

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 7:10-MJ-1568-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	McAllen, Texas
)	
MANUEL TIJERINA-HERRERA,)	Monday, May 10, 2010
)	
Defendant.)	(9:27 a.m. to 10:44 a.m.)

PRELIMINARY EXAMINATION / DETENTION HEARING

BEFORE THE HONORABLE PETER E. ORMSBY,
UNITED STATES MAGISTRATE JUDGE

Appearances: See next page

Interpreter: Woody Lewis

Court Recorder: Karen Lopez

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1 McAllen, Texas; Monday, May 10, 2010; 9:27 a.m.

2 (Interpreter utilized for translation)

3 (Call to Order)

4 **THE COURT:** Number M-10-1568, United States versus
5 Manuel Tijerina-Herrera.

6 **MS. REESE:** The Government's present and ready.

7 **MR. VEGA:** Good morning, Judge. We're present and
8 ready.

9 **THE COURT:** Good morning.

10 **THE DEFENDANT:** Good morning, your Honor.

11 **THE COURT:** Good morning, sir.

12 Okay. Mr. Vega, Mr. Tijerina wishes to proceed with
13 the probable cause hearing?

14 **MR. VEGA:** Yes, your Honor.

15 **THE COURT:** Okay. Very well. I'm sorry. You can
16 have a seat with your attorney.

17 **MS. REESE:** The Government calls Kevin Brown -- Agent
18 Kevin Brown.

19 **THE COURT:** Okay.

20 **KEVIN BROWN, GOVERNMENT'S WITNESS, SWORN**

21 **DIRECT EXAMINATION**

22 **BY MS. REESE:**

23 Q Special Agent, please state your name for the record?

24 A Kevin Brown.

25 Q And with whom are you employed?

1 A Bureau of Alcohol, Tobacco, Firearms and Explosives.

2 Q And what is your position?

3 A Special Agent.

4 Q And for how long have you been a special agent with ATF?

5 A One year.

6 Q And are you familiar with the case against Defendant

7 Manuel Tijerina-Herrera?

8 A Yes, ma'am.

9 Q And is Mr. Tijerina in the courtroom today?

10 A Yes, he is.

11 Q Could you please identify the Defendant by stating maybe
12 an article of clothing he's wearing?

13 A Yeah. He's sitting right over there wearing a gray T-
14 shirt with black writing.

15 **MS. REESE:** Let the record reflect the special agent
16 has identified the Defendant.

17 **THE COURT:** Okay. Yes, it will.

18 **BY MS. REESE:**

19 Q And Mr. Tijerina is here on a firearms offense; is that
20 correct?

21 A Yes, ma'am.

22 Q And so what is the evidence against Mr. Tijerina related
23 to this firearms offense?

24 A I received information that a Mr. Jesse Gonzalez may be
25 purchasing firearms for someone other than himself. Myself and

1 other ATF agents conducted surveillance. He was observed with
2 several other men transferring a rifle box from his vehicle
3 into Mr. Tijerina's truck. Mr. Gonzalez was later interviewed.
4 He stated that he was given money by Mr. Tijerina to purchase
5 the gun, and he was also given additional money for doing so.
6 Mr. Tijerina was also surveilled after the gun was moved from
7 Mr. Gonzalez's vehicle to his vehicle. And agents observed him
8 driving back to his residence in McAllen. And --

9 Q Let me stop you there. When you're talking about
10 Mr. Tijerina's vehicle, he was observed as the driver of that
11 vehicle, correct?

12 A Yes, ma'am.

13 Q And when the gun was transferred into his truck, he was
14 observed at that transaction as well.

15 A Yes, ma'am.

16 Q I don't mean to say transaction as far as money was
17 exchanged at that point, but just that the gun was transferred
18 from one vehicle to the other. And where was -- where did this
19 transfer occur?

20 A In the parking lot of Klub Infinity in McAllen.

21 Q And who is the owner of Klub Infinity or the operator?

22 A The owner I believe is Mr. Tijerina's wife, and from what
23 I understand he's the operator.

24 Q Okay. And so at this point, ATF agents are watching
25 Mr. Tijerina drive the vehicle that has the gun at this point.

1 A Yes, ma'am.

2 Q What happened next?

3 A He was observed along with two other males carrying the
4 firearm that Mr. Gonzalez had bought, what appeared to be one
5 additional firearm box and also what appeared to be a canister
6 of ammunition from the vehicle inside of his residence. Later,
7 I guess when Mr. Gonzalez was interviewed and stated what he
8 did about Mr. Tijerina paying him to purchase the gun, agents
9 approached Mr. Tijerina in his yard and, you know, told him why
10 they were there. And a federal search warrant was obtained and
11 served that same evening. And the gun that Mr. Gonzalez had
12 purchased was found inside Mr. Tijerina's home.

13 Q And how many -- I guess when you executed the search
14 warrant, did Mr. Tijerina give a statement regarding the number
15 of guns he possessed in the home?

16 A He did. He stated to Agent Arnwan (phonetic) that he had
17 two guns and only two guns inside of his residence.

18 Q And when the search warrant was executed, how many
19 firearms were found in the home?

20 A Nine were found.

21 Q Were any of them registered to Mr. Tijerina?

22 A Not that I know.

23 Q And so it was -- you observed Mr. Gonzalez transfer one
24 firearm to Mr. Tijerina. Did he give a statement as to how
25 many firearms he provided to Mr. Tijerina?

1 A Yes. He said this was the third firearm in the last 16
2 days.

3 Q And did you talk to anyone else who supposedly provided
4 Mr. Tijerina with firearms?

5 A I have not personally done so, but multiple ATF
6 investigations have involved Mr. Tijerina over the last several
7 years. And I'm still in the process of reviewing reports, but
8 at least five that I know of additional individuals have stated
9 that they have purchased firearms for Mr. Tijerina in the past.

10 Q And when you executed the search warrant -- and you, I
11 mean, ATF, I don't just mean you individually -- what sort of
12 documentation -- personal documentation was found regarding
13 Mr. Tijerina?

14 A We found two separate birth certificates.

15 Q And for what countries were they? Were they both for the
16 same country?

17 A One was for the United States. One was for Mexico.

18 Q And the one for the United States, where did that indicate
19 Mr. Tijerina had been born?

20 A Alamo, Texas.

21 Q And when did it indicate he had been born?

22 A In 1962, October the 1st.

23 Q And for the Mexican birth certificate, where did that
24 indicate he was born?

25 A Reynosa, Mexico, October 1st, 1963.

1 Q And did you find any sort of additional information, legal
2 status to be here kind of documentation?

3 A Yes. There was a resident alien card.

4 Q And the resident alien card used what birth date?

5 A 1963, which was on the Mexico birth certificate.

6 Q And did you find a driver's license?

7 A Yes, we did.

8 Q And that indicated what year of birth?

9 A 1962, which reflect the United States birth certificate.

10 Q When you executed the search warrant, did Mr. Tijerina
11 give a statement regarding the United States birth certificate?

12 A Yes. He said that it had been purchased at a carnival.

13 Q Did you have a chance to look at the birth certificate?

14 A I did.

15 Q I know that you're not an expert, but did it appear to be
16 one that you purchase at a carnival?

17 A No, ma'am, it did not.

18 Q Additionally, I believe -- did you talk to anyone who had
19 purchased guns for Mr. Tijerina or any females who had
20 purchased guns for him?

21 A I have not, but I've read reports of interviews from 2008
22 of two females that purchased guns for Mr. Tijerina.

23 Q Did he have any other sort of business relationship with
24 those females?

25 A Yes, ma'am. Both the females stated that they had been

1 paid \$300 for having sex with Mr. Tijerina.

2 **MS. REESE:** I have nothing further for this witness
3 at this time. I'm passing the witness.

4 **THE COURT:** Mr. Vega.

5 **CROSS EXAMINATION**

6 **BY MR. VEGA:**

7 Q Mr. Brown, my name is Oscar Vega, and I represent
8 Mr. Manuel Tijerina. I spoke to you a few days ago; is that
9 correct?

10 A Yes, sir.

11 Q Okay. And when I called you, you were interviewing two
12 young gentlemen at Mr. Tijerina's club?

13 A Yes, sir.

14 Q All right. And after I hung up with you, you told one of
15 the young men that I called and said that he was transporting
16 firearms; is that correct?

17 A No, sir.

18 Q Are you sure?

19 A Yes, sir.

20 Q You know it's a felony to lie to a federal judge?

21 A Yes. Yes, sir.

22 **MS. REESE:** Objection, your Honor, relevance.

23 **THE COURT:** Okay. I mean, it's really argumentative,
24 so I'm going to sustain.

25 //

1 **BY MR. VEGA:**

2 Q Did you bring the birth certificate, sir?

3 A A photocopy, sir.

4 Q Can you show it to us please?

5 **MS. REESE:** Your Honor, at this point I would object.

