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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
(THE HONORABLE GONZALO P. CURIEL)**

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRED MAGAÑA,

Defendant.

Case No. 19CR4768-GPC

**FRED MAGAÑA'S  
SENTENCING  
MEMORANDUM**

**Date:** January 27, 2023

**Time:** 8:30 AM

**Introduction<sup>1</sup>**

When he was a cop, Lieutenant Fred Magaña<sup>2</sup> was an exceptionally good cop. One of the very best. But on November 22, 2019, Freddy Magaña - a first generation Mexican American – agonizingly watched as his law enforcement career was destroyed. And he contritely acknowledged that he

<sup>1</sup> This Memorandum is brief and focused because the Court is already fully familiar with the underlying offense conduct and the facts of this unusual case.

<sup>2</sup> Hereinafter - Freddy Magaña.

1 had a hand in that destruction.

2        Freddy Magaña's 19-year law enforcement career with the San Diego  
3 Sheriff's Department (SDCSD) spanned from January 2002 until May 2019<sup>3</sup>.  
4 Yet, on November 22, 2019, as he endured that fateful day when he was  
5 arraigned on the Indictment, Freddy Magaña's disciplined dedication, hard  
6 work, and dreams came crushing down. Tragically, there was no other option  
7 for him *at that time*, other than to plead guilty to a felony offense. The case  
8 and the results would turn out to have a protracted history with proceedings  
9 lasting even up to today.  
10

11        Exacerbating his agonizing pain and public shame, Freddy, and his law  
12 enforcement officer wife, had to endure even more pain that same day.  
13

14        After Freddy Magaña went home from the shame of that public  
15 arraignment, the guilty plea process, the (to a cop) humiliating book-and-  
16 release process, a representative from the SDCSD – at that time Lieutenant  
17 Michael Knobbe - was insistently telephoning him. Like a telemarketer  
18 would have called. Even as Freddy and his wife were emotionally crushed,  
19 desperately trying to recover from the deep psychological and emotional  
20 shock of having his career destroyed.  
21  
22  
23  
24  
25  
26  
27

28 <sup>3</sup> Lt. Magaña was suspended, *without pay*, on November 22, 2019.

1 Lieutenant Knobbe was insisting that he needed to meet Freddy  
2 Magaña “immediately.” And so, he demanded that Freddy meet him later  
3 that afternoon at the Chula Vista Police Department parking lot “to get  
4 equipment from him and accept process.” By then, it was late in the day.  
5

6 The undersigned immediately contacted the SDCSD’s legal counsel to  
7 offer acceptance of service of process urging that the matter could wait until  
8 the following day. This was normally a routine matter among lawyers. Legal  
9 counsel for the SDCSD agreed with the undersigned. But that insensitive  
10 unmoved representative, pressing as infamous Inspector Javert, persisted.  
11

12 The reason for this insistence was to unceremoniously hand Freddy  
13 Magaña the documents for his formal discharge from the SDCSD. That  
14 representative just could not wait to add to the shame already publicly  
15 displayed and endured by Freddy Magaña and his wife.  
16

17 At that fateful point, in that Chula Vista parking lot, Freddy Magaña’s  
18 exemplary law enforcement career with the SDCSD continued to be  
19 disproportionately destroyed then at the hand of that representative. No  
20 consideration was made by that representative to simply wait until the  
21 following day. No consideration was made to hand the termination notice to  
22 the undersigned. No considerations were made like those given before and  
23 after to former SDCSD Captain Garmo – only written reprimands, even as  
24  
25  
26  
27  
28

1 the San Diego District Attorney had investigated the same illicit conduct by  
2 him and for which Garmo was eventually indicted here. No, Freddy Magaña  
3 did not have any of those same considerations from the SDCSD.  
4

