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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 IN THE MATTER OF THE EXTRADITION ) CASE NO. 3-19-71055 MAG  
21 OF ALEJANDRO TOLEDO MANRIQUE )  
22 ) GOVERNMENT'S RESPONSE TO SECOND  
23 ) MOTION FOR RECONSIDERATION OF  
24 ) DETENTION ORDER  
25 )  
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1 The United States of America, by the undersigned attorneys, hereby submits its response to the  
2 second motion by Alejandro Toledo Manrique (“Toledo”) for reconsideration of the decision of U.S.  
3 District Judge Vince Chhabria to detain him during the pendency of the proceedings on Peru’s request  
4 for his extradition. This is Toledo’s sixth attempt to seek release on bail, or consideration of the denial  
5 thereof, during these proceedings. *See* DE 19; DE 32; DE 33 at 15:1-4; DE 101; DE 105. Most  
6 recently—just over a week ago—Toledo filed his first motion for reconsideration of Judge Chhabria’s  
7 detention decision, which Judge Chhabria denied two days later. *See* DE 107. Toledo has appealed both  
8 the detention decision and the denial of reconsideration to the Ninth Circuit. *See* DE 101; DE 108.

9 In order to be released, Toledo must demonstrate both that he is not a flight risk and also that  
10 special circumstances exist warranting his release. He does neither in the instant motion. *First*, he  
11 presents the exact same facts and argument regarding flight risk that he presented when unsuccessfully  
12 seeking release and reconsideration before Judge Chhabria—the exact same facts and argument which  
13 underlie his appeals currently pending before the Ninth Circuit. *Second*, contrary to his argument, the  
14 speculative prospect of a COVID-19 outbreak at the facility where he is currently being detained does  
15 not constitute a requisite special circumstance for release. There are no known cases of COVID-19 at  
16 the facility, and the facility is prepared to address such cases if they should arise. Accordingly, Toledo’s  
17 motion should be denied.

## 18 BACKGROUND

19 Toledo was arrested based on Peru’s request for his extradition on July 16, 2019. This Court  
20 held a hearing three days later at which it granted the government’s request that Toledo be detained  
21 pending the extradition proceedings and rejected Toledo’s opposition thereto. In a written order issued  
22 on August 5, 2019, the Court concluded that “detention is appropriate” for three reasons:

23 First, there is a presumption against bail in an extradition case . . . [so as] to enable the  
24 United States to comply with its treaty obligations, which it might be impossible to fulfill  
25 if release on bail were permitted. Second, the fugitive poses a flight risk. Third, he has  
not established special circumstances to overcome the presumption against bail in  
extradition proceedings.

26 DE 16 at 1-2 (internal quotation marks, brackets, and citations omitted). In support thereof, the Court  
27 made the following findings:

1 [Toledo] is the former president of Peru, and if this Court were to release him from custody  
2 and he successfully fled, this would be a diplomatically significant failure of the United  
3 States to live up to its treaty obligations to Peru. In addition, the fugitive presents a flight  
4 risk based on law enforcement finding \$40,000 cash in a suitcase in his house, which  
demonstrates his mobility and financial ability to travel, and he is a well-traveled person  
with numerous international connections.

5 *Id.* at 2. The Court further found that Toledo had failed to demonstrate that any special circumstances  
6 warranted his release. *Id.* On August 15, 2019, Toledo filed a motion for reconsideration of the  
7 detention order, which the Court denied following a hearing based on the fact that Toledo “ha[d] not  
8 carried the burden of proof to show that he is not a risk of flight.” *See* DE 35 at 35:22-25.