6 I believe that goes to discovery. It's --

7 **THE COURT:** Well, since he was asked about it on
8 direct, if he has it I'll go ahead and allow that. Then --

9 **MS. REESE:** Should I offer them to the case manager
10 or --

11 **THE COURT:** Whatever. You can -- is it just
12 photocopies?

13 **MS. REESE:** They're photocopies of the United
14 States --

15 **THE COURT:** Okay.

16 **MS. REESE:** -- and the Mexican.

17 **THE COURT:** Okay. That's fine. You can just hand
18 them to counsel, and we'll see what to do from there.

19 **BY MR. VEGA:**

20 Q Okay. This birth certificate, did you go check and see if
21 it was registered in the county?

22 A Not yet, sir.

23 Q You've had over a week. Why haven't you done that?

24 **MS. REESE:** Objection, your Honor, argumentative.

25 **THE COURT:** Okay. That's sustained.

1 **BY MR. VEGA:**

2 Q Does it have a number -- birth certificate number on the
3 birth certificate?

4 A Not that I see it, sir.

5 Q Okay.

6 **MR. VEGA:** And, your Honor, may I approach the
7 witness?

8 **THE COURT:** Yes, sir.

9 **BY MR. VEGA:**

10 Q Is this the same document you've been talking about, sir?

11 A Yes, sir.

12 **MR. VEGA:** Your Honor, can we label it Defense
13 Exhibit 1 and have it admitted into evidence?

14 **MS. REESE:** Objection, your Honor. I don't believe
15 that proper foundation has been laid.

16 **THE COURT:** Okay. Well, we'll admit it just solely
17 for purposes of the probable cause and detention hearings.
18 That doesn't mean it would be admissible as evidence under the
19 Federal Rules of Evidence but just as something that was used
20 in connection with the hearing.

21 **(Defendant's Exhibit Number 1 was received in evidence)**

22 **BY MR. VEGA:**

23 Q So you don't see a number where it's been registered,
24 right?

25 A No, sir.

1 Q Okay. And he did tell you he purchased it a carnival,
2 correct?

3 A He did not tell me directly, but he did tell one of our
4 agents that.

5 Q And that's because you don't understand Spanish, right?

6 A Yes, sir.

7 Q You actually had another agent there talking to him,
8 correct?

9 A He speaks English fairly well, so I just wasn't present at
10 the time. But I did talk to him in English for extended period
11 of time myself.

12 Q All right. Before -- you're saying that the gun was
13 transferred to my client's vehicle and he took it home. That's
14 one date; is that correct?

15 A Yes, sir.

16 Q And actually, the rest was later, several days later?

17 A No, sir. It was all the same day.

18 Q It was the same day?

19 A Yes, sir.

20 Q All right. Now, after you talked to these young
21 gentlemen, I believe it was on Friday, you discovered that it
22 was not Mr. Tijerina who was present at the -- at his vehicle
23 when the gun was transferred to his vehicle, right?

24 A No, I was not told that.

25 Q You were not told that?

1 A I was not.

2 Q Okay. Do you have a recording of that transaction?

3 **MS. REESE:** Objection, your Honor. It goes to
4 discovery, not relevant to probable cause.

5 **THE COURT:** A recording of what, Mr. Vega?

6 **MR. VEGA:** A video recording, your Honor, of the
7 gentleman putting the gun in the truck.

8 **THE COURT:** Oh, okay.

9 **MR. VEGA:** It goes to the weight of the evidence,
10 your Honor --

11 **THE COURT:** Right. You can --

12 **MR. VEGA:** -- if he does.

13 **THE COURT:** You can answer if you're -- if you know.

14 **THE WITNESS:** There is no video recording.

15 **BY MR. VEGA:**

16 Q All right. And he did tell you that he had several
17 weapons in the home; is that correct?

18 A He stated that he had two weapons.

19 Q Okay. And the other weapons were -- what kind of weapons
20 were they?

21 A There were multiple rifles and handguns, and I believe
22 that's all.

23 Q Okay. And I believe you left several weapons at his home
24 after you left his residence, right?

25 A Not to my knowledge.

1 **MS. REESE:** Objection, relevance.

2 **THE COURT:** Okay. He's answered already so --

3 **BY MR. VEGA:**

4 Q And there was nothing illegal about these weapons?

5 A No, sir.

6 Q Okay. He actually told you that there was a weapon that
7 didn't belong to him in his house, and he pointed to the gun
8 case; is that correct?

9 A Yes, sir.

10 Q Okay. And he told you that he was going to charge
11 Mr. Gonzalez several hundred dollars to put a scope on that
12 weapon; is that right?

13 A Yes, sir.

14 Q Okay. Now, do you -- have interviewed any witnesses that
15 Mr. Gonzalez has told you about that overheard him tell these
16 individuals that he was putting a -- he was getting a scope put
17 on his rifle?

18 **MS. REESE:** Objection, your Honor. Again, goes to
19 discovery.

20 **THE COURT:** Okay. I'm going to go ahead and allow
21 that.

22 **BY MR. VEGA:**

23 Q Have you interviewed any witnesses to that effect?

24 A Can you repeat the question please, sir?

25 Q Okay. Have you interviewed any witnesses that overheard

1 Mr. Gonzalez tell these individuals that he was going to get a
2 scope put on his rifle by Mr. Tijerina?

3 A No, sir.

4 Q Before the day of his arrest, Mr. Gonzalez -- they
5 arrested Mr. Gonzalez, Mr. Brown, do you know -- did you know
6 anything about Mr. Gonzalez?

7 A I had received information the day before the transaction.

8 Q Do you know anything about his truth or veracity?

9 A No, sir.

10 Q Anything about his reputation in the community?

11 A No, sir.

12 Q Okay. Did you do a background investigation on
13 Mr. Gonzalez of how many times he's been arrested?

14 **MS. REESE:** Objection, your Honor, relevance.

15 **THE COURT:** Okay. At this point, I'm not sure this
16 really goes to the probable cause issue here, Mr. Vega, so I'm
17 going to sustain that on background.

18 **MR. VEGA:** Judge, it just goes to the weight of the
19 evidence. We have an individual who's claiming that my client
20 did something, and I just want to know if the agent actually,
21 you know, talked to individuals, see if this young man is
22 capable of telling the truth or not.

23 **THE COURT:** You're talking about Mr. Gonzalez.

24 **MR. VEGA:** Yes, your Honor.

25 **THE COURT:** Okay. Well, I am going to go ahead and

1 sustain that particular one. But you can go ahead.

2 **MR. VEGA:** Okay.

3 **BY MR. VEGA:**

4 Q Did you check the weapon for any fingerprints?

5 A No, sir.

6 **MS. REESE:** Objection, your Honor.

7 **MR. VEGA:** That was a no?

8 **THE COURT:** Okay.

9 **THE WITNESS:** Yes, sir.

10 **BY MR. VEGA:**

11 Q And prior to -- was that April 30th, sir, the day of the
12 arrest?

13 A Yes, sir.

14 Q Prior to that, you had not done -- you personally had not
15 done an investigation on my client?

16 A That's correct.

17 Q Okay. So you're taking Mr. Gonzalez's word that there was
18 a conveyance of a firearm for money so he could -- so he could
19 actually own the weapon without him having actually to sign for
20 it, right?

21 **MS. REESE:** Objection, your Honor, misstatement of
22 the evidence and argumentative.

23 **THE COURT:** Could you -- Mr. Vega, I think you ought
24 to rephrase that because --

25 **MR. VEGA:** Okay.

1 **THE COURT:** -- the question you just asked is one I
2 think he's already answered. If there's other questions you
3 want to ask related to that, you can, but I think that is
4 something he's already testified to.

5 **MR. VEGA:** Yes, your Honor.

6 **BY MR. VEGA:**

7 Q Sir, you've already had an opportunity to check all the
8 weapons in my client's house. Was there anything illegal about
9 any of them?

10 **MS. REESE:** Objection, your Honor, asked and
11 answered.

12 **THE COURT:** Okay. That specific one was already
13 asked, Mr. Vega. He answered that no.

14 **MR. VEGA:** Okay.

15 **THE WITNESS:** If I may state, there was also an
16 object attached to one of the weapons, which possibly may be
17 illegal in and of itself. It appears to be a silencer, and
18 that has been sent to the lab for testing.

19 **BY MR. VEGA:**

20 Q Okay. And that was a suppressor; is that correct?

21 A It's been sent to the tab -- to the lab for --

22 Q All right.

23 A -- determination.

24 Q But we understand that that is a suppressor which
25 suppresses the flash -- a flash suppressor, right?

1 A Multiple ATF agents have told me that they believe it to
2 be a silencer, and the final determination is up to the lab.