5 The Court was able to witness firsthand former Lt. Magaña's  
6 honorable, disciplined character when he forthrightly testified at trial. As he  
7 testified, Lt. Magaña was unflappable; his testimony favored no side. He was  
8 candid; he was truthful. Even if the giving of that public testimony was  
9 personally painful to him. He did so with dignity.  
10

11 But his decade-long law enforcement service was also destroyed. And  
12 the personal and professional price he and his family paid for his atypical,  
13 admittedly unlawful actions, can be sincerely said to have been  
14 disproportionate to his crimes. The disproportionality of his accountability,  
15 when contrasted with that of his Co-defendants, was too high a price to  
16 extract from him. Yet, he accepted that severe consequence honorably.  
17

18 Now, returned from that agonizing personal Odyssey, former Lt.  
19 Magaña takes some solace in the unanimous sentencing recommendations  
20 from Probation Officer Jill Johnson-Pogue<sup>4</sup> and from the Government. Each  
21 recommends no custody need be added to the heavy price former Lt. Magaña  
22  
23  
24  
25  
26  
27

28 <sup>4</sup> Though Probation Officer Johnson-Pogue also suggests an unnecessary \$5,000.00 fine.

1 has already paid. The stripping away of his 19-year law enforcement career  
 2 with the SDCSD is more than enough. And, because Freddy has been in  
 3 pretrial supervision for over three years now - since November 22, 2019 - the  
 4 Government is also expected to recommend no further supervision.  
 5

6  
 7 Freddy Magaña respectfully asks the Court to accept the unanimous  
 8 recommendation of the Government and Probation for no custody. He also  
 9 asks for no additional time of supervision and no fine - this case has already  
 10 cost Freddy Magaña substantial loss of income and savings.  
 11

12  
 13 **I.**  
 14 **What Destroyed Former Lieutenant Magaña's Exceptional**  
 15 **Law Enforcement Career - The Sum and Substance of**  
 16 **His Offense Conduct.<sup>5</sup>**

17 The actions for which former Lieutenant Magaña's career was  
 18 destroyed have already been accurately captured in the Presentence Report  
 19 (PSR). This Court also directly witnessed his direct and cross-examination  
 20 at trial wherein he forthrightly admitted all of his criminal acts.

21 The specific context for the unlawful actions attributed to Freddy  
 22 Magaña in this case, very accurately captured in the PSR, is the following:  
 23

24 After GARMO's *formal reprimand in February*<sup>6</sup>  
 25 *2017*, GARMO supplied HAMEL with a new "straw"

26 <sup>5</sup> Freddy Magaña provides the advisory Guidelines in his Sentencing Summary Chart,  
 27 filed separately.

28 <sup>6</sup> Yes, Garmo received only a "formal reprimand" at first for his actions.

1 purchaser, MAGANA, a Lieutenant with SDCSD,  
 2 who was directly supervised by GARMO. The  
 3 arrangement was documented through text messages  
 4 obtained during a search warrant of GARMO's  
 5 telephone. GARMO confirmed with HAMEL which  
 6 guns HAMEL wanted to purchase and GARMO  
 7 would text the requests to TILOTTA at Honey Badger  
 Firearms. GARMO told TILOTTA that the guns were  
 for MAGANA.

8 PSR, paragraph 47, page 11, emphasis added. And after almost two decades  
 9 of exemplary loyal service to the community with the SDCSD, former  
 10 Lieutenant Magaña atypically did the following for hen Captain Garmo:  
 11

12 During the investigation [of former SDCSD Captain  
 13 Marco Garmo], it was determined that MAGANA  
 14 assisted in GARMO's firearms trafficking by making  
 15 a straw purchase *of two firearms for HAMEL*, at  
 GARMO's direction.

