

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Cr. No. 19-4447-KWR

MAROQUEZ CLAH,

Defendant.

**DEFENDANT'S APPEAL OF MAGISTRATE'S DENIAL OF MOTION TO
MODIFY CONDITIONS OF RELEASE**

Defendant Maroquez Clah, by and through his counsel of record, Assistant Federal Public Defender Emily P. Carey, and pursuant to 18 U.S.C. § 3145(c) hereby appeals the Magistrate Judge's Order Denying Motion to Modify Conditions of Release (Doc. 22). In support, Mr. Clah states the following.

BACKGROUND

On February 20, 2020, Mr. Clah pleaded not guilty to an indictment charging him with one count of involuntary manslaughter in violation of 18 U.S.C. §§ 1153 and 1112. Trial in this matter is set for July 13, 2020. The Court held a detention hearing that same day at which Mr. Clah requested release on account of his minimal criminal history, strong family and community ties, positive employment history, and personal health issues. Mr. Clah also informed the Court that he has sole physical custody of his four-year old child and was needed at home to care for her and to assist his parents in light of his father's serious medical issues. The Magistrate Judge authorized Mr. Clah's release to the third party custody of the La Pasada Halfway House in Albuquerque, New Mexico, but expressed that should Mr. Clah perform well at La Pasada, he would consider possible modification of conditions in the future. The Magistrate Judge entered an Order Setting

Conditions of Release (Doc. 14) on February 20, 2020, and Mr. Clah has been residing at the La Pasada Halfway House since that time.

On March 23, 2020, Mr. Clah filed a motion asking the Magistrate Judge to modify his conditions to allow him to be released from the third party custody of the La Pasada Halfway House, allow his pretrial supervision to be transferred to the District of Arizona, and to permit him to reside with his mother, father, and child at their residence in Red Valley, Arizona. (Doc. 19). United States Pretrial Services Officer (USPO) Jeffrey Martinez-Spelich did not oppose Mr. Clah's request. U.S. Probation and Pretrial Services for the District of Arizona conducted a home visit and informed Mr. Martinez-Spelich that the office would take responsibility for Mr. Clah's supervision. Assistant United States Attorney Novaline Wilson opposed the request. The motion was fully briefed. (*See* Response, Doc. 20; Reply, Doc. 21).

On April 1, 2020, without a hearing, the Magistrate Judge denied Mr. Clah's request for a modification of his conditions of release. (Doc. 22). The Magistrate Judge cited concern for the community safety if Mr. Clah were permitted to "reside in an environment of only nominal supervision and limited device" to prevent Mr. Clah from abiding by the conditions that he not consume alcohol and that he not drive. (Doc. 22). Due to the nature of this motion, opposition from the United States is presumed.

ARGUMENT¹

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, the United States Supreme Court has long recognized the constitutional limits on pretrial detention. *See, id.* at 746-48 (holding that restrictions on pretrial release of adult arrestees must be carefully

¹ Mr. Clah incorporates argument set forth in his Emergency Motion to Modify Conditions of Release (Doc. 19) and his Reply (Doc. 21).

limited to serve a compelling governmental interest). When structuring release of a defendant, the judicial officer must impose the least restrictive condition or combination of conditions necessary to “reasonably assure” the defendant’s appearance as required and to “reasonably assure” the “safety of any other person and the community.” In considering appropriate conditions of release, a Court must consider the factors under 18 U.S.C. § 3142(g). Mr. Clah submits that, in assessing the 3142(g) factors, allowing him to live with his family in Red Valley, Arizona with appropriate conditions fulfills the least restrictive requirement required by the law, which will reasonably assure his appearance and the safety of the community.

Mr. Clah is a single father to a four-year-old daughter and the only child of his parents Benjamin Clah and Bessie Begay. Prior to the instant offense, Mr. Clah was living with his parents and daughter at their residence in Red Valley, Arizona where Mr. Clah grew up and where he has spent his entire life. Mr. Clah has raised his daughter on his own since 2017, and reports that the two have an extremely close relationship. He has not been able to see his daughter because of visitation restrictions imposed due to concerns regarding the coronavirus. However, when he speaks with her on the phone she often cries and begs for him. He is extremely concerned about the effect this separation is having on her, and worried about the burden his absence is putting on his mother. Currently Ms. Begay is sharing childcare responsibilities for Mr. Clah’s daughter with the child’s maternal grandmother because daycares and schools are closed. Mr. Clah is asking the Court to permit him to be at home so that he can help care for and be a father to his daughter.

