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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14
15 IN THE MATTER OF THE EXTRADITION
16 OF ALEJANDRO TOLEDO MANRIQUE.

Case No. 19-mj-71055 MAJ (TSH)

**ALEJANDRO TOLEDO'S OPPOSITION
TO THE UNITED STATES' REQUEST
FOR DETENTION**

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INTRODUCTION

Dr. Toledo should be released from custody on a secured bond with appropriate conditions because he is a longtime resident of the United States (32 years) and the Northern District of California (24 years) with deeply rooted community ties, and because he lacks the means, ability, or desire to flee this jurisdiction. Dr. Toledo has been aware of the attempt to extradite him since February 10, 2017 when the Peruvian government announced its intention to the world, and he did not flee. His friends, distinguished community members, are prepared to put forth significant security in the form of cash and property to secure his release. Additionally, his current conditions of incarceration, solitary confinement, are inhumane for a short period of detention, let alone the time necessary to litigate this particularly complex and novel extradition request.

12
13

BACKGROUND¹

14

I. Dr. Toledo's Personal History

15 Alejandro Toledo refers to the path of his life as a "statistical error." Dr. Toledo was born in 16 1946 in the mountain town of Cabana in the Andes mountains of Peru. The son of indigenous 17 Quechuan farmers, he grew up in extreme poverty. Of Dr. Toledo's 15 siblings, 7 died in their first 18 year of life. When Dr. Toledo was four-and-a-half, his family moved down from the Andes to the 19 port city of Chimbote. During the day he attended school; at night, he worked to help support his 20 family by shining shoes and selling lottery tickets and newspapers to sailors in bars. In high school, 21 he won a writing contest, and the prize was a job as a correspondent for the Chimbote office of the 22 national newspaper *La Prensa*. When some members of the Peace Corps, Nancy Deeds (now 23 Meister) and Joel Meister, arrived in Chimbote in 1964, they were struck by this young man's love of 24 writing and curiosity about the world. Another Peace Corps volunteer, Marjorie Leon, helped to 25 teach him English. After he won a grant to study in the United States, a friend of the Meisters was 26 able to help Dr. Toledo obtain a visa and find a job in America. They enabled him to support himself 27 while he studied English and, later, attended the University of San Francisco.

28

¹ To the extent that English-language documents are available, they are submitted with this motion. The defense is in the process of translating the relevant Spanish-language documents. The defense anticipates supplementing future filings with extensive documentation of the proceedings in Peru.

1 Dr. Toledo arrived in the United States in 1965. He would spend much of the next 45 years in
2 this country, most of that time in the Bay Area.

3 After earning his undergraduate degree from USF, Dr. Toledo went to Stanford University,
4 where he was a student from 1970 to 1976. At Stanford, Dr. Toledo earned Master's Degrees in
5 International Education and Economics, and a Ph.D. in International Education. He returned to
6 Stanford as a Visiting Scholar for the 1978-79 academic year.

7 While at Stanford, he also met his wife, Eliane Karp, whom he married in Sunnyvale in 1979.
8 They will celebrate their fortieth anniversary later this year.

9 From 1979 to 1981, Dr. Toledo worked for the World Bank in Washington, D.C. He then spent
10 several years in Peru before returning to the United States in 1990 as a Visiting Research Associate at
11 the Harvard Institute for International Development (HIID). He remained at HIID through the 1992-
12 1993 academic year.

13 After a year as a visiting professor at a university in Tokyo, Dr. Toledo returned to Peru, where
14 he dedicated himself to political and social reform. These efforts culminated in his six-year term as
15 President.

16 After his presidency ended in 2006, Dr. Toledo returned to Northern California and to Stanford.
17 He spent the next three years at Stanford, first as a Senior Research Fellow and then as a Visiting
18 Professor. From 2009 to 2010, he went to Washington, D.C., where he was a non-resident Senior
19 Fellow at the Brookings Institute and a Visiting Scholar at the Johns Hopkins Center for Advanced
20 Studies. In 2011, he returned once again to Stanford. When he was arrested in connection with this
21 case, he was a Visiting Research Scholar at Stanford, and was at work on a new book, tentatively
22 titled *The Urgency for Leadership to Improve the Quality of Education in the World*.

23 **II. Dr. Toledo's Presidency**

24 In December of 1994, Dr. Toledo created a political organization called Possible Country and
25 announced his candidacy for the 1995 presidential election. At the time, Peru was controlled by
26 Alberto Fujimori, and was in desperate need of new leadership. During his presidency, Fujimori
27 would disband Congress, dismiss judges, suspend the Peruvian Constitution, and oversee shocking
28 human rights violations.

1 Dr. Toledo ran against Fujimori in 1995, but lost. Undaunted, Dr. Toledo challenged Fujimori
2 again in April of 2000. The official tally showed Fujimori with 49.8% of the vote compared to Dr.
3 Toledo with 40.3%. Electoral fraud was widely suspected, however, not only by Fujimori's
4 opponents, but also by objective international observers, including the United States. By this time,
5 Dr. Toledo had emerged as the leader of a broad democratic coalition against Fujimori's increasingly
6 authoritarian rule. After repeated protests and calls for a new election, Dr. Toledo was elected
7 President of Peru on June 3, 2001. He was the first indigenous Peruvian leader in five hundred years.

8 During his presidency, the Peruvian economy grew. Inflation, which had plagued Peru in the
9 past, nearly disappeared. Dr. Toledo worked tirelessly to reform the judicial system, although much
10 of that progress has been undone by subsequent leaders. He was a strong ally to the United States in
11 its fight against narcotics trafficking. His efforts to expose Fujimori's wrongdoing ultimately
12 resulted in Fujimori's criminal conviction for human rights violations, murder, and kidnapping.

13 Until Peru's campaign to discredit him and brand him an international fugitive, Dr. Toledo was
14 in demand as a speaker on topics including poverty, early childhood, nutrition, and indigenous rights.

15 **III. The Ongoing Efforts of Dr. Toledo's Political Adversaries to Implicate Him in the** 16 **Odebrecht Scandal**

17 In 2015 and 2016, numerous executives at Odebrecht, a Brazilian construction conglomerate,
18 were arrested in connection with a bribery scandal involving contracts with a Brazilian state oil
19 company. The executives pled guilty and agreed to identify corrupt officials in return for shorter
20 sentences.² These executives implicated officials in numerous countries, including Peru.

21 Peruvian prosecutors have now accused Dr. Toledo of receiving bribes, through intermediaries,
22 from Odebrecht in return for favorable treatment in bidding for contracts to build an international
23 highway. These accusations are based primarily on recent statements from Josef Maiman. There are
24 compelling reasons to doubt the reliability and veracity of those statements.

25 In a July 2013 statement to Peruvian prosecutors, and again in a September 2013 statement to a
26 Peruvian congressional committee, Maiman gave statements fully exonerating Dr. Toledo of any

27 _____
28 ² Odebrecht has entered into a plea agreement with the United States and Switzerland which calls for
fines exceeding \$2.5 billion.

1 involvement in the Odebrecht scandal. Maiman’s statement changed dramatically after Peru began
2 putting extreme pressure on Maiman and his family. Suddenly, Maiman found himself the subject of
3 an arrest warrant and an INTERPOL Red Notice. He was threatened with international seizure of his
4 bank accounts, and warned that his family could soon also be targets of criminal investigation.
5 Maiman agreed to become a “collaboration witness” for the Peruvian government. In return for
6 Maiman’s testimony and the payment of a \$1.2 million fine, Peru has agreed to absolve Maiman of
7 any criminal wrongdoing. Maiman, in turn, now admits that somewhere between \$20 million and
8 \$35 million found in his bank accounts was bribe money from Odebrecht, and claims that he was a
9 middleman who was supposed to give the money to Dr. Toledo.

10 Even though Dr. Toledo has lived openly in California throughout the Odebrecht investigation,
11 and has fully cooperated with investigators, the Peruvian authorities have falsely painted him as an
12 international fugitive. On February 10, 2017, despite knowing Dr. Toledo’s place of work and his
13 home address, Peru publicly announced a \$30,000 reward for information on his whereabouts or his
14 “capture.”

15 HISTORY OF THE CASE

16 In February of 2017, the government of Peru requested Dr. Toledo’s provisional arrest with an
17 eye toward extradition. Dr. Toledo was aware of this request, which received extensive coverage in
18 both the Peruvian and international press. He retained counsel, and his attorneys began
19 corresponding with the State Department on February 13, 2017. *See* Declaration of Graham Archer
20 (“Archer Decl.”), attached hereto as Exhibit A, at ¶ 23. Although Dr. Toledo’s whereabouts were
21 known, the United States did not act on Peru’s request.

22 In May of 2018, Peru submitted a second request for Dr. Toledo’s arrest and extradition. For
23 more than a year, the United States did not act on this request. It was not until July 15, 2019, that the
24 United States government filed a criminal complaint against Dr. Toledo and obtained a warrant for
25 his arrest in connection with Peru’s request for extradition. Dkt. No. 1.

26 On July 16, 2019, Dr. Toledo was arrested at his home. The FBI also conducted an exhaustive
27 search of the home, seizing and imaging computer hard drives and personal papers.

28 The same day, Dr. Toledo made his initial appearance before this Court. His retained counsel

1 specially appeared, but informed the Court that he would be withdrawing because Dr. Toledo's funds
2 had been exhausted. Dr. Toledo was remanded to custody. *See* Dkt. No. 4.

3 A detention hearing was held on July 19, 2019. The day before the hearing, the government
4 filed an extensive memorandum entitled Memorandum of Extradition Law and Request for Detention
5 Pending Extradition Proceedings ("Govt. Memo"). Dkt. No. 8. At the conclusion of the hearing, the
6 Court ordered Dr. Toledo detained as a flight risk. In a subsequent written order, the Court specified
7 that its decision had been based upon the following factors: (1) Because of Dr. Toledo's status as the
8 former President of Peru, it would be a "diplomatically significant failure" if the United States were
9 to release him and he then fled; (2) during the search of Dr. Toledo's home, the FBI found \$40,000 in
10 a suitcase, demonstrating "mobility and financial ability to travel"; (3) Dr. Toledo is a "well-traveled
11 person with numerous international connections"; and (4) Dr. Toledo failed to demonstrate any
12 special circumstances warranting release. *See* Detention Order, Dkt. No. 16.

13 On August 8, 2019, the Court agreed to entertain further briefing and argument regarding
14 whether Dr. Toledo should be released on bond during the extradition proceedings, and a hearing was
15 set for August 22, 2019. Dkt. No. 17.

16 ARGUMENT

17 I. This Court Has the Authority to Release Dr. Toledo on Bail

18 Because an international extradition proceeding is not a criminal case, the Bail Reform Act
19 does not apply. *Kamrin v. United States*, 725 F.2d 1225, 1227-28 (9th Cir. 1984). This does not
20 mean that bail is not permitted, however.³ In the Northern District, courts frequently release
21 extraditees on bail while the extradition proceedings are pending, even when they are accused of
22 violent crimes. *See, e.g., Minute Order, United States v. Gonzalez*, No. 09-mj-70576-DRM (N.D.
23 Cal. 2009), attached hereto as Exhibit B (granting bail to extraditee accused of attempted murder);
24 Order Granting Request for Bail in Extradition Proceeding, *Matter of Extradition of Ramirez Luna*,
25 No. 16-xr-90095 NC (N.D. Cal. 2016) ("*Ramirez Luna* Bail Order"), attached hereto as Exhibit C
26 (granting bail to extraditee accused of second degree murder); Order Granting Release on Secured

27
28 ³ Indeed, the extraditee in *Kamrin* was released on bail while his extradition case was pending. *See United States v. Kamrin*, No. 82-251M-01 (W.D. Wash. Dec. 10, 1982).

1 Bond, *United States v. Kollmar*, No. 19-mj-70677-MAG-1 (KAW) (N.D. Cal. 2019) (“*Kollmar Bond*
 2 *Order*”), attached hereto as Exhibit D (granting bail to extraditee accused of sexual abuse of a minor);
 3 *see also Matter of Extradition of Kirby*, 106 F.3d 855 (9th Cir. 1996) (affirming Northern District
 4 court’s grant of bail to extraditees accused of escaping from prison).

5 While there is a presumption against bail in extradition cases, it is well-established that courts
 6 have the power to grant bail in extradition cases where the extraditee can demonstrate the presence of
 7 “special circumstances.” *Wright v. Henkel*, 190 U.S. 40, 63 (1903). In this Circuit, the general
 8 consensus is that the extraditee “must establish the existence of special circumstances by a
 9 preponderance of the evidence.” *Matter of Extradition of Blasko*, 2018 WL 3691859, *4 (E.D. Cal.
 10 Aug. 1, 2018) (citing *In re Extradition of Santos*, 473 F. Supp. 2d 1030, 1035 (C.D. Cal. 2006)); *see*
 11 *also, e.g., Matter of Extradition of Gonzalez*, 2015 WL 1409327, *5 (N.D. Cal. March 27, 2015);
 12 *Munoz Santos v. Thomas*, 2012 WL 12964319, *2 (C.D. Cal. June 29, 2012); *Garcia v. Benov*, 2009
 13 WL 6498194, *3 (C.D. Cal. Apr. 13, 2009).⁴

14 In addition to determining whether there are special circumstances, the Court must be satisfied
 15 that the extraditee is neither a flight risk nor a danger to the community. *See Santos*, 473 F. Supp. 2d
 16 at 1035-36. Even though the Bail Reform Act is not strictly applicable to extradition proceedings,
 17 courts generally look to the factors identified in 18 U.S.C. § 3142(g) to assess whether ““there are
 18 conditions of release that will reasonably assure the appearance of the person as required and the
 19 safety of any other person and the community.”” *Santos*, 473 F. Supp. 2d at 1041 (quoting 18 U.S.C.
 20 § 3142(g)) (additional citations omitted).