16 *Id.*, emphasis added. Freddy Magaña facilitated the straw purchase of two  
 17 firearms.  
 18

19 There was some additional conduct attributed to former Lt. Magaña:

20 Text messages were recovered between MAGANA  
 21 and GARMO, which determined the two had a close  
 22 relationship. GARMO told MAGANA that he owed  
 23 him (MAGANA) and MAGANA suggested that  
 24 GARMO provide him a list of stuff GARMO wanted  
 25 to sell and MAGANA would "pimp it out to his homies  
 26 and keep your name (GARMO) out of it until they  
 27 were ready to pull the trigger." GARMO provided  
 28 MAGANA with a list of firearms he (GARMO) was  
 trying to sell, while GARMO and MAGANA discussed  
 prices GARMO was willing to accept. Despite the

1                    messages, *MAGANA's actual efforts to advertise*  
2                    *GARMO's firearms were minimal.*

3                    PSR, pages 11-12, paragraph 50, emphasis added. Yes, even according to  
4                    Probation officer Johnson-Pogue, Freddy Magaña's efforts to help Garmo  
5                    further "were minimal."

7                    These acts constitute the sum and substance of the criminal actions in  
8                    the case by Freddy Magaña. The actions that led to the destruction of his 19-  
9                    year career with the SDCSD and proud service to the San Diego community.  
10                    Significantly, Probation Officer Johnson-Pogue recommends a minor role  
11                    reduction to reflect Freddy Magaña's mitigated role in this case:  
12                   

14                    Adjustment for Role in the Offense: During this  
15                    offense, MAGANA worked at the direction of GARMO  
16                    and agreed to purchased two firearms in his name,  
17                    which would later be transferred to HAMEL.  
18                    MAGANA did not purchase these firearms for his  
19                    personal use and knew that the firearms were for  
20                    another individual. MAGANA agreed to provide this  
21                    favor to his then direct supervisor, GARMO. There is  
22                    no evidence the defendant was the leader or organizer  
23                    in this offense but that *he had limited involvement*  
24                    *and participation in this scheme.* Therefore, a  
25                    minor role adjustment pursuant to USSG 3B1.2(b)  
26                    would apply at this juncture.

27                    PSR at page 15, paragraph 72, emphasis added. Freddy Magaña respectfully  
28                    ask the Court to grant Probation Officer Johnson-Pogue's fact-based  
29                    recommendation for minor role.



1 At the sentencing hearing, former Lt. Magaña will make four simple  
2 requests of the Court:

- 3 1. To accept the unanimous recommendation of the parties for no  
4 custody – time served.
- 5 2. That the Court add **no** supervision because he has already been  
6 under presentencing supervision for over three years - since  
7 November 22, 2019.
- 8 3. That the Court nor follow Probation's recommendation for a fine.  
9 Finally,
- 10 4. Freddy Magaña personally asks the Court to exercise discretion  
11 and reduce his felony to a misdemeanor.

12  
13 **II.**  
14 **Former Lieutenant Magaña's Law Enforcement Career**  
15 **Had Been Undeniably Exceptional.**

16  
17 In the PSR, Officer Johnson-Pogue lists but some of the exceptional  
18 accomplishments by former Lt. Magaña:

19  
20  
21  
22 97. The defendant achieved the following certificates  
23 while employed with the sheriff's department: 2018  
24 LEAD San Diego Leadership Course; POST  
25 Management School; Homicide Investigations; Child  
26 Homicide Investigation Course; Detective Sergeant  
27 Case Management; Academy Instructor Certification  
28 Course; DEA Basic Narcotic Investigator School;  
Department of the Army and Air Force Joint Task  
Force Domestic Support-Counterdrug; Interview and



1 Interrogation Techniques; Basic P.O.S.T.  
 2 Supervisory School; Advanced P.O.S.T.; Patrol  
 3 Training Officer; Jail Training Officer; 11350 H&S  
 4 Under the Influence Certificate/Driving Under the  
 5 Influence; San Bernardino Terror Attack; and FEMA  
 6 Center for Domestic Preparedness.

