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12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,  
16 Plaintiff,  
17 v.  
18 RAUL TORRES-OLIVARES,  
19 Defendant

20 Case No.: 23-cr-766-JES

21 **UNITED STATES' OPPOSITION TO  
22 DEFENDANT'S RENEWED MOTION  
23 FOR BOND**

24 **I. INTRODUCTION**

25 Defendant Raul Torres-Olivares, an undocumented alien, convicted felon for killing  
26 a baby, and a repeated status offender seeks reconsideration of the Court's finding that he  
27 is a flight risk. Without providing new facts, Defendant seeks the Court's reconsideration  
28 of detention, discussing the same evidence and attempting to sanitize his felony conviction.  
29 Since there has been no change in the controlling law this Court relied on and the  
30 circumstances remain unchanged, the Court should not reconsider its order to detain  
31 because Defendant remains a serious risk of flight.

32 **II. STATEMENT OF THE CASE**

33 On March 30, 2023, at around 3:00 in the morning, a Department of Defense scope  
34 operator observed a group of individuals including Defendant traveling north from the

1 United States and Mexico International border. Dkt. No. 1 at 1. A Border Patrol Agent,  
2 guided by the scope operator, encountered Defendant hiding in thick brush 3.8 miles from  
3 the nearest port of entry and 2.1 miles north of the border. *Id.* Defendant confirmed with  
4 the agent he is a citizen of Mexico without any immigration documents to enter, work, or  
5 remain in the United States legally. *Id.* The agent arrested Defendant and he was charged  
6 with illegal entry in violation of 18 U.S.C. § 1326. *Id.*

7 The following day, Defendant presented before this Court for his initial appearance.  
8 Dkt. No. 3. At the initial appearance, the Government moved to detain Defendant based on  
9 a serious risk of flight. *Id.* Specifically, the Government expressed its concern with  
10 Defendant's criminal history, prior deportations, and strong ties to Mexico. Ex. A  
11 ("Hearing Transcript") at 3. Defendant sought a \$15,000 personal appearance bond secured  
12 by one financially responsible and related adult based on Defendant's family ties to Iowa  
13 and potential sureties.

14 The Court found "there are no conditions [it] can set that will reasonably assure  
15 [Defendant's] appearance as required," then ordered Defendant detained:

16 I do understand that you have ties to a community within the  
17 United States, specifically within the state of Iowa, where your  
18 partner resides, and that you have three United States citizen  
children.

19 I'm also considering additional factors: The weight of the  
20 evidence against you is strong, although that's the least important  
21 factor that I'm considering. You do have criminal history. It's  
22 only one conviction, but it was a very long sentence, and I don't  
23 have additional information about all of the facts and  
circumstances underlying it.

24 You appear to lack legal status within the United States. That is  
25 not determinative; it's just one of the factors that I consider, sir.

26 And as best I can tell from the evidence before me, you do not  
27 appear to have significant community ties to any community  
28 within the United States specifically, or stable employment or  
financial ties to the United States or a community within it.

1 Hearing Transcript at 6. The Court later issued a written detention order. Dkt. No. 9.

2 Defendant's Motion for Reconsideration follows. Dkt. No. 16.

### 3 III. LEGAL STANDARD

4 For reconsideration, Defendant must show "what new or different facts and  
 5 circumstances are claimed to exist which did not exist, or were not shown, upon such prior  
 6 application." CivLR 7.1.i.<sup>1</sup> Merely rearguing a previous position does not support  
 7 reconsideration. *Schueneman v. Arena Pharms., Inc.*, No. 10-cv-1959-CAB, 2018 WL  
 8 11437824, at \*2 (S.D. Cal. May 11, 2018); *see also United States v. Ward*, 63 F. Supp. 2d  
 9 1203, 1206-07 (S.D. Cal. 1999) (stating detention hearing should not be reopened to  
 10 consider evidence available at the time of the original hearing).

### 11 IV. ARGUMENT

12 Because Defendant's Motion is merely a recapitulation of the arguments he made or  
 13 could have made at the time of the detention hearing, it should be denied without reaching  
 14 the merits. Regardless, under the applicable 18 U.S.C. § 3142(g) factors, Defendant  
 15 continues to be a flight risk where no condition or combination of conditions can be set to  
 16 reasonably assure Defendant's future appearance.