21 **II. Dr. Toledo Is Not a Flight Risk**

22 **A. Dr. Toledo Lacks the Financial Ability to Flee**

23 The government has repeatedly offered speculation about money that it thinks Dr. Toledo
 24 theoretically might have. One by one, these hypothetical sources of funds have proven illusory.

25 First the government argued that Dr. Toledo was “alleged to have received US\$20 million.”

26
 27 ⁴ As the government notes, a few courts have applied the clear and convincing standard. *See Govt.*
 28 *Memo* at 22 n.16. But both of the cases cited by the government are based on the reasoning set forth
In re Extradition of Nacif-Borge, 829 F. Supp. 1210 (D. Nev. 1993), reasoning which has been
 persuasively rejected as a misreading of Ninth Circuit precedent. *See Santos*, 473 F. Supp. 2d at
 1035; *Garcia*, 2009 WL 6498294 at *3.

1 Govt. Memo at 24. In fact, Peru has alleged that *Joseph Maiman* has received \$20 million. Indeed,
2 the \$20 million was located in Maiman’s bank accounts. While Maiman is reportedly now claiming
3 that this money was meant to eventually go to Dr. Toledo, it did not.

4 Next the government pointed out that Dr. Toledo owns “multiple properties” in Peru. Govt.
5 Memo at 24. This is true, but as the government has since acknowledged, these properties have been
6 seized by the Peruvian government. *See* Extradition Request, Supp. 2.⁵ The same is true of Dr.
7 Toledo’s pension and bank accounts. *See id.*

8 The government then suggested that Dr. Toledo had “other possible sources of income.” Govt.
9 Memo at 24. Yet the government has been unable to identify these hypothetical sources of funds,
10 despite monitoring his bank accounts and executing a search warrant at his home. The government
11 suggests that Dr. Toledo has lucrative speaking engagements or publishing royalties. It is true that
12 Dr. Toledo was formerly very much in demand as a public speaker. Unfortunately, Peru’s relentless
13 campaign to discredit him and paint him as an international fugitive has eliminated that demand. As
14 the Court knows from Dr. Toledo’s financial affidavit, his current income is minimal.

15 Finally, at the July 16th hearing, the government made much of the fact that a suitcase
16 containing \$40,000 was found at Dr. Toledo’s home. As an initial matter, that money was his wife’s.
17 By the time their home was searched, it had been two years since Peru announced its intention to
18 have Dr. Toledo extradited. Most of his assets had been seized, and what remained had been spent on
19 lawyers. The Toledos were struggling and Dr. Toledo’s mother-in-law gave them money to help
20 cover their everyday living expenses. Having already watched as Dr. Toledo’s assets, including his
21 bank accounts, were seized in Peru, it is understandable that his wife felt the need to have cash
22 available to pay their bills.

23 In *Taitz*, as here, the government “implied that [the extraditee] may have money from the
24 alleged fraud hidden away.” *United States v. Taitz*, 130 F.R.D. 442, 444 (S.D. Cal. 1990). Noting
25 the absence of actual *evidence* of “any substantial financial assets,” the *Taitz* court concluded that
26 “[n]o evidence exists to allow such an inference.” *Id.* The same is true here.

27
28 ⁵ The defense is informed and believes that the government has manually provided a hard copy of this document to the Court.

1 **B. Dr. Toledo Lacks the Practical Ability to Flee**

2 The government claims that Dr. Toledo is a flight risk because he traveled the world,
3 something completely normal for a 74 year old former head of state. Now, his ability to do so is
4 entirely curtailed. Even if he had the financial wherewithal or inclination to flee, doing so would be
5 practically impossible.

6 Dr. Toledo's Peruvian passport has expired, and Peru will certainly not issue an updated
7 passport while this matter is pending. As he is a legal permanent resident, nor will the United States.

8 The government arrested Dr. Toledo at his home without notice, and found no fraudulent travel
9 documents or evidence of preparations to flee the country. Further, Peru has issued a Red Notice to
10 INTERPOL, which would result in Dr. Toledo being arrested and detained for extradition at any
11 border crossing.

12 Dr. Toledo is willing to submit to restrictive bond conditions including GPS monitoring and a
13 condition that he stay away from all airports. Compounding these already insurmountable practical
14 hurdles to flight, Dr. Toledo is well known internationally. To the extent that he was not well known
15 before February 10, 2017, his face has now graced the area above bylines in hundreds of stories
16 published around the world about the Peruvian government's attempts to arrest him.

17 The government has argued that Dr. Toledo might flee to Israel due to his history of good
18 political relations with Israel, and his wife's Belgian-Israeli citizenship. That argument was
19 foreclosed by the Israeli government on February 12, 2017, when Israel's Foreign Ministry
20 announced publicly that Dr. Toledo would not be permitted into Israel until his matters were settled
21 in Peru.

22 In the aggregate, these factors make any attempt to flee by Dr. Toledo completely impractical.

23 **C. Dr. Toledo Lacks the Desire to Flee**

24 Dr. Toledo has known about the Peruvian attempts to have him arrested in the United States
25 since February of 2017 when they were publicly announced by Peruvian authorities. He responded
26 by hiring counsel to defend himself against the accusations, and by remaining at home in Menlo Park.
27 At that point, his family finances were in much better shape, and he had a valid passport, yet he
28 remained in the United States to contest the charges without submitting to unjust investigatory

1 detention in Peru.

2 **D. Dr. Toledo Has Substantial Ties to the Community and Significant Sureties**

3 Contrary to the government's prior assertion, Dr. Toledo has longstanding and significant ties
4 to the United States, and specifically to the Northern District of California. While in custody, Dr.
5 Toledo prepared a chronology of his residency and employment for the Court's consideration. It has
6 been typed up and is attached as Exhibit E. As Dr. Toledo notes, he has spent 32 years in the United
7 States, and he has spent 24 of those years in the Northern District of California, primarily at Stanford
8 University as both a student and teacher.

9 In spite of the allegations publicized in the press for the last several years, Dr. Toledo enjoys
10 significant community support, and still has many friends and supporters in our District and across
11 the country. Since his arrest in this matter, a number of friends have stepped forward to offer money
12 and property to secure his release from custody and assure his appearance in court. Amongst those
13 supporters are people who have known Dr. Toledo for decades, and who have had the opportunity to
14 assess his personal character and professional capacities.

- 15
- 16 • Dr. Martin Carnoy has known Dr. Toledo since 1970, when Dr. Carnoy was an Assistant
17 Professor of Education and Economics at the Stanford Graduate School of Education, and Dr.
18 Toledo was applying to Dr. Carnoy's graduate program. Dr. Carnoy has been a professor at
19 that program since 1968, becoming a leading scholar in the political economy of the
20 educational system. He attended Dr. Toledo's presidential inauguration, and is one of Dr.
21 Toledo's closest friends.⁶
 - 22 • Dr. Alberto Martin is the Registrar at the Stanford Law School, and has been a longtime friend
23 of Dr. Toledo. Dr. Martin met Dr. Toledo at Stanford where they played soccer together in the
24 early 1970s while studying for their graduate degrees. Their friendship endures to this day.
 - 25 • Marjorie Leon has known Dr. Toledo since 1964 when she traveled to Peru as a Peace Corps
26 volunteer. Ms. Leon briefly stayed with Dr. Toledo's family, and gave him his first English
27 lessons. She also helped him relocate to San Francisco to study at the University of San
28 Francisco.

⁶ See Exhibit F – San Francisco Chronicle – From president of Peru to just Palo Alto guy, February 11, 2007.

- 1 • Nancy Meister first met Dr. Toledo in 1964 when she lived with his family as a Peace Corps
2 volunteer. She and her future husband were instrumental in aiding Dr. Toledo in traveling to
3 the United States to continue his education, and they visited him when he lived in Peru.⁷
- 4 • Dr. H. Andrea Neves has known Dr. Toledo since they studied together in their doctoral
5 programs at Stanford. Now retired as a professor of education at Sonoma State University, Dr.
6 Neves is a world-renowned scholar in education and serves on a number of local boards of
7 academic and arts organizations.
- 8 • Dr. Larry Diamond is a widely published scholar and expert on democratic development, and a
9 friend and colleague of Dr. Toledo. He teaches courses on democratic development and
10 supervises the democracy program at Stanford’s Center on Democracy, Development, and the
11 Rule of Law. He is also a senior fellow at the Hoover Institution. He has also served as an
12 advisor to a number of governmental and international organizations, including the U.S.
13 Department of State, USAID, the United Nations and the World Bank.

14 As of this filing, surety information is being organized to present to United States Pretrial
15 Services. While the total amount of security available for a bond is not yet determined, it will be
16 significant.

17 **III. Several Special Circumstances Justify Dr. Toledo’s Release on Bail**

18 In this case, there are several special circumstances that, either taken alone or considered
19 together, justify Dr. Toledo’s release on bail during these proceedings.

20 **A. This Court Has Broad Discretion to Determine What Constitutes a Special 21 Circumstance**

22 “[T]he determination of what constitutes a ‘special circumstance’ is left to the sound discretion
23 of the trial judge.” *In re Extradition of Gonzalez*, 52 F. Supp. 2d 725, 736 (W.D. La. 1999). The list
24 of “potential ‘special circumstances’ is not limited to those previously recognized in published
25 decisions,” and special circumstances must be assessed on a case-by-case basis. *Id.* The fact that one
26 judge declined to consider a circumstance in one case does not preclude another judge (or even the
27 same judge) from considering that same circumstance in a different case.

28 In its Memorandum, the government presents a long list of circumstances that have been
rejected as grounds for granting bail. *See* Govt. Memo at 23-24. It is true that at least one judge has
rejected each of these circumstances. But it is equally true that, in almost every instance, more than

⁷ *See* Exhibit G – Tucson Weekly – The Peace Corps President, September 8, 2005.

1 one judge has *granted* bail based on the very same circumstances.

2 For example, the government asserts that courts have rejected “complexity of pending
3 litigation” concerning the extradition, but this was found to be a special circumstance justifying bail
4 in both *Taitz*, 130 F.R.D. at 445, and *United States v. Castaneda-Castillo*, 739 F. Supp. 2d 49, 59 (D.
5 Mass 2010).

6 Likewise, the government notes that the need to consult with an attorney and participate in
7 pending litigation has been rejected, *see* Govt. Memo at 23, but these were precisely the special
8 circumstances that prompted the court to grant bail in *In re Mitchell*, 171 F. 289, 290 (S.D.N.Y.
9 1909), and *Blasko*, 2018 WL 3691859 at *10-*11.

10 Similarly, while the government points to cases in which courts have refused to consider “the
11 pendency of naturalization or other immigration proceedings,” Govt. Memo at 23, it fails to mention
12 cases in which courts have found special circumstances based on the extraditee’s pending asylum
13 proceedings, *see Blasko*, 2018 WL 3691859 at *10-*11; or the fact that the extraditee had been
14 granted asylum in the United States, *see Matter of Extradition of Porumb*, 2018 WL 814568, *5
15 (W.D. La. Feb. 9, 2018).

16 The government notes that some courts have declined to consider the extraditee’s character,
17 background and ties to the community. *See* Govt. Memo at 23. But courts in the Ninth Circuit and
18 the Northern District of California have found those factors to be special circumstances supporting
19 release. *See, e.g., Kirby*, 106 F.3d at 864-65; *Ramirez Luna* Bail Order at 4-5; *Kollmar* Bond Order at
20 4-5; *see also Wroclawski v. United States*, 634 F. Supp. 2d 1003, 1007-08 (D. Ariz. 2009).

21 Finally, the government notes that some courts have rejected the availability of bail for the
22 charged offense in the requesting country as a special circumstance. *See* Govt. Memo at 24. Again,
23 this is true, but it is also true that an equal number of courts have concluded that the availability of
24 bail in the requesting country *is* a special circumstance. *See, e.g., Castaneda-Castillo*, 739 F. Supp.
25 2d at 57-58; *Wroclawski*, 634 F. Supp. 2d at 1007; *In re Extradition of Morales*, 908 F. Supp. 1368,
26 1376 (S.D. Cal. 1995); *of Nacif-Borge*, 829 F. Supp. at 1221; *Taitz*, 130 F.R.D. at 477.