For the past two and a half years, Mr. Clah has worked full-time performing plant operations for the Yazzie Oil Field Service close to his home. With this income, Mr. Clah provided for his daughter’s needs and helped cover household costs. His father is unable to work and his mother only has a part-time job. Without Mr. Clah’s income, the family’s financial well-being has

been tenuous. Mr. Clah advises that his employers are aware of his arrest and would allow him to continue working for them were he to be released.

Mr. Clah's father suffers from kidney failure, which requires dialysis three times a week. In recent months, Mr. Clah's father has needed to use a walker and often a wheelchair because of increased weakness. Mr. Clah was helping his mother care for his father, perform household duties, and care for the property because his father is no longer able to do much. Ms. Begay also reports that her husband falls frequently, and she does not have the physical ability to lift him on her own. Mr. Clah used to help lift his father in and out of the wheelchair, and, on occasions when he fell, would help bring his father back to his feet.

Since Mr. Clah's arrest, his father's physical health has dramatically deteriorated. To exacerbate the situation, Ms. Begay reports that her husband has been exhibiting symptoms of dementia and diminished mental capacity. To keep him from wandering and getting hurt, she has placed noisemakers on the door so that she will wake up if her husband tries to leave while she is sleeping. Despite precautionary measures, Ms. Begay reported that a few days ago her husband managed to get out of the house without her knowledge. While outside, he fell. Ms. Begay reports that she found him on the ground unable to get up on his own. She struggled to lift him within her own physical limitations. She eventually managed to get him in the house and into bed, but that night he could not sleep because of pain. On April 2, 2020, Mr. Clah's father was admitted to the San Juan Regional Medical Center in Farmington on suspicion of internal bleeding, seemingly unrelated to the fall. At the writing of this appeal, the source of the bleeding is still unknown. Ms. Begay is not allowed to stay with her husband at the hospital because of concern over exposure to the coronavirus. And she is scared to be in the house a night alone. Ms. Begay is extremely concerned about her husband's well-being and knows that when he is released from the hospital

he is going to require a level of care that she worries she will not be able to provide without help from her son. (*See* Exhibit A, Letter from Bessie Begay).

Less than a month after Mr. Clah's arrest and then release, on March 13, 2020, the President of the United States declared a national emergency concerning the novel coronavirus outbreak.² While Mr. Clah is concerned about his own health living in close quarters with others, he is particularly concerned about his parents who are vulnerable candidates for the virus and entirely on their own without him there. On March 23, 2020, New Mexico Governor Michelle Lujan Grisham announced a stay at home instruction to disrupt the spread of the COVID-19 virus.³ On March 26, 2020, when Mr. Clah filed his Reply (Doc. 21), there were 112 confirmed coronavirus cases in this state. As of this writing, there are 624 positive coronavirus cases in New Mexico.⁴ Across the country, communal living spaces such as halfway houses are perceived as places at high risk for spread of the virus.⁵ Mr. Clah is asking the court to allow him to be released from the halfway house so that he can be with his family. Not only would this remove Mr. Clah from a high-risk communal living situation, but this would also allow him to help reduce the burden that has fallen on his mother. He could also then take on tasks that are higher risk for his elderly

² *See* Proclamation on Declaring National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, March 13, 2020 available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last viewed on April 3, 2020).

³ *See* Office of the Governor, State enacts further restrictions to stop spread, including stay-at-home instruction, March 23, 2020, available at <https://www.governor.state.nm.us/2020/03/23/state-enacts-further-restrictions-to-stop-spread-including-stay-at-home-instruction/> (last viewed on April 3, 2020).

⁴ *See* New Mexico Department of Health, 2019 Novel Coronavirus Disease (COVID-19) Update, available at <https://cv.nmhealth.org/> (last viewed on April 6, 2020).

⁵ *See, e.g.*, Shelby Kapp, Horizon halfway house resident tests positive for coronavirus, other residents worried, El Paso News, April 2, 2020, available at <https://www.ktsm.com/local/el-paso-news/horizon-halfway-house-resident-tests-positive-for-coronavirus-other-residents-worried/> (last viewed on April 3, 2020); Rachel Disell & John Caniglia, Coronavirus concerns leave halfway house scrambling for guidance, ways to protect residents, staff and the public, March 19, 2020, available at <https://www.cleveland.com/coronavirus/2020/03/coronavirus-concerns-leave-halfway-houses-scrambling-for-guidance-ways-to-protect-residents-staff-and-the-public.html> (last viewed on April 3, 2020); Lauren Gill, Halfway House Residents Describe 'A Scary Situation' as Coronavirus Sweeps the U.S., The Appeal (March 31, 2020).

mother, such as going inside the store for groceries or walking his father into the hospital for dialysis.