9 Toledo then appealed to Judge Chhabria, who initially ordered Toledo’s release, but  
10 subsequently, on March 4, 2020, after holding an evidentiary hearing, ordered him detained. *See* DE  
11 100. While that appeal was pending, the government sought reconsideration of this Court’s appointment  
12 of counsel for Toledo. On January 31, 2020, the Court denied that request, but found that Toledo had  
13 “false[ly] represent[ed] to the Court that his wife did not have access to significant funds,” including  
14 over \$1 million recently received from her mother. *See* DE 88 at 2, 4. In deciding to continue detaining  
15 Toledo, Judge Chhabria found that Toledo was a flight risk based on the concealment of assets in excess  
16 of \$1 million by Toledo and his wife, and also on the fact that:

17 Toledo faces a real prospect of spending the rest of his life in Peruvian custody, and the  
18 past months in jail may have made the consequences of extradition concrete in a way  
19 they weren’t before. Nor do the sureties adequately guarantee Toledo’s appearance  
20 during extradition proceedings. While lifelong friends have staked their homes or  
21 considerable assets on Toledo’s promise not to flee, his wife’s deception with respect to  
more than a million dollars in assets—and the possibility that still-hidden funds could aid  
an escape—is reason to doubt that Toledo will hold up his end of the bargain.

22 DE 100 at 4-5. Judge Chhabria also rejected Toledo’s argument that the conditions of his confinement  
23 constituted a special circumstance warranting his release. *Id.* at 5-7.

24 Toledo appealed Judge Chhabria’s detention decision. DE 101. On March 10, 2020, he also  
25 sought reconsideration of Judge Chhabria’s finding with respect to risk of flight. Judge Chhabria denied  
26 that request on March 12, 2020, and Toledo appealed that decision. DE 107; DE 108. The Ninth Circuit  
27 initially treated Toledo’s appeal as a criminal bail appeal and set an expedited briefing schedule, but  
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1 rather than proceeding with that schedule, Toledo requested and was granted a continuance of the  
 2 briefing deadlines, with his opening brief now due on April 29, 2020. *See United States v. Manrique*,  
 3 No. 20-10089 (9th Cir. Mar. 12, 2010).

4 During this same time, the outbreak of COVID-19 was widely covered in the media. The first  
 5 confirmed case of the disease in the United States was reported on January 20, 2020, and Health and  
 6 Human Services Secretary Alex M. Azar II declared a public health emergency for the United States on  
 7 January 31, 2020. *See Michelle L. Holshue, et al., First Case of 2019 Novel Coronavirus in the United*  
 8 *States*, *New England J. of Medicine* (Mar. 5, 2020)<sup>1</sup>; CDC, *Coronavirus Disease 2019 (COVID-19):*  
 9 *Situation Summary* (last updated Mar. 17, 2020)<sup>2</sup>; CDC, *Coronavirus Disease 2019 (COVID-19):Cases*  
 10 *in U.S.* (last updated Mar. 17, 2020).<sup>3</sup> The World Health Organization declared COVID-19 to be a  
 11 pandemic on March 11, 2020. *See WHO, Director-General’s Opening Remarks at the Media Briefing*  
 12 *on COVID-19* (Mar. 11, 2020).<sup>4</sup>

13 Toledo filed the instant motion for reconsideration on March 17, 2020.

## 14 ARGUMENT

### 15 I. TOLEDO CONTINUES TO PRESENT A RISK OF FLIGHT

16 This Court should reject Toledo’s request for reconsideration of the finding that he presents a  
 17 risk of flight, just as Judge Chhabria did. While Toledo’s motion focuses primarily on the possibility of  
 18 a COVID-19 outbreak in the facility where he is detained, such a possibility does not bear on, let alone  
 19 mitigate, his risk of flight.

20 That risk mandates his continued detention. *See, e.g., In re Extradition of Kirby*, 106 F.3d 855,  
 21 862-63 (9th Cir. 1996); *United States v. Leitner*, 784 F.2d 159, 160-61 (2d Cir. 1986). As a former  
 22 president of Peru, Toledo remains a well-traveled individual with connections all over the world. He has  
 23 put significant resources and effort into avoiding prosecution in Peru, through retained attorneys in both  
 24

25 <sup>1</sup> Available at <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191>.