27 In truth, a special circumstance can be virtually anything that is “not faced by all individuals
28 facing extradition.” *Wroclawski*, 634 F. Supp. 2d at 1008. Among the many special circumstances

1 that courts have found can justify release in extradition cases are:

- 2 • A high likelihood of success on the merits. *See, e.g., Salerno v. United States*, 878
3 F.2d 317, 317; *Nacif-Borge*, 829 F. Supp. at 1215.
- 4 • Uncertainty regarding the outcome on the merits. *See, e.g., In re Extradition of Santos*,
5 473 F. Supp. 2d 1030, 1040 (C.D. Cal. 2006).
- 6 • The complexity of the case. *See, e.g., Castaneda-Castillo*, 739 F. Supp. 2d at 59; *Taitz*,
7 130 F.R.D. at 445.
- 8 • Anticipated length of the extradition proceedings. *See, e.g., Matter of Extradition of*
9 *Kirby*, 106 F.3d 855, 863 (9th Cir. 1996); *United States v. Williams*, 611 F.2d 914, 915
10 (1st Cir. 1979); *In re Extradition of Chapman*, 459 F. Supp. 2d 1024, 1027 (D. Haw.
11 2006); *Santos*, 473 F. Supp. 2d at 1036; *Taitz*, 130 F.R.D. at 445-46.
- 12 • Lack of a suitable detention facility. *See, e.g., Hu Yau-Leung v. Soscia*, 649 F.2d 914,
13 920 (2d Cir. 1981).
- 14 • Serious health problems. *See, e.g., Salerno*, 878 F.2d at 317; *Taitz*, 130 F.R.D. at 446.
- 15 • Inability to observe religious customs in detention facility. *See, e.g., Taitz*, 130 F.R.D.
16 at 446.
- 17 • Risk of financial harm to extraditee if unable to participate in civil litigation. *See In re*
18 *Mitchell*, 171 F. 289, 290 (S.D.N.Y. 1909).
- 19 • The need to prepare for and participate in asylum-related litigation. *See, e.g., Blasko*,
20 2018 WL 3691859 at *10-*11.
- 21 • Fact that extraditee was granted asylum from requesting country. *See, e.g., Porumb*,
22 2018 WL 814568 at *5.
- 23 • Delay in requesting country's decision to seek extradition. *See, e.g., Kollmar Bond*
24 *Order* at 5-6; *Blasko*, 2018 WL 3691859 at *9; *Matter of Extradition of Mirela*, 2018
25 WL 1634393, *2 (D. Conn. Apr. 5, 2018); *Castaneda-Castillo*, 739 F. Supp. 2d at 58-
26 59; *Wroclawski*, 634 F. Supp. 2d at 1008.
- 27 • Availability of bail during extradition proceedings in requesting country. *See, e.g.,*
28 *Kollmar Bond Order* at 6-7; *Nacif-Borge*, 829 F. Supp. at 1221; *Taitz*, 130 F.R.D. at 447.
- Availability of bail for the alleged offense in requesting country. *See, e.g., Castaneda-*
Castillo, 739 F. Supp. 2d at 57-58; *Wroclawski*, 634 F. Supp. 2d at 1007; *Morales*, 908
F. Supp. at 1376; *Nacif-Borge*, 829 F. Supp. at 1221; *Taitz*, 130 F.R.D. at 447.
- Role as caretaker for family member. *See, e.g., Mirela*, 2018 WL 1634393 at *2;
Ramirez Luna Bail Order at 4.

- 1 • Community support and personal character. *See, e.g., Kirby*, 106 F.3d at 864-65;
2 *Kollmar Bond Order* at 4-5; *Mirela*, 2018 WL 1634393 at *2; *Ramirez Luna Bail*
3 *Order* at 5-6; *Wroclawski*, 634 F. Supp. 2d at 1007-08.
- 4 • Absence of flight risk. *Wroclawski*, 634 F. Supp. 2d at 1007; *Chapman*, 459 F. Supp.
5 2d at 1027.

6 Not only does the court have wide discretion to consider these and other circumstances, “there
7 need not be one overriding circumstance justifying an extraditee’s release on bail. Rather, the
8 cumulation of several factors can constitute special circumstances that justify release in extradition
9 proceedings.” *Morales*, 966 F. Supp. at 1373.

10 **B. Dr. Toledo’s Confinement in “Administrative Separation” for the Duration of the
11 Extradition Proceedings Is a Special Circumstance Justifying Release**

12 Dr. Toledo has been in custody at the Santa Rita Jail since his arrest on July 16, 2019.
13 Unfortunately, because of the high-profile nature of this case, the Classification Unit at Santa Rita has
14 determined that it would be unsafe for Dr. Toledo him to be housed anywhere other than a
15 “separation unit.” *See Archer Decl.* at ¶¶ 8-9. For this reason, instead of being housed with the
16 general population, Dr. Toledo is in Administrative Separation, the highest security classification at
17 Santa Rita. *See id.* at ¶ 6.

18 Dr. Toledo spends 47 of each 48 hour period in a cell approximately 6 feet by 15 feet. *Id.* at ¶
19 7. Although he is housed in a “pod” with 13 other inmates, none of the inmates in Administrative
20 Separation – including Dr. Toledo – are allowed contact with another inmate. *See id.* ¶¶ 10-11. In
21 theory, there is an 8-hour period each day when the inmates in the pod are permitted to leave their
22 cells for an hour to go to an adjacent indoor recreation area. Because the inmates are not permitted to
23 have contact, however, only one inmate can be in the recreation area at a time. This means that on
24 any given day, at most only 8 of the 14 inmates in Dr. Toledo’s pod will have the chance to leave
25 their cells to go to the recreation area. *See id.* at ¶ 12. Jail lockdowns, medical appointments, visits,
26 and other events may interfere with the short window of time available for access to the recreation
27 area. *Id.* at ¶ 13. Even under ideal circumstances, at most Dr. Toledo is permitted to leave his cell to
28 go, alone, to the recreation area for one hour every two days. *See id.* at ¶ 14.

Because the time in the recreation area is the only time during which Dr. Toledo is able to

1 make phone calls, including calls to counsel, Dr. Toledo's ability to reach counsel by phone has been
2 impaired. *See id.* at ¶ 15. Not only is the window of opportunity brief, but there is no way to predict
3 in advance when he will be allowed to go to the recreation area.

4 There is an exercise yard available, but it is shared by approximately 300 similarly classified
5 inmates, and only one inmate can be in the exercise yard at any given time. *See id.* at ¶ 16. The goal
6 is to get each inmate to the exercise yard once a week. However, as of August 13, 2019, Dr. Toledo
7 had been in custody for 29 days and he had only been permitted to go outside once, for 45 minutes, a
8 fact that has been confirmed by a Classification Sergeant. *See id.* at ¶¶ 17-18.

9 Even though Dr. Toledo is in Administrative Separation for his own safety and not because he
10 poses any threat to anyone, his hands have been handcuffed and shackled to a waist chain every time
11 that he has met with counsel. *See id.* at ¶ 19. When counsel has asked that the handcuffs be
12 removed, he has been told that this is not possible due to Dr. Toledo's classification level, i.e., the
13 fact that he is in administrative separation. *Id.*

14 It would be difficult to overstate the harmful effects of administrative segregation. Empirical
15 studies have identified a multitude of "frequently occurring adverse psychological reactions,"
16 including: sleep disturbances, anxiety and panic, aggression and rage, paranoia, violent fantasies,
17 dysfunction, hypersensitivity to stimuli, hallucinations, loss of emotional control, lethargy,
18 depression, and increased suicidality and instances of self-harm. *See* Craig Haney, *The*
19 *Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Just.* 365, 371-72
20 (2018).⁸ Tellingly, subjecting prisoners to long periods of isolation is "a common form of
21 mistreatment to which prisoners of war have been subjected." *Id.* It is also "frequently used as a
22 component of torture." *Id.* The National Commission on Correctional Health Care has concluded
23 that placement in solitary confinement or other forms isolation for more than *15 days* is "cruel,
24 inhumane, and degrading treatment" that is "harmful to an individual's health." *Id.* at 368. By the
25

26 ⁸ Although Professor Haney's article uses the term "solitary confinement," he explains that this term
27 "subsumes a range of prison nomenclature including 'administrative segregation,' 'security housing
28 units,' 'high security,' and 'close management,' among others." *Id.* at 366 n.1. It includes all "forms
of prison isolation in which prisoners are housed involuntarily in their cells for upward of 23 hours
per day and denied the opportunity to engage in normal and meaningful social interaction and
congregate activities." *Id.*

1 time this motion is heard, Dr. Toledo will already been in the administrative separation unit more
2 than twice that long; by the time his extradition case is resolved, he will likely have been there for
3 two years or more. *See* Archer Decl. at ¶¶ 20-21.

4 In addition to the risk of serious long-term psychological effects, Dr. Toledo's ongoing
5 confinement in administrative separation raises concerns about his constitutional right to due process.
6 The Supreme Court has recognized that the right to due process is implicated by conditions of
7 custody that "impose[] atypical and significant hardship on the inmate in relation to the ordinary
8 incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); *see also Wilkinson v.*
9 *Austin*, 545 U.S. 209, 224 (2005) (restrictive conditions of confinement create a liberty interest when
10 they "impose an atypical and significant hardship within the correctional context").

11 In the past, courts have found that bail was warranted because the available detention facilities
12 were unsuitable. *See, e.g., Hu Yau-Leung*, 649 F.2d at 920 (no facility suitable for a juvenile); *Taitz*,
13 130 F.R.D. at 446 (allergic reaction to detention center laundry detergent); *id.* (detention center
14 impeded ability to practice religion). Santa Rita, the only facility available for federal detainees in
15 the Northern District of California, has determined that it cannot guarantee Dr. Toledo's safety from
16 other inmates unless he is kept in virtual isolation, able to leave his cell for the recreation room only
17 one hour out of every 48. The prospect of keeping Dr. Toledo, who has never been accused, much
18 less convicted, of any act of violence and, indeed, has not been convicted of any crime at all, in such
19 punitive conditions for what will likely be years of litigation is a special circumstance that verges on
20 the unconscionable. He should be released on this basis alone.

21 **C. The Complexity of the Issues and Likely Duration of the Extradition Proceedings**
22 **Are Special Circumstances Justifying Release**

23 Extradition cases can take years to resolve. To give two recent examples from the Northern
24 District, litigation involving the extradition of Eustolio Gonzalez lasted more than five years, while
25 litigation involving the extradition of Israel Ramirez Luna lasted nearly two-and-a-half years. *See*
26 Archer Decl. at ¶¶ 20-21.

27 The Ninth Circuit has held that "highly probable lengthy delays," both during the extradition
28 proceedings and during the appeals that follow, can be special circumstances supporting release.

1 Kirby, 106 F.3d at 863;⁹ *see also Santos*, 473 F. Supp. 2d at 1036 (“[D]elay in the extradition
2 proceeding is a circumstance, either alone or in combination with other factors, which may justify
3 granting bail.”).

4 Dr. Toledo’s case will almost certainly take years to resolve, particularly if Dr. Toledo is
5 certified for extradition and has to seek a writ of habeas corpus and/or appeal to the Ninth Circuit.
6 *See Santos*, 473 F. Supp. 2d at 1037 (granting bail based, in part, on delay that would result given
7 likelihood that “Santos will appeal any decision certifying his extraditability by seeking habeas
8 review”).

9 The extradition package submitted by Peru contains an extraordinary number of documents.
10 There are more than 6,000 English-language documents.¹⁰ Reviewing and organizing these
11 documents, which have no accompanying index, will be a time-consuming but essential project. *See*
12 *Taitz*, 130 F.R.D. at 445 (finding a special circumstance based on the anticipated delay where the
13 government “submitted to the court a carton containing the exhibits it intend[ed] to use at the
14 extradition hearing,” and the documents would “need to be analyzed by the parties and the court
15 before arguments [could] be made and a decision rendered”). Beyond that, the need to translate and
16 review documents in the course of the defense’s own investigation adds delay.

17 In addition, Dr. Toledo expects to make numerous challenges to Peru’s request, many of which
18 present legal questions of first impression. *See Taitz*, 130 F.R.D. at 446 (granting bail where
19 resolution of novel issues “will no doubt involve habeas corpus proceedings in the district court and
20 the Court of Appeals,” and the extraditee “would have to remain incarcerated during this lengthy
21 period”); *see also id.* at 445 (noting that other courts have granted bail where “the factual issues
22 involved in the extradition were of extreme complexity and involved issues of first impression”).
23 While Dr. Toledo anticipates raising several challenges, there are a few that are particularly
24 noteworthy for purposes of his request for bail:

25
26
27 ⁹ This is true even if the extraditee is partly responsible for the delays. *See id.*

28 ¹⁰ Oddly, these 6,000+ documents have been presented as the official translations of fewer than 3,000
corresponding Spanish documents. One of many tasks awaiting the defense will be an attempt to
reconcile the two sets of documents.

1 **1. Challenge Based on the Lack of Formal Charges**

2 The extradition treaty between the United States and Peru is unusual in that it requires the
3 requesting country to provide both an arrest warrant *and* a charging document. *See* Extradition
4 Treaty with Peru, July 26, 2001, U.S.-Peru, S. Treaty Doc. No. 107-6, art. VI(3)(a) (requiring “a copy
5 of the warrant or order of arrest”); *id.* at art. VI(3)(b) (requiring “a copy of the charging document”).
6 This is significant because in Peru the criminal system is divided into an “investigative” stage and a
7 “charging” stage. While the Peruvian government has provided an order from the First National
8 Preliminary Investigation Court granting the prosecutor’s request for provisional arrest of Dr. Toledo,
9 this is not sufficient to satisfy Article VI(3). The extradition documents do not contain an *auto de*
10 *enjuiciamiento* or prosecution order, which undersigned counsel is informed and believes is the
11 document that is required to commence the charging stage, i.e., the charging document required by
12 Article VI(3)(b) of the Treaty.¹¹

13 The Ninth Circuit has explicitly identified the high probability of success on the merits as a
14 special circumstance warranting release on bail. *See Salerno*, 878 F.2d at 317. At a minimum, the
15 interpretation of Article VI of the Treaty appears to be an issue of first impression, which is itself a
16 special circumstance.

17 **2. Probable Cause Challenge Based on Witness Coercion**

18 According to the government’s memorandum, the extraditee’s “right to present evidence is
19 severely constrained.” Govt. Memo at 19. Yet the government omits any mention of *Santos Munoz*
20 *v. Thomas*, 830 F.3d 987 (9th Cir. 2016) (en banc), the Ninth Circuit’s leading decision on extradition
21 procedures and the extraditee’s right to present evidence. In particular, *Santos Munoz* makes it clear
22 that an extraditee is entitled to present evidence of witness coercion, “because a coerced statement is
23 not competent evidence and cannot support probable cause.” *Id.* at 1001.