3 Q Okay. You have not checked that out over a week?

4 A I --

5 Q You haven't fired a weapon?

6 A No. I don't fire the evidence weapons. I send them to a
7 lab, so they test it.

8 Q Okay.

9 A They're certified to do so.

10 Q And we know -- and he told you where he got that from,
11 right?

12 A Yes, he did.

13 Q Okay. And you understand that several days before that
14 his wife had actually called the McAllen Police Department on
15 the individual that was leasing her property.

16 **MS. REESE:** Objection, your Honor, relevance.

17 **MR. VEGA:** Well, he mentioned the weapon --

18 **THE COURT:** Well --

19 **MR. VEGA:** -- your Honor, so --

20 **THE COURT:** I'm going to allow him to answer if he
21 knows since he's mentioned that. You can --

22 **THE WITNESS:** I was not aware of that. And to my
23 knowledge, Mrs. Cano did not state that to any of us.

24 //

25 //

1 **BY MR. VEGA:**

2 Q Other than the hearsay, Mr. Brown, that you've mentioned
3 about other investigations, do you have any evidence, any
4 documents with you today to reflect that?

5 **MS. REESE:** Objection, your Honor. It goes to
6 discovery, not relevant to probable cause.

7 **MR. VEGA:** They mentioned it, your Honor. They're
8 the ones who brought it up.

9 **THE COURT:** Right. Well, the answer I think is
10 pretty clear, I mean, from the testimony already. You don't
11 have -- you've just testified that you read reports as far as
12 these other investigation and that's all you've done at this
13 point; is that correct?

14 **THE WITNESS:** Yes, your Honor.

15 **THE COURT:** Okay.

16 **MR. VEGA:** Your Honor, I don't have any further
17 questions for Agent Brown.

18 **MS. REESE:** Nothing further, your Honor.

19 **THE COURT:** I did want to ask a couple things.

20 And Special Agent Brown, as far as this Mr. Gonzalez
21 had indicated that this was the third time that he had bought a
22 firearm for Mr. Tijerina, did he say -- and this time, the
23 firearm that he purchased was a .223 rifle, which is a
24 semiautomatic rifle, like an M-16 type of rifle; is that
25 correct?

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** And did he say what type of firearms he
3 purchased for Mr. Tijerina on the other two occasions?

4 **THE WITNESS:** Yes. He purchased on April 15th and
5 April 21st, both occasions were also rifles. One was a similar
6 Bushmaster rifle. The other was a Sig Sauer rifle.

7 **THE COURT:** Were they both .223 caliber semiautomatic
8 rifles of different brands; is that --

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** And so I take it that those other two
11 rifles that Mr. Gonzalez claimed to have purchased for
12 Mr. Tijerina, they were not found at Mr. Tijerina's house when
13 the search warrant was completed; is that correct?

14 **THE WITNESS:** That is correct.

15 **THE COURT:** And so as far as Mr. Gonzalez is
16 concerned, did -- was it you or one of the other agents that
17 observed him to go to this Klub Infinity with the rifle case I
18 guess at that point you could see?

19 **THE WITNESS:** Myself and several other agents.

20 **THE COURT:** And did you personally see Mr. Tijerina
21 there leaving the club with a rifle case or was that somebody
22 else?

23 **THE WITNESS:** I did, your Honor.

24 **THE COURT:** Okay. And when you later interviewed
25 Mr. Gonzalez, I assume that he was not aware when you first

1 interviewed him that you had been following him around or --

2 **THE WITNESS:** He was not aware that we had followed
3 him to Klub Infinity, but by the time we approached him at his
4 house, he was aware that we had been following him at that
5 point.

6 **THE COURT:** Okay. And was -- were the statements he
7 made, were those consistent with the other information you all
8 had received as far as from the federally licensed firearm
9 dealer and your own observations of what he had done,
10 Mr. Gonzalez, as far as his activities?

11 **THE WITNESS:** Yes, your Honor.

12 **THE COURT:** You mentioned these other individuals,
13 these reports that you looked at from these five other
14 individuals who also said that Mr. Tijerina had purchased -- or
15 that they had purchased firearms from Mr. Tijerina. And do you
16 recall the types of firearms that those other individuals
17 claimed to have purchased on behalf of Mr. Tijerina?

18 **THE WITNESS:** Yes, your Honor. They were similar
19 rifles.

20 **THE COURT:** Were they -- I mean, were they all the
21 same .223 caliber semiautomatic rifles or were there different
22 types or --

23 **THE WITNESS:** I don't recall. I know some of them
24 were.

25 **THE COURT:** And as far as the significance of that

1 particular rifle, is there any significance to that in terms of
2 -- well, one obvious thing that we have here in this area is
3 obviously a lot of violence going on across the border in
4 Mexico. There's been a lot in the news and a lot of cases here
5 in Federal Court about firearms going from the United States
6 into Mexico. As far as this .223 caliber semiautomatic rifle,
7 is that -- is there anything significant about that in terms of
8 that type of situation?

9 **THE WITNESS:** Yes, your Honor. It falls under the
10 category of weapon of choice because it's very common to be
11 trafficked into Mexico.

12 **THE COURT:** And it's an assault-type of a rifle
13 that's --

14 **THE WITNESS:** Yes, your Honor.

15 **THE COURT:** And I guess from other cases, I have
16 heard that groups like the Zetas and others, that's one of
17 their preferred firearms. Is that your experience and training
18 as well that that's the case?

19 **THE WITNESS:** Yes, your Honor.

20 **THE COURT:** And -- but as far as this point, these
21 other individuals you're talking about, you say that those are
22 some other investigation that somebody else has done. In terms
23 of the situation here, you mentioned the nine guns that were
24 found in his home. Were any of the other -- so one of them was
25 the one that Mr. Gonzalez had purchased. Were there any other

1 of those same type of rifles in his home, the .223 caliber type
2 of rifle? Do you know?

3 **THE WITNESS:** Yes. There was one that had been
4 converted. The lower half of the firearm was a .223 caliber,
5 but the upper half had been removed and converted to a larger
6 caliber.

7 **THE COURT:** I don't understand what that means. I
8 guess I'm not that familiar with firearms. So it started as a
9 .223 semiautomatic rifle.

10 **THE WITNESS:** Yes, your Honor.

11 **THE COURT:** And they did something to it so that the
12 caliber was higher so it took bigger rounds or something or --

13 **THE WITNESS:** Larger rounds -- larger rifle rounds.

14 **THE COURT:** And was it still semiautomatic or --

15 **THE WITNESS:** It was, your Honor.

16 **THE COURT:** As far as the other -- so there's one --
17 one of the nine was that one. And the other ones you mentioned
18 were rifles, and there were some also handguns as well or no?

19 **THE WITNESS:** Yes, your Honor.

20 **THE COURT:** Were there -- there's some testimony
21 about something about a scope or maybe Mr. Vega was just asking
22 you about a scope. Was there any -- during the search, were
23 there any scopes, riflescopes that were found there at
24 Mr. Tijerina's residence?

25 **THE WITNESS:** Yes, your Honor.

1 **THE COURT:** And they were -- were they already
2 mounted on other rifles or were they separate or what?

3 **THE WITNESS:** To my knowledge, there were several
4 that were mounted on other rifles, and there were also a --
5 there was a shoebox found with just a guess approximately five
6 additional riflescopes.

7 **THE COURT:** And as far those particular scopes, was
8 there anything about -- significant about the type of scopes
9 that they were or --

10 **THE WITNESS:** From what I've been told, they're
11 expensive and of good technology.

12 **THE COURT:** Okay. And I thought I understood your
13 testimony when you were on direct and you were saying that when
14 you all observed Mr. Tijerina and several other individuals
15 leave the club that they had the one rifle box that was -- or
16 case -- was it a box or a case?

17 **THE WITNESS:** It was a black plastic case.

18 **THE COURT:** Okay. So they had the one that was
19 consistent with the one that Mr. Gonzalez had purchased. And
20 did you indicate that he -- they also had appeared to have a
21 second rifle case as well at that time?

22 **THE WITNESS:** We did not see that transferred from
23 car to car, but when the black case in question was carried
24 into the house there was what appeared to be another rifle box
25 carried into the house as well.

1 **THE COURT:** Okay. Was it -- so I'm just a little
2 confused. So the rifle Mr. Gonzalez purchased, was that in
3 like a plastic case, like a, you know, actual case?

4 **THE WITNESS:** Yes, your Honor.

5 **THE COURT:** And the other would -- the other thing
6 you saw, was that a box, like a cardboard box that you might
7 have bought a firearm in, or was it also a second case it
8 seemed?

9 **THE WITNESS:** I was not present at the time that was
10 transferred but --

11 **THE COURT:** Okay.

12 **THE WITNESS:** -- my understanding is that it was more
13 of like a box not a plastic case.

14 **THE COURT:** Okay. And as far as these .223
15 semiautomatic rifles, I mean, to your knowledge or experience
16 and training, are those typically used in hunting?

17 **THE WITNESS:** No, sir.