26 <sup>2</sup> Available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

27 <sup>3</sup> Available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

28 <sup>4</sup> Available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

1 Peru and the United States. He has done so because he faces the prospect of spending the rest of his life  
2 in jail if convicted—a prospect that has only become more real since his arrest in these proceedings. As  
3 part of his effort to avoid detention, he has misrepresented a number of facts related to his and his wife’s  
4 finances. While several different sureties have each offered contributions to a proposed bond package,  
5 Toledo’s wife has herself declined to contribute any of her own significant funds. She has also failed to  
6 pursue her claim for the over \$40,000 cash seized from the Toledos’ house during the search executed  
7 upon Toledo’s arrest in this case, notwithstanding her filed claim that the money was lawfully hers and  
8 her husband’s. *See* DE 49-5. Toledo and his wife have also declined to claim in excess of \$600,000  
9 seized from a bank account in Maryland. *See* DE 83 at 24; Order, *United States v. \$639,583.07*, No.  
10 1:19cv5652 (E.D.N.Y. Feb. 19, 2020).

11 Toledo has presented no new facts or argument in his pending motion for reconsideration.  
12 Although Toledo attaches two exhibits related to flight risk to his motion, both of those documents have  
13 been previously filed. *Compare* DE 109-2 with DE 39-3; *compare* DE 109-3 with DE 105-1. He has  
14 previously argued that the alleged \$20 million bribe intended for him was paid only to his close friend,  
15 Josef Maiman. *See, e.g.*, DE 32 at 15-16; DE 39 at 7-8. He has previously argued that the government  
16 has not relied on any damning evidence turned up in the search of his home. *See, e.g.*, DE 19 at 12. He  
17 has previously argued that he lacks the ability or willingness to flee. *See, e.g.*, DE 32 at 17-18; DE 39 at  
18 9-10. He has previously argued that the recommendation of detention by Pretrial Services was based on  
19 incorrect and incomplete information.<sup>5</sup> *See, e.g.*, DE 105 at 4-6. In sum, in his motion, he now simply  
20 repeats the precise arguments which have already been rejected. *See* DE 109 at 6-8.

21 Accordingly, there is no basis for the Court to reconsider its prior finding and the finding of  
22 Judge Chhabria that Toledo presents a risk of flight. The Court should deny Toledo’s motion for that  
23 reason alone.

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<sup>5</sup> However, when Pretrial Services initially favored release, Toledo implored the Court to  
“adopt” its recommendation and to “give considerable weight to it.” DE 39 at 5, 7.

**II. NO SPECIAL CIRCUMSTANCES WARRANT TOLEDO'S RELEASE**

Special circumstances must be extraordinary, and not issues common to all incarcerated fugitives facing potential extradition. *See In re Extradition of Smyth*, 976 F.2d 1535, 1535-36 (9th Cir. 1992)); *see also, e.g., In re Extradition of Drumm*, 150 F. Supp. 3d 92, 99 (D. Mass. 2015); *In re Extradition of Beresford-Redman*, 753 F. Supp. 2d 1078, 1088 (C.D. Cal. 2010). Courts have, for example, generally rejected “health problems” as a basis for release because otherwise “both actual and feigned illnesses could rapidly empty custodial facilities.” *In re of Extradition of Hamilton-Byrne*, 831 F. Supp. 287, 290-91 (S.D.N.Y. 1993); *see also, e.g., In re Extradition of Garcia*, 761 F. Supp. 2d 468, 481 (S.D. Tex. 2010) (same). Although there is no finite list of what factors may constitute special circumstances, contrary to Toledo’s suggestion, *see* DE 109 at 5-6, courts have narrowly circumscribed the set of factors that may establish special circumstances. *See, e.g., In re Extradition of Sutton*, 898 F. Supp. 691, 694 (E.D. Mo. 1995) (“Courts have taken a limited view of what constitutes ‘special circumstances.’”); *Beresford-Redman*, 753 F. Supp. 2d at 1087 (“Determining whether certain facts qualify as a ‘special circumstance’ requires ‘a cautious judgment by the judge, taking into account the totality of the facts and having a healthy respect for this country’s international treaty agreements.’”); *United States v. Ramnath*, 533 F. Supp. 2d 662, 666 (E.D. Tex. 2008) (“By definition, special circumstances are rare.”).