24 Here, Peru’s case appears to rest almost entirely on the statements of Josef Maiman and Jorge
25 Barata. These statements have varied dramatically over time, and Dr. Toledo has reason to believe

26
27
28 ¹¹ The defense is in the process of obtaining the assistance of an expert in Peruvian criminal
procedure, *see Morales*, 906 F. Supp. at 1376; *Nacif-Borge*, 829 F. Supp. at 1221, and anticipates
presenting a more detailed and nuanced discussion in the substantive motion on this issue.

1 that the statements implicating him were coerced. After a series of public statements exonerating Dr.
2 Toledo, Maiman's statement implicating Dr. Toledo was given in response to extreme pressure from
3 the Peruvian government. Peru's tactics included the issuance of an INTERPOL Red Notice, which
4 made it impossible for Maiman to leave Israel, threats to seize his international bank accounts, and
5 threats to make his family targets of criminal investigation. In return for his statement inculcating
6 Dr. Toledo, Maiman has been officially absolved of all criminal responsibility, and has been let off
7 with only a \$1.2 million fine, despite admitting that he accepted at least \$20 million in bribes from
8 Odebrecht.

9 In contrast to Maiman's later "change of heart," Barata's early statements while in Brazilian
10 prison implicated Dr. Toledo. In recorded testimony given on April 29, 2019, Barata acknowledged
11 that he had no evidence of any payments being made to Dr. Toledo, nor any knowledge of payments
12 made to Maiman being later directed to Dr. Toledo. Tellingly, he indicated that based on press
13 accounts he thought that money had made its way to Dr. Toledo. The recording of this exculpatory
14 interview was not produced to Dr. Toledo's defense counsel in Peru until July 22, 2019.

15 If Dr. Toledo succeeds in demonstrating that the witnesses were coerced, there is a high
16 likelihood that his probable cause challenge will succeed on the merits since "a coerced statement is
17 not competent evidence and cannot support probable cause." *Id.* And while it is too early to say with
18 certainty that Dr. Toledo will be able to obtain the necessary evidence to prove coercion, the
19 possibility that Dr. Toledo will prevail "make[s] the government's probability of success sufficiently
20 unclear that it constitutes a special circumstance warranting [his] release on bail." *Santos*, 473 F.
21 Supp. 2d at 1040. Either way, it is inevitable that the need to investigate this issue will result in
22 considerable delay, since it will involve the investigation of events occurring in at least three
23 countries (Peru, Brazil, and Israel).

24 **D. The Lack of Flight Risk Is a Special Circumstance**

25 At least two courts in this Circuit have concluded that the absence of flight risk can be a special
26 circumstance justifying release on bail. *See Wroclawski*, 634 F. Supp. 2d at 1007; *Chapman*, 459 F.
27 Supp. 2d at 1027. The same should be true here. Dr. Toledo has known about Peru's accusations and
28 about its extradition request for over two years. Yet he did not flee. He did not go into hiding.

1 Instead, he continued to live in openly in the Bay Area, as he had done for much of his adult life. Dr.
2 Toledo does not have the financial ability to flee nor does he have the practical ability. He is the
3 subject of an INTERPOL Red Notice. He has no passport and there is no country that would issue
4 one to him. He is a “visible, well-known public figure[] who could not easily go into hiding.”
5 *Chapman*, 459 F. Supp. 2d at 1027. This Court also has the power to set restrictive conditions that,
6 particularly when coupled with the strong package of sureties that Dr. Toledo will present, would
7 further deter any possibility of flight.

8 **E. Dr. Toledo’s Extraordinary Community Support Is a Special Circumstance**

9 As discussed in Section II.D, *supra*, Dr. Toledo enjoys extraordinary community support. As
10 the Ninth Circuit has recognized, this is significant not only as an indicator that he will not flee, but
11 also as a special circumstance supporting release in the extradition context. *See Kirby*, 106 F.3d at
12 864-65; *see also Kollmar* Bond Order at 4-5; *Mirela*, 2018 WL 1634393 at *2; *Ramirez Luna* Bail
13 Order at 5-6; *Wroclawski*, 634 F. Supp. 2d at 1007-08.

14 **IV. The Lack of Urgency Shown by the United States Weighs Against the Court’s Concerns 15 About the Potential for Diplomatic Embarrassment**

16 The government contends that Dr. Toledo must be detained because of the diplomatic
17 embarrassment that would result if Dr. Toledo fled and the United States were unable to comply with
18 its treaty obligations. The actions of the United States government, however, suggest that it has not
19 been particularly concerned about this possibility.

20 Peru first requested Dr. Toledo’s extradition more than two years ago, in February of 2017.
21 The request was not a secret. It was heavily publicized, not only in Peru but internationally. It
22 certainly was not a secret from Dr. Toledo, whose counsel contacted the State Department within
23 days of the request. *See Archer Decl.* at ¶ 23. Yet the United States government does not appear to
24 have had any concerns about the possibility that Dr. Toledo would flee the country. In response to
25 Peru’s request, the United States government took no action at all.

26 Peru sent a second extradition request in May of 2018. Again, Dr. Toledo was aware of the
27 request. *See Archer Decl.* at ¶ 22. Again, the United States government appears to have concluded –
28 correctly – that there was no reason to fear that Dr. Toledo would run. For more than a year, the

1 United States again took no action on Peru's request.

2 The United States government's decision to leave Dr. Toledo out of custody for more than two
3 years is compelling evidence that it was unconcerned about the risk that he would cause diplomatic
4 embarrassment by fleeing.

5 In this particular case, it is also worth considering the diplomatic implications of holding an
6 internationally known political figure for months or even years in administrative segregation, when
7 he has not been convicted of any crime.

8 **CONCLUSION**

9 For the foregoing reasons, Dr. Toledo has met his burden to establish that there are special
10 conditions justifying his release, and has established that he is neither a flight risk, nor danger to the
11 community. Balanced with the cruel conditions of confinement to which he is currently subjected,
12 Dr. Toledo respectfully requests that the Court grant him bond with appropriate conditions of release.

13
14
15
16 Dated: August 15, 2019

Respectfully submitted,

17
18 STEVEN G. KALAR
Federal Public Defender
Northern District of California

19
20 /S

GRAHAM ARCHER
MARA K. GOLDMAN
Assistant Federal Public Defenders

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT A

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9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 IN THE MATTER OF THE
15 EXTRADITION OF

16
17 ALEJANDRO TOLEDO,
18 Extraditee.

Case No. MJ 19-71055 TSH

**DECLARATION OF GRAHAM
ARCHER**

Court: Courtroom A, 15th Floor
Hearing Date: August 22, 2019
Hearing Time: 10:30 a.m.

19
20
21 I, Graham Archer, declare the following:

- 22 1. I am Dr. Toledo's attorney of record in the above captioned matter.
23 2. The information included in this declaration is based on my meetings with Dr.
24 Toledo, my professional experience, communications with the United States Marshals
25 and the Classification Unit of the Santa Rita Jail, my communications with Dr.
26 Toledo's prior counsel, and my review of documents related to this case.
27 3. Dr. Toledo has been at the Santa Rita Jail for 30 days since his arrest on July 16,
28 2019.

- 1 4. I spoke with a Sergeant in the Classification Unit at the Santa Rita Jail, who relayed
2 information about the Santa Rita Jail classification system and Dr. Toledo's
3 conditions of confinement.
- 4 5. Dr. Toledo is housed in Unit 2 of the Santa Rita Jail in Dublin, California.
- 5 6. Dr. Toledo is in an Administration Separation Unit. Administrative Separation is the
6 highest security classification at the Santa Rita Jail.
- 7 7. I am informed and believe that Dr. Toledo spends 47 of each 48 hours in a cell
8 approximately 6 feet wide by 15 feet long. His cell includes a bed, a toilet and a sink.
- 9 8. The Classification Sergeant indicated that Dr. Toledo is classified in Administrative
10 Separation because of the high profile nature of his case.
- 11 9. The Sergeant did not believe that, for safety reasons, Dr. Toledo could be housed at
12 Santa Rita Jail outside of a Separation Unit.
- 13 10. I am informed and believe that inmates, including Dr. Toledo, in Administrative
14 Separation are never allowed contact with other inmates.
- 15 11. According to the Sergeant, Dr. Toledo is housed in a "pod" which has 14 inmates,
16 each in solitary cells.
- 17 12. I am informed and believe that there is an indoor recreation area adjacent to the
18 inmates' cells that is open for an 8-hours period each day. Inmates are permitted to
19 leave their cells to go to the recreation area during that time, but because of the
20 Administrative Separation classification, only one inmate can be in the recreation area
21 at a time. This means that each day no more than 8 of the 14 inmates can go into the
22 recreation area.
- 23 13. I am informed and believe that jail lockdowns, medical appointments, administrative
24 issues, and visits may interfere with this short window of time for inmate recreation.
- 25 14. I am informed and believe that, at most, Dr. Toledo is permitted to leave his cell to
26 go, alone, into the recreation room for one hour every two days.
- 27 15. I am informed and believe that this time in the recreation room is the only time he has
28 to make phone calls, including calls to counsel. Dr. Toledo is unable to determine in

1 advance when he will be released, so he has been unable to successfully reach me.

2 16. I am informed and believe that an outdoor exercise yard is available, but it is shared
3 by approximately 300 similarly classified inmates.

4 17. When I met with Dr. Toledo on August 13th, 2019, he informed me that he had only
5 been permitted outside once, alone, and only for 45 minutes.

6 18. The Classification Sergeant informed me that it is their goal to get inmates to the
7 exercise yard once a week, but confirmed that Dr. Toledo had only been permitted
8 outside once since his arrest.

9 19. Every time that I have met with Dr. Toledo, his hands have been handcuffed and
10 shackled to a waist chain. I have asked that his handcuffs be removed during our
11 meetings, and each time I have been told that they cannot be due to his classification
12 level.

13 20. Our office represented Eustolio Gonzalez Gonzalez in his extradition proceedings on
14 a charge of attempted murder. These proceedings began on June 26, 2009, and ended
15 more than five years later, on November 12, 2014. The proceedings included the
16 original extradition case, *United States v. Gonzalez*, No. 09-mj-70576 DMR (N.D.
17 Cal.); and the habeas case, *Gonzalez v. O'Keefe*, No. 12-cv-02681 LHK (N.D. Cal.).

18 21. Our office represented Israel Ramirez Luna in his extradition proceedings on a charge
19 of second-degree murder. These proceedings began on February 8, 2016, and ended
20 nearly two-and-a-half years later, on July 24, 2018. The proceedings included the
21 original extradition case, *Matter of Extradition of Ramirez Luna*, No. 16-xr-90095 NC
22 (N.D. Cal.); the habeas case, *Ramirez Luna v. O'Keefe*, No. 17-cv-021296 LHK
23 (N.D. Cal.); and the Ninth Circuit Appeal, *Ramirez Luna v. O'Keefe*, No. 18-15450.

24 22. I am informed and believe that Dr. Toledo retained counsel in early 2017 in response
25 to threats by Peruvian prosecutors to have him arrested in extradited.

26 23. I have reviewed correspondence between Dr. Toledo's prior counsel and the
27 Department of State. I am informed and believe that Dr. Toledo's retained counsel
28 first wrote the Department of State on February 13, 2017 in response to the Peruvian

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT B

DOCUMENTS UNDER SEAL

TOTAL TIME (mins): 52 Mins

MAGISTRATE JUDGE MINUTE ORDER	DEPUTY CLERK Ivy L. Garcia	REPORTER/FTR FTR 10:26:38-11:18:55
MAGISTRATE JUDGE HON. WAYNE D. BRAZIL	DATE 9/15/09	NEW CASE <input type="checkbox"/> CASE NUMBER 4-09-70576-SBA

APPEARANCES

DEFENDANT EUSTOLIO GONZALEZ GONZALEZ	AGE	CUST Yes	P/NP P	ATTORNEY FOR DEFENDANT Jerome Matthews	PD. <input checked="" type="checkbox"/> RET. <input type="checkbox"/> APPT. <input type="checkbox"/>
U.S. ATTORNEY Joshua Hill	INTERPRETER Ines Swaney (Spanish Int.)	<input type="checkbox"/> FIN. AFFT SUBMITTED	<input type="checkbox"/> COUNSEL APPT'D		

PROBATION OFFICER None	PRETRIAL SERVICES OFFICER Carol Mendoza	DEF ELIGIBLE FOR APPT'D COUNSEL <input type="checkbox"/>	<input type="checkbox"/> PARTIAL PAYMENT OF CJA FEES	
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PROCEEDINGS SCHEDULED TO OCCUR

<input type="checkbox"/> INITIAL APPEAR	<input type="checkbox"/> PRELIM HRG	<input type="checkbox"/> MOTION	<input type="checkbox"/> JUGM'T & SENTG	<input type="checkbox"/> STATUS
<input type="checkbox"/> I.D. COUNSEL	<input type="checkbox"/> ARRAIGNMENT	<input type="checkbox"/> BOND HEARING	<input type="checkbox"/> INITIAL APPEAR REV PROB OR S/R	<input type="checkbox"/> OTHER
<input checked="" type="checkbox"/> DETENTION HRG 52 Mins HELD	<input type="checkbox"/> ID / REMOV HRG	<input type="checkbox"/> CHANGE PLEA	<input type="checkbox"/> PROB. REVOC.	<input type="checkbox"/> ATTY APPT HEARING