18 **THE COURT:** Okay. That's all the questions I have.
19 Was there anything else, Mr. Vega?

20 **MR. VEGA:** Yes, your Honor. You mentioned something
21 I kind of -- I forgot to ask.

22 **FURTHER CROSS EXAMINATION**

23 **BY MR. VEGA:**

24 Q Mr. Brown, actually, when you started talking to my
25 client, you were asking him whether he had been in Fort Worth

1 or not; is that correct?

2 **MS. REESE:** Objection, your Honor, relevance.

3 **MR. VEGA:** Your Honor, it goes to -- you said he was
4 going to Mexico, this individual, if I could just elaborate,
5 your Honor.

6 **THE COURT:** Okay. You can go ahead. Right. Go
7 ahead.

8 **BY MR. VEGA:**

9 Q While you -- did you ask him if he had been to Fort Worth?

10 A Yes, sir.

11 Q Okay. And that's because Mr. Gonzalez was telling you
12 that my client was transporting these weapons to Fort Worth to
13 sell?

14 A Not from his own knowledge. He had stated that
15 Mr. Tijerina had told him previously that all the guns that he
16 was purchasing for him and other people were purchasing for him
17 he was transporting to Fort Worth, Texas to sell.

18 Q Okay. This is what Mr. Gonzalez is telling you, right?

19 A He said that's what Mr. Tijerina had stated.

20 Q Okay. But that's what Mr. Gonzalez is telling you.

21 A Yes, sir.

22 Q Okay. And he has no other witnesses to this, right?

23 **MS. REESE:** Objection, your Honor.

24 **THE COURT:** Right. That's sustained. There's no
25 point in that.

1 **BY MR. VEGA:**

2 Q Has anybody else told you that?

3 **MS. REESE:** Objection, your Honor.

4 **THE COURT:** Yeah. I mean, you can answer that if you
5 know.

6 **THE WITNESS:** No one else has told me that
7 personally.

8 **THE COURT:** So Mr. Gonzalez said that Mr. Tijerina
9 said that. So in other words, that was Mr. Tijerina's
10 explanation to Mr. Gonzalez about why he was purchasing all
11 these guns; is that right?

12 **THE WITNESS:** Yes, your Honor.

13 **THE COURT:** Okay.

14 **BY MR. VEGA:**

15 Q Okay. Sir, and the large-caliber rifle that you saw, that
16 was to -- my client told you that was to hunt bear, correct?

17 A He did not tell me that personally. I am not aware if he
18 told someone else that.

19 Q Okay. There were several agents there?

20 A Yes, sir.

21 Q And did he have a conversation to you about how much
22 hunting he does?

23 A Not to me directly, but he did to Agent Flores.

24 Q Okay. And he told him that he was -- they were getting a
25 lease together, a hunting lease, with another gentleman?

1 A I believe he stated that.

2 Q Okay. And they talked about the hunting trip that he had
3 made for bear and other large animals?

4 A I recall him talking about hunting trips, but I'm not sure
5 about the bear.

6 **MR. VEGA:** That's it, your Honor.

7 **MS. REESE:** Nothing further, your Honor.

8 **THE COURT:** Thank you, sir.

9 **(Witness excused)**

10 **THE COURT:** Okay. And, Mr. Vega, on the issue of
11 probable cause, did you wish to make any argument on that at
12 this time?

13 **MR. VEGA:** No, Judge. But I want to call
14 Ms. Tijerina, your Honor.

15 **THE COURT:** For the purposes of the bond
16 determination or for probable cause?

17 **MR. VEGA:** For probable cause, Judge.

18 **THE COURT:** Okay.

19 **MS. REESE:** Your Honor, at this point, we would
20 object. I believe that to the extent that Ms. Tijerina would
21 give some sort of additional explanation, it would go to a
22 defense that would be relevant at trial but not relevant to
23 probable cause. I would submit to you the Government has
24 established probable cause and there's no need to -- for
25 additional testimony.

1 **THE COURT:** Right.

2 **MR. VEGA:** Judge, he was able to elaborate and talk
3 about things that I can't even defend now.

4 **THE COURT:** Right. Well, the Defendant --

5 **MR. VEGA:** He told the Court about several weapons.

6 **THE COURT:** The Defendant does have the right to call
7 witnesses at a probable cause hearing. I mean, it's not done
8 very often, but the Defendant has the right to do that. So
9 we'll go ahead. And then if there's specific objections to the
10 actual testimony, then that could be addressed if there are
11 any. So you can go ahead.

12 **MR. VEGA:** Yes, your Honor. And also, can we -- at
13 the same time, can I elaborate as to bond also? Or do you want
14 us to stop and start again or --

15 **THE COURT:** Well, I mean, we might as well combine
16 and just -- yeah. If you're going to have a witness that's
17 also going to be relevant to the bond issue, we might as well
18 address all of it at the same time so --

19 **MR. VEGA:** Yes, your Honor. Your Honor, I'm going to
20 call Ms. Tijerina to the stand.

21 **THE COURT:** Okay.

22 **MR. VEGA:** She goes by Nancy Cano, your Honor.

23 **THE COURT:** Okay.

24 **MR. VEGA:** Even though -- and I'll explain once I get
25 her on the stand.

1 **THE COURT:** Go on. Ma'am, if you would please raise
2 your right hand. Okay.

3 **JUANITA INES CANO, DEFENDANT'S WITNESS, SWORN**

4 **THE COURT:** Okay. Please have a seat.

5 **DIRECT EXAMINATION**

6 **BY MR. VEGA:**

7 Q Ms. Tijerina, you -- could you please give us your legal
8 name?

9 A Juanita Ines Cano.

10 Q Okay. You go by Nancy?

11 A By Nancy.

12 Q Okay. That's because your dad wanted to call you Juanita
13 and --

14 A My mother wanted to call me Nancy, so she continued to
15 call me Nancy.

16 Q Even though your dad got the birth -- that name on the
17 birth certificate?

18 A Nancy is not on the birth certificate.

19 Q Just --

20 A It's Juanita --

21 Q Just Juanita.

22 A -- Ines Cano.

23 Q Okay.

24 **THE INTERPRETER:** Your Honor, if you could beg the
25 witness to get closer, I can hardly hear her.

1 **THE COURT:** Right. If you could pull -- thank you,
2 ma'am.

3 **BY MR. VEGA:**

4 Q Ma'am, you -- as you heard Agent Brown testify today, you
5 were not -- he did not mention you as being anywhere at the
6 club or at home during the time of arrest. Were you present?

7 A I was present --

8 Q Okay.

9 A -- at my home.

10 Q Okay. The day of the arrest, who drove Mr. Tijerina back
11 from the club?

12 A I did.

13 Q Okay. Mr. Brown didn't mention that. Why did you drive
14 him back from the club?

15 A Because my husband was feeling sick, so I drove him back
16 home.

17 Q Okay. And he made it sound like you got -- he got home
18 with the weapons and they were there. Is that what happened
19 that day?

20 A When we got home they went into my home, and the weapons
21 were in my home.

22 Q Okay. So they weren't -- he made it sound like they came
23 home that day with the weapons, and that's when the agents came
24 in. That's not correct.

25 A No, sir.

1 Q Okay. You actually -- did you go to the club and go pick
2 up your husband because he wasn't feeling fine; is that what
3 you said?

4 A I was at the club, and he told me if I could drive him
5 home because he was feeling sick.

6 Q And when you get home, you notice that someone's following
7 you.

8 A When I get home, we were driving up, parking, and I
9 noticed several vehicles parking behind us.

10 Q Okay. And as the agents approached the home, did they ask
11 for permission to enter?

12 A No, not to me personally.

13 Q Okay. To your husband?

14 A To my husband.

15 Q Okay. And did he show them all the weapons that he had?

16 A He pointed out where he had some weapons behind the sofa.

17 Q Did they ask you if you had a weapon?

18 A No, sir.

19 Q Okay. Did you tell them that you had one?

20 A I told Mr. Flores that I had a personal weapon.

21 Q Okay. That's Agent Bobby Flores?

22 A I believe his first name is Bobby, but Mr. Flores I know.

23 Q Yes. Okay. And you had just -- the reason that you have
24 a weapon now is because -- or that you have it close to is
25 because of what happened a few days prior; is that correct?

1 A Yes. I have a rental home right besides my home.

2 Q Okay.

3 A And there was a big drug case there.

4 Q Okay.

5 A And there was firearms too.

6 Q And you called the police department on that.

7 A I called McAllen PD.

8 Q And you're the one who initiated the call, and they
9 discovered the weapons and the drugs.

10 A Yes, sir.

11 Q Okay. And you also told them that you had another rental
12 home to the same gentleman. They went to that home and also
13 found drugs and weapons.

14 A Yes, sir.

15 **MS. REESE:** Your Honor, I would object to relevance.

16 **MR. VEGA:** I'm getting to it, your Honor. I'll be
17 quick.