As Toledo himself recognizes, the possible exposure to infectious disease is unfortunately a risk faced by all incarcerated individuals. *See* DE 109 at 4. Toledo’s risk of exposure overall is likely lower than that of other inmates. Until recently, he was placed in the sheltered living unit separate from the general population at San Mateo County Jail Maguire Correctional Facility (“Maguire”), where he had a private cell and bathroom that was not shared with any other inmate. DE 103 at 103:5-10. Indeed, his prior arguments for the existence of special circumstances were premised on his claim that he lacked contact with anyone. *See* DE 54; DE 103 at 27:3-7, 32:23-24, 172:7. Very recently, Toledo was moved to the jail’s maximum security unit, as were all inmates who were previously classified in the sheltered living unit, in order for the facility to keep the sheltered living unit available for any potential COVID-19 quarantine needs. *See* Attachment A, Declaration of AUSA Elise LaPunzina. Therefore, Toledo remains relatively protected from any health risk from the general population at the jail.

1 Toledo argues that the risk that he will contract COVID-19—a risk that existed when he filed his  
2 initial motion for reconsideration—presents a special circumstance now warranting his release.  
3 However, he articulates no specific risk other than the existence of a worldwide pandemic. Currently,  
4 there are no reported cases of COVID-19 at Maguire (and Toledo does not claim to be infected with the  
5 coronavirus such that he might cause an outbreak himself). Instead, Toledo relies on the *possibility* that  
6 he will become infected by someone else at the facility. Even if the Court could weigh this speculative  
7 risk (and properly discount it by the risk of Toledo becoming infected if he were out in the community),  
8 Toledo’s motion fails to take into account substantial precautionary measures Maguire has implemented  
9 to mitigate the risk, which include a plan for screening individuals entering the facility,  
10 recommendations for monitoring inmates based on COVID-19 exposure risk, a housing  
11 recommendation and plan for potential and confirmed COVID-19 patients, infection control,  
12 surveillance, and staff contact with persons under investigation, as set forth in the attached Correctional  
13 Health Services COVID-19 (Novel Coronavirus) Management Plan for the Jail. *See* Attachment B.

14 Taken together, these measures should sharply mitigate the risk of COVID-19 transmission  
15 Toledo purportedly fears. Given that there are no reported cases of COVID-19 infection at Maguire, and  
16 no persons will be admitted to the facility without being screened for symptoms and risk of infection, the  
17 risk that Toledo himself will be infected simply as a result of his detention is likely low and manageable.  
18 Even in U.S. cases, courts have generally recognized that “it is a rare case in which health conditions  
19 present an ‘exceptional reason’” to allow for release where detention would otherwise be warranted.  
20 *See, e.g., United States v. Wages*, 271 Fed. App’x 726, 728 (10th Cir. 2008). In this case, Toledo’s  
21 speculative concerns do not overcome the strong presumption against bail in international extradition  
22 proceedings. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903). If the situation with respect to COVID-19  
23 at Maguire changes, Toledo is free to seek reconsideration of the issue at that point.

### 24 **III. CONCLUSION**

25 The Court has repeatedly rejected Toledo’s arguments that he does not present a risk of flight  
26 and the possibility that he may contract COVID-19 is not a special circumstance. Accordingly, the  
27 Court should decline to reverse Judge Chhabria’s finding on flight risk and should again decline to order  
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1 Toledo's release during the pendency of the extradition proceedings. However, in the event that the  
2 Court is inclined to grant Toledo's motion, the government requests a brief stay of any such order so as  
3 to enable it to seek an appeal to Judge Chhabria.  
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5 DATED: March 18, 2020

Respectfully submitted,

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/s/

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