#### 17 A. Reconsideration Is Not Appropriate

18 The same facts and circumstances exist now as they did on March 31, 2023.  
 19 Defendant's Motion simply claims he homed in on a potential surety and reiterates his  
 20 strong community ties in Iowa. These are not new facts. Defendant claimed to have  
 21 numerous family members including an uncle as a potential surety during the March  
 22 hearing. Instead, as demonstrated below, the additional information the parties have

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23  
 24 <sup>1</sup> "The court assumes the same standard applies in both civil and criminal cases, even  
 25 though the Federal Rules of Criminal Procedure do not contain a provision akin to Fed. R.  
 26 Civ. P. 59(e)." *United States v. Herman*, No. 08-cr-146-LRS, 2009 WL 2973123, at \*2  
 27 (E.D. Wash. Sept. 11, 2009), *aff'd*, 415 F. App'x 822 (9th Cir. 2011); *United States v. Gomez*, No. 14-cr-3000-DMS, 2021 WL 347694, at \*1 (S.D. Cal. Feb. 2, 2021) (citations  
 28 omitted) ("Courts typically evaluate [criminal motions for reconsideration] under the  
 standards applied to civil motions for reconsideration.").

1 regarding Defendant's criminal history makes an even stronger case for detention. And the  
 2 Bail Reform Act has not changed since the hearing. There is no new circumstance. Because  
 3 reconsideration is not a vehicle to "ask the Court to rethink what it has already thought  
 4 through," *see United States v. Rezzonico*, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998)  
 5 (granting motion for reconsideration due to an error of law), Defendant's Motion should  
 6 be denied before reaching the merits.

7 **B. The § 3142 Factors Still Support Detention**

8 Defendant's Motion does not provide any basis for the Court to change its mind as  
 9 to the reasons supporting detention. Instead, Defendant argues his family ties (already  
 10 considered by the Court) overcome the fact that every other relevant § 3142(g) factor  
 11 supports detention. Defendant poses a significant risk of flight based on his lack of legal  
 12 status to enter or remain legally in the United States, ties to a foreign country, criminal  
 13 history, and disregard for the laws of the United States. A personal appearance bond of any  
 14 amount is insufficient to reasonably assure his appearance at future hearings.

15 The Court must conduct an individualized evaluation of each bail request. *See* 18  
 16 U.S.C. § 3142(g).<sup>2</sup> When determining whether "there are conditions of release that will  
 17 reasonably assure the appearance of the person as required and the safety of any other  
 18 person and the community," the Court must consider the following relevant factors: (1) the  
 19 nature and seriousness of the offense charged; (2) the weight of the evidence against the  
 20 defendant; and (3) the defendant's character, physical and mental condition, family and  
 21 community ties, past conduct, history relating to drug and alcohol abuse, and criminal  
 22 history. *Id.*

23 i. *The Nature and Circumstances of the Offense*

24 While attempting to illegally enter the United States, Defendant—a Mexican citizen  
 25 and felon who has been previously deported—was caught in the middle of the night, miles  
 26 away from the nearest port of entry, hiding from law enforcement in thick brush. Defendant

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27 <sup>2</sup> The statistics and generalities Defendant cites in his Motion are, therefore, inapposite.  
 28

1 knew he had been deported, that he that he was not allowed to reenter the United States  
 2 (Defendant's removal order gives reentry warnings), yet he chose to attempt to do so at  
 3 night, in the mountainous desert, outside of a port of entry, and by hiding from Border  
 4 Patrol.

5 Defendant argues the absence of certain "aggravating details" from his offense  
 6 weighs in favor of bail, such as not producing false documents, making false statements,  
 7 or otherwise engaging in fraud or deceit. Dkt. No. 16 at 10. Defendant's elusive behavior  
 8 actively avoiding law enforcement, just months after being ordered removed, however,  
 9 shows he is unwilling to comply with lawful removal orders, immigration officials, and  
 10 court orders. *See United States v. Martinez-Tomas*, No. 19cr4847-LAB, 2020 U.S. Dist.  
 11 LEXIS 79796, at \*1 (S.D. Cal. May 5, 2020) ("At Defendant's initial appearance . . .  
 12 Magistrate Judge Andrew Schopler ordered [Defendant] detained, finding that Defendant  
 13 posed a 'serious flight risk' [and] for good reason: Defendant has four prior removals and  
 14 two prior convictions . . .").