18 **THE COURT:** Okay. She's already answered though, so
19 go ahead.

20 **MR. VEGA:** Yes, sir.

21 **BY MR. VEGA:**

22 Q Okay. Now, one of the weapons that they found at your
23 house, can you tell us where that one came from?

24 A One of the weapons that I know when we arrived to the home
25 was behind the sofa, and one of them was in the kitchen --

1 Q Okay.

2 A -- where the dishes go.

3 Q Okay. And that one came from where?

4 A The one that was in the dishes?

5 Q Yes, ma'am.

6 A It was in the rental home that my husband had pulled out
7 from there.

8 Q Okay. And that's after they had -- the police had done
9 all their inventory and cleaned up all the drugs and weapons.
10 Evidently whoever you -- can you tell us who you hired to clean
11 the house?

12 A Yes. I had a lady to help me to clean out the house --

13 Q Okay.

14 A -- of course, after me calling several times that I wanted
15 to lease the home. So they told me to go ahead and get it
16 ready to lease the home.

17 Q Okay. And all these things that she cleaned up, she put
18 them in a bag?

19 A We put them in bags. So she put them in bags and they
20 were taken out to the garage.

21 Q And that's where your husband claims he got one of the
22 weapons?

23 A Yes. He was after some green big bags that were there,
24 like, they were very sturdy bags used for hunting. So he kept
25 on asking for those green bags, that he wanted the bags.

1 Q And that was abandoned property that your renter left
2 behind.

3 A That they had left and also, well, that McAllen PD and
4 their other departments that were there going through the home
5 left.

6 Q Okay. And he told the Agent Bobby Flores where he got the
7 weapon, right?

8 A Yes, sir. And --

9 Q Okay.

10 A -- he also explained to him that the bags with the clothes
11 were still in the garage --

12 Q Okay.

13 A -- that he had pulled out from that home.

14 Q All right. He told them that he fired that weapon and it
15 was not a suppressor at all.

16 A Yes, sir.

17 Q Okay. Now, you know that your husband likes to hunt,
18 right?

19 A Yes. For -- we've been married for 20 years, and he's
20 always been a hunter.

21 Q Okay. And he has several weapons.

22 A He has several weapons.

23 Q That he uses to go hunting.

24 A That he uses to go hunting, yes, sir.

25 Q Okay. And the only one that he told the agents was not

1 his was the one in the black case.

2 A He told them there was one that was not his, and he told
3 them that it belonged to a gentleman named Jesse.

4 Q Okay. And that weapon had been -- do you know when it got
5 to your house?

6 A No, sir.

7 Q Okay. Did you ever see your husband open the case?

8 A No, sir.

9 Q Did he tell you anything about the weapon?

10 A No, sir.

11 Q Do you know what your husband was going to do with that
12 weapon?

13 A He is getting several -- there are several people getting
14 together for, like, hunting guides. And he had been going for
15 the past -- as of that day of the incident, that Friday, about
16 two, three weeks more or less they were getting together. They
17 were even making a contract for a ranch in Hargill or -- I
18 can't pronounce the place there. But they were also doing,
19 like, fishing guides and hunting guides. They wanted to start
20 getting a business like that.

21 Q Okay. But the individual that owns that weapon wanted to
22 go hunting at this place?

23 A My husband mentioned that he wanted to go hunting, and he
24 was going to charge him \$1,000 to go hunting.

25 Q Okay. And did he mention anything about putting a scope

1 on that weapon?

2 A My husband mentioned that he was going to put a scope, and
3 he was going to charge him \$400 to put a scope.

4 Q Okay. And do you know if Jesse told that to anybody else
5 about putting a scope on a weapon?

6 A There is one gentleman in particular.

7 Q Okay.

8 A Yes, sir.

9 Q Is there -- could be more?

10 A No, sir, not that I know of.

11 Q Okay. And does that include your son also?

12 A My son and a friend of his overheard, but they were not
13 in, like, in the conversation with this gentleman, Jesse.

14 Q Okay. And I guess from what you know of the case, it was
15 not your husband who went to the truck and put that weapon in
16 the truck, right?

17 A No, sir. It was my son, his friend, Victor, and Jesse.

18 Q All right. Your son -- I mean, your husband works at the
19 club during the day?

20 A Yes. He does the maintenance in the pool.

21 Q Okay. But he does acknowledge that he was going to do
22 something with the weapon, put a scope on it, right?

23 A Who?

24 Q Your husband.

25 A Yes, sir.

1 Q He's not trying to hide that at all.

2 A No. He told Mr. Flores that day -- that evening --

3 Q Okay.

4 A -- that that was the purpose of the rifle.

5 Q Yes. Now, ma'am, concerning bond, here in the courtroom
6 today we have three of Mr. Tijerina's sisters; is that correct?

7 A Yes, sir.

8 Q All right. And one of them is an attorney in Mexico?

9 A Yes, sir.

10 Q Okay. And but we do have one that lives here in the
11 United States that can act as a cosuretor?

12 A Yes, sir.

13 Q Okay. And you have also two rental properties that you
14 weren't able to use as a bond; is that correct?

15 A One of them they were going to use as bond. The second
16 one they were not going to be able to use because it was under
17 both my husband and my name.

18 Q Okay. But if you can, you would convey all your
19 properties to the Court so -- even your home -- so your husband
20 could remain out on bond; is that correct?

21 A Yes, sir.

22 Q All right. And we also turned over to the Court several
23 letters concerning your husband's medical history.

24 A Yes, sir.

25 Q Can you tell us concerning his heart and the anxiety

1 problems how much work your husband has had done on him?

2 A Yes, sir. He's had six strokes and two heart attacks.

3 Q Okay.

4 A And he's been on medication for the past four years.

5 Q Okay. Does he have a stint?

6 A He has a stint in his heart, yes, sir.

7 Q Okay. And this is something that he has to do every day,
8 he has to check his blood for his diabetes?

9 A Blood pressure and diabetes.

10 Q Blood pressure. Okay. And plus take his heart
11 medication.

12 A Heart medication, high blood pressure, cholesterol,
13 anxiety, the diabetes.

14 Q And the day of his arrest, in fact, you had to go drive
15 him home because he wasn't feeling well.

16 A Yes. He had been working in the pool, and the sun, you
17 know, just made him feel sick. So I drove him home.

18 **MR. VEGA:** Okay. I'll pass the witness, Judge.

19 **THE COURT:** Okay.

20 **MS. REESE:** Nothing for this witness. We'd ask for a
21 ruling, your Honor.

22 **THE COURT:** Okay. And, ma'am, I did want to ask you
23 a few things. I understand that you all have some property
24 that you were willing to perhaps place as security in
25 connection with a possible bond --

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** -- in your husband's case. And the
3 information that was obtained by the Pretrial Services officer
4 reflects that I guess you all have -- well, between you and
5 your husband you have several different rental homes; is that
6 correct? I guess one is owned by both of you, and then you
7 also have a lot that's owned by both of you; is that correct?

8 **THE WITNESS:** Yes, sir.

9 **THE COURT:** And just starting with those, I guess
10 those are both on East Laurel Avenue. When did you obtain
11 those properties on East Laurel, do you recall?

12 **THE WITNESS:** The properties themselves were obtained
13 I would say about six years ago. They were first properties,
14 and then we built two homes on two properties, which is 225
15 East Laurel and 221 East Laurel.

16 **THE COURT:** 225 and 221, okay. So on both of those
17 lots or properties you all built houses on there or --

18 **THE WITNESS:** Yes, sir.

19 **THE COURT:** Okay. And they're being rented now, is
20 that --

21 **THE WITNESS:** One of them is my home.

22 **THE COURT:** Okay.

23 **THE WITNESS:** And the second one is -- actually,
24 that's the home that had that problem that I called in McAllen
25 PD. So they allowed me to go ahead and rent the home about

1 three weeks ago. So I put up the rent sign already.

2 **THE COURT:** Okay. And so those properties, do you
3 all -- you don't owe anything, you don't have any loans on
4 those properties?

5 **THE WITNESS:** No, sir.

6 **THE COURT:** So your home you own outright as well as
7 the 221 Laurel property that has a home on it also, and you own
8 those outright; is that correct?

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** And so when you bought those, that was
11 several years back I guess; is that --

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** Okay. And do you remember about when you
14 put the buildings on those or the homes on these?

15 **THE WITNESS:** It was I would say about four years
16 ago, sir.

17 **THE COURT:** Okay. And so were you -- as far as did
18 you have contractors do that for you I guess that you all made
19 arrangements with?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** And were you able to pay them in cash or
22 pay them outright or did you have a loan that you've been able
23 to pay off or how did you arrange that?