INITIAL APPEARANCE

<input type="checkbox"/> ADVISED OF RIGHTS	<input type="checkbox"/> ADVISED OF CHARGES	<input type="checkbox"/> NAME AS CHARGED IS TRUE NAME	<input type="checkbox"/> TRUE NAME:	
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ARRAIGNMENT

<input type="checkbox"/> ARRAIGNED ON INFORMATION	<input type="checkbox"/> ARRAIGNED ON INDICTMENT	<input type="checkbox"/> READING WAIVED SUBSTANCE	<input type="checkbox"/> WAIVER OF INDICTMENT	
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RELEASE

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PROPERTY TO BE POSTED <input type="checkbox"/> CASH \$	CORPORATE SECURITY <input type="checkbox"/>	REAL PROPERTY: <input type="checkbox"/>
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<input checked="" type="checkbox"/> MOTION FOR DETENTION	<input type="checkbox"/> PRETRIAL SERVICES REPORT	<input type="checkbox"/> DETAINED	<input type="checkbox"/> RELEASED	<input type="checkbox"/> DETENTION HEARING AND FORMAL FINDINGS WAIVED	<input checked="" type="checkbox"/> REMANDED TO CUSTODY
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ORDER REMOVED TO THE DISTRICT OF

PLEA

<input type="checkbox"/> CONSENT ENTERED	<input type="checkbox"/> NOT GUILTY	<input type="checkbox"/> GUILTY	GUILTY TO COUNTS: <input type="checkbox"/>
<input type="checkbox"/> PRESENTENCE REPORT ORDERED	<input type="checkbox"/> CHANGE OF PLEA	<input type="checkbox"/> PLEA AGREEMENT FILED	OTHER:

CONTINUANCE

TO: 9/22/09	<input type="checkbox"/> ATTY APPT HEARING	<input type="checkbox"/> BOND HEARING	<input type="checkbox"/> STATUS RE: CONSENT	<input checked="" type="checkbox"/> STATUS / TRIAL SET HRG. DATE FOR DEFT'S MOTIC
AT: 9:00 a.m.	<input type="checkbox"/> SUBMIT FINAN. AFFIDAVIT	<input type="checkbox"/> PRELIMINARY HEARING OR ARRAIGN- MENT	<input type="checkbox"/> CHANGE OF PLEA	<input type="checkbox"/> OTHER
BEFORE HON. S. B. ARMSTRONG	<input type="checkbox"/> DETENTION HEARING		<input type="checkbox"/> MOTIONS	<input type="checkbox"/> JUDGMENT & SENTENCING
<input type="checkbox"/> TIME WAIVED	<input type="checkbox"/> TIME EXCLUDABLE UNDER 18 § USC 3161	<input type="checkbox"/> IDENTITY / REMOVAL HEARING	<input type="checkbox"/> PRETRIAL CONFERENCE	<input type="checkbox"/> PROB/SUP REV. HEARING

ADDITIONAL PROCEEDINGS

Based on the spec. circumstances presented by the def't's atty. (health of def't's wife & def't's age), the Court found that the def't. is not a flight risk. Court is agreeable to release the def't. on the following conditions: PR Bond co-signed by the def't's son, daughter-in-law & granddaughter, def't. subject to home detention with elec. mon., curfew set from 9:00 pm to 6:00 am, def't. may leave home for court appear., atty. visits, Pret. Svcs. visits, def't's & def't's wife's medical needs & as directed by Pret. Svcs. only, travel restricted to Northern Dist. of CA, no firearms or other dangerous weapons, not to use/posses drugs or controlled subs., not use alcohol to excess, report to Pret. as directed. Execution of this Court's release order of the def't. shall be STAYED for 24 hrs. to give the govt. the opportunity to lodge an appeal to Judge Armstrong.

cc: WDB's Stats, Lisa, Pretrial Svcs.

FILED
SEP 15 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT C

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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 IN THE MATTER OF THE
11 EXTRADITION OF ISRAEL
12 RAMIREZ-LUNA

Case No. 16-xr-90095 NC

13 **ORDER GRANTING REQUEST FOR**
14 **BAIL IN EXTRADITION**
15 **PROCEEDING**

Re: Dkt. No. 8

16
17 Israel Ramirez-Luna has been arrested and provisionally detained in the Northern
18 District of California at the request of the Mexican government. Mexico seeks to extradite
19 him in connection with criminal charges in Guanajuato, Mexico, from May 2009.
20 Ramirez-Luna requests that the Court order him released on bail pending the resolution of
21 the extradition proceedings in this Court. The government opposes his motion for bail and
22 seeks to have him detained until his extradition. For the reasons set forth below, the Court
23 GRANTS Ramirez-Luna's request for bail, finding that he establishes "special
24 circumstances" for release and does not pose a risk of flight or a danger to the community.
25 The Court orders Ramirez-Luna released into the custody of his wife in Willits, California,
26 on a secured \$100,000 bond, subject to a stringent combination of conditions, including
27 electronic location monitoring. Three family members are sureties to secure Ramirez-
28 Luna's release.

Case No. 16-xr-90095 NC

United States District Court
Northern District of California

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I. BACKGROUND

The government of Mexico seeks the extradition of Ramirez-Luna, an American citizen, to face prosecution for two counts of aggravated homicide, as defined by Articles 138, 140, and 153 of the Penal Code of the State of Guanajuato, Mexico. Dkt. No. 4 at 1. On May 8, 2009, a criminal court in the State of Guanajuato issued an arrest warrant for Ramirez-Luna as part of criminal case number 39/2009. *Id.*

This Court issued a warrant for Ramirez-Luna’s arrest in the United States on February 8, 2016, pursuant to the extradition treaty in force between the United States and Mexico, *Treaty Signed at Mexico City May 4, 1978*, 1980 WL 309106, T.I.A.S. No. 9656 (Jan. 25, 1980), and 18 U.S.C. § 3148. Ramirez-Luna was arrested in Willits, California on February 11, 2016. Ramirez-Luna has been in federal custody since his arrest.

This Court held a detention hearing on April 6, 2016, with Ramirez-Luna present and represented by his counsel, Assistant Federal Public Defender Varell Fuller. Mexico and the United States were represented by Assistant U.S. Attorney John Glang.

II. LEGAL STANDARD

Because an extradition proceeding is not a criminal case, the Bail Reform Act of 1984 does not govern, including its presumption in favor of bail. *Kamrin v. United States*, 725 F.2d 1225, 1227-28 (9th Cir. 1984). Instead, the governing extradition federal statute, 18 U.S.C. § 3184, contains a presumption against bail in foreign extradition circumstances and only “special circumstances” can justify release on bail. *United States v. Salerno*, 878 F.2d 317 (9th Cir. 1989) (citing *Wright v. Henkel*, 190 U.S. 40, 63 (1903)). “The party seeking release on bail has the burden of showing that special circumstances exist.” *In re Extradition of Santos*, 473 F. Supp. 2d 1030, 1035 (C.D. Cal. 2006). Further, Ramirez-Luna’s status as a United States citizen is not grounds for special consideration. *Matter of the Extradition of Garcia*, 615 F. Supp. 2d 162, 173 (S.D.N.Y. 2009) (“Citizens and non-citizens alike must demonstrate special circumstances to overcome the presumption against bail.”).

“The term, ‘special circumstances,’ however, has never been precisely defined and

1 courts have addressed on a case by case basis particularly sufficient circumstances that
2 would reverse the strong presumption against bail.” *Santos*, 473 F. Supp. 2d at 1036
3 (internal quotations and citations omitted). “Examples of [special] circumstances include
4 the raising of substantial claims upon which the appellant has a high probability of success,
5 a serious deterioration of health while incarcerated, and unusual delay in the appeal
6 process.” *Salerno*, 878 F.2d at 317. However, “this list is not exhaustive and the
7 determination of what constitutes a ‘special circumstance’ is left to the sound discretion of
8 the trial judge.” *Matter of Perez-Cueva*, No. 16-0233 M, 2016 WL 884877, at *2 (C.D.
9 Cal. Mar. 7, 2016) (citing *Santos*, 473 F. Supp. 2d at 1036).

10 If a defendant “can show ‘special circumstances’ justifying bail, he must also
11 demonstrate that there is no risk he will fail to appear for further extradition proceedings
12 and that he is not a danger to the community.” *Santos*, 473 F. Supp. 2d at 1035; *United*
13 *States v. Taitz*, 130 F.R.D. 442, 444 (S.D. Cal. 1990) (“Special circumstances must exist in
14 addition to absence of risk of flight.”).

15 **III. ANALYSIS**

16 **A. Special Circumstances**

17 The presumption is that Ramirez-Luna be detained. *Salerno*, 878 F.2d at 317. To
18 overcome that presumption, Ramirez-Luna must show “special circumstances” beyond the
19 usual concerns of incarcerated individuals awaiting trial. For example, “[t]he need to
20 consult with counsel, gather evidence and confer with witnesses, although important, is not
21 extraordinary; all incarcerated defendants need to do these things.” *Matter of Extradition*
22 *of Smyth*, 976 F.2d 1535, 1535-36 (9th Cir. 1992).

23 Here, Ramirez-Luna states that he will contest the charges against him such that
24 there will be delay in the extradition proceedings, that the provisional arrest warrant is
25 facially invalid, and that his substantial likelihood of success on the merits all justify a
26 grant of bail. Dkt. No. 13. However, every extradition case has opportunities to file
27 challenges to the extradition and an appeals process. As such, these do not constitute
28 unusual delay. *Smyth*, 976 F.2d at 1536. Likewise, the record before the Court at this

1 juncture regarding the likelihood of Ramirez-Luna’s success is thin. A finding that he will
2 succeed on the merits would be too speculative to overcome the presumption for detention.
3 *Cf. e.g., Santos*, 473 F. Supp. 2d at 1036 (cloud of uncertainty in Mexican proceedings
4 created indeterminable and prolonged delay sufficient to justify granting bail).

5 What is unusual here is the serious medical condition of Ramirez-Luna’s daughter,
6 who relies on Ramirez-Luna for support and care. Dr. Howard M. Rosenfeld, who is Chief
7 of the Division of Pediatric Cardiology at Benioff Children’s Hospital and Research Center
8 in Oakland, submitted a letter to the Court explaining the health conditions of Naomi
9 Ramirez, Ramirez-Luna’s daughter. Dkt. No. 13-4 at 1. Naomi Ramirez has a diagnosis
10 of Turner’s syndrome and congenital cardiac disease including critical aortic valve stenosis
11 and coarctation of the thoracic aorta. *Id.* She has undergone a series of surgeries since
12 presenting with these complications when she was one week old, and requires a cardiology
13 clinic visit every six months and upcoming open heart surgery this summer.

14 Dr. Rosenfeld describes Ramirez-Luna’s involvement in his daughter’s care since
15 her birth, including driving her to her appointments and staying by her side during her stint
16 in the critical care unit. *Id.* Dr. Rosenfeld further explains that Naomi “underwent
17 catheterization in 2013 and is now preparing for a repeat open heart surgery with
18 augmentation of her left ventricular outflow tract and valve replacement.” *Id.* at 2. The
19 surgery is planned for “early this summer.” *Id.* Dr. Rosenfeld states that the “[c]ontinued
20 support and involvement of her father will be crucial for her outcome, recovery, and
21 ongoing health.” *Id.* Ramirez-Luna’s need to assist his daughter through her surgery and
22 recovery constitutes a special circumstance. *See USA v. Matter of Extradition of Gonzalez*,
23 No. 09-mj-70576-DMR, Dkt. No. 78 at 1 (N.D. Cal. Mar. 27, 2015) (“Mr. Gonzalez’s
24 serious health conditions constitute special circumstances that justify his continued release
25 pending extradition”).

26 In addition to the statements of his daughter’s physician, Ramirez-Luna has
27 presented overwhelming evidence of support in his community. The Court may consider a
28 combination of factors, including the general “uniqueness” of a case. *In re Extradition of*

1 Kirby, 106 F.3d 855, 858 (9th Cir. 1996). In Kirby, Irish extraditees had escaped from a
2 British prison in Northern Ireland and were at the center of a firestorm between the
3 Protestants and Catholics in Northern Ireland that had engaged the “attention of the
4 citizens of the United States, including the President and the Secretary of State.” *Id.* at
5 865. The Ninth Circuit found that a grant of bail would “contribute more to promoting
6 harmony” among these groups than would a denial, and considered the consequences in its
7 determination. *Id.* Following Kirby, multiple courts have considered the “uniqueness” of
8 an application for bail in their special circumstances analysis. *In re Extradition of*
9 *Trinidad*, 754 F. Supp. 2d 1075, 1078 (N.D. Cal. 2010) (granting bail for a United States
10 citizen who had served in the United States Air Force for many years, was deployed to
11 Iraq, and showed special circumstances in his extraordinary community support); *In re*
12 *Extradition of Molnar*, 182 F. Supp. 2d 684, 689 (N.D. Ill. 2002).

13 Here, Ramirez-Luna’s family and friends have submitted 22 letters and three videos
14 describing the help he gives to neighbors and community members. A Deputy Sheriff in
15 Willits, Deputy Andrade, has offered to act as surety for Ramirez-Luna. Ramirez-Luna
16 has lived in the Bay Area for approximately 31 years, has no criminal record in this
17 country, has law enforcement ties, and has family in the area willing to act as sureties for
18 him. Combining the factors of his daughter’s illness and his role as caretaker with the
19 extraordinary support of his community, Ramirez-Luna’s application is unique and
20 justifies release on bail. *See also United States v. Taitz*, 130 F.R.D. 442, 446 (S.D. Cal.
21 1990), (holding that a collection of several factors, including the extraditee’s lack of a prior
22 record, health difficulties, inability to adequately observe rituals as an Orthodox Jew while
23 incarcerated, and extraordinary community support, constituted “special circumstances”
24 justifying bail pending his extradition proceedings).