15 Further, Defendant is charged with attempted illegal re-entry under 18 U.S.C.  
 16 § 1326. If convicted of this offense, it is a virtual certainty Defendant will be deported after  
 17 he completes his term of custody (if any). Defendant's criminal history makes his guideline  
 18 range 18-24 months. There is, therefore, an incentive to flee to Mexico on his own terms  
 19 now rather than on the United States' terms following a possible lengthy prison sentence.

20 Accordingly, the nature and circumstances of Defendant's illegal reentry offense  
 21 weigh heavily in favor of detention.

22       ii.     *The Weight of the Evidence Against Defendant*

23 Defendant does not dispute that the weight of the evidence is strong as to the  
 24 elements of the attempted illegal reentry offense. Nonetheless, Defendant contends "[t]he  
 25 weight of the evidence favors release." Dkt. No. 16 at 10. Defendant raises speculative  
 26 claims that his prior deportation was invalid. Essentially, he argues that because he can  
 27 think of a defense, this factor weighs against detention. However, any argument that there  
 28 is a chance to prevail in a case is already subsumed by 18 U.S.C. § 3142(j) and considered

1 by the Court: “Nothing in this section shall be construed as modifying or limiting the  
2 presumption of innocence.” Accordingly, the Court should maintain its finding that “[t]he  
3 weight of the evidence against [Defendant] is strong,” Hearing Transcript at 6, despite  
4 Defendant’s reference to a § 1326(d) issue.

iii. *Defendant's History and Characteristics*

6 As the Court already ruled, despite Defendant's family ties within the United States,  
7 his history and characteristics weigh in favor of detention. Hearing Transcript at 6.

8 As reasons for detention under § 3142(g)(3)(A)—history and characteristics—the  
9 Court identified Defendant’s: (1) criminal history; (2) illegal status in the United States;  
10 (3) lack of ties to a specific community within the United States; and (4) lack of stable  
11 employment or financial ties to the United States. Hearing Transcript at 6. Each of these  
12 reasons continues to support detention.

a. Defendant's Criminal History Continues to Support Detention

14 During the detention hearing, the Court sought additional information on  
15 Defendant's underlying conviction. At the time, neither side knew the circumstances  
16 underlying the conviction other than "it was a very long sentence." Hearing Transcript at  
17 6. This is no longer the case. Documents contained in Defendant's A-file as well as police  
18 records, which were produced well before Defendant filed his motion, contain additional  
19 details about his 2006 conviction.<sup>3</sup> Defendant's inaccurate claim that "the conviction did  
20 not result from any intentional act of violence or force on Mr. Torres-Olivares's part," Dkt.  
21 No. 16 at 8, fails to provide a basis for reconsideration.

22 The 2006 conviction stemmed from Defendant's killing of his girlfriend's 10-month-  
23 old child. On April 10, 2003 at 8:00 p.m., police officers in Nebraska were called to a  
24 hospital because the child presented with head injuries and visible bruising. The child was  
25 air lifted to a Children's Hospital where he passed away the following day. The child died:

26 of a closed head injury, to the right side of the skull, from about  
27 the ear back. There was a large pooling of blood in the sub dural

**28** |<sup>3</sup> Tellingly, Defendant's motion does not describe its circumstances.

1 area ...the crown of the head had a bruise that was not visible on  
 2 the outside of the skin ... 2 inches by 2 inches in size. There was  
 3 a black bruise above the left eye .... There were bruising marks  
 4 on the left side of the face. On the bottom side of the left nostril  
 5 there was an abrasion. These injuries, according [to the medical  
 6 doctor], were consistent with blunt trauma injuries. .... [The  
 7 child] died from the closed head injury on the left side, from the  
 hemorrhaging of blood into the brain. That he had stopped  
 breathing for a period of time .... [The doctor's] ruling was that  
 he died of non-accidental trauma.