24 **THE WITNESS:** We used one of the properties to build
25 like collateral. Actually, they first started one, and then

1 the second one we both used like collateral with the
2 construction with the builder. And the builder didn't go
3 through finishing building the homes. We had problems that he
4 was, like, stealing money. So we had to individually start it
5 -- myself, I started to hire people. His own people that was
6 working on the construction --

7 **THE COURT:** Right.

8 **THE WITNESS:** -- stayed there to finish the homes,
9 and I was paying them as they were finishing.

10 **THE COURT:** Okay. And then so that's two. And then
11 is there -- there is also a lot at 217 East Laurel as well, is
12 that correct, that's just --

13 **THE WITNESS:** That is correct, sir.

14 **THE COURT:** -- an empty lot right now? Okay. And
15 you all own that outright also. You don't have any loans on
16 that or anything?

17 **THE WITNESS:** No, sir. The three properties were
18 purchased, and they were financed through the bank. When we
19 finished paying them, we started building.

20 **THE COURT:** Okay. And then the other two rental
21 homes I guess on North Second and North Sixth, those are I
22 guess the ones that are in your name; is that correct?

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** And as far as those, how long have you
25 owned those two homes?

1 **THE WITNESS:** The 26 on Sixth Street, I've owned that
2 one for -- my son is 19 -- for about 14 years, 15 years.

3 **THE COURT:** Okay. And as far as the other one on --
4 is it North Second and a Half Street? Is that the name of the
5 street?

6 **THE WITNESS:** North Second and a Half Street.

7 **THE COURT:** That's an interesting one. As far -- how
8 long have you owned that one?

9 **THE WITNESS:** That one I've owned for two years I
10 believe.

11 **THE COURT:** Okay. And so you purchased that just by
12 yourself or in your own name a couple years ago?

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** And on either of those, is there any kind
15 of a loan or anything like that, or do you all own -- or do you
16 own those outright or --

17 **THE WITNESS:** 2605 there's a lien right now.

18 **THE COURT:** Okay. That's the Sixth Street one.

19 **THE WITNESS:** Yes, your Honor.

20 **THE COURT:** And but the other one that you bought I
21 guess --

22 **THE WITNESS:** That does not have a lien.

23 **THE COURT:** -- two years ago, there's no lien on
24 that. And then also, I'm just trying to understand. From the
25 information from Pretrial Services, I guess I'm getting a

1 little confused because there is some discussion here about
2 Klub Infinity. Do you all own that or do you run that or how
3 does that work?

4 **THE WITNESS:** No. We are in the process of buying
5 the property.

6 **THE COURT:** Is that the same thing as Los Palmas
7 or --

8 **THE WITNESS:** Las Palmas, yes, sir.

9 **THE COURT:** Okay. So --

10 **THE WITNESS:** It's in foreclosure right now.

11 **THE COURT:** Okay. So Klub Infinity and Las Palmas
12 are the same --

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** -- business. Okay. That's what I was
15 confused about. And then you also -- do you have another
16 business as well that --

17 **THE WITNESS:** Yes, I do, Exotic Hair Studio. It's a
18 hair salon.

19 **THE COURT:** And how long have you had that business?

20 **THE WITNESS:** For two years.

21 **THE COURT:** And as far as that business, do you
22 actually work there or do you have somebody else that manages
23 that for you or --

24 **THE WITNESS:** I worked the first year of the
25 business, and after that we -- I started getting involved in

1 Las Palmas, Klub Infinity.

2 **THE COURT:** Okay. Okay. And is -- the home that you
3 all live in, that's solely in your name; is that correct,
4 the --

5 **THE WITNESS:** The 225, I don't remember if it -- the
6 property was both our names.

7 **THE COURT:** Okay. Is there any reason it would be
8 solely in your name if you all are both living there or --

9 **THE WITNESS:** Well, it was the property. When -- the
10 property was originally ours, and then we sold it to get some
11 money to start building the first home, which is 221. And then
12 the gentleman puts up a sign that he's selling the property, so
13 then I was interested in the property again. So I started
14 negotiating with the gentleman to sell back the property.

15 **THE COURT:** Okay. Ma'am, I normally -- I mean, I
16 should apologize in advance for even asking these questions.
17 Normally, these are your personal affairs, of course. And the
18 only reason any of this is coming out here or that I've asked
19 about it is that I understand that you all have suggested using
20 some of this property as security for a bond, and so that's the
21 only reason that I'm asking about these things.

22 But just in general, you all have, you know,
23 accumulated a lot of properties that have a lot of value with
24 very little liability or liens or anything like that. I'm just
25 wondering, I mean, how you were able to get to the point where

1 you could generate that much income to be able to purchase all
2 these different properties. I'm just trying to figure out from
3 the information from Pretrial Services.

4 I know your husband has done -- I guess he was doing
5 some kind of import-export work or selling security systems.
6 Maybe that was related to that. But how was it you were able
7 to start purchasing these things? I mean, most people aren't
8 able to accumulate this kind of, you know, property that has
9 this kind of value.

10 **THE WITNESS:** The first one, which is the one on
11 Sixth Street, that one we had a lawsuit and we got some money
12 paid there on that house. So after paying a mortgage for 14
13 years, we paid the remaining balance on that home. And then
14 that money that was left we used to start building the first
15 home on 221, and then that was the time of the sale of the
16 properties.

17 The properties, we didn't have any liens on the
18 properties because we had been financing the properties. I
19 would say about four or five years they were financed through
20 the bank. And the home on Two and a Half, that home, I got it
21 for -- the lady was losing her property for taxes, so I got
22 that home for 30,000. I used Sixth Street to borrow or have a
23 lien on Sixth Street to pay some of the money on Two and a
24 Half.

25 **THE COURT:** And then -- okay. But since then you've

1 been able to pay off the rest of that on the Two and a Half I
2 guess.

3 **THE WITNESS:** On the Two and a Half, yes, that was
4 paid with the money that was borrowed from the -- on Sixth
5 Street.

6 **THE COURT:** Okay. Okay. Was there anything else,
7 Mr. Vega, as far as --

8 **MR. VEGA:** Judge, I guess I forgot to add, she also
9 worked for Attorney Lynnette Perez for a while. And that's
10 maybe some of the income that we -- that wasn't noted at
11 Pretrial.

12 **THE COURT:** Okay. Okay. Anything else?

13 Thank you very much, ma'am.

14 **MR. VEGA:** That's it.

15 **THE COURT:** You can go ahead and have a seat, ma'am.
16 Thanks.

17 **(Witness excused)**

18 **THE COURT:** Okay. And was there anything else on
19 probable cause, Mr. Vega, or --

20 **MR. VEGA:** No, your Honor.

21 **THE COURT:** All right. I do find based on the
22 testimony of Special Agent Brown that there is probable cause
23 in this case. That's not a finding of guilt, but I do find
24 there is sufficient evidence to allow the case to go forward.

25 You all can probably just stay there since I take it

1 there may be some other witnesses for the bond issue.

2 And, Mr. Tijerina, you're fine to go ahead and sit
3 down, sir. With your situation, I don't want you --

4 **THE DEFENDANT:** Thank you.

5 **THE COURT:** And but in any event, I do find based on
6 his testimony, Special Agent Brown, that there's probable
7 cause. And again, as I mentioned in the other case, that's not
8 a finding of guilt; it's just that there's sufficient evidence
9 to allow the case to go forward.

10 Obviously, there will be defenses that Mr. Tijerina
11 will be able to assert, and as the case goes forward, that
12 certainly is something that he'll be able to do. And so I'm
13 not purporting to make any final determinations here. That
14 would be later for trial or other resolution by the District
15 Court. But I do find there is probable cause based on the --
16 all of the evidence.

17 We need to address the issue of bond in this case.
18 And obviously, we addressed some aspects of that in connection
19 with this -- the last witness, Mr. Tijerina's wife. There's
20 actually no presumption that applies under this type of an
21 offense.

22 And so, Ms. Reese, what is the Government's position
23 on release or detention of Mr. Tijerina in this case?

24 **MS. REESE:** The Government requests detention based
25 on the dual birth certificates, specifically the United States

1 birth certificate that was used supposedly and the driver's
2 license. The driver's license birth date is only consistent
3 with the U.S. birth certificate, which is totally inconsistent
4 with the Mexican birth certificate and his status here as a
5 legal permanent resident.

6 The Government is concerned that with dueling birth
7 certificates that -- I don't know how he received them, but
8 they indicate different places of birth, different birth dates.
9 One is used in Government documentation, his driver's license,
10 that there's reason to be concerned that he didn't disclose
11 this birth date to Pretrial. That -- it gives the Government
12 some concern, and we would ask for detention based on that.

13 **THE COURT:** Okay. And Mister -- I will be taking
14 notice of the factual information in the Pretrial Services
15 Report except to the extent it's clarified or corrected in
16 connection with the hearing here. I should have noted that
17 already.

18 But, Mr. Vega, was there other evidence that you wish
19 to present on the issue of bond at this time?

20 **MR. VEGA:** No, your Honor. But may I see that birth
21 certificate again?