25 **B. Risk of Flight And Danger To The Community**

26 The Court finds that Ramirez-Luna is neither a flight risk nor a danger to the
27 community. Ramirez-Luna’s family, neighbors, friends, children’s teachers, children’s
28 physicians, and other community members have written 22 letters and recorded three

1 videos describing his involvement in the community and his strong family ties. For
2 example, an honorably retired California Highway Patrol Officer, Thomas E. Sleeper,
3 writes that “[i]n my 16 years working in Mendocino County, I know of no incident where
4 Israel Ramirez was suspected of any wrongdoing. I don’t think he has even so much as
5 received a parking ticket.” Dkt. No. 18 at 9. Sleeper goes on to certify that he is
6 “confident [Ramirez-Luna] will appear as directed for all court proceedings and []
7 absolutely know[s] he is not a danger to this community.” *Id.* at 9-10. An active
8 Mendocino County Deputy Sheriff, Jeffery Andrade, is a friend of Ramirez-Luna and has
9 indicated that he is willing to assist with bail by way of an unsecured bond.

10 These ties to family, the community, and law enforcement persuade the Court that
11 Ramirez-Luna is not a flight risk or a danger to the community. Defense counsel proffered
12 information to the Court at the bail hearing that Ramirez-Luna has employment waiting
13 should he be released on bond. Because of the presumption of detention and in the interest
14 of supporting the nation’s Treaty obligation with Mexico, the Court imposes a combination
15 of conditions. These conditions include electronic location monitoring under the
16 supervision of Pretrial Services. Ramirez-Luna’s wife has agreed to be and the Court finds
17 to be an appropriate custodian and surety. Two additional family members are required as
18 sureties on the \$100,000 bond, which will be secured by real property.

19 **IV. CONCLUSION**

20 Ramirez-Luna has demonstrated an accumulation of special circumstances
21 weighing in favor of release on bail: the special needs of his seriously ill daughter,
22 supported by a letter from her physician, and the exceptional package from Ramirez-
23 Luna’s family, community, and law enforcement officers showing his involvement in the
24 community. In totality, the Court finds that these factors constitute special circumstances
25 justifying Ramirez-Luna’s release on bond.
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This release order is stayed until April 8, 2016, at 5:00 p.m., or further Court order.

IT IS SO ORDERED.

Dated: April 7, 2016



NATHANAEL M. COUSINS
United States Magistrate Judge

United States District Court
Northern District of California

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT D

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
DON KOLLMAR,
Defendant.

Case No. 19-mj-70677-MAG-1 (KAW)

**ORDER GRANTING RELEASE ON
SECURED BOND**

On May 6, 2019, the United States filed a complaint under 18 U.S.C. § 3184, seeking to provisionally arrest Defendant Don Kollmar for extradition to Canada. (Compl., Dkt. No. 1.) The United States also filed a memorandum of law in opposition to bail. (United States Memo., Dkt. No. 4.) On May 13 and 17, 2019, the Court held hearings regarding the status of bail. (Dkt. Nos. 13, 27.)

Having considered the parties' filings, oral arguments, and the relevant authority, the Court **ORDERS** Defendant's release on a secured bond in the amount of \$4 million, with eight special conditions of release.

I. BACKGROUND

On November 28, 2018, Defendant was charged in Canada with violations of the Criminal Code of Canada ("CCC") § 149 (indecent assault on a female), § 143(b)(iii) (rape), and § 146(2) (rape of a female). (Compl. ¶ 6.) The charges stem from a 1997 report from B.B. that Defendant had sexually assaulted her when she and her family belonged to a religious group, "Students of Light." (Compl. ¶ 7a.) B.B. stated that the sexual activity started in 1975, when B.B. was twelve or thirteen years old. (Compl. ¶ 7c.) B.B. reported the activity to her parents when she was sixteen years old, but her parents were advised by a lawyer provided by the religious group not to

1 file a formal complaint. (Compl. ¶ 7f.) Following B.B.’s statement to the Canadian authorities in
2 1997, an initial arrest warrant for Defendant was issued, under the name “Donald Kolmar.”
3 (Compl. ¶ 7e; United States Supp. Brief at 5, Dkt. No. 22.)

4 In July 2017, Canadian authorities found a photo of a man named Don Kollmar on a
5 spiritual website. (Compl. ¶ 7f.) B.B. identified the individual as the man who had sexually
6 assaulted her as a child. (Compl. ¶ 7f.) On December 24, 2018, the Ontario Court of Justice
7 issued a warrant for Defendant’s arrest. (Compl. ¶ 7.)

8 On May 3, 2019, Defendant was arrested in this district. (Dkt. No. 6.) By this time,
9 Defendant, a United States citizen, had moved to the Netherlands, although he had visited Canada
10 repeatedly over the last twenty years. (R. Kollmar Decl. ¶ 4, Dkt. No. 10; United States Memo. at
11 12.)

12 II. LEGAL STANDARD

13 “There is a presumption against bail in an extradition case and only ‘special circumstances’
14 will justify bail.” *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989); *see also Wright v.*
15 *Henkel*, 190 U.S. 40, 63 (1903) (“We are unwilling to hold that . . . while bail should not
16 ordinarily be granted in cases of foreign extradition, those courts may not in any case, and
17 whatever the special circumstances, extend that relief.”). The presumption against bail stems from
18 the United States’ obligations under extradition treaties, with the Supreme Court explaining:

19 The demanding government, when it has done all that the treaty and
20 the law require it to do, is entitled to the delivery of the accused on
21 the issue of the proper warrant, and the other government is under
22 obligation to make the surrender; an obligation which it might be
23 impossible to fulfil if release on bail were permitted. The
24 enforcement of the bond, if forfeited, would hardly meet the
25 international demand; and the regaining of the custody of the
26 accused obviously would be surrounded with serious
27 embarrassment.

28 *Wright*, 190 U.S. at 62.

While “it is unusual and extraordinary for bail to be granted, it is not impossible to obtain
bail in an international extradition treaty case.” *In re Nacif-Borge*, 829 F. Supp. 1210, 1213 (D.
Nev. 1993). The defendant “has the burden of establishing an entitlement to bail,” and must not
only demonstrate that there are “special circumstances” justifying bail, but that the defendant is

1 not a flight risk or a danger to the community. *Id.* at 1214; *see also United States v. Taitz*, 130
2 F.R.D. 442, 444 (S.D. Cal. 1990) (“special circumstances must exist in addition to absence of risk
3 of flight”). “Special circumstances must be extraordinary and not factors applicable to all
4 defendants facing extradition.” *In re Extradition of Maniero*, 950 F. Supp. 290, 294 (S.D. Cal.
5 1996).

6 III. DISCUSSION

7 A. Risk of Flight and Danger to the Community

8 The Court finds that Defendant is not a flight risk. The United States argues that
9 Defendant is a flight risk based on the charges that he faces, as well as the facts that Defendant left
10 Canada after the victim reported the assault, and that Defendant now resides in the Netherlands.
11 (United States Memo. at 12.) There is no showing, however, that Defendant left Canada to escape
12 the charges (or that he even knew of the charges); indeed, Defendant lived openly in the United
13 States and the Netherlands, and has repeatedly returned to Canada in the last twenty years, after
14 the initial arrest warrant was issued in or around 1997. (*See* Compl. ¶ 7f; R. Kollmar Decl. ¶ 4.)

15 The Court concludes that there are conditions of release that can be set which will negate
16 the risk of flight, including surrender of all passports and home confinement. There are numerous
17 individuals who are willing to act as sureties on Defendant’s behalf, and to post money and/or
18 property to ensure his appearance. (*See* R. Kollmar Decl. ¶ 5; Dkt. Nos. 17-20.) Courts have
19 recognized that bail itself “will present a significant financial deterrent to flight.” *In re Extradition*
20 *of Chapman*, 459 F. Supp. 2d 1024, 1027 (D. Haw. 2006).

21 Likewise, the Court finds that Defendant is not a danger to the community. Indeed, the
22 United States does not argue that Defendant would pose a danger, and Defendant has no criminal
23 history other than the current charges.

24 B. Special Circumstances

25 Having found that there is no risk of flight or danger to the community, the Court must
26 determine whether there are special circumstances that would justify bail.

27 As an initial matter, the Court finds that Defendant has not demonstrated that there would
28 be unusual delay in the appeals process. The Ninth Circuit has found that “unusual delay in the

1 appeal process” constitutes a special circumstance. *Salerno*, 878 F.2d at 317; *In re Requested*
2 *Extradition of Kirby*, 106 F.3d 855, 863 (9th Cir. 1996). In *Taitz*, the district court found an
3 unusual delay where the defendant faced 434 counts of fraud, which would require the district
4 court to consider the evidence to determine whether probable cause existed as to each count. 130
5 F.R.D. at 445. Moreover, there were issues of whether the offense constituted an extraditable
6 offense, and the defendant pointed to two similar cases in the district where more than six months
7 had passed without an extradition hearing due to the complexity of the cases. *Id.* at 445-46.
8 Additionally, the resolution of the case would likely involve habeas proceedings, such that the
9 extradition proceedings could last as long as two years. *Id.*

10 Here, Defendant argues that there will be complex challenges regarding the propriety of
11 extradition, and also suggests that the likelihood of an appeal of the bail and merits decisions “is
12 high.” (Def.’s Supp. Brief at 2-3, Dkt. No. 23.) The propriety of extradition, however, is a
13 question on the merits, and the fact that it may be complex alone is insufficient to show that there
14 will be unusual delay. Likewise, the “high” likelihood of appeal does not necessarily mean there
15 will be *unusual* delay, rather than the normal delays associated with an appeal. For those reasons,
16 the Court cannot, at this time, find that Defendant has carried his burden of showing that there will
17 be unusual delay in the appeals process.

18 The Court, however, finds that the following special circumstances exist to warrant bail.

19 **i. Character**

20 The Court finds that Defendant has no criminal record other than the current charges.
21 Defendant has also filed declarations from several individuals who attest to Defendant’s good
22 character, and are willing to personally sign a personal appearance bond and/or act as a surety by
23 posting money or property. (See Dkt. Nos. 17-20.)

24 The Court acknowledges that several courts have found that “the character and background
25 of a person subject to extradition are considered in regard to risk of flight and danger to the
26 community, rather than as a special circumstance.” *In re Extradition of Nacif-Borge*, 829 F. Supp.
27 at 1220. Others, however, have considered it a special circumstance, particularly when other
28 special circumstances also exist. See *Taitz*, 130 F.R.D. at 446; *In re Extradition of Chapman*, 459

1 F. Supp. 2d 1024, 1027 (D. Haw. 2006).

2 **ii. Lack of Diplomatic Necessity due to Delay in Prosecution**

3 The Court finds that the delay in prosecution of this case is a special circumstance that
4 justifies bail. In *United States v. Castaneda-Castillo*, the district court found that there was a lack
5 of diplomatic necessity for detention where Peru, the country seeking extradition, “ha[d]
6 obviously not actively pursued this twenty-five year old charge, thereby resulting in a very lengthy
7 delay.” 739 F. Supp. 2d 49, 57-58 (D. Mass. 2010). While the district court recognized that the
8 Peruvian government was in turmoil for years, and that the Peruvian president had passed an
9 amnesty law which prevented prosecution for several years, the court found there was no
10 explanation for a three-year delay between the commencement of the case in 2005 and the
11 extradition request in 2008. *Id.* at 58. The district court also found there was no explanation for
12 the two-year delay between the extradition request and the United States seeking the defendant’s
13 provisional arrest, particularly when the United States knew that the defendant was in federal
14 custody while pursuing his amnesty petition. *Id.* at 53, 58. The district court concluded that under
15 those circumstances, the delay weighed “very heavily in favor of release.” *Id.* at 58.

16 Likewise, in *In re Chapman*, the district court found there was a “lack of any diplomatic
17 necessity for denying bail” because the country seeking extradition had “waited three years before
18 bringing extradition proceedings against the Respondents, during which Respondents were living
19 openly and notoriously, aware of the charges against them” 459 F. Supp. 2d at 1027. Such
20 delay demonstrated that the country seeking extradition “ha[d] not made prosecution of this
21 offense a priority,” supporting the defendant’s release on bail. *Id.*

22 In contrast, in *In re Extradition of Drumm*, the district court found that a seven-year delay
23 in filing charges against the defendant was not a special circumstance because “it appears that
24 Ireland ha[d] been actively investigating the case since 2009 and that the delay in charging [the
25 defendant] was attributable, at least in part, to his own decision to relocate to the United States.”
26 150 F. Supp. 3d 92, 98-99 (D. Mass. 2015).¹

27 _____
28 ¹ The United States also cites to other cases where the district courts did not grant bail despite lengthy delays in the prosecution, but both cases are distinguishable as the district courts found

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1 In the instant case, Defendant is charged with sexually assaulting a minor in 1975 and
2 1977. (Compl. ¶¶ 7c, 7d.) The assault was reported to the Canadian authorities in 1997, after
3 which an initial arrest warrant was issued under the name “Donald Kolmar.” (Compl. ¶ 7e; United
4 States Supp. Brief at 5.) There is no showing, however, that the Canadian authorities took any
5 actions after the 1997 report and issuance of the arrest warrant until July 2017 -- twenty years later
6 -- when they found a photograph of a man that B.B. identified as the man who had sexually
7 assaulted her. (Compl. ¶ 7f.) Indeed, it appears the Canadian authorities took no actions at all to
8 investigate during this time; rather, in 2017, the Division Warrant Office happened to be
9 “conducting an audit of old arrest warrants [when] an Internet search revealed a possible hit for the
10 accused ‘Donald Kollmar’” (United States Supp. Brief at 5.) Only then did Canadian
11 authorities reach out to B.B. to ensure that she was still willing to testify. Even then, Defendant
12 was not charged until November 28, 2018, more than a year after Defendant’s photograph was
13 identified. (Compl. ¶ 6.)