8 Ex. B South Sioux City Police Report at 15.

9 Defendant's original story was the child fell out of a highchair while Defendant was  
 10 cleaning in the bathroom for three to five minutes. *Id.* at 9. A doctor opined the child "was  
 11 probably without air for longer than what the family thinks he was." *Id.* at 10. And after  
 12 the doctor did "not think the fall from a highchair could do this amount of damage," *id.* at  
 13 10, as well as the scene of the apartment not matching Defendant's narrative, a nurse at the  
 14 hospital "noticed a change in the story [Defendant] would give." *Id.* at 12. A later story  
 15 Defendant told was that his stomach was upset, and he was in the bathroom for ten minutes  
 16 when the incident occurred. *Id.* at 16. Some versions of Defendant's story were that the  
 17 child fell on linoleum flooring, others on a rug. *Id.* at 21. Sometimes the child hit his head  
 18 on a wall, others Defendant picked the child up and vigorously moved him. *Id.* at 23.

19 After a jury found Defendant guilty of knowing and intentional child abuse resulting  
 20 in serious bodily injury and death, Defendant pled guilty to manslaughter and was  
 21 sentenced to 20 years. By any measure, this was a serious offense.

22 Defendant nonetheless argues his criminal history weighs in favor of release. Dkt.  
 23 No. 16 at 7. First, his argument that his conduct was unintentional only concerns what he  
 24 plead to because of a charge-bargain. Notably, a jury originally convicted him of an  
 25 intentional act; however, there apparently was post-trial litigation that resulted in the  
 26 charge-bargain plea deal. More importantly, that the conviction itself was unintentional  
 27 does not change the fact that his actions resulted in the death of a 10-month-old infant. His  
 28 second argument that he has been law abiding since his release from custody in 2011 except

1 a 2018 driving arrest infers he had been living surreptitiously and illegally in the United  
 2 States at least some of this time—not abiding by the law or his removal orders. While  
 3 somewhat dated, the conviction and sentence are recent enough to score. Finally,  
 4 Defendant highlights that he “has no history of failures to appear, has no probation, parole,  
 5 or other release violations, and was not on release status at the time of the instant arrest.”  
 6 Dkt. No. 16 at 10. This is a red herring and unsurprising. As demonstrated by Defendant’s  
 7 pre-trial custody credit, he was detained after his arrest, so failing to appear was not  
 8 possible. He has never been on probation, parole, or other release.

9 Defendant cites various cases where bond was granted with recent, criminal history  
 10 in §1326 cases. None of them involve the conviction Defendant has. Further, Chief Judge  
 11 Dana M. Sabraw has denied detention appeals under less concerning circumstances to those  
 12 here. *See e.g., United States v. Tapia-Martinez*, 23-CR-21-DMS, Dkt. No. 43 at 9 (denying  
 13 an appeal of a detention order in § 1326 case where defendant had DUI and domestic  
 14 violence charges). In any event, the standard is not what other judges did on specific facts  
 15 of other cases, but whether the Defendant has provided new facts or law to warrant  
 16 reconsideration. He has not.

17 The additional information about Defendant’s conviction should solidify the Court’s  
 18 detention order.

19                   b. Defendant’s Lack of Legal Status Can and Does Support Detention

20 The Court properly considered Defendant’s alienage as “just one of the factors that  
 21 [it] consider[ed],” Hearing Transcript at 6, as an indication of risk of flight. *See United*  
*22 States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015) (“Alienage may be taken into  
 23 account, but it is not dispositive.”).