22 **THE COURT:** Sure. It's --

23 **MR. VEGA:** It's Defense Exhibit 1.

24 Yes, your Honor. We have no further evidence as to
25 bond, your Honor, just argument.

1 **THE COURT:** Okay. And so you can go ahead and make
2 any other argument you wish to make, Mr. Vega.

3 **MR. VEGA:** Yes, your Honor. Your Honor, he's told
4 the agents that that was a gag item that he bought at a
5 carnival. It's not registered, does not have a number on that
6 birth certificate that would -- that anybody would assume that
7 it's been registered. It's not something he can take to an
8 office -- a DPS office and have that used. It could be that
9 the driver's license has an error on it and that he's tried
10 already to correct it.

11 His legal permanent resident card, your Honor,
12 reflects his Mexican birth certificate. He's applied for U.S.
13 citizenship with the Mexican birth certificate. Nowhere does
14 he claim to be a U.S. citizen. So you know, they're trying to
15 use this gag item that they found so that they don't give him a
16 bond.

17 We're looking at a five-year max offense, your Honor.
18 They come in here with hearsay about other investigations, but
19 there's been no arrest. There's no credibility of these
20 witnesses. We have one individual. They don't even know if
21 he's lying or not. And they take as the gospel truth whatever
22 he had to say about this weapon.

23 They come over to my client's house, and he tells
24 them, "I'm going to put a scope on it for him. That's what I'm
25 going to charge him for." And they arrest him. Nor does he

1 claim that he paid him money to purchase this weapon, that he
2 was doing something illegal.

3 Your Honor, my client does not have a criminal
4 history. He has no convictions, your Honor. He has family
5 here that are willing to sign for him, your Honor. He has
6 medical conditions, Judge. It's very hard to take care of an
7 individual like this in custody.

8 Your Honor, there are conditions of bond that we can
9 do. Even -- we would ask if the Court will accept the
10 recommendation of Pretrial, but if the Court is not inclined to
11 take more property or home detention, your Honor. He does need
12 to go to work back and forth and go to the doctor. He's going
13 to have to see a U.S. doctor now. But we would ask the Court
14 to release him on bond, your Honor, so that we could take care
15 of this case.

16 **THE COURT:** Okay. Thank you.

17 I'm required to apply the factors under the Federal
18 Bail Reform Act. And so I'm just going to go ahead and make
19 findings as to how those factors apply here.

20 The first thing I'm required to take into account is
21 the nature and seriousness of the alleged offense. And in this
22 case, there is a felony -- a federal felony offense being
23 alleged against Mr. Tijerina, and so it's serious in that
24 sense.

25 On the other hand, the potential penalties that go

1 along with this type of an offense, at least as the specific
2 offense as stated, is not as significant or not as -- it's not
3 the extreme type of sentence that we see in many of the cases
4 in Federal Court that we have here often in this area in
5 particular. So there's aspect of it too. However, despite the
6 fact that this particular offense does not necessarily carry
7 that high of potential penalties in terms of possible
8 imprisonment, despite that, this is one of the cases or types
9 of cases where the nature of this may well greatly understate
10 the seriousness or the nature of an alleged offense.

11 Just talking generally now not about Mr. Tijerina in
12 particular, we see many of these cases in this area, and what's
13 very troubling is that there are a lot of firearms going from
14 the United States into Mexico. And it's established that those
15 firearms find their way into the hands of people that are then
16 using them in some of the violence that's going on over there.
17 It's been -- obviously, it's been happening for quite awhile.
18 And it's been specifically -- I mean, particularly significant
19 in the last year or so or two where firearms ending up over
20 there in these gun battles between -- involving drug cartels
21 and other violent groups.

22 So in some ways, as I was saying, this type of an
23 offense may understate the seriousness and the troubling nature
24 of this activity in general. Again, I'm talking in general.
25 And so that's a concern. I am considering that aspect of this

1 type of an offense. The fact that that is a serious problem, I
2 can take judicial notice of that and in this area that that's a
3 significant problem that's been going on for some time. And
4 that this type of an offense is the type of situation that is
5 -- at least the alleged nature of this activity is the type of
6 situation that's apparently often used to do these straw
7 purchases, and then the guys get taken over into Mexico in some
8 of these other situations.

9 So turning back to this case, as far as -- I'm
10 required to take into account the weight of the evidence.
11 That's not a -- an attempt to predict the outcome of this case
12 because a lot of things could look different as this goes
13 forward. The evidence may appear weaker for the Government as
14 the case goes forward or it may appear stronger based on new
15 evidence that comes in. The Defendant obviously has defenses
16 that he would raise here and has had an explanation suggested
17 here in the hearing for why he was in possession of this
18 particular rifle.

19 But at the same time, there is significant evidence
20 here. The agents observed this individual go to the
21 Defendant's place of business, saw the rifle come out. It was
22 at the Defendant's residence. This individual indicated that
23 he had purchased several of these for the Defendant.

24 Now, it may be that that is ultimately -- you know,
25 the issue would be whether or not that individual is truthful,

1 and perhaps it might be shown ultimately that Mr. Tijerina was
2 just putting a scope on that as was suggested here. On the
3 other hand, in addition to the -- what this individual is
4 saying, the agents have some corroboration of his statements in
5 that they observed his activity here.

6 And there's also these other investigations that have
7 also linked Mr. Tijerina to the same activity. We can't say
8 too much about those because there's not any real evidence of
9 percentage here of that. But the fact that there is other --
10 his name has already come up in other investigations, the fact
11 that the weapons here were semiautomatic assault-type rifles
12 that are not typically what hunters use.

13 I suppose a hunter could use that, but the agent
14 testified it's not and common sense tells you that that's not
15 the type of firearm hunters are using. And it is the type of
16 firearm that's often found in these violent gun battles and in
17 particular is one of the weapons in choice as far as some of
18 these groups.

19 So that's all -- serious concerns are raised by all
20 of that, although ultimately, Mr. Tijerina has not been found
21 guilty of anything at this point and he's presumed innocent.
22 But I'm required to take into account the nature and also the
23 -- of the alleged offense as well as the evidence at this
24 stage. And so all those things I'm considering.

25 There are positive factors. Mr. Tijerina does have

1 significant ties here. Obviously, he's got family ties. He's
2 been here. He's got his children from his present wife and
3 three United States citizen children. So those are strong
4 ties. He's got very strong economic ties in terms of all the
5 properties they have, the businesses they've been involved with
6 here. So those are positive circumstances.

7 At the same time, and this is actually -- this
8 combination of things is actually more of a concern to me than
9 the birth certificate, at least by itself. But Mr. Tijerina is
10 a resident alien of the United States, so that means he is a
11 citizen of Mexico. He's here on the basis of a privileged
12 status. That can be taken away from a person if they violate
13 laws of the United States such as the law that's being alleged
14 in this case.

15 So one of the issues here is that, you know, a
16 reasonable person, if they think they're going to be convicted
17 on an offense and have to serve time in jail and they know that
18 afterwards they're likely to be deported, they may not want to
19 stick around to have that outcome come and then end up having
20 to be deported to another country anyway. So that's an issue
21 to be considered.

22 There's this recent Supreme Court case, Padilla. In
23 that case, the Supreme Court held that an attorney is required
24 to give -- in order to render effective assistance is required
25 to give some advice concerning immigration consequences for

1 criminal cases in Federal Court. And I meant to bring that out
2 or have that out here because it's something that comes up
3 often in some of the cases we see.

4 But the Supreme Court there emphasized that this
5 immigration consequence is so significant that for many people
6 it might be more significant than the actual conviction or
7 sentence itself. And so that is a consequence that's at issue
8 here.

9 And so the birth certificate is a little bit
10 troubling. For this area and, you know, the -- it doesn't seem
11 like, you know, a very funny gag to -- down here to have a fake
12 birth certificate. But you know, that's -- on the other hand,
13 you know, I'm not sure that it's all that significant since
14 Mr. Tijerina does have status to be here.

15 I'm not sure where the birth certificate really would
16 get him, but it is a little bit troubling the fact that that's
17 there. And you know, it doesn't seem like the thing -- the
18 type of thing you would buy as a joke around here anyway,
19 especially for a person that, you know, has some status here
20 and so forth. So I don't really understand or know exactly
21 what to make of that other than it's a little bit troubling.
22 But I'm more concerned by the other aspect of this that I was
23 just describing.

24 Also, in addition to his ties here, Mr. Tijerina
25 clearly does have ties to Mexico as well. I mean, that's not

1 uncommon for people in this area, and there's nothing wrong
2 with that. But in the context of this situation, he's got
3 significant ties in Mexico as well, as reflected by the
4 Pretrial Report. His parents are there. His father was
5 deported after a drug conviction here in the United States.
6 Also, he has a brother that was similarly deported to Mexico
7 after a drug conviction in the United States. And it looks
8 like Mr. Tijerina was -- I'm guessing he was charged in that
9 same case that his brother and father were deported on from the
10 United States, but the charge was dismissed as to him.

