_  
CYNTHIA R. OTT, RDR, CRR