24 Defendant’s risk of immigration consequences following a significant and enhanced  
 25 sentence highlight a voluntary flight risk and thus weighs in favor of detention. Courts  
 26 regularly find immigration consequences relevant in the risk-of-flight analysis. *See, e.g.,*  
*27 United States v. Contreras-Avalos*, No. 22-mj-4180-DDL, 2022 WL 17652836, at \*3 (S.D.  
 28 Cal. Dec. 13, 2022) (“The record indicates that Mr. Contreras-Avalos is a citizen of Mexico

1 with no ability to lawfully remain in the United States. It is a virtual certainty that he will  
 2 be removed to Mexico at the conclusion of the case. As such, he has a strong incentive to  
 3 abscond to avoid removal.”); *United States v. Araujo-Salas*, No. 19-mj-4179-WVG-WQH,  
 4 2019 WL 4963012, at \*2 (S.D. Cal. Oct. 8, 2019) (detention was proper given defendant’s  
 5 “lack of legal status,” prior deportations, and “the likelihood of removal” following  
 6 incarceration); *United States v. Osuna-Villa*, No. 18-cr-3979 WQH, 2018 WL 9961830, at  
 7 \*2 (S.D. Cal. Oct. 26, 2018) (Detention was proper given defendant’s criminal history,  
 8 “lack of legal status,” and because “Defendant has a strong motive not to appear in order  
 9 to avoid a significant period of incarceration and certain deportation.”). The potential for  
 10 removal following conviction increases the likelihood Defendant will not make court  
 11 appearances on his own volition and rather will make attempts to evade law enforcement  
 12 and avoid an enhanced custodial sentence and potential removal.

13 Defendant also seems to not be deterred. Despite two deportations, including one as  
 14 recent as November 2022, Defendant has returned to the United States. *See United States*  
 15 *v. Turijan-Cruz*, No. 20-cr-0416-H, 2020 WL 12182469, at \*2 (S.D. Cal. Apr. 7, 2020)  
 16 (“Despite being ordered to remain outside United States, the Defendant has three prior  
 17 deportations, leaving the Court with little confidence that the Defendant will be able to  
 18 follow the Court’s order to appear for further proceedings if released on bail.”).

19       c. Defendant’s Employment and Financial Ties to Mexico Support Detention  
 20       Defendant’s inability to work in the United States still supports detention. Although  
 21 Defendant claims to have worked in construction since he was seventeen years-old, his  
 22 legal work and financial ties are in Jalisco, Mexico. Because Defendant lacks legal status,  
 23 he would be unable to work if released from detention, or otherwise find it necessary to  
 24 work illegally.

25       d. Defendant’s Ties to the United States Do Not Outweigh the Factors that  
 26       Support Detention

27       The fact that Defendant is a citizen of a foreign country, particularly one so close to  
 28 this district, tends to weigh in favor of his being a serious flight risk. Defendant’s lack of

1 legal status in the United States and his strong ties to a foreign country are separate factors  
 2 that can be considered by the Court.

3 During the detention hearing, Defendant argued for a \$15,000 personal appearance  
 4 bond based on his partner, three United States citizen children, and three stepchildren in  
 5 Iowa. Hearing Transcript at 3–4. The Court considered this. In his appeal, he continues to  
 6 focus on these ties without providing any new, material information.

7 Defendant may have strong family ties involving immediate family members who  
 8 are U.S. citizens in Iowa. These members, however, appear to be complicit in his continued  
 9 violation of U.S. laws by virtue of his continuing to reside in the United States when not in  
 10 criminal or immigration custody or removed. And, Defendant’s friends, family, and the  
 11 church do not overcome Defendant’s other incentives to flee. *See Turijan-Cruz*, 2020 WL  
 12 12182469, at \*2 (upholding detention order where “Defendant’s family ties to the United  
 13 States including family support weigh[ed] in favor of setting bail,” but “the Defendant’s  
 14 serious criminal history including a recent possession of a controlled substance conviction  
 15 resulting in a prison term of 24 months and a recent felony conviction for an immigration  
 16 offense in this district, weigh against setting bail in this case”).

17 Finally, Defendant acknowledges he has immediate family in Mexico: his mother,  
 18 child, and ex-wife. Dkt. No. 16 at 5. *See United States v. Mukhtar*, No. 12-cr-00004-MMD,  
 19 2012 WL 4510687, at \*5 (D. Nev. Sept. 28, 2012) (Although the defendant has ties to the  
 20 United States, the defendant “also has at least equal, if not stronger, family ties to [a foreign  
 21 country]. Such family ties to [a foreign country] coupled with his lack of financial and  
 22 employment ties in the United States make factor three [of the BRA] weigh against his  
 23 release.”).