11 So that whole circumstance is a little bit troubling.
12 First, he does have ties in Mexico. But the circumstance of
13 this situation where he has family members that have had these
14 convictions and then got deported, and apparently he was
15 charged himself in connection with that. This was some years
16 ago. So I'm not placing a lot of weight on that, but it is,
17 you know, one point to weigh in the balance along with many
18 other things.

19 He does have his own children from I guess his first
20 marriage that one is living in the United States and the other
21 two are -- do live in Mexico. So he's got those ties in terms
22 of two of his own children as well that are there.

23 As I mentioned, his wife and he have very strong
24 economic ties and very impressive as far as the amount of
25 assets that they've accumulated. I'm still not altogether

1 clear. You know, it's a situation where they may just be very
2 good businesspeople that are able to turn these things over and
3 develop very significant assets by working things.

4 On the other hand, it's hard for me to tie in where
5 this amount of wealth would be generated from the income or
6 assets that I can see from the report or that I understand from
7 what Ms. Cano was testifying about. So that's a little bit
8 troubling there. It's -- on the one hand, they've got strong
9 -- he's got strong economic ties. On the other hand, that's
10 the other aspect of this.

11 So in looking at everything, I am concerned. I do
12 find that this is not the kind of case where an unsecured bond
13 would be appropriate. And I guess there are a couple of things
14 that I would think that might be helpful or to have some
15 additional information on.

16 And one thing, Mr. Vega, I was going to ask about,
17 and maybe you know this already, but the -- in terms of this
18 immigration consequence that might flow from a conviction, if
19 there were to be one, obviously, that is a question of whether
20 that would happen. But are you familiar with this type of an
21 offense? I know in some types of offenses it's almost a
22 certainty. This may not be the same type of situation or it
23 may be. I don't know. Are you familiar with that or know?

24 **MR. VEGA:** It's -- well, normally, the weapons
25 offenses are automatic, Judge. But since this is more of a

1 fraud, conspiracy to commit fraud, I still think it still falls
2 under that for deportation. And that's why it's my client's
3 intent to go to trial. As you can see, Judge, you mentioned
4 all the bonds. But nobody wants to, like, go to Mexico.
5 They're all coming over here --

6 **THE COURT:** Right.

7 **MR. VEGA:** -- because of the violence. So I mean,
8 that's -- our intent is to go to trial and fight it not to take
9 a plea and risk deportation. So it's -- we're going to assume
10 that it is, and that's why we're going to fight it.

11 **THE COURT:** And in terms of these properties, I'm a
12 little concerned as far as, you know, tying in where all these
13 funds came from. And I asked some questions to Ms. Cano about
14 that, and she provided some answers on that. And I guess,
15 Mr. Vega, if you wanted to, I mean, I would think that if I was
16 to set a bond for -- in this case given the -- all the
17 circumstances, I would definitely be wanting to look at some
18 significant security or conditions in that sense.

19 If you wish to request some additional time maybe to
20 present further evidence or explanation as far as some of these
21 properties and the circumstances that they came to own those
22 and to consider in the context of possibly setting conditions
23 that might include security that would relate to those
24 properties, we could do that. Or if you just want, I can go
25 ahead and rule right now and based on every -- what's before

1 the Court right now. Or if you wish to have --

2 **MR. VEGA:** Judge, I would be -- if the Court wants
3 additional information, we could put, like, the documentation
4 to show the years because some of these properties were bought
5 14, 15 years ago.

6 **THE COURT:** Right.

7 **MR. VEGA:** Does the Court want me to go back to 20
8 years or --

9 **THE COURT:** Well, no. I mean, do you see the point
10 I'm getting at though? I mean, they --

11 **MR. VEGA:** I think it's two properties there in the
12 last two years. Is that what you want me to --

13 **THE COURT:** Well, I mean, those are -- those
14 illustrate the concern I have as far as it's -- well, I think
15 there were several properties that were -- like some of them
16 were bought like four years ago. Some of them were a couple
17 years ago or I guess maybe four years ago where houses were
18 placed on some of them and then a couple years ago. Those are
19 the Laurel ones I believe. Four years ago there was houses
20 placed on them. And then a couple years ago one of them was
21 purchased. And somehow, they, you know, all end up with -- are
22 free and clear of any liabilities.

23 You know, and again, on the one hand, we don't want
24 to punish somebody for being, you know, good with their
25 finances and being smart in terms of real estate investments

1 and so forth. On the other hand, the type of situation here
2 that's -- you know, the Government obviously believes that
3 Mr. Tijerina has been involved in with these firearms and more
4 than just this one particular firearm in that there were three
5 others and that there were other circumstances that are
6 similar.

7 And so obviously, one concern is that if assets are
8 obtained by -- you know, through sources from -- you know, that
9 are -- can't be really ascertained, then one possibility, of
10 course, is that it's from some kind of illegal activity in that
11 that -- under the Bail Reform Act is one of the issues the
12 Court should look at in determine whether security would really
13 be appropriate or proper. And so -- you know, and it may be
14 that these things can be explained, but that's one of the --
15 one issue I have with those things.

16 And so I'm sorry. I think I might have -- you were
17 starting to say as far as additional information. Do you want
18 to request some additional time? We can reset this and see if
19 you want to present anything else, or I can just go ahead and
20 enter a ruling right now. And then always, the Defendant would
21 have the opportunity if no bond is set to reopen the hearing.

22 **MR. VEGA:** Yes, your Honor. Well, we do have the
23 other property that was being provided by a sister. Would we
24 have to explain too, Judge, if I asked for more time or --

25 **THE COURT:** Well, I mean, under the -- I think under

1 the circumstances, it would be best to also, you know,
2 determine that or have --

3 **MR. VEGA:** Okay.

4 **THE COURT:** -- some information about the source of
5 that as well or any property or any security that --

6 **MR. VEGA:** Yes, your Honor.

7 **THE COURT:** -- may be placed.

8 **MR. VEGA:** Would the Court give us until Wednesday so
9 I can sit down with the family and get it typed up and submit
10 it, your Honor?

11 **THE COURT:** Okay. We can reset this. Although
12 Wednesday morning, we have a large number of other cases that
13 are already set. So we would either have to do this Wednesday
14 afternoon or Thursday morning might work as well. So do you
15 have a preference between those, Mr. Vega?

16 **MR. VEGA:** The afternoon is fine, Judge.

17 **THE COURT:** Okay. We'll set this for Wednesday
18 afternoon at 3:00 o'clock, just a continued hearing. At that
19 time, I'll consider any additional evidence that may be
20 presented on behalf of the Defendant and then take that into
21 account. I'll also, of course, if the Government has other
22 evidence consider that as well. And based on all the factors,
23 I'll just go ahead and make a ruling at that point after
24 considering those things.

25 And, Mr. Vega, I guess what you're saying on the

1 immigration issue is you're assuming that it would be almost
2 automatic at this point. If there was any different
3 information you would have as far as these specific offenses
4 that you wanted to present that suggest that maybe it's not so
5 automatic as then, you know, you could do that as well.

6 **MR. VEGA:** Yes, your Honor. I will.

7 **THE COURT:** So if there's nothing else here today
8 then -- and I do want to -- obviously, we discussed when last
9 time Mr. Tijerina was not able or actually was needed to be
10 taken to the hospital the -- his medical situation. And,
11 Mr. Vega, on that, I mean, he's -- I assume he got attention at
12 the hospital, but did they also straighten out the medication
13 he should be taking as well or --

14 **THE DEFENDANT:** Yes, your Honor.

15 **THE COURT:** Okay.

16 **MR. VEGA:** Yes, Judge. He's fine. I think it was
17 just anxiety, your Honor, and he hadn't had his medication in a
18 couple of days. So he's fine.

19 **THE COURT:** Okay. Well, we do want to make sure that
20 he's kept well and is, you know, is going to be safe and be
21 able to be as healthy as he can be given his various
22 conditions. So that -- and that is one issue in terms of
23 considering bond as well, that he is in bad health. So
24 obviously, we would rather not have him be in custody if it's
25 appropriate to set conditions.

1 On the other hand, he's obviously a vigorous person.
2 He hunts. He does -- engages in a lot of activity. So that --
3 I mean, that's a good situation for him. But that's another
4 aspect of all this as well is to take into account.

5 If there's nothing else here today then, we'll go
6 ahead and continue this until Wednesday at 3:00 to consider any
7 other information, and then I'll enter a ruling at that point.
8 Thank you all.

9 **MR. VEGA:** Thank you, your Honor.

10 **THE COURT OFFICER:** All rise again.

11 **(This proceeding was adjourned at 10:44 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



April 29, 2011

Signed

Dated

TONI HUDSON, TRANSCRIBER