7 98. Additionally, the defendant received two  
 8 meritorious unit citations, exemplary performance  
 9 accommodations, letters of commendation, 2009  
 10 Auto-theft Recovery Office of the Year at the Poway  
 11 Station, and two arrests of the month at the Poway  
 12 Station.

13 *Id.*, page 18.

14 Officer Johnson-Pogue also notes:

15 The defendant provided copies of his performance  
 16 evaluations, which indicated that MAGANA had  
 17 strong connections to law enforcement ***and the***  
 18 ***community***. He delegated work appropriately,  
 19 ***mentored others, praised his staff, and was***  
 20 ***eager to learn new responsibilities***. The  
 21 defendant was involved in a variety of ***community***  
 22 ***programs*** and maintained a positive spirit, despite  
 23 a difficult workload.

24 *Id.*, page 18, paragraph 95, emphasis added. Freddy Magaña invites the  
 25 Court's attention to Part C. Offender Characteristics at pages 16-18 of the  
 26 PSR.

27 Freddy Magaña also invites the Court's attention to examples of the  
 28 types of merit certificates and commendations accomplished by him. These  
 are attached here as Exhibits A-E.

1 The first certificate, Exhibit A, from the County of San Diego Sheriff,  
2 Meritorious Unit Citation, states in part:

3  
4 On March 13, 2018, the President of the United  
5 States, Donald J. Trump arrived in San Diego to  
6 observe the recently constructed prototype walls for  
7 the planned border wall construction. Several months  
8 leading up to the President's visit, many people, both  
9 for and against the planned border wall, were very  
10 vocal in both public forums as well as social media.  
11 The construction of a wall along the United States  
12 and Mexico international order as well as increased  
13 order security had been the topic of national debate.  
14 Rallies and protests regarding the wall and border  
15 security were held throughout the country and in San  
16 Diego County.

17 *The mission was to ensure the safety of the*  
18 *President of the United States during his visit to*  
19 *the county of San Diego, ensure the protection of*  
20 *life, property and maintain the peaceful and*  
21 *lawful assembly for any persons wishing to*  
22 *gather and express their constitutional right of*  
23 *free speech during President Trump's visit.*

24 Exhibit A, emphasis added. Lieutenant Magaña's skill and reliability as a  
25 great cop, at that time, were obviously among the very best. They were good  
26 enough to help protect the then most powerful man in the world – the  
27 President of the US. And Magaña and his colleagues in law enforcement did  
28 this during an unstable time in our country. And specifically, a socially  
unstable time in San Diego County at the Mexico/US border.

1 Exhibit A also acknowledges:

2 In the weeks leading up to purposed visit, Sheriff's  
3 Units began the daunting task of operational  
4 planning. They worked collaboratively with local,  
5 state and federal allied agencies to include San Diego  
6 Police Department (SDPD), Cal Fire, Border Patrol  
7 (BP), Customs and Border Protection (CBP), United  
8 States Secret Service (USSS), Federal Protective  
9 Services (FPS) and the California Highway Patrol  
10 (CHP). *The collective group functioned in a  
11 Unified Command posture and formed the  
12 working response plan, "POTUS 18."*

13 ...

14 *Due to the dedication and efforts of those  
15 involved, the visit was a success. It was managed  
16 well with no arrests, no uses of force, and no  
17 injuries to law enforcement or the public while  
18 ensuring the citizen's 1st amendment right to  
19 speech and the safety of the President of the  
20 United States.*

21 *The attached San Diego Sheriff's Units and  
22 individuals involved in POTUS 18 represented  
23 the department in an exemplary manner.*

24 It is a pleasure to present these individuals with the  
25 Sheriff's Meritorious Unit Citation.

26 Exhibit A, emphasis added. Freddy Magaña was a critical part of POTUS 18  
27 as can be seen in the photograph of that day, taken after the event was  
28 successful:



Then Lieutenant Magaña second from right.

And the certificates discussed here demonstrate that Freddy Magaña was indeed a great cop. A great cop whose unlawful actions in this case are palpably atypical. Actions he should have never taken. But Freddy Magaña blames no one for his deliberate actions. He only wishes that he had never acted upon Garmo's solicitations and that he could, somehow, take them back.

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## Conclusion

When Freddy Magaña tendered his guilty plea, and when he was discharged from the Sheriff's Department, San Diego County lost a great cop. And Freddy Magaña and his family endured what seems a high, disproportionate, unnecessary price to pay. Therefore, Mr. Magaña respectfully asks the Court to impose no custody, no fine, and no additional supervision.

Dated: January 20, 2023.

Respectfully submitted,

/s/ Ezekiel E. Cortez

Ezekiel E. Cortez

*Attorney for Fred Magaña*

## **Exhibit A**



C O U N T Y O F S A N D I E G O

**Sheriff**



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***MERITORIOUS UNIT CITATION***

***FRED MAGANA***

On March 13, 2018, the President of the United States, Donald J. Trump arrived in San Diego to observe the recently constructed prototype walls for the planned border wall construction. Several months leading up to the President's visit, many people, both for and against the planned border wall, were very vocal in both public forums as well as social media. The construction of a wall along the United States and Mexico international border as well as increased border security had been the topic of national debate. Rallies and protests regarding the wall and border security were held throughout the country and in San Diego County.

The mission was to ensure the safety of the President of the United States during his visit to the county of San Diego, ensure the protection of life, property and maintain the peaceful and lawful assembly for any persons wishing to gather and express their constitutional right of free speech during President Trump's visit.

In the weeks leading up to purposed visit, Sheriff's Units began the daunting task of operational planning. They worked collaboratively with local, state and federal allied agencies to include San Diego Police Department (SDPD), Cal Fire, Border Patrol (BP), Customs and Border Protection (CBP), United States Secret Service (USSS), Federal Protective Services (FPS) and the California Highway Patrol (CHP). The collective group functioned in a Unified Command posture and formed the working response plan, "POTUS 18."

Sheriff's and County authorities coordinated with Sheriff's Emergency Planning and criminal intelligence units to obtain temporary area restrictions with county counsel and Board of Supervisors approval. In addition efforts were made to obtain parking restrictions and create no trespass areas. This was both an administrative and operational effort on a large scale. Coordination had to be conducted for communications, off road enforcement teams, mobile field force (MFF) activation, mobile booking, and Sheriff's Special Enforcement Detail deployment. To ensure proper information sharing and task monitoring, operational briefings were conducted with MFF and Unified Command partners.

Due to the dedication and efforts of those involved, the visit was a success. It was managed well with no arrests, no uses of force, and no injuries to law enforcement or the public while ensuring the citizen's 1st amendment right to speech and the safety of the President of the United States.

The attached San Diego Sheriff's Units and individuals involved in POTUS 18 represented the department in an exemplary manner.

It is a pleasure to present these individuals with the Sheriff's Meritorious Unit Citation.



## **Exhibit B**



COUNTY OF SAN DIEGO

**Sheriff**



---

***Fred Magaña***

---

***Exemplary Performance***

*On January 13, 2017 at approximately 1509 hours, Lieutenant Fred Magaña along with Team 4 Patrol Deputies responded to investigate a report of shots fired at a location in Spring Valley. When he arrived he contacted a witness, who stated the landlord to the building had been shot and was lying down in the open doorway of an apartment. Believing the victim may still be alive, Lieutenant Magaña formulated a rescue plan to retrieve the victim as quickly as possible. Believing an active threat was still at large inside the apartment, the plan was initiated. Lieutenant Magaña and deputies approached the open apartment with ballistic shields and lethal coverage. The victim was removed from inside the apartment and carried to waiting paramedics who began lifesaving measures.*

*As more information was forthcoming about the incident, it was believed one or two more victims were inside the apartment. A second rescue plan was formulated and enacted. A Deputy along with his K-9, off leash, cleared the apartment one room at a time which allowed Lieutenant Magaña and Team 4 to enter and secure the residence. A search was conducted and two additional lifeless subjects were located in a bedroom.*

*Lieutenant Magaña should be commended for his courage in initiating and conducting two separate rescue attempts, in order to preserve human life with the knowledge that an active shooter may be waiting in ambush.*

*Lieutenant Magaña continues to set the example for his subordinates while exemplifying the high values we continually strive to achieve. Therefore, it is with great pride; I hereby award Lieutenant Fred Magaña the Sheriff's Letter of Exemplary Performance.*

A handwritten signature in black ink, appearing to read "J. L. ...", positioned above the title "Division Commander".

Division Commander

## **Exhibit C**



C O U N T Y O F S A N D I E G O

*Sheriff*



**LETTER OF COMMENDATION**

***FRED MAGANA***

On September 25, 2012, deputies from the Santee Sheriff's Station conducted an investigation involving child molestation. The suspect was a resident of Lakeside living with his girlfriend and her two daughters. During the investigation, deputies developed strong evidence against the molestation suspect. Deputies from the Santee Sheriff's Station and a Detective from the Child Abuse Detail responded to the suspect's residence to arrest the subject. Sergeant Craig Johnson, Detective Ali Perez and Deputy Mike Spears attempted to contact the suspect at the front door to the residence.

Because of exigent circumstances, Detective Perez forced entry into the apartment and was met with a barrage of gunfire. Perez was shot by the suspect and fell to the ground in the apartment. During this time, Sergeant Johnson was shot through his ballistic vest in his upper body and left arm. Sergeant Johnson and Deputy Spears returned gunfire with the suspect and were trapped on the upstairs landing. Spears and Johnson were forced to withdraw from the area as they continued to engage the suspect with gunfire. During this time, they entered an adjacent apartment and withdrew to the back of the apartment for cover.

Numerous law enforcement officers throughout the county responded to the incident and assisted their comrades with an active shooter and deputies in need of rescue. Ultimately, Detective Perez, Sergeant Johnson and Deputy Spears were rescued from the area. Additionally, the suspect was taken into custody. Both Detective Ali Perez and Sergeant Johnson were transported to the hospital and survived their life threatening injuries.

Detectives and deputies from specialized units responded to help. They assisted in crime scene preservation and aided in organizing the investigation. They conducted critical interviews with key witnesses including law enforcement witnesses that were involved in the rescue of their fallen comrades. Every interview became extremely important to the success of the investigation and the future prosecution of the suspect. These experienced detectives demonstrated exceptional job performance, which materially contributed to the Department's mission.

It is with great pleasure that I present Detective Fred Magana with the Sheriff's Letter of Commendation for his outstanding performance displayed under such an emotional and trying event.

May 8, 2013

*William D. Gore*

William D. Gore, Sheriff

## **Exhibit D**





An Affiliate of San Diego Regional Chamber

**THIS CERTIFICATE IS PRESENTED TO**

*Fred Magaña*

**IN RECOGNITION OF DISTINGUISHED ACHIEVEMENT IN COMPLETING THE  
IMPACT SAN DIEGO PROGRAM. BY RECOMMENDATION OF THE BOARD OF DIRECTORS,  
WE ARE PLEASED TO PRESENT YOU WITH THIS HONOR.**

**THE SEVENTH DAY OF JUNE  
TWO THOUSAND AND EIGHTEEN**

A handwritten signature in blue ink, appearing to read "Nikki Clay", written over a horizontal line.

**NIKKI CLAY  
CO-CHAIR, BOARD OF DIRECTORS**

A handwritten signature in blue ink, appearing to read "Stath", written over a horizontal line.

**STATH KARRAS  
CO-CHAIR, BOARD OF DIRECTORS**