24 In sum, because each of the § 3142(g) factors that the Court weighed in favor of  
 25 detention continues to support detention and the circumstances remain the same as the day  
 26 of the detention hearing, the Court should deny Defendant’s Motion.

27 //  
 28

## V. CONCLUSION

For all the foregoing reasons, the Court should deny Defendant's Motion.

DATED: May 17, 2023

Respectfully submitted,

RANDY S. GROSSMAN  
United States Attorney

/s/ *Evangeline A. Dech*  
EVANGELINE A. DECH  
Assistant United States Attorney

# Exhibit A

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE DAVID D. LESHNER  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES OF AMERICA, )  
 ) Case No. 23-mj-01158-DDL  
 )  
 Plaintiff, )  
 ) March 31, 2023  
 v. )  
 )  
 RAUL TORRES OLIVARES, ) Initial Appearance  
 )  
 Defendant. ) **CERTIFIED  
TRANSCRIPT**

REPORTER'S TRANSCRIPT OF  
ELECTRONICALLY RECORDED PROCEEDINGS

**PAGES 1 THROUGH 7**

## APPEARANCES:

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
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BY: ASHLEY KAINO-ALLEN, AUSA

For Defendant: FEDERAL DEFENDERS OF SAN DIEGO  
225 Broadway, Suite 900  
San Diego, California 92101-5030  
BY: DANIELA MUELHEISEN, ESO.

Reported by: Stephanie Whitehead, RDR, CRR, CSR #10093  
United States District Court, Southern District  
333 West Broadway, Suite 420  
San Diego, California 92101-3806

Friday, March 31, 2023

-- o0o --

THE COURT: Mr. Torres Olivares, thank you for your patience, sir.

Ms. Muelheisen, do you have a proffer for appointment of counsel for Mr. Torres?

MS. MUELHEISEN: Yes, your Honor, I do. He has currently been working for five months and making approximately 1800 to 2000 Mexican pesos per week, and he has one vehicle in Mexico, but other than that, has no substantial assets. I'm not sure how much that vehicle is worth in Mexico.

THE COURT: No, I appreciate that. But based on the remainder of the proffer, I find that appointment of counsel is appropriate, and I will appoint Federal Defenders to represent you, Mr. Torres.

Ms. Kaino-Allen, what's your recommendations as to any conditions of release?

MS. KAINO-ALLEN: We're moving to detain, your Honor, based on serious risk of flight. And I'm ready to proceed today.

THE COURT: Ms. Muelheisen, are you prepared to proceed this afternoon?

MS. MUELHEISEN: Yes, your Honor.

THE COURT: Okay. Ms. Kaino, go ahead.

1 MS. KAINO-ALLEN: Regarding the nature and  
2 circumstances, your Honor, the defendant was found  
3 trying to hide in thick brush approximately 2 miles  
4 north of the international border and 3.8 miles west of  
5 the Tecate port of entry. Regarding his criminal  
6 history, there is an entry from 2006 that is of note,  
7 your Honor, resulting in a very extensively long  
8 confinement period and followed by his most recent  
9 removal being November 17th of 2022, your Honor. So the  
10 defendant was incarcerated for a lengthy period of time  
11 which is why he doesn't have immigration history of note  
12 but, within about six months, has returned or attempted  
13 to return to the United States.

14 He does have a total of two deportations. It  
15 is noted his last known residence was in Mexico. He is  
16 a citizen of Mexico, your Honor, and to the Government's  
17 knowledge, there is no known ties to United States, the  
18 California Southern District between financial,  
19 familial, residence, or otherwise, that would show that  
20 he will abide by the Court's orders, your Honor.

21 Subject to any questions, I submit.

22 THE COURT: Thank you, Ms. Kaino-Allen.

23 Ms. Muelheisen.

24 MS. MUELHEISEN: Thank you, your Honor. We  
25 would ask for a \$15,000 personal appearance bond signed

1 by one financially related adult. Mr. Olivares has a  
2 partner in Iowa. He also has three United States  
3 citizen children. Those children -- also three of his  
4 stepchildren also live in Iowa.

