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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUKE BRUGNARA,

Defendant.

Case No. 24-cr-00277-MMC

**MEMORANDUM IN SUPPORT OF
MOTION TO REVOKE DETENTION
ORDER**

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

MEMORANDUM ISO MOTION TO
REVOKE DETENTION ORDER
Case No.: 24-cr-00277-MMC

1 Luke Brugnara submits this memorandum in support of the oral motion made at the prior
2 hearing seeking revocation of the Magistrate Court's detention order. ECF No. 19. The order was
3 imposed after the government sought detention based solely on the basis of flight risk. *Id.*

4 Mr. Brugnara, a 62-yearold lifetime resident of San Francisco who is in increasingly frail
5 physical and mental health, respectfully submits that appropriate conditions exist that can reasonably
6 mitigate against the risk of non-appearance at future court dates. He should be ordered released
7 pending trial in this case.

8 I. Legal Standard

9 "In our society liberty is the norm" *United States v. Salerno*, 481 U.S. 739, 755 (1987).
10 A "carefully limited exception" is detention prior to trial. *Id.* The Bail Reform Act "mandates the
11 release of a person pending trial unless the court 'finds that no condition or combination of conditions
12 will reasonably assure the appearance of the person as required and the safety of any other person and
13 the community.'" *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting 18 U.S.C. §
14 3142(e)). "Only in rare circumstances should release be denied, and doubts regarding the propriety
15 of release should be resolved in the defendant's favor." *United States v. Gebro*, 948 F.2d 1118, 1121
16 (9th Cir. 1991).

17 The parties agree that Mr. Brugnara is entitled to a presumption of release and that the
18 government bears the burden to prove that no condition or set of conditions exists that would
19 reasonably assure his appearance at future court dates.

20 This Court reviews detention *de novo*, "without deference to the magistrate's ultimate
21 conclusion." *United States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990). In determining whether
22 a set of conditions exists that will reasonably assure Mr. Brugnara's future appearances, the Court
23 may consider the available information concerning the nature and circumstances of the offense
24 charged, the weight of the evidence, the history and characteristics of Mr. Brugnara, and the record
25 concerning appearance at court proceedings. 18 U.S.C. § 3142(g). The Court can also consider
26 whether, at the time of the current offense, he was on some form of supervised release.

II. Mr. Brugnara Should Be Released with Appropriate Conditions

Given the nature of the charges and of Mr. Brugnara's lifetime ties to San Francisco and his age, health, and related factors, he should be released pending trial in this case.

A. The Nature and Circumstances of the Charged Offense and the Weight of the Evidence Favor Pretrial Release

The case against Mr. Brugnara stems from information he included on four applications submitted to pandemic-era loan programs. Three of the applications were denied. Only one resulted in a loan, issued in April 2021. Based on those loan applications, Mr. Brugnara is charged with wire fraud and money laundering. ECF No. 1.

The heart of the government's case is that Mr. Brugnara included false information relating to his corporation's revenue and number of employees on the four loan applications. ECF No. 1. Two of the applications were for loans under the Economic Injury Disaster Loan (EIDL) program, which was expanded under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. *Id.* Those loan applications, both of which were rejected, would have generated loans of up to \$150,000, according to the indictment. *Id.* The second two applications sought loans under the Paycheck Protection Program (PPP). *Id.* One of those loan applications was rejected. *Id.* The other was accepted and generated a loan of about \$420,000. *Id.* As undersigned counsel understands PPP loans, if Mr. Brugnara's corporation did not eventually qualify for loan forgiveness, the loan would not become due until April 2026, five years after it was obtained.¹

Although Mr. Brugnara was charged in connection with the loan applications in May of this year, the government has been aware of the applications since at least February 2022, when a Form 12 petition was submitted in another case in which Mr. Brugnara was on supervised release. Case No. CR 14-306, ECF No. 1049, at 2, 5. That Form 12 petition contained an alleged violation relating to the same alleged PPP loan fraud charged in the present indictment. *Id.* The government ultimately

¹ <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> at 22, Question No. 49 (last visited July 12, 2024) ("If a PPP loan received an SBA loan number on or after June 5, 2020, the loan has a five-year maturity."); *see also* <https://www.kservicing.com/resources/ppp-loan-repayment-what-you-need-to-know-to-repay-your-ppp-loan-kabbage/> (last visited July 12, 2024) (same).

1 dismissed that alleged violation and, at the sentencing hearing on the Form 12 violations in June
2 2023, informed the court overseeing those proceedings that the government had investigated the
3 “alleged false filing” and that at the time, the government did “not intend to file separate charges
4 against Mr. Brugnara.” Case No. CR 14-306, June 6, 2023, Tr. at 2.

5 As for the weight of the evidence, the government recently produced almost five gigabytes of
6 materials, including 37,000 pages of documents and 90 audio files. In addition, the government has
7 produced extractions from two cell phones. While voluminous, there is no way at this time to
8 evaluate the strength of the evidence and, of course, Mr. Brugnara disputes that there is evidence to
9 convict him of the charged conduct and looks forward to challenging the government’s case at trial.

10 Although the sheer volume of evidence does not in any way indicate the probative value of it,
11 the volume is important to consider for a separate reason. If Mr. Brugnara is detained pretrial, it will
12 be virtually impossible for him to review that evidence and confer with counsel regarding it. This is
13 especially true given the conditions under which he presently is confined.

14 **B. Mr. Brugnara**

15 In considering the characteristics of Mr. Brugnara for purposes of pretrial release, the Court
16 may look at his “physical and mental condition, family ties, employment, financial resources, length
17 of residence in the community, community ties, past conduct, history relating to drug or alcohol
18 abuse, criminal history, and record concerning appearance at court proceedings.” 18 U.S.C. §
19 3142(g)(3)(A).

20 Mr. Brugnara’s ties to the community run deep. He’s a fourth-generation San Franciscan who
21 has lived in the area for almost all of his life. His father was a probation officer. His mother was an
22 elementary school teacher. His brother is a retired officer who served in the Department of
23 Homeland Security. His uncle served as chief of police.

24 Although he came from a family of modest means, through hard work and determination, he
25 built an impressive real estate portfolio. As another court in this District has recognized, Mr.
26 Brugnara has been a “successful entrepreneur” who owned “important buildings in San Francisco.”
27 Case No. 14-00306, July 20, 2023 Tr. at 17. His success as a commercial real estate investor and
28

1 developer landed him on the covers of Forbes and San Francisco Magazine. *Id.* Along the way, he
2 married and had four children.

3 Today, he's 62 years old and suffers from serious medical issues, both physical and mental.
4 He has severe hypertension, which runs in his family. Early last year, his blood pressure reached 214
5 over 134, which his doctor testified was "very dangerous." Case No. CR 14-00306, Jan. 31, 2023 Tr.
6 at 331. His father died at the age of 58 from a heart attack and his son suffered a stroke when he was
7 only 25. Case No. CR 14-00306, ECF No. 1131 at 11 (defendant's sentencing memorandum).

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25 ² The report was prepared in March 2010 and submitted to Magistrate Judge Spero.
26 Undersigned counsel understands that this Court would have received a copy of the report. If that did
27 not happen, a copy can be provided.

28 ³ Undersigned counsel understands that this report may have been provided to another court in
this District prior to sentencing in the matters CR 08-222 and CR 14-00306.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 In seeking detention, the government will focus on Mr. Brugnara's three prior cases here in
6 the district. But that history also confirms that, on the whole, Mr. Brugnara generally is not a flight
7 risk. For example, in October 2021, in response to a Form 12 petition alleging various supervised
8 release violations, Mr. Brugnara was arrested and detained. But then Magistrate Judge Hixson
9 ordered him released. Case No. 14-00306, ECF No. 951. Mr. Brugnara remained on supervised
10 release for almost two years, until May 2023. Although he was detained for failing to appear at a
11 March 2023 hearing, he had faithfully appeared at the 15 or so court appearances between October
12 2021 and March 2023. Even after he missed the March 2023 hearing, he did not leave the Bay Area
13 and did not obtain a new phone to disguise his location. Instead, he remained in contact with
14 Probation, his counsel, and the court. He was arrested in the Bay Area about two months after
15 missing the hearing. He had not sought to leave the area or flee to another jurisdiction.

16 Take another, more recent example. In May of this year, Mr. Brugnara was released from the
17 BOP facility at Florence, Colorado. He was given money and an airline ticket so he could travel – on
18 his own – to the Residential Reentry Center (RRC) in Oakland to serve the remainder of his sentence.
19 Mr. Brugnara boarded his flight in Colorado, spent several hours in a layover in Phoenix, Arizona,
20 and then arrived in the Bay Area and presented himself to the RRC. He had ample opportunity to
21 flee and avoid spending another month at the RRC. But he instead complied with BOP's
22 instructions.⁴

23 The government points to the allegation that Mr. Brugnara walked away from the RRC about
24 a week and a half after he arrived there, claiming it was an escape. The details surrounding that
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26 ⁴ This is true even though, as undersigned counsel understands it, BOP failed to credit Mr.
27 Brugnara with 236 days under the First Step Act. As such, at the time he traveled from Colorado to
28 Oakland, he voluntarily surrendered to the RRC despite believing that BOP should have released him
almost eight months earlier.

1 incident show otherwise.⁵ As an initial matter, at the time, Mr. Brugnara's release date from BOP
2 custody was June 3, 2024. The government claims he "escaped" on May 11. It defies logic to think
3 he would try and escape from a halfway house with only three weeks left to complete his sentence.

4 In any event, Mr. Brugnara had obtained a job authorized by the RRC. On May 9, he went
5 and had a hamburger for lunch. He was then told by BOP that he could not leave the job site to have
6 lunch. He returned to the RRC as directed. The next morning, however, he was arrested for, as
7 undersigned counsel understands it, leaving the worksite for lunch the previous day. He was
8 transported to Santa Rita Jail but the jail refused to take him because of his medical condition. He
9 instead was transported to Stanford Hospital in Livermore, where he spent several hours in the
10 emergency room. He was diagnosed with both a hypertensive crisis and a bronchial/respiratory
11 infection. He was given medication to reduce his blood pressure and prescribed antibiotics for the
12 infection. He then was brought back to the RRC.

13 Around 3:00 a.m., Mr. Brugnara woke up with chest pain, shortness of breath, and dizziness.
14 He told the RRC staff that he needed the medicine that had been prescribed at the emergency room
15 the previous day. He also asked the staff to call him an ambulance. He instead was told to return to
16 his room. The following morning, he asked the RRC staff for his identification and the prescriptions
17 so that he could go fill them and begin taking the medications. The staff refused. Mr. Brugnara
18 contacted a lawyer and, on her advice, gave the RRC staff a written demand for his identification and
19 prescriptions. This demand also was refused. Mr. Brugnara was arrested six days later at Best
20 Western Hotel in the Bay Area.

21 Rather than revealing an individual intent on escape, these events show, at most, a sick man
22 seeking treatment and medication.
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27 ⁵ The reports from the U.S. Marshals Service, BOP, and the RRC, attached to the
28 government's detention memorandum, are consistent with this description.

CONCLUSION

For the reasons stated, Mr. Brugnara respectfully submits that the government has not satisfied its burden to establish the need for pretrial detention. Appropriate conditions exist that will reasonably mitigate against the risk of future non-appearance. Mr. Brugnara will present the details of his proposed bond package to the Court on Wednesday.

Dated: July 15, 2024

ILLOVSKY GATES & CALIA LLP

/s/Matthew Dirkes

Matthew Dirkes

Attorney for Defendant

Luke Brugnara