14 The twenty-year delay in the investigation, as well as over a year delay between B.B.
15 identifying the photograph and Defendant being charged, demonstrates a failure to actively
16 prosecute the case, which reduces the lack of any diplomatic necessity for denying bail. Thus, the
17 significant delay in prosecution is a special circumstance justifying the granting of bail.

18 **iii. The Availability of Bail in Extradition Cases in Canada**

19 Finally, the Court finds that the fact that Canada would grant bail to defendants facing
20 extradition for similar offenses is a special circumstance. In *Taitz*, the district court found that
21 there was “no diplomatic necessity for denying bail” under such circumstances, explaining that
22 “the rationale for denying bail is that the United States will suffer consequences in foreign affairs
23 if one subject to extradition absconds while on release.” 130 F.R.D. at 446. There was, however,

24
25
26 that the delays were outweighed by other circumstances. *See In re Johnson*, No. MAG 12-65m,
27 2012 WL 3929811, at *4-5 (W.D. Penn. Sept. 7, 2012) (finding that delay did not warrant bail
28 where the defendant was accused of murdering and raping a 16-year old boy before fleeing
Mexico); *United States v. De Lorea*, No. 2:06-MJ-98-PRC, 2006 WL 1518981, at *3-4 (N.D. Ind.
May 31, 2006) (ten-year delay in requesting extradition and good character outweighed by the
defendant having allegedly committed the crime while he was living in the United States, was
employed, and had a family).

1 “no diplomatic concern by South Africa [the extraditing country] if a United States court releases
2 on bail a person who is facing extradition to South Africa where bail is available in South Africa
3 for persons facing extradition to the United States.” *Id.* at 447.

4 The United States points to cases which found that the availability of bail in the country
5 seeking extradition is not a special circumstance. (United States Supp. Brief at 7.) Those cases,
6 however, considered the availability of bail generally, not the availability of bail for defendants
7 seeking extradition specifically. *See In re Extradition of Sutton*, 898 F. Supp. 691, 694-95 (E.D.
8 Mo. 1995) (considering whether the availability of bail “on the underlying substantive offense”
9 only, not in extradition cases only); *In re Extradition of Siegmund*, 887 F. Supp. 1383, 1386 (D.
10 Nev. 1995) (“we respectfully disagree with [*Nacif-Borge’s*] holding that the availability of bail on
11 the underlying offense in the requesting country may constitute a ‘special circumstance’ justifying
12 bail in the United States pending resolution of the extradition case”); *In re Extradition of Rouvier*,
13 839 F. Supp. 537, 540-41 (N.D. Ill. 1993); *In re Extradition of Antonowicz*, 244 F. Supp. 3d 1066,
14 1070-71 (C.D. Cal. 2017) (focusing on the availability of bail in the extraditing country generally);
15 *In re Extradition of Garcia*, 615 F. Supp. 2d 162, 172 (S.D.N.Y. 2009) (disagreeing with *Taitz* that
16 there would be a lack of diplomatic necessity based on the availability of bail, but focusing solely
17 on the availability of bail in the extraditing country rather than the availability of bail during
18 extradition hearings specifically).²

19 The Court finds *Taitz* persuasive.³ Further, Defendant has provided significant evidence
20 that Canada would release a defendant on bail for similar offenses, even when extradition is being
21 sought. Defendant has provided a declaration by Mr. Seth Weinstein, a Canadian attorney who
22 has expertise in extradition and mutual legal assistance cases. (Weinstein Decl. ¶¶ 2-3, Dkt. No.
23 24.) Mr. Weinstein states that in his experience, “bail is routinely granted to Canadian citizens in
24

25 ² Many of these cases criticized *In re Gannon*, which focused on the fact that the offense at issue
26 was bailable in both Pennsylvania and Canada, the country seeking extradition. 27 F.2d 362, 362
(E.D. Penn. 1928). Notably, *Taitz* did not rely on *In re Gannon*. *See* 130 F.R.D. at 446-47.

27 ³ The Court notes that even if it did not find this to be a special circumstance, special
28 circumstances still exist, including the delay in prosecution of this case.

1 extradition cases as well as on appeal” (Weinstein Decl. ¶ 9.) Importantly, Mr. Weinstein
2 points to specific cases in which bail was granted pending extradition hearings based on similar
3 offenses. For example, in *United States v. Hillis*, 2018 ONSC 5360, “a Canadian citizen was
4 released pending his extradition hearing for allegations involving the sexual assault of three young
5 girls in Minnesota.” (Weinstein Decl. ¶ 11, Attachment at 25-42.⁴) Likewise, in *United States v.*
6 *Ruggeberg*, 2005 BCSC 113, “the person was being sought for his extradition for allegations that
7 he had raped a woman at gunpoint in Texas approximately 25 years earlier. He had initially been
8 denied bail but was released when he presented a better release plan to the court.” (Weinstein
9 Decl. ¶ 13, Attachment at 44-65.) And while on a different charge, the Court also notes that in
10 *Republic of France v. Diab*, 2009 CanLII 26600, an individual being sought for four counts of
11 murder and forty counts of attempted murder related to the bombing of a synagogue nearly thirty
12 years prior was released on bail pending his extradition hearing, despite “liv[ing] a very transient
13 lifestyle with roots in many countries.” (Weinstein Decl. ¶ 15, Attachment at 71-96.) Given that
14 Canada has released defendants being sought for extradition on similar or more serious charges,
15 the Court concludes that this is a special circumstance that also warrants bail.

16 IV. CONCLUSION

17 For the reasons stated above, the Court finds that there is no risk of flight or danger to the
18 community and that special circumstances exist that merit release on bail. Therefore the Court
19 will order Defendant’s release on a secured bond in the amount of \$4 million, secured with the
20 properties of Mr. Richard Kollmar, Mr. Peter Capuciati, Mr. Christopher Kirkham, and Ms.
21 Samantha Good. The conditions of release shall include:

- 22 1. Defendant shall report to Pretrial Services as directed;
- 23 2. Defendant shall not travel outside the Northern District of California;
- 24 3. Defendant shall surrender all passports and visas to Pretrial Services and shall not
25 apply for any passports or other travel documents;
- 26 4. Defendant shall not possess any firearm, destructive device, or other dangerous

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28 ⁴ The Court refers to the ECF headers, as the various cases are included in one attachment to the
Weinstein declaration.

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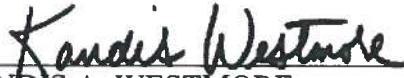
weapon;

- 5. Defendant shall not have contact with any defendant in a related case;
- 6. Defendant shall not change residence without prior approval of Pretrial Services;
- 7. Defendant shall remain in the custody of his custodians Christopher Kirkham and Samantha Good at 97 Tamalpais Road, Berkeley, California, who agree to report any violation of Defendant’s release conditions to pretrial services; and
- 8. Defendant shall participate in location monitoring and be placed on home confinement and may only leave for court, attorney visits, pretrial services appointments, and medical reasons.

The Court will sign the bond for Defendant’s release after all sureties have signed the bond and all properties have been posted with the Clerk of the Court to secure the full amount of the \$4 million bond.

IT IS SO ORDERED.

Dated: May 17, 2019


KANDIS A. WESTMORE
United States Magistrate Judge

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT E

Doctor Alejandro Toledo M.
 "Time/Residence in USA and in Northern District of California"

<u>Academic Year</u>	<u>Academic Purpose</u>	<u>Years in USA</u>	<u>Years in NDC</u>
1965 – 1970	- Arrived to USA for the first time - Studied Intensive English - B.A. in Economics and Business Administration from USF (University of San Francisco)	5 Years	5 Years
1970 – 1976	<i>Stanford University</i> - Master in International Education - Master in Economics - PhD in International Education "Economics of human resources"	6 Years	6 Years
1976 – 1978	<i>United Nations (CEPAL)</i> Buenos Aires, Argentina	-	-
1978 – 1979	- <i>Stanford University</i> , Visiting Scholar - FULBRIGHT Foundation	2 Years	2 Years
1979 – 1981	- <i>The World Bank</i> , Washington DC - Education Specialist for Uruguay, Guatemala, and Dominican Republic	3 Years	-
1981 – 1990	- Peru: Economic Advisor to Minister of Labor. - University Professor at Universidad del Pacifico and at ESAN (Stanford founded) Graduate school of Business (Lima, Peru)	-	-
1990 – 1993	- <i>Harvard University</i> , Cambridge Mass. Visiting Research Associate - Harvard Institute for International Development (HIID)	3 Years	-
1993 – 1994	<i>University of Waseda</i> , Tokyo, Japan Visiting Scholar	-	-
1994 – 2000	- Preparation and Mobilization to recuperate Democracy in Peru from a Dictatorship	-	-

- For the first time in 500 years, an indigenous person (educated in USF & Stanford; Worked at Harvard) began the organization and mobilization of millions of Andean and Amazon peoples together with all Democratic Institutions of Peru to oust peacefully the dictator Alberto Fujimori. This was accomplished by including the marginalized population, the poor, the Indigenous peoples, all marginalized from the official Peruvian society.
- 2000 – 20001
- I had the privilege to be democratically elected president of my country in June 20001. The first president of Indigenous origin in 500 years.
 - The first round of this election was hacked by the National Electoral Board (ONPE), the institution in Charge for counting the votes at the national level.
 - After one year, and a lot of international pressure, recognizing the nature of the hacking, I won again the new election in 2001 with international observation.
- 2001 – 2006
- President of Peru; History will be in charge of judging our results. Constitutionally in Peru there is no immediate re-election.
 - All my achievements, economical and social, the reduction of poverty levels, empowerment of Indigenous peoples, Amendments of their constitutional rights and decentralization of the whole country to promote economic growth in the remote provinces have been summarized in a book *5 years: Economic Sustainable Growth and Recuperation of Democracy*, The government of Alejandro Toledo 2001 – 2006.
- 2006 – 2009
- Returning to our home in Stanford University 3 Years 3 Years
 - Senior Research Fellow at the Center for Advanced Studies in the Behavioral Sciences (CASBS)
 - Visiting professor at the Graduate School of Education
 - Distinguished Payne Lecturer at Stanford FSI
- 2009 – 2010
- Non-Resident Senior Fellow at the Brookings Institution 2 Years Economic Development and Foreign Policies Research. Simultaneously, visiting scholar at the John Hopkins Center for Advanced Studies in Washington DC.
- 2010
- I returned to Peru for new presidential elections. My candidacy was unsuccessful.

2011 – 2015	- Back home to Stanford University again - FSI (Freedman Spogli Institute for International Studies). Here I researched, wrote, and published My 8 th book: <i>The Shared Society: A Vision for the Global Future of Latin America</i> , published by Stanford University press, 2015. This book is now published in ten different languages around the world.	4 Years	4 Years
2016 – 2017	Stanford University - Visiting Research Scholar with the project to work on a new book temporarily titled <i>The Urgency for Leadership to Improve the Quality of Education in The World</i> ; Expected to be published at the beginning of 2020.	1 Year	1 Year
2017 – 2019 and beyond	Stanford University - Project to conclude the book and make a movie on the whole path of our lives together with my wife who is an Anthropologist who is also from Stanford.	3 Years	3 Years

Total amount of years spent in the USA: 32 Years
Total amount spent in the Northern District of California: 24 years

75% of my time spent in the USA has been in Northern District of California

Peru does not accept double citizenship for presidential candidates; therefore I could not ask for the US Citizenship despite the fact that I had spent so many years living in the US.

Your Honor: My wife and I do not intend to live in any other place than in California. I want you to be sure of this.

Doctor Alejandro Toledo, PhD
Former President of Peru "2001 – 2006"

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT F

SFGATE <https://www.sfgate.com/bayarea/article/From-president-of-Peru-to-just-Palo-Alto-guy-2618164.php>

From president of Peru to just Palo Alto guy

Tyler Bridges Published 4:00 am PST, Sunday, February 11, 2007



Chronicle / Mike Kane

IMAGE 1 OF 3

BRIDGES11_392_MBK.JPG Former president of Peru Alejandro Toledo plays pick-up soccer on Stanford's campus in Palo Alto, CA, on Tuesday, February, 6, 2007. photo taken: 2/6/07 Mike Kane / The Chronicle ** ... [more](#)

A short man wearing blue jeans and a windbreaker joined the other schlumps in the long line at the **Department of Motor Vehicles** office in Redwood City last September.

A couple of hours later, the man rejected a friend's suggestion that he pull strings to get a driver's license.

Just then, someone spotted him in line and asked: "What are you doing? Aren't you the president of Peru? Where's your bodyguard?"

"I used to be the president of Peru," replied **Alejandro Toledo**, whose five-year term ended in July.

Some 42 years after first coming to the Bay Area, Toledo has returned with his wife and daughter to spend at least a year at **Stanford University**.

He is learning again how to use a computer, writing two books, lecturing worldwide and recharging his political batteries with an eye toward running for president again in 2011.

Gone are the bodyguards, the chauffeurs, the bulletproof Mercedes, the presidential jet, the hounding reporters, the frenzied supporters, the merciless critics, the white-jacketed servants, the generals waiting at his beck and call, and the meetings with Presidents Bush, Chavez, Lula, et al.

Toledo drives a used SUV that he bought, cooks for his family, pushes a shopping cart at the local Safeway, has a Blockbuster card, carries his own luggage at the airport and plays soccer on public fields in Palo Alto.

When strangers recognize him, he tells them with a smile that he is actually Alejandro Toledo's twin brother.

"I love the freedom that I have now," he said.

Toledo's low-key manner doesn't surprise Bay Area friends who knew him before.

"He's treated as an ex-president wherever else he goes," said **Martin Carnoy**, a Stanford professor of **education**. "But at Stanford, he's just one of the guys. He's an incredibly nonpretentious guy."

Toledo came to the Bay Area in 1965 as a penniless 19-year-old student who had never left Peru or even flown on an airplane. He tripped on the first escalator he tried out, at **Los Angeles International Airport**.

He had grown up on a dusty patch of land in a stinking slum, one of 16 children, only nine of whom survived childhood diseases. Two Peace Corps volunteers helped him win a partial scholarship to leave Peru to study at the **University of San Francisco**.

Toledo learned English, worked the midnight shift at a Van Ness Avenue gas station and played soccer on the junior varsity squad under coach **Steve Negoesco** while getting an undergraduate degree. He drove a 1959 Triumph convertible with faulty brakes that he named Mellow Yellow and borrowed a roommate's sport coat for dates.

In 1970, Carnoy accepted him into Stanford's **School of Education** graduate studies program.

"He had the ambition of someone who has come from the bottom and clawed his way up, who has the ambition to go way beyond where anyone expected him to go," Carnoy said.

Toledo went on to earn two master's degrees and a doctorate from Stanford. He met his future wife, **Eliane Karp**, a French-Belgian graduate student, at a campus party.

Along the way, he secretly nourished the outlandish dream of being elected president of Peru.

After working for the **World Bank** and teaching at Harvard, Toledo returned to Peru. He wound up leading the opposition to

President **Alberto Fujimori**, who bought off pliable opponents and used his secret police to intimidate and silence dissenters.

When Fujimori unexpectedly resigned in 2000, elections were called. Toledo won.

He stumbled badly in his first year.

His \$18,000 monthly salary, the largest in Latin America, infuriated Peruvians. So did well-publicized late-night jaunts to posh restaurants, his frequent tardiness and his reluctance to acknowledge a teenager born out of wedlock while he was separated from Karp.

For the next three years, Toledo's approval rating languished around 10 percent, he had to be careful where he went in public to avoid being showered with eggs and rotten vegetables, and he fought off efforts to force him from office.

In time, Peru's economy boomed under his free-market and free-trade policies, and the poverty rate began to fall. Last year, during his final six months in office, while he remained unpopular, his approval rating shot up to 34 percent, according to one poll.

Watching Toledo, 61, tool around Palo Alto now, it seems hard to imagine that he led a California-sized country of 27 million people.

The first time he showed up to play in a regular pickup soccer game at Stanford last year, "all the Peruvians recognized him," said Tulio Mendoza, an IBM manager originally from Peru. "When we told the other players, they didn't believe that an ex-president would play with us. They thought we were joking."

Toledo joins the other players afterward at the **Oasis** in Menlo Park, where they talk soccer over pizza and beer.

After dinner, Toledo likes to visit the Dutch Goose, a peanuts-on-the-floor joint in Menlo Park, to shoot pool.

"He doesn't demand anything," said **Hector Varela**, a bartender. "He's just a sweet, nice guy."

Toledo said that after getting more than 100 death threats from Fujimori's henchmen and living in a fishbowl in Peru, first as a candidate then as president, he is reveling in his independence.

"Once again I'm a common citizen," Toledo said. "I don't have to be afraid for my safety. I'm enjoying the time to think and reflect. I look younger.

"In 10 years, I hadn't gone to a movie. I have seen 12 movies already. My family can't believe it."

The biggest adjustment for Toledo has been dealing with Bay Area prices and doing such mundane tasks as getting a driver's license and opening a bank account.

He visited eight car dealers before he found a used Toyota SUV at an acceptable price in Fremont.

He could not open a bank account until Stanford provided a letter saying it had him on its payroll.

Learning how to use a computer again was another challenge.

"When I was at Harvard (as a professor in the early 1990s), I was on the frontier of using the computer of that time," Toledo said. "But after I got into politics and became president, I became computer illiterate."

Carnoy said that after he helped Toledo buy a computer at the **Stanford Bookstore**, "He'd call me up and say he'd learned how to use Word and the Internet. He was so proud he learned how to use e-mail."

Stanford's current administration got its first exposure to Toledo as the 2003 commencement speaker.

When he made it known last year that he'd like to return to Stanford, the provost's office and the Hoover Institution came up with the money. The Center for Advanced Study in the Behavioral Sciences, an independent think tank on the Stanford campus, offered him an office in a secluded setting.

"When a national leader like Toledo steps down," Provost John Etchemendy wrote in an e-mail, "it is essential that he have a chance to 'decompress': to reflect on his experiences and perhaps record those reflections; to think about the future and perhaps retool for new endeavors; and to share what he has learned with students and colleagues."

Toledo is updating his autobiography and is writing a book on anti-poverty strategies, although he has been criticized in Peru for not having done enough to reduce the ranks of the poor.

Karp, a onetime specialist in rural aid who is fluent in seven languages, is teaching a class called "Indigenous People and Social Inclusion." Their daughter Chantal is doing research for a professor and applying to Stanford and other universities for admission to a doctoral program.

Now widely traveled, Toledo was invited by former President Jimmy Carter to act as an election observer in Nicaragua last year and has invitations to give speeches in Europe, Asia and at other American universities.

But Toledo said his real pleasure these days is being in the Bay Area.

John Rick, a Stanford anthropology professor who works in Peru every year, said Toledo invariably gets special treatment at restaurants, although he doesn't seek it.

"Latins in any business or restaurant know who he is," Rick said. "He gets the best seat in the house, and the food is always perfect. People are amazed to meet him, almost reverent."

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H E A R S T

*IN THE MATTER OF THE EXTRADITION OF ALEJANDRO
TOLEDO MANRIQUE*

19-mj-71055 MAJ (TSH)

EXHIBIT G

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The Peace Corps President

A friendship between two Tucsonans and the man who would become Peru's president spans four decades

By Tyler Bridges

LIMA, PERU--President Alejandro Toledo hosted Defense Secretary Donald Rumsfeld earlier in the day and has just gotten off the phone with the president of Brazil.

He has at best an hour to talk, he tells the woman visiting from Tucson as she sits down to his left. He is scheduled to have dinner that evening at the Brazilian Embassy with foreign ambassadors, important businessmen and powerful politicians.

They begin to talk. Soon, Toledo is pacing about his office as he remembers stories and events from 40 years ago, when he was a teenager with ambition but no opportunities--until he met this woman and her boyfriend.

He stops, leans over and hugs the woman.

Then he picks up the phone. "Cancel my dinner," he says. "I'm going to eat here."

Toledo looks up. "The ambassador I can see any day," he says. "I can't see you every day."

Nancy Meister smiles.

Simply put, Nancy Meister and her ex-husband, Joel, may have been the most successful Peace Corps volunteers in the program's history. Were it not for them, Toledo undoubtedly would never have been elected president of Peru in 2001. Says David Arnold, editor of the magazine published by the National Peace Corps Association: "I cannot think of anyone whose personal friendship and long-time support for an individual has had such a profound influence as Nancy and Joel Meister, not only on an individual career but on the leadership of a nation."

They met Toledo 41 years ago. Nancy Deeds and Joel Meister had come to Peru a week earlier as members of the newly formed Peace Corps. They were assigned to Chimbote, a squalid coastal city that reeked of fish meal, and were looking in a shantytown for a place where Nancy could live.

Several families had already rejected them when they happened upon a humble concrete dwelling. A teenager wearing a white short-sleeve shirt and dark pants greeted them. He listened to their request and went inside to seek his mother's approval.

It was a chance meeting that would change history.

Alejandro Toledo explained to his mother that the gringos had come to assist poor Peruvians like themselves. Their house already had nine people living in three rooms, he acknowledged, but Nancy could occupy "la tiendita," the tiny room fronting the street where Mrs. Toledo sold vegetables and fruits to earn a few extra dollars. Nancy could pay more in rent than Mrs. Toledo earned, Alejandro figured. She gave her assent, and then got her husband's blessing.

Nancy's new home sat on a dirt street where neighborhood dogs ran wild. The home had no electricity or running water. Guinea pigs frequently occupied the kitchen. Behind the dirt backyard was an open trench that contained the



Tyler Bridges
Peruvian President Alejandro Toledo and Nancy Meister visit in the president's office.

neighborhood's raw sewage. Fresh water came from a well 50 yards away.

The Toledos had moved to Chimbote a dozen years earlier from the mountains. Like millions of Peruvians who had moved to urban areas, they were hoping for a better future. In their new home, Mr. Toledo made bricks for a living, in the backyard. Joel found a place to live two blocks away.

"Maybe, hidden, I wanted to have friends to learn English," President Toledo tells Nancy, as they sit in the presidential palace and recall the day they met. He adds that he probably thought they could be the ticket out of the dead-end life that typically swallowed Chimbote's youth. Alejandro was one of 16 children, only nine of whom would survive infant sicknesses.

Nancy and Joel began assisting Alejandro with a youth group that he headed. By kerosene lamp in her tiny room, he and Nancy also had long talks about politics and society. "There's no doubt that I woke up and said, 'Maybe I can go somewhere,'" Toledo remembers.

A year after arriving, Nancy and Joel got married in Chimbote. Mr. and Mrs. Toledo stood in for their parents.

In June 1965, the Meisters returned to the United States for graduate studies at the University of California at Berkeley.

Three months later, Toledo turned to them for help. He had won a small scholarship to study in the United States. They agreed to help after he promised that he would return to Peru some day. They got him enrolled at the University of San Francisco, lent him money and housed him until he could find his own place to live. In 1970, they attended his graduation.

Toledo went on to Stanford, where he ended up getting two master's degrees and a doctorate. It was at Stanford that he met his wife, Eliane Karp, a Belgian linguistics student.

The Meisters ended up in the northeast, where they raised three children while Joel taught and Nancy was employed as a social worker.

In 1983, wanting to return to the West, they moved to Tucson. She got a job at the University Medical Center working with cancer patients. He began work at the Rural Health Office.

They stayed in touch with Toledo over the years as he worked for various international organizations and taught at Harvard. He visited them one time in Tucson, for Thanksgiving and to teach a seminar at the Rural Health Office. They visited him in Peru in 1997.

Meanwhile, Toledo secretly nourished a dream that one day he would be elected president of Peru, to create better lives for the poor. Few people gave him a chance when he ran in 2000 against President Alberto Fujimori, who was using an iron fist and bribes to retain power with the economy in recession. But using the tenacity and street smarts that had propelled him out of Peru, Toledo came from last in the polls to narrowly lose to Fujimori. Toledo won the presidency a year later, however, after Fujimori resigned amidst a corruption scandal and called new elections.

At his 2001 inauguration, Toledo gave royal-carpet treatment to Joel and Nancy, who were now divorced but remained friendly.

In his four years in office, Toledo has presided over one of the strongest economic rebounds in Latin America. But traps created by Fujimori's followers and self-inflicted wounds by the politically inexperienced president have left him with an approval rating below 20 percent over the past two years. Every move Toledo makes gets heavy criticism.

"I'm concerned about you," Nancy, 63, tells the 59-year-old president as she greeted him last month, as he sagged in his chair. "You should rest a bit."

As the president steps out of the room for a moment, she leans over and tells another visitor, "He's aged a lot since September" when she saw him last.

After Toledo returns, he and Nancy light up remembering their time together in Chimbote, and subsequent visits over the years.

Toledo laughs occasionally as he tells the story of a Swiss family that took him on as a boarder shortly after his arrival in

San Francisco, at Joel and Nancy's recommendation, in exchange for him cooking and cleaning. They fired him, Toledo recalls, when he short-circuited the toaster and the vacuum cleaner. They yelled at Joel and Nancy for having brought an ignorant Peruvian to them.

Years later, Toledo adds with glee, he bumped into the man at a restaurant and told him that he was now teaching at Harvard. "He was absolutely shocked," Toledo says.

By now, Toledo is having too much fun taking a break from the pressures of his job. He begs out of the dinner at the Brazilian Embassy and leads Nancy to his private dining room in the presidential palace.

He takes off his coat and tie. Everyone orders a drink from a white-jacketed waiter.

Nancy tells him about having gone to his home the day before--Toledo has chosen not to live at the presidential palace--to visit with the president's 93-year-old father and his 23-year-old daughter. Toledo's father has two photos of Joel and Nancy on his bedroom wall. One was taken on their wedding day, the other on their 1997 visit to Peru.

"They are great, great human beings," Toledo says of them at one point during the dinner.

Near midnight, the president reluctantly says he must end the evening because he has to inaugurate a project in the mountains the next day.

He and Nancy hug. He gets into the backseat of his car to head home. Nancy gets into another car. She is staying nearby where he lives. Toledo has her vehicle join the presidential motorcade.

"When I stop and think: My God, look where he's come from, it seems so fantastic," Nancy says the next day. "But I very quickly got over the awe of being in the palace. His way of being puts you at ease. He's totally unpretentious."

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