5 Beyond that, we have not been able to contact  
6 the sureties; however, he does have one brother who has  
7 political asylum, and then he has four brothers, six  
8 uncles, six aunts, and many other cousins in Iowa. We  
9 would ask that if the Court does grant conditions of  
10 release that he may be able to reside there with a  
11 family member or a surety.

12 THE COURT: In Iowa, you say?

13 MS. MUELHEISEN: In Iowa.

14 THE COURT: Do you have any information  
15 regarding the underlying conviction, Ms. Muelheisen?

16 MS. MUELHEISEN: Unfortunately, I have no  
17 information regarding the underlying conviction. All I  
18 know is that he has lived in the U.S. for an extended  
19 period of time.

20 THE COURT: Okay. No, I appreciate that.

21 MS. MUELHEISEN: Thank you.

22 THE COURT: Ms. Kaino-Allen, do you have any  
23 information about that underlying conviction?

24 MS. KAINO-ALLEN: I do not, your Honor, and I  
25 do agree he's been living here in the United States for

1 a while. But, again, to me, because he's had that  
2 conviction for such a long period of time, your Honor,  
3 that I'd like to again note --

4 THE COURT: Well, and, I think Ms. Muelheisen's  
5 point was it's not clear from the record how long he was  
6 living in the United States for any period of time  
7 before then, but your point is well taken as well. I  
8 hear you.

9 Ms. Muelheisen, you mentioned that Mr. Torres  
10 has his partner in Iowa, three United States citizen  
11 children. Does he have family members in Mexico as  
12 well, or is his family here in the United States?

13 MS. MUELHEISEN: He has one child in Mexico,  
14 and then his father is deceased and his mother, I  
15 believe, still lives in Mexico.

16 THE COURT: Okay.

17 MS. MUELHEISEN: But beyond that, it appears  
18 that everyone who he considers his family -- or that's  
19 what's -- that's the information I have -- is in Iowa.

20 THE COURT: I understand. Thank you.

21 Mr. Torres, sir, I'm granting the motion of the  
22 United States to detain you pending trial, and I want to  
23 explain why. I find the United States has met its  
24 burden to prove by a preponderance of the evidence that  
25 there are no conditions I could set that will reasonably

1 assure your appearance as required. I've considered all  
2 of the information provided by counsel for the United  
3 States and defense counsel, and I do understand that you  
4 have ties to a community within the United States,  
5 specifically within the state of Iowa, where your  
6 partner resides, and that you have three United States  
7 citizen children.

8 I'm also considering additional factors: The  
9 weight of the evidence against you is strong, although  
10 that's the least important factor that I'm considering.  
11 You do have criminal history. It's only one conviction,  
12 but it was a very long sentence, and I don't have  
13 additional information about all of the facts and  
14 circumstances underlying it.

15 You appear to lack legal status within the  
16 United States. That is not determinative; it's just one  
17 of the factors that I consider, sir.

18 And as best I can tell from the evidence before  
19 me, you do not appear to have significant community ties  
20 to any community within the United States specifically,  
21 or stable employment or financial ties to the United  
22 States or a community within it.

23 For all of those reasons, Mr. Torres, I am  
24 granting the motion of the United States. That's  
25 without prejudice. And what that means, Mr. Torres, is

1 that if there's additional information you would like me  
2 to consider, you may come back before me and present  
3 that additional information and I will again consider  
4 whether I can set conditions that will reasonably assure  
5 your appearance. But I am granting the United States'  
6 motion to detain you, which means you will remain in  
7 custody pending trial, unless and until you come back  
8 before me, sir.

9 (End of recorded proceedings.)

10

11

12 CERTIFICATE OF TRANSCRIBER

13 I certify the foregoing is a true and  
14 correct transcript, to the best of my ability, of the  
15 official electronic sound recording provided to me in  
16 the above-entitled action on the date and time  
17 previously stated. I further certify that I am  
18 neither counsel for, related to, nor employed by any  
19 of the parties to the action in which this hearing was  
20 taken, and further, that I am not financially nor  
21 otherwise interested in the outcome of the action.

22

Dated: April 20, 2023.

23

S/ STEPHANIE WHITEHEAD

24

Stephanie Whitehead, CSR 10093  
U.S. Official Court Reporter

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