Mr. Clah has minimal criminal history. In 2018, he had a tribal court conviction for a DUI. The tribal court judge sentenced him to 90 days of supervised probation, which he successfully completed. The probation officer reported that Mr. Clah went to all scheduled meetings with his probation officer, complied with all conditions, and maintained full-time employment. Mr. Clah's behavior while on supervised probation through the tribal court demonstrates that he can perform well under conditions while still living at home. Mr. Clah's behavior while on federal pretrial release also suggests that he can comply with any conditions imposed on him by the Court. Mr. Clah has abided by all of the rules imposed by La Pasada. He has been actively participating in weekly counseling sessions with a focus on substance abuse and parenting skills, and has attended AA meetings at the halfway house. These services would continue at Cottonwood Clinical Services in Farmington if the Court grants Mr. Clah's request.

Mr. Clah understands that the charge against him is a serious one, and that the Court may have some concerns about Mr. Clah returning to his home environment. However, Mr. Clah submits that there are appropriate conditions, in addition to those imposed in the Magistrate Court's original Order Setting Conditions of Release (Doc. 14), which may assuage the Court's concerns. Mr. Clah's mother would be willing to serve as third party custodian for her son, understanding that she would need to report any violation of his conditions of release to the pretrial services officer. Mr. Clah is already subject to the condition that he not operate a motor vehicle. However, he wants to advise the Court that he does not even have access to a vehicle. He does not have his own vehicle and his mother uses an employer-owned vehicle that only she is permitted to operate. Mr. Clah would like to return to work if possible, and he has proactively spoken with

family members about assisting him with rides to and from work. Mr. Clah's physical movements are restricted by his own physical injuries for which he requires ongoing treatment. Moreover, at present, the entire Navajo Nation has imposed a curfew from 8:00 p.m. to 5:00 a.m., which is enforced by law enforcement personnel issuing citations and roadblocks. However, should the Court be concerned with Mr. Clah's movement, he would be willing to submit to electronic monitoring under home detention or any other condition the court deems appropriate. Mr. Clah will be required to continue counseling and any additional substance abuse treatment recommended by pretrial services or ordered by the Court. Importantly, over the last month away from his family, Mr. Clah has become acutely aware of what he has to lose were he to return to Red Valley and violate his conditions of release. He does not intend to squander this opportunity if the Court grants his request. Rather, he hopes to continue to work to improve himself as a father, son, and member of the community.

As mentioned above, pretrial services had already identified a local provider for treatment. The U.S. Probation and Pretrial Services Office from the District of Arizona conducted a collateral home assessment of the Red Valley residence and determined both that the home was suitable, and that the office had the capacity to take responsibility for Mr. Clah's pretrial supervision. Undersigned counsel spoke with USPO Jeffrey Martinez-Spelich following the Magistrate Judge's denial of Mr. Clah's initial request. USPO Martinez-Spelich expressed that he continues to support Mr. Clah's request for modification.

In short, Mr. Clah does not pose a risk of danger to the community, but certainly any lingering concerns the Court may have about allowing him to be released from the third party custody of La Pasada can be assuaged by a combination of the already existing conditions established by the Magistrate Judge and any additional conditions the Court deems appropriate.

Mr. Clah is a loving father and son whose sole motive for requesting release from La Pasada during the pendency of this case is to be with his daughter and parents during a difficult time.

WHEREFORE, for the foregoing reasons, Mr. Clah respectfully requests that the Court grant his appeal of the Magistrate Judge's denial of his motion to modify conditions. He further asks that the Court modify his conditions and release him from the third party custody of the La Pasada Halfway House, transfer his pretrial supervision to the District of Arizona and modify his travel restrictions so that he may reside with his parents at their residence in Red Valley, Arizona. All previously issued conditions in the Order Setting Conditions of Release, filed February 20, 2020 would remain in place (Doc. 14), with any additional conditions as deemed appropriate by the Court. Mr. Clah respectfully requests a hearing on this matter.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER

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Electronically filed April 6, 2020

/s/ Emily P. Carey

Assistant Federal Public Defender
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following: Novaline Wilson, Assistant United States Attorney.

Electronically filed April 6, 2020

/s/ Emily P. Carey

Assistant Federal Public Defender