

REICHELLAW PC
MARK REICHEL
ATTORNEY AT LAW
State Bar #155034
455 CAPITOL MALL, SUITE 802
SACRAMENTO, CA 95814
916.548.7398
mark@reichellaw.com
www.reichellaw.com

Attorney for Defendant
ANIBAL HERNANDEZ SANTANA

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANIBAL HERNANDEZ SANTANA,

Defendant

) Case No.: 2:25-mj-00131-JDP

) DEFENDANT'S MOTION FOR RELEASE
) ON CONDITIONS

) Date: September 25, 2025

) Time: 2:00 p.m.

) Court: Hon. Magistrate Judge Chi Soo Kim

MOTION FOR RELEASE: Defendant moves this Court for pretrial release on terms as set forth below, subject to additional terms as the Court may require.

Terms of Release:

1. Third party custodian approved by the Court.
2. Reside at a premises approved by the Court.
3. Electronic monitoring and home detention.

1 4. Unsecured appearance bond signed by his wife, his brother Arial Hernández Santana, and
2 Anibal himself.

3 5. Such other terms for release as required by the Court.

4 **Brief Factual Background:** Anibal was raised in Puerto Rico in an excellent family and was
5 educated through college, then entered the US Army to follow in his father's footsteps as his father
6 served in the Korean War. After 7 years in the US Army, achieving the rank of Captain, he then
7 obtained his master's degree at the University of California, Berkeley, followed by a law degree from
8 UC Hastings College of Law. Anibal spent over 30 years serving as a professional in legislative
9 advocacy and associated work. He is now retired.
10

11 He has no prior criminal charges.
12

13 Anibal is a healthy 64-year-old man, with extensive ties to the Sacramento area. He is very close
14 with his wife and children, as well as maintaining broad support among his extended family and
15 friends.
16

17 **Applicable Law to be Applied:**

18 **The Federal Charges: Discharge of a Firearm.** Quite simply, if Donald Trump was not the
19 President, along with his brand of political authoritarianism, Anibal would not be in federal
20 court. The Sacramento County District Attorney's office has a long record of being able to
21 successfully prosecute state criminal offenses like shooting at an occupied building. Indeed, their
22 District Attorney has issued strong statements in media interviews advising that he will prosecute the
23 case to the fullest extent possible. It is certainly not a "common" state crime, but it is not altogether
24 rare. However, those cases, once charged by the District Attorney, never make it to our handsome
25 District Court in Sacramento. Indeed, Anibal was originally arrested Saturday evening federally for
26 the Class A Misdemeanor 47 USC 333. That gave the federal authorities the time until Monday
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1 afternoon to search and explore and then locate a federal felony charge to bring. In that endeavor,
 2 they found that a single shot was apparently fired at the 850th foot away from a school zone, where
 3 the federal statute required someone to be 1000 feet away. And thus, a federal case alongside the
 4 more serious state charge.

5
 6 Of note, it is not capable of dispute that there are hundreds of shootings into the air and
 7 occupied building shootings in Sacramento County yearly. None make their way to the District
 8 Court in Sacramento.

9 Anibal's political career and political alignment place him squarely in the category of the
 10 perceived "enemies" of The Trump Administration. As such, his not completely uncommon state
 11 crime, coupled with his political affiliation, would not be an opportunity for federal prosecution and
 12 *political benefit* that the Trump Justice Department would ever overlook.

13
 14 "In our society liberty is the norm, and detention prior to trial...is the carefully limited
 15 exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

16 The Bail Reform Act of 1984 "requires the release of a person facing trial under the least
 17 restrictive condition or combination of conditions that will reasonably assure the appearance of the
 18 person as required and the safety of the community." *U.S. v. Gerbo*, 948 F.2d 1118, 1121 (9th Cir.
 19 1991). A court may detain a defendant if it finds that there are no conditions or combination of
 20 conditions that will "*reasonably assure the appearance of the person as required and the safety of*
 21 *any other person and the community.*" 18 U.S.C. § 3142 (e). "Only in *rare circumstances* should
 22 release be denied, and doubts regarding the propriety of release should be resolved in *[the]*
 23 *defendant's favor.*" *Gerbo*, 948 F.2d 1118, 1121 (citations omitted). A finding that a defendant is a
 24 flight risk must be supported by a preponderance of the evidence, *U.S. v Aitken*, 898 F. 2d 104, 107
 25 (9th Cir. 1990), and that "a defendant is a danger to any other person or the community must be
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supported by 'clear and convincing evidence,' "U.S. Hir, 517 F. 3d 1081, 1086 (9th Cir. 2008) (quoting 18 U.S.C. § 3142 (f) (2) (B)).

Even if It Were a Presumption Cases: It is not a presumption case. However, even if it were, the law compels release. "Presumption" cases are the most misunderstood and misapplied in the statute. The presumption was intended by Congress to apply extraordinarily narrowly: Congress intended this presumption of detention to capture only the "worst of the worst" offenders. As a legal matter, the presumption should have at most, a limited effect: Case law emphasizes two checks that the Bail Reform Act and the Constitution impose on the presumption:

1. There is an easy-to-meet standard for rebutting the presumption and the prosecution always bears the weight of persuasion, and
2. The presumption alone does not warrant detention and must always be weighed along with the other factors.¹

Even leaders in Congress have now acted to address the incorrect effects of the presumption of detention. Senator Durbin's "Smarter Pretrial Detention for Drug Charges Act of 2021" would *eliminate the presumption of detention in all federal drug cases*. This was based upon a 2017 study done by U.S. Probation and Pretrial Services of the AOC showing that the presumption results in the unnecessary jailing of low-risk individuals and "has contributed to a massive increase in the federal pretrial detention rate."²

If a defendant has presented evidence, he has met the burden of production: self-surrender to the warrant, family ties, employment ties, no other criminal charges, no violence in the case. The

¹ The legislative history teaches that "There is a small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community...It is with respect to this limited group of offenders that the courts must be given the power to deny release pending trial." The Comprehensive Crime Control Act of 1983, S. REP. NO. 98-225, at 6-7 (1983)

² Apply. Chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.uscourts.gov/sites/default/files/81_2_7_0.pdf

1 burden shifts back to the government either to prove by a preponderance of the evidence that he is
2 still a risk of flight or to prove by clear and convincing evidence that he still poses danger to safety of
3 the community. *United States v. Mastrangelo*, 890 F.Supp. (E.D. Pa. 1995). In order to rebut the
4 statutory presumption, a defendant need not produce evidence negating the finding of probable cause
5 that he committed the underlying offense. The defendant's burden of production may be met by
6 evidence bearing on any of the factors which are set forth in section 3142 (g) of the Bail Reform Act,
7 including employment history, community ties, and physical and mental conditions. See *United*
8 *States v. Jones*, 980 F. Supp. 359, 361-62 (D. Khan. 1997). See also *United States v. Quartermaine*,
9 913 F.2d 910, 916 (11th Cir. 1990).
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11 **Conclusion:**

12 Anibal should be released on terms requested or similar conditions set by the Court.

13 Dated: September 24, 2025

14
15 Respectfully submitted,
16 *Mark Reichel*
17 MARK REICHEL
18 Counsel for Defendant
19 Anibal